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[G.R. No. 147750. October 14, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERRY EBIO *Y* HERMIDA,** *accused-appellant.*

SYNOPSIS

Accused-appellant was found guilty by the trial court of the crime of qualified rape for sexually abusing his eleven-year old daughter. He was sentenced to suffer the penalty of death. Hence, this automatic review by the Supreme Court.

In affirming the decision of the trial court, the Supreme Court ruled that it is highly improbable for a daughter to go out in public to falsely accuse her father of rape if it were not true. It is against human nature for a girl to fabricate a story that would expose herself as well as her family to a lifetime of dishonor, especially when her charge could mean death of her own father. In the case at bar, the victim's story of defilement was corroborated by the prosecution witness, Leonisa Ebio. The rape was also supported by the medical findings of the physician who examined the victim.

With respect to the penalty imposed, the Court ruled that the death penalty was correctly meted by the trial court on the appellant considering that the victim's minority and her relationship to the appellant have been duly alleged in the information and proven during trial.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; DESIGNATION OF OFFENSE IN INFORMATION OR COMPLAINT.— Section 8, Rule 110 of the Revised Rules on Criminal Procedure states that "the complaint or information *shall* state the designation of the offense given by the statute, *aver the acts or omissions constituting the offense*, and *specify* its *qualifying* and *aggravating circumstances*. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it."

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2. CRIMINAL LAW; RAPE; DEATH PENALTY; IMPOSED WHEN VICTIM'S MINORITY AND HER RELATIONSHIP TO ACCUSED ARE DULY ALLEGED IN THE INFORMATION AND PROVEN DURING TRIAL; CASE AT BAR.— The first qualifying circumstance is the age of the victim. The Information alleged that the private complainant was only 11 years old at the time she was raped. The prosecution submitted as proof of her age the following evidence: (1) the private complainant's birth certificate, marked as Exh. "B," and (2) her testimony that she was born on March 24, 1989, duly corroborated by her mother, Cristina Ebio. No contrary evidence was submitted by the appellant. Needless to state, the age of the private complainant was proved beyond reasonable doubt. Similarly, the relationship of the offender to the victim was also duly established. The marriage of the appellant with Cristina Ebio in 1985 is evidenced by their Marriage Contract. They had six (6) children, all girls. The victim is their third child. The private complainant's minority and her relationship to the appellant having been duly alleged and proven, the death penalty was correctly meted by the trial court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

***Per curiam*:**

The appellant, GERRY EBIO, was charged with rape before the Regional Trial Court of Sorsogon, Sorsogon. The private complainant is his 11-year old daughter, DORY EBIO. The Information[1] dated May 2, 2000 reads:

"The undersigned Government Prosecutor, upon the complaint of DORY EBIO, accuses GERRY EBIO *y* HERMIDA, a resident of Tughan, Juban, Sorsogon, of the crime of STATUTORY RAPE defined and penalized under the Revised Penal Code as amended by RA 7610

[1] Original Records, p. 1.

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(Anti-Child Abuse Act), and further amended by RA 7659 (Death Penalty for Heinous Crimes) and RA 8353, otherwise known as the Anti-Rape Law of 1997, committed as follows:

> 'That sometime in *(sic)* **April 21, 2000** at more or less *(sic)* 10:00 o'clock in the evening, at Barangay Tughan, Municipality of Juban, Province of Sorsogon, and within the jurisdiction of this Honorable Court, the above-named accused, with **force and intimidation**, with lewd designs and taking advantage of his moral ascendancy and the tender age of the child, did then and there, willfully/unlawfully and feloniously, had *(sic)* **carnal knowledge** of DORY EBIO, **his own 11-year old daughter**, against her will and **without her valid consent**, to her damage and prejudice.'

The offense is aggravated by relationship, the accused being the natural ascendant of the private offended victim.

ACTS CONTRARY TO LAW.

May 1, 2000. Sorsogon, Sorsogon, Philippines.
NO BAIL RECOMMENDED

(SGD.) REGINA COELI F. GABITO
Prosecutor II
Officer In-Charge"

When arraigned on June 8, 2000, the appellant, assisted by counsel *de oficio,* pled "not guilty."[2] However, at the first hearing of the case on January 11, 2001, the appellant, through counsel, withdrew his plea of "not guilty" and changed it to "guilty." To avoid an improvident plea, the trial court inquired on the voluntariness of his plea, informed him of the meaning of his admission of the crime charged and the penalty for it. The appellant, however, persisted on his plea of guilty,[3] thus, a new Certificate of Arraignment,[4] dated January 11, 2000, was issued. On the same day, the evidence for the prosecution was received.

