Supreme Court E-Library

1. Each appellant is sentenced to suffer the penalty of ***reclusion perpetua***.

2. Appellants are ordered to *PAY*, jointly and severally, the heirs of Chua the following amounts: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; (c) ₱63,000.00 as actual damages; (d) ₱25,000.00 as exemplary damages; and (e) ₱25,000.00 as temperate damages.

3. The police are ordered to return immediately to the heirs of the victim the Omega wristwatch and gold Cross ballpen which were recovered from the appellants.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.*, concur.

EN BANC

[G.R. No. 128109. November 19, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **VENO ESPERAS,** *appellant.*

SYNOPSIS

Appellant was found guilty of three counts of qualified rape. He was sentenced to death and, hence, this automatic review.

On the alleged absence of external injuries on the victim, the same did not detract from the fact that rape was committed. As to appellant's denial, it cannot overcome the victim's positive assertion. Further, appellant failed to show any ill motive on the part of the victim and her mother to fabricate such story.

Supreme Court E-Library

Finally, while the victim's vaginal lacerations alone cannot establish rape, they are corroborative of its commission. Thus, the Court affirmed the conviction of appellant, but reduced the penalty to *reclusion perpetua* for each count of rape. The qualifying circumstance of minority was not sufficiently established, as there was absence of documentary evidence thereto and the testimonies given by the victim and her mother were conflicting. The qualifying circumstance of relationship between appellant and the victim, on the other hand, cannot be appreciated as the same was not alleged in the Informations.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; TESTIMONIES; DENIAL; CANNOT PREVAIL OVER POSITIVE ASSERTION.** – Appellant's denial cannot overcome the victim's positive assertion. Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim. Time and time again this Court has said that when a woman – more so when she is a minor – says she has been raped, she says in effect all that is required to prove the ravishment.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; UPHELD IN THE ABSENCE OF ILL MOTIVE.** – Appellant failed to show any ill motive, on the part of the victim and her mother, to fabricate such a story. A witness testifying candidly, trustworthy and consistently – without any ill motive – is surely more credible than an appellant who simply denies the charge. "Where there is no evidence to show any improper motive on the part of the rape victim to testify falsely against the accused or to implicate him falsely in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.

3. **ID.; ID.;ID.; FINDINGS OF TRIAL COURT, RESPECTED.** – It is a hornbook doctrine that the competence and the credibility of witnesses are best determined by the trial court because of its unique opportunity to observe their deportment while testifying. Binding and conclusive on this Court are its factual findings, absent any arbitrariness or oversight of facts or circumstances of weight and substance. In the present case, the court *a quo* gave more credence to the positive testimony

Supreme Court E-Library

of the victim, and we find no reason to set aside its factual findings.

4. CRIMINAL LAW; RAPE; NOT NEGATED BY ABSENCE OF INJURIES. – The presence of injuries is not vital to establishing the guilt of appellant. The alleged absence of external injuries on the victim does not detract from the fact that rape was committed. Even, assuming *arguendo* that there were no signs of other bodily injuries, the occurrence of rape is still not negated, since their absence is not an essential element of the crime.

5. ID.; ID.; ALSO NOT NEGATED BY ABSENCE OF VAGINAL LACERATIONS. – While vaginal lacerations alone cannot establish rape, they are corroborative of its commission. The straightforward and unwavering testimony of the victim, coupled with her vaginal lacerations, proved that rape was committed, and that he was the perpetrator. It was the totality of evidence – not the mere presence or absence of those lacerations – that established his culpability for the offense charged.

6. ID.; ID.; QUALIFYING CIRCUMSTANCES; MINORITY; NOT ESTABLISHED WHERE TESTIMONY OF THE VICTIM CONTRADICTED WITH THAT OF HER MOTHER'S AS TO THE EXACT AGE OF THE VICTIM; PROPER PENALTY. – It must be noted that the rapes were committed prior to the effectivity of RA No. 8353, otherwise known as "The Anti-Rape Law of 1997." Applicable, then is the old provision — Section 11 of RA No. 7659 – which reads as follows: "SEC. 11. Article 335 of the same Code is hereby amended to read as follows: x x x 'Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances: '1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.'" Minority not having been sufficiently established, the trial court committed reversible error in appreciating it as a qualifying circumstance; as such, it must be proved with equal certainty and clearness as the crime itself. Required, therefore, is independent proof of the age of the victim, such as, her birth

Supreme Court E-Library

certificate or her mother's testimony. The victim testified that she was born on August 14, 1979, and was thus 15 years old on the date of the trial. On the other hand, her mother testified that she was born in September 1979. These conflicting – albeit casual – testimonies cast a serious doubt on the victim's exact age at the time of rape. In *People v. Brigildo,* the Court held that minority as a qualifying circumstance under Section 11 of RA No. 7659 had not been properly proven when the testimony of the mother as to the true age of the victim contradicted that of the latter. The Court was thus constrained to reduce to *reclusion perpetua* the penalty of death imposed by the trial court.

7. **ID.; ID.; ID.; RELATIONSHIP OF ACCUSED WITH THE VICTIM; NOT APPRECIATED WHEN NOT ALLEGED IN THE INFORMATION.** – Another error committed by the RTC was its appreciation of the qualifying circumstance of relationship of appellant with the victim. He is allegedly her brother-in-law, but because this fact was not alleged in the Informations, it should have been used by the trial court to qualify the crime. Well-settled is the rule that the relationship of the perpetrator with the victim must be duly alleged in order to justify the imposition of the death penalty. If the offender is merely a relation — not a parent, ascendant, step-parent, guardian, or common law spouse of the mother of the victim – the specific relationship must be alleged in the information, *i.e.,* that he is 'a relative by consanguinity or affinity [as the case may be] within the third civil degree.'"

8. **ID.; ID.; PROPER CIVIL PENALTY.** – In addition to indemnity *ex delicto*, the victim should be awarded moral damages in the sum of ₱50,000. This Court has granted the same to victims of rape without need of proof other than the fact of rape, which by itself shows the factual bases for the award. Also, exemplary damages of ₱25,000 is proper, since the prosecution was able to prove the relationship of appellant with the victim. Even if not alleged in the Information, their proven relationship is sufficient basis for this *civil* liability.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

Supreme Court E-Library

DECISION

PANGANIBAN, *J.*:

Appellant cannot be convicted of qualified rape, because the Informations did not allege his relationship with the victim. Moreover, the latter's exact age at the time the crimes were committed was not proven by the prosecution.

The Case

For automatic review before this Court is the October 18, 1996 "Joint Judgment"[1] of the Regional Trial Court (RTC) of Palawan, Branch 52, in Criminal Case Nos. 12552, 12707 and 12708, finding Veno Esperas guilty beyond reasonable doubt of three counts of rape. The decretal portion of the Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding the accused VENO ESPERAS guilty beyond reasonable doubt as principal of three counts of rape as charged in:

A. CRIMINAL CASE NO. 12,552;

B. CRIMINAL CASE NO. 12,707; and

C. CRIMINAL CASE NO. 12,708; and as the commission of each of the offenses had been attended by the qualifying circumstance that, the offenses charged were committed against a victim below 18 years of age, and by an offender who is related to the offended party within the second degree of affinity, the accused is hereby sentenced to three (3) counts of death — one for each of the above entitled Criminal Cases — in the manner prescribed by law; to pay the offended party and complainant Emie R. Adier civil indemnity of ₱50,000.00 for each of the three (3) offenses charged."[2]

In three separate Informations — one dated August 29, 1995; and two, November 7, 1995 — Prosecutor Reynaldo R. Guayco charged appellant as follows:

---

[1] Written by Judge Filomeno A. Vergara.

[2] RTC Joint Judgment, p. 15; *rollo*, p. 33; records, p. 84.