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[2] *Id.*, p. 20.

[3] TSN, January 11, 2001, pp. 2-3; Order, dated January 11, 2001, Original Records, p. 47.

[4] Original Records, p. 46.

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The prosecution evidence shows that the private complainant, Dory Ebio, is the daughter of spouses Cristina Daquio and appellant Gerry Ebio.[5] The private complainant is the third in a brood of six (6) children.[6] She was born on March 24, 1989, as shown in her Certificate of Live Birth.[7]

The Ebios are residents of Tughan, Juban, Sorsogon. Their house has one bedroom where Cristina and Gerry sleep, together with private complainant's youngest sister. The private complainant, her other sisters and their grandmother sleep in the *sala.*

The private complainant testified that in the evening of April 21, 2000, she was preparing to sleep in the *sala.* Her three (3) younger sisters and their grandmother were also in the *sala,* sleeping. Her elder sister, Donna, their aunt and their cousin, went to church earlier that night, while her mother, Cristina, was in Manila together with her sister, Dina. The appellant was not yet home at that time.

The appellant arrived in their house at about 10:00 p.m. He proceeded to the room and fixed the bed. Thereafter, he approached the private complainant and told her to transfer to the bedroom because they were already crowded in the *sala.* She obeyed him because she was afraid he would scold her. The appellant was drunk.

Armed with a six-inch long bladed instrument, the appellant ordered her to undress and threatened to kill her if she would not comply. Afraid of the threat, she took off her shorts and panty. Appellant also took off his shorts, mounted her and had carnal knowledge of her. She felt pain and cried. The private complainant was silent during the sexual assault because he threatened to kill her if she would talk or shout. After the assault, she put on her shorts and panty and again lay down. She remained inside the room, crying.

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[5] Exh. "E", Original Records, p. 44.

[6] Donna, Dina, Dory, Daisy, Emilia and Gerrylin.

[7] Exh. "B", Original Records, p. 45.

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The following day, April 22, the private complainant reported the incident to her grandmother. Her grandmother accompanied her to the police authorities. She executed a sworn statement[8] and a written complaint,[9] both dated April 27, 2000, charging the appellant with rape.

The private complainant revealed that the April 21, 2000 incident was the third occasion that she was raped by the appellant. The first two (2) defilements happened when she was ten (10) years old. She was then a Grade II elementary pupil. She related the incidents to her mother who told her that they would file a complaint against the appellant. However, they were not able to report the matter to the police.

The private complainant was brought to Dr. Erlinda B. Olondriz-Orense, Municipal Health Officer of Sorsogon, for medical examination. The lady doctor's findings are as follows:[10]

"To Whom It May Concern:

This is to certify that I have examined Dory Ebio, 11 years old, resident of Tughan, Juban, Sorsogon.

Findings:

- *labia majora* and *minora* in close contact
- Internal exam. - vaginal wall admits one finger with resistance
- With healed hymenal lacerations at 4 o'clock and 6 o'clock (positions)

ERLINDA B. OLONDRIZ-ORENSE, M.D.,CFP
Municipal Health Officer
Juban, Sorsogon"

Leonisa Ebio, 12 years old, cousin of the private complainant, lives with the Ebios in Tughan, Juban, Sorsogon. She testified that in the evening of April 21, 2000, after going to church, she

[8] Exh. "C", Original Records, p. 7.

[9] Exh. "D", Original Records, p. 6.

[10] Exh. "A", Original Records, p. 5.

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returned to the house of the Ebios to sleep. She was about to sleep when she heard someone crying inside the room of her Tiyo Gerry, the appellant, and Tiya Cristy. Curious, she slowly entered the room. She saw the appellant on top of the private complainant. Both were naked and the appellant was raping the private complainant. Afraid that the appellant might kill her, she retreated and went back to sleep. She did not relate the incident to anyone out of fear.

Cristina Ebio testified that she is legally married to the appellant. The victim is their daughter. Dory was born on March 24, 1989. On April 27, 2000, she (Cristina) was in Manila for a medical check-up. She received a phone call from a relative, informing her that the appellant had raped their daughter. She cried and immediately headed back to Sorsogon.