Supreme Court E-Library

Criminal Case No. 12552

"That on August 4, 1995, at about 5:00 o'clock in the afternoon, at Sitio Landing, Municipality of San Vicente, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, VENO ESPERAS, with violence, threat and intimidation by using a knife and with lewd design, did then and there, wilfully, unlawfully and feloniously have carnal knowledge with EMIE R. ADIER, a girl of 15 years of age, against her will and consent to her damage and prejudice."[3]

Criminal Case No. 12707

"That on the 4th day of August, 1995, at about 5:30 o'clock in the afternoon, at Sitio Landing, Barangay New Agutaya, Municipality of San Vicente, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused with lewd design and by means of force, threat and intimidation with the use of a knife, did then and there, wilfully, unlawfully and feloniously have carnal knowledge with one, EMIE R. ADIER, a girl of 15 years of age, a minor, against her will and consent."[4]

Criminal Case No. 12708

"That on the 4th day of August, 1995, at about 6:00 o'clock in the afternoon, at Sitio Landing, Barangay New Agutaya, Municipality of San Vicente, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused with lewd design and by means of force, threat, and intimidation with the use of a knife, did then and there, wilfully, unlawfully and feloniously have carnal knowledge with one, EMIE R. ADIER, a girl of 15 years of age, a minor, against her will and consent."[5]

Upon his arraignment on November 10, 1995,[6] appellant, with the assistance of counsel,[7] pleaded not guilty to all the charges. After trial in due course, the court *a quo* rendered the assailed judgment.

---

[3] Information dated August 29, 1995; *rollo*, p. 7; records, p. 1.

[4] Information dated November 7, 1995; *id.*, pp. 9 & 16.

[5] Information dated November 7, 1995; *id.*, pp. 11 & 22.

[6] See Order dated November 10, 1995; records, p. 35.

[7] Atty. Benjamin Padon.

Supreme Court E-Library

The Facts
Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution's version of the facts in the following manner:

"In the morning of August 4, 1995, while the victim Emie Adier was cooking breakfast, her brother-in-law, appellant Veno Esperas, arrived and requested her to buy medicine for his fighting cocks and to bring it to his house after attending her class. Emie, who was then a fifteen-year old *barrio* lass, had cordial relations with appellant who is the husband of her sister Elnora.

"Emie bought the medicine after attending school. She then proceeded to appellant's house at Sitio Landing, Barangay New Agutaya, San Vicente, Palawan, which is about two (2) kilometers away from her school. Only appellant was at home because his wife, the victim's sister, was away teaching at the far away town of Caruray, San Vicente, Palawan, where she and her child stayed during weekdays. Upon her arrival around 5:00 in the afternoon, the victim called the appellant and told him that she already bought the medicine he requested. Appellant appeared and went down the stairs. While she was handing the medicine to him, appellant immediately held her hand, pulled her up the stairs and dragged her inside the house.

"When inside the house, appellant hastily pointed a ten-inch jungle knife on Emie's neck. The victim cried and shouted but appellant immediately covered her mouth with his hand.

"The victim told appellant not to proceed with his intentions because she treated him as her own brother but appellant told her not to treat him as her brother. Her pleas went unheeded. Appellant pushed Emie to lie down and proceeded to undress her of her uniform and underwear with his other hand. She kicked and struggled but she did not succeed in resisting appellant.

"Appellant thereby undressed. He then embraced and kissed the victim from her face to her vagina. Appellant placed his finger on her private part and while lying on top of the victim, inserted his organ to her vagina. The hapless victim felt pain. After about [ten] seconds, appellant removed his organ from the victim's vagina and rested on top of her for 30 minutes.

"After resting, he again pointed his knife at Emie's neck. She boxed and kicked appellant but she could not resist his strength.

Supreme Court E-Library

Appellant again inserted his organ to her genitalia and made a push and pull motion. After ravishing the victim, appellant sat and rested beside her. Emie attempted to run but appellant grabbed her and prevented her from running. In pain and feeling very weak, Emie was unable to escape.

"For the third time, he again poked the knife on Emie's neck and once more placed his organ inside her vagina. He ravished her for ten minutes. After satisfying his lechery, appellant ordered the victim to dress up. Appellant forewarned the victim not to tell anybody, otherwise, '*Hindi ako aatras, papatayin ko kayong lahat.*'

"The victim who was hardly able to stand slowly dressed herself and headed home. She reached her house around 6:30 in the evening. She saw her parents and siblings but she was unable to immediately disclose her ordeal because she feared for their lives. In the succeeding days, however, her mother noticed that she looked weak and did not eat regularly. She confided to her mother three days after the incident. The victim's mother went to the police. Emie executed three (3) complaints against appellant. The doctor who examined her days after the incident found that she suffered lacerations in her genitalia. The medical certificate dated August 10, 1995, signed by Dr. Ruthelma Gejon stated:

Grossly Female genitalia
Noted healed laceration at 3, 8 and 11 o'clock
Admits one finger with tenderness
Negative for spermatozoa

"Based on her findings, the doctor concluded that the lacerations could have been caused by penetration or trauma."[8] (Citations omitted)

Version of the Defense

Appellant interposes the defense of denial. His version of the facts is as follows:

"The accused-appellant is a simple farmer, aged 25 years at the time of trial. His marriage to Elnora in 1993 was blessed with a child. Elnora teaches in a far place, which needs crossing the sea by pumpboat. During schooldays, Elnora and the child stay at her place

[8] Appellee's Brief, pp. 5-7; *rollo*, pp. 151-153. Signed by Assistant Solicitors General Carlos N. Ortega and Josefina C. Castillo and Solicitor Jane E. Yu.

Supreme Court E-Library

of teaching assignment, leaving the accused-appellant alone at home to attend to their other concerns. Their house is a one-room nipa shack with a floor made of bamboo slats.

"Early in the morning of 4 August 1995, the accused-appellant went to the house of the accuser and asked her, being the younger sister of her wife, to buy some medicine for his fighting cocks, and to bring it to his house after class that day. As told, the accuser bought the medicine and brought it to the house of accused-appellant after class.

"Upon reaching the house of accused-appellant, she called out to him. She was on the ground, reaching out to him the medicine with her right hand. The accused-appellant was at the topmost part of stairs of his house. The floor of the house or nipa shack is about one meter from the ground. Thus, in the direct examination of the accuser.

Q. Is the flooring elevated from the ground?
A. Yes, sir, about a meter high.

"While the accuser was in the act of giving the medicine to the accused-appellant, the latter took hold of her right hand with his left hand, forcibly pulling her up the stairs of his house, and while facing her directly, covered her mouth with his hand as she was shouting loudly even while she was still outside the house. The accused-appellant allegedly dragged her into his house, and when they were inside the house, pulled out from a scabbard tucked at the right side of his waist a jungle knife, poking the right side of her neck. Even with a knife poked at her neck, she continued to shout.

"The accused-appellant forcibly pushed her to the floor, and the accused-appellant while holding the knife with one hand, undresse[d] her totally, removing her blouse, skirt, bra and panty with his free hand, even as she was continuously shouting for help, with her back pressed against the floor. She was boxing, pushing, and kicking the accused-appellant. But still the accused-appellant succeeded in sexually abusing her.

"At the time of the alleged sexual assault she was menstruating. But she felt and touched blood in her vagina only after the third sexual intercourse.

"The accused-appellant removed her *palda* while he was on top of her. As the accused-appellant removed her panty, the waistline of her panty got torn (although this was not presented as exhibit by the prosecution).

Supreme Court E-Library

"On the second count of [the] alleged rape, the accuser testified that before raping her the second time, the accused-appellant poked the jungle knife to her neck. And while the accused-appellant was poking the jungle knife to her neck, she again boxed him and kicked him but she could not resist his strength.

"The prosecution did not formally offer to prove that the accuser was a minor.

"The prosecution reserved the presentation of the birth certificate but never presented it in evidence."[9] (Citations omitted)

Ruling of the Trial Court

The RTC convicted appellant of three counts of rape for the following reasons. *First*, more than his negative assertion, it was complainant's positive testimony that was given more weight. *Second*, the physical evidence — the medical examination of complainant six days after the incident and the testimony of the examining physician — was deemed to have corroborated the former's assertion that appellant had ravished her.

The trial court discarded the denial proffered by appellant, saying that no woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and expose herself and her family to a public trial, if she was not moved by the desire to have her ravisher punished. Moreover, because the close and cordial relations between her and appellant would be adversely affected by the filing of the charges, only the desire to seek justice could have motivated her and her mother to file the charges, against him.

Hence, this automatic review before us.[10]

---

[9] Appellant's Brief, pp. 9-12; *rollo*, pp. 93-96. Signed by Atty. Virgilio P.A. Ocaya of the Free Legal Assistance Group (FLAG).

[10] This case was deemed submitted for decision on April 9, 2003, upon receipt by this Court of appellant's Reply Brief signed by Attys. Amelia C. Garchitorena, Teresita S. de Guzman and Susan O. Bilog-Azarcon of the Public Attorney's Office (PAO). Appellant's Brief, signed by Atty. Virgilio P.A. Ocaya, was received by this Court on January 27, 2003, while appellee's Brief was filed on September 3, 2002.

Supreme Court E-Library

The Issues

Appellant raises the following errors for our consideration:

"1.01. The trial court gravely erred in according credence to the testimony of the accuser, the scenes depicted in her testimony being highly improbable and inconsistent with physical laws and human behavior.

"1.02. The trial court gravely erred in imposing the death penalty on the accused-appellant as the qualifying circumstances of minority was not sufficiently proven, and that of relationship was not pleaded in the information.

"1.03. The trial court erred in finding that the physical evidence culled from the physician's physical/medical examination of the accuser six days after the alleged rape was consistent with the latter's complaint of rape.

["1.04.] The trial court gravely erred in ruling that the defense of denial by the accused is inherently weak, without putting to scrutiny the contradictory and improbable testimony of the accuser.

["1.05.] The trial court gravely erred in holding appellant liable to pay his accuser the sum of Fifty Thousand Pesos (₱50,000.00) as civil indemnity."[11]

Simply put, the main arguments of appellant are as follows: 1) the circumstances surrounding the offense charged are highly improbable; (2) the commissions of rape cannot be drawn from the physical evidence presented by the prosecution; and (3) the trial court erred in appreciating the minority of the victim and her relationship with him.

The Court's Ruling

We affirm the conviction of appellant for three counts of rape, but reduce the penalty for each count to *reclusion perpetua* for the failure of the Informations to allege his relationship with the victim and for the failure of the prosecution to prove her exact age.

---

[11] Appellant's Brief, pp. 5 & 6; *rollo*, pp. 89 & 90. Original in upper case.

Supreme Court E-Library

First Issue:
Probability of Circumstances

Appellant questions why complainant did not sustain injuries despite the resistance she was supposed to have put up against him — boxing and kicking him while loudly shouting for help. Such struggle should have caused bodily injuries not confined only to the genitalia. Abrasions, hematoma or contusions should have resulted if he had indeed forcibly pulled her from the ground up to his house, which was about a meter above the ground. Moreover, a mark or cut would have been left on her neck, if he had truly poked a knife at it.

He adds as improbable the failure of his neighbors to hear her cries if she truly shouted for help. Among them was Ely Peralta who testified that she was inside her house, which was about 10 meters away from his, yet she did not hear any shouts at the time.

Allegedly unable to fathom why complainant and her mother would fabricate the charges against him despite his cordial relations with them, he contends that the trial court should not have applied the rule that no decent woman would file a rape charge if she was not motivated by the desire to seek justice.

We reject his arguments. The assigned errors, being essentially factual, may readily be explained upon a careful review of the records.

First, the records do not show whether the victim suffered other bodily injuries. During the trial, questions on this matter were limited to the lacerations of her genitalia. As to other injuries, none was propounded to her, her mother or the examining physician.

Second, appellant did not pull the victim from the ground while he was still inside his *nipa* house. She clearly testified that he had gone down the stairs; gripped her hand; and dragged her from there, up the stairs, and into the house.[12] It was not

[12] TSN, February 22, 1996, pp. 13-15.

Supreme Court E-Library

improbable that the whole process left her unscathed, assuming that she was.

Third, his claim that the victim did not suffer injuries when he poked a knife at her neck is of no moment. It must be clarified that the word "poke" in the transcript was interchangeably used with the word "pointed"[13] which indicates that it was a rough translation of the Filipino word "*tinutok*." Naturally, a knife that does not touch the skin would not cause injury.

Nonetheless, the presence of injuries is not vital to establishing the guilt of appellant. The alleged absence of external injuries on the victim does not detract from the fact that rape was committed.[14] Even, assuming *arguendo* that there were no signs of other bodily injuries, the occurrence of rape is still not negated, since their absence is not an essential element of the crime. [15]

Neither is the fact of the rape weakened by the claim of appellant that none of his neighbors heard any shout for help from the victim. As can be gleaned from the records, he quickly halted her shouts by covering her mouth with his hand and poking a knife at her neck.[16] He also warned her that he would kill her if she made any noise.[17] From time to time he silenced her succeeding shouts[18] until she eventually became too weak to make any noise.[19]

Thus, the circumstances surrounding the rapes are not implausible, as appellant would like this Court to believe. These are immaterial, as they refer to explainable details that have nothing to do with the essential fact of the commission of the crime of rape — carnal knowledge through force or intimidation.

---

[13] *Id.*, pp. 15, 17-18.

[14] *People v. Napud, Jr.*, 366 SCRA 25, September 26, 2001.

[15] *People v. Cula*, 385 Phil. 742, March 28, 2000.

[16] TSN, February 22, 1996, p. 15.

[17] *Id.*, pp. 50, 63-64.

[18] *Id.*, p. 56.

[19] *Id.*, p. 60.

Supreme Court E-Library

Appellant's denial cannot overcome the victim's positive assertion. Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim.[20] Time and time again this Court has said that when a woman — more so when she is a minor — says she has been raped, she says in effect all that is required to prove the ravishment.[21]

Furthermore, appellant failed to show any ill motive, on the part of the victim and her mother, to fabricate such a story. A witness testifying candidly, trustworthily and consistently — without any ill motive — is surely more credible than an appellant who simply denies the charge.[22] "Where there is no evidence to show any improper motive on the part of the rape victim to testify falsely against the accused or to implicate him falsely in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence."[23]

The victim recounted how appellant — armed with a knife — defiled her thrice on that fateful day:

"FISCAL ESTOLANO
(cont)

What else did he remove from his body?

A He removed his pants and brief.

Q After removing his brief, what did he do?
A He again pointed the knife to me.

Q And what happened next?
A While he was pointing the knife, I continued pushing him, but I cannot resist his strength.

---

[20] *People v. Edem*, 378 SCRA 38, February 27, 2002; *People v. Baluya*, 380 SCRA 532, April 11, 2002.

[21] *People v. Balas*, 372 SCRA 80, December 11, 2001; *People v. Manayan*, 368 SCRA 300, October 25, 2001; *People v. Tagaylo*, 345 SCRA 284, November 20, 2000.

[22] *People v. Pecayo, Sr.*, 348 SCRA 95, December 14, 2000.

[23] *People v. Cula, supra*, pp. 754-755, per Melo, *J.*

Supreme Court E-Library

xxx xxx xxx

Q What happened next?
A He placed his finger inside my vagina.

Q Then what happened next?
A He inserted his organ to my vagina.

FISCAL ESTOLANO
(cont)

What was his position when he inserted his penis inside your vagina?
A *He was on top of me.*

Q After inserting his penis to your vagina, what did you feel?
A I felt pain.

Q After inserting his penis to your vagina, what did you do and while he was on top of you?
A He is still pointing the knife to my neck."[24]

xxx xxx xxx

Q When you said rested, what do you mean by rested?
A He was resting.

Q Where was his penis while resting? Where did he rest?
A On top of me.

COURT
(to witness)

Did he sleep on top of you?
A No, sir.

FISCAL ESTOLANO
(cont)

While the accused was resting, what did you do?
A While he was resting I kept on boxing him.

[FISCAL ESTOLANO]
(to witness)

Was the penis still inside your vagina?
A No more, sir.

---

[24] TSN, February 22, 1996, pp. 22-23.

Supreme Court E-Library

Q How long did Veno Esperas rest?
A For 30 minutes.

COURT
(to witness)

On top of you he rested for 30 minutes?
A Yes, sir.

FISCAL ESTOLANO
(cont)

Why did you say that he was resting there?
A Because at that time he was no longer moving.

Q No longer moving his what?
A He is no longer moving his body.

Q *After resting for 30 minutes, what did* Veno Esperas do?
A He again point a jungle knife on my neck.

Q What did you do when he pointed the jungle knife to your *neck?*
A I again boxed him and kicked him but I cannot resist his strength.

FISCAL ESTOLANO
(cont)

What happened next?
A He again inserted his male organ to my vagina.

Q What did you feel when he inserted his penis inside your vagina?
A I felt pain.

Q How long did the penis stay inside your vagina?
A For 10 minutes.

Q *While his penis was inside your vagina, what* was he doing?
A He was then kissing me.

xxx xxx xxx

FISCAL ESTOLANO
(cont)

After 10 minutes what did Veno Esperas do?
A He again rested himself.

Supreme Court E-Library

Q When you said he rested, what was his position when resting?
A He was sitting beside me.

FISCAL ESTOLANO
(cont)

How about you, what did you do since his body was no longer on top of you?
A When he was resting I was about to run away but he immediately held my hand, so I was not able to run.

Q How long did Veno Esperas rest?
A For 10 minutes.

Q After he rested what happened next?
A He again inserted his penis to my vagina.

Q How was he able to insert his penis inside your vagina when you said he was sitting beside you and you were about to run away?
A While he rested, he again raped me."[25]

It is a hornbook doctrine that that the competence and the credibility of witnesses are best determined by the trial court [26] because of its unique opportunity to observe their deportment while testifying.[27] Binding and conclusive on this Court are its factual findings, absent any arbitrariness or oversight of facts or circumstances of weight and substance.[28] In the present case, the court *a quo* gave more credence to the positive testimony of the victim, and we find no reason to set aside its factual findings.

---

[25] *Id.*, pp. 25-29.

[26] *People v. Montes, supra; People v. Tadeo*, 371 SCRA 303, December 3, 2001.

[27] *People v. Plana*, 370 SCRA 542, November 27, 2001; *People v. De Guzman*, 388 Phil. 943, June 8, 2000.

[28] *People v. Obordo*, 382 SCRA 98, May 9, 2002; *People v. Bertulfo*, 381 SCRA 762, May 7, 2002; *People v. Sanchez*, 375 SCRA 355, January 31, 2002; *People v. Abella*, 339 SCRA 129, August 28, 2000.

Supreme Court E-Library

Second Issue:
Physical Evidence

Appellant contends that the physical evidence from the medical examination is not consistent with the finding of rape. He argues that the examining physician should not have concluded hastily that complainant had been raped, because the medical findings merely showed that her genitalia was positive for lacerations. He adds that such lacerations are not conclusive of the commission of rape. Allegedly, although the examination was intended to determine its factual truth, the physician should not have rendered the conclusion that complainant had indeed been raped. He further alleges that the doctor was not even an expert witness, having commenced medical practice only a year after she passed her licensure examination. Moreover, her previous examinations on more than 10 rape victims supposedly resulted in inconclusive findings.

We disagree with appellant. While vaginal lacerations alone cannot establish rape, they are corroborative of its commission. The straightforward and unwavering testimony of the victim, coupled with her vaginal lacerations, proved that rape was committed, and that he was the perpetrator. It was the totality of evidence — not the mere presence or absence of those lacerations — that established his culpability for the offense charged.

Third Issue:
Minority and Relationship

Appellant claims that the RTC imposed on him the penalty of death, because the trial court had appreciated the minority of the victim and his alleged relationship by affinity to her.

We are persuaded.

Minority of the Victim Not Proven Beyond Reasonable Doubt

We agree with appellant that the minority of the victim was not proven beyond reasonable doubt. The prosecution failed to

Supreme Court E-Library

present her birth certificate despite its reservation to present it during the trial.

It must be noted that the rapes were committed prior to the effectivity of RA No. 8353, otherwise known as "The Anti-Rape Law of 1997." Applicable, then is the old provision — Section 11 of RA No. 7659 — which reads as follows:

> "SEC. 11. Article 335 of the same Code is hereby amended to read as follows:
>
> xxx xxx xxx
>
> 'Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.
>
> xxx xxx xxx
>
> 'The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> '1.when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim."'

Minority not having been sufficiently established, the trial court committed reversible error in appreciating it as a qualifying circumstance; as such, it must be proved with equal certainty and clearness as the crime itself. Required, therefore, is independent proof of the age[29] of the victim, such as, her birth certificate or her mother's testimony.[30]

The victim testified that she was born on August 14, 1979, and was thus 15 years old on the date of the trial.[31] On the

---

[29] *People v. Alvarado*, 379 SCRA 475, March 19, 2002; *People v. Agravante*, 372 SCRA 64, December 11, 2001; citing *People v. Tundag*, 342 SCRA 704, October 12, 2000.

[30] *People v. De la Cruz*, 338 SCRA 582, August 23, 2000; citing *People v. Javier*, 311 SCRA 122, July 26, 1999.

[31] TSN, February 22, 1996, p. 4.

Supreme Court E-Library

other hand, her mother testified that she was born in September 1979.[32] These conflicting — albeit casual — testimonies cast a serious doubt on the victim's exact age at the time of rape.

In *People v. Brigildo*,[33] the Court held that minority as a qualifying circumstance under Section 11 of RA No. 7659 had not been properly proven when the testimony of the mother as to the true age of the victim contradicted that of the latter. The Court was thus constrained to reduce to *reclusion perpetua* the penalty of death imposed by the trial court.

Appellant's Relationship by Affinity to the Victim

Another error committed by the RTC was its appreciation of the qualifying circumstance of relationship of appellant with the victim. He is allegedly her brother-in-law, but because this fact was not alleged in the Informations, it should not have been used by the trial court to qualify the crime.

Well-settled is the rule that the relationship of the perpetrator with the victim must be duly alleged in order to justify the imposition of the death penalty.[34] "If the offender is merely a relation — not a parent, ascendant, step-parent, guardian, or common law spouse of the mother of the victim — the specific relationship must be alleged in the information, *i.e.*, that he is 'a relative by consanguinity or affinity [as the case may be] within the third civil degree.'"[35]

Civil Liability

In addition to indemnity *ex delicto*, the victim should be awarded moral damages in the sum of ₱50,000.[36] This Court

---

[32] TSN, February 28, 1996, p. 4.

[33] 323 SCRA 631, January 28, 2000.

[34] *People v. Daganio*, 374 SCRA 365, January 23, 2002.

[35] *People v. Esperanza*, GR Nos. 139217-24, June 27, 2003, p. 16, *per* Davide, C.J .

[36] *People v. Baldosa*, 381 SCRA 712, May 7, 2002; *People v. Arofo*, 380 SCRA 663, April 11, 2002.

Supreme Court E-Library

has granted the same to victims of rape without need of proof other than the fact of rape, which by itself shows the factual bases for the award. Also, exemplary damages of ₱25,000[37] is proper, since the prosecution was able to prove the relationship of appellant with the victim. Even if not alleged in the Information, their proven relationship is sufficient basis for this *civil* liability.[38]

WHEREFORE, the joint judgment promulgated on October 18, 1996 by the Regional Trial Court of Palawan, finding appellant guilty of three counts of qualified rape, is *MODIFIED*. He is found *GUILTY* of three counts of *SIMPLE RAPE* only, and for each count he is sentenced to three (3) terms of reclusion perpetua. Furthermore, for each count of rape he is ordered to pay the victim moral damages of ₱50,000 and exemplary damages of ₱25,000, in addition to the ₱50,000 civil indemnity imposed by the RTC for each count.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and *Tinga, JJ.*, concur.

THIRD DIVISION

[G.R. No. 144483. November 19, 2003]

STA. CATALINA COLLEGE and SR. LORETA ORANZA, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and HILARIA G. TERCERO,** *respondents.*

---

[37] *People v. Villanueva*, G.R. Nos. 146464-67, November 15, 2002; *People v. Barcelon Jr.*, G.R. No. 144308, September 24, 2002; *People v. Francisco*, 351 SCRA 351, February 7, 2001.

[38] *People v. Lachica*, 382 SCRA 162, May 9, 2002.