Upon reaching their town, she proceeded to the municipal building where she found the private complainant. They both cried when they met. The private complainant told her about the April 21, 2000 rape incident.

Cristina claimed that she confronted the appellant about the rape committed on April 21, 2000. He admitted the dastardly act and explained that he was drunk at the time.

After the prosecution had rested its case, the defense opted not to present any evidence. Hence, the case was deemed submitted for decision.

On February 19, 2001, the trial court rendered its judgment, finding the appellant guilty of qualified rape. The appellant was sentenced to suffer the penalty of death and ordered to pay the private complainant the amounts of P75,000.00 as civil indemnity and ₱50,000.00 as moral damages. The dispositive portion of the decision[11] reads:

"In view of the foregoing, the Court finds the accused Gerry Ebio *y* Hermida *GUILTY beyond reasonable doubt of the offense of RAPE* under R.A. 7610 as amended by R.A. 7659 and further amended by

[11] Original Records, pp. 54-57.

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R.A. 8353, otherwise known as the ANTI-RAPE LAW of 1997, and accordingly sentences him with the penalty of *DEATH under Art. 266-8 of R.A. 8353*; and to pay the victim civil indemnity of ₱75,000,00 and moral damages of ₱50,000,00.

Considering however the open repentance of the accused in Court in accepting the crime he has done, this Court is recommending to Her Excellency, the President of the Republic of the Philippines, thru the Department of Justice, an EXECUTIVE CLEMENCY as the penalty imposed to *(sic)* the accused is to the Court excessive if we are to administer justice in a manner that is fair and just but compassionate and merciful as well.

SO ORDERED.

Given this 19th day of February 2001 at Sorsogon, Sorsogon, Philippines.

(SGD.) JOSE L. MADRID
Judge"

Hence, the automatic review of the case.

The Appellant's Brief assigns a single error:

"THE COURT *A QUO* GRAVELY ERRED ON *(sic)* CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE HIS IMPROVIDENT PLEA OF GUILTY."

We affirm the judgment of conviction.

Appellant contends that his plea of guilty was improvident because the trial court did not strictly observe Section 3, Rule 116 of the Revised Rules on Criminal Procedure. The rule provides that when an accused pleads guilty to a capital offense, the courts should perform the following tasks: (1) it shall conduct a *searching inquiry* into the *voluntariness* and *full comprehension* of the consequences of his plea, and (2) it shall require the prosecution to prove his guilt and the precise degree of culpability. Thereafter, the trial court will allow the accused to present evidence, if he so desires.

It is alleged that the appellant did not fully understand the consequences of his plea because when the appellant was re-arraigned on January 11, 2001, the trial court told the appellant

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that he would be sentenced to "*reclusion perpetua* to *death*" if he pled guilty. Allegedly, the penalty could not have been understood by the appellant.

Appellant is clutching on straws. He was convicted on the basis of the evidence presented by the prosecution and not on his guilty plea. The private complainant testified as follows:[12]

"Prosecutor Bonto:

Q: Dory, do you remember where were you on April 21, 2000 at around 10:00 o'clock in the evening?
A: I was in our house, sir.

Q: Where is your house situated?
A: At Tugjan, *(sic)* Juban, Sorsogon.

Q: Who is *(sic)* your companion then at that time?
A: My three (3) sisters and my grandmother.

xxx xxx xxx

Q: Now, what was your grandmother doing at that time?
A: She was sleeping.

Q: Where?
A: In the sala.

Q: How many rooms are there in your house?
A: Only one, Your Honor.

xxx xxx xxx

Q: Who were then at home when Donna and your cousin and aunt went to church?
A: My grandmother and my three (3) other sisters.

Q: And your three other sisters were younger than you are?
A: Yes, sir.

Q: What were they doing at that time?
A: They were sleeping.

Q: What were you doing at that time?
A: I was lying.

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[12] TSN, Dory Ebio, January 11,2001, pp. 8-12.

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Q: While you were lying, do you recall of any unusual incident that happened?
A: Yes, sir.

Q: Kindly tell us?
A: That night, my father has just arrived from Casiguran.

Q: When your father arrived, what did he do, if any?
A: He went inside the room and fixed the bed.

Q: After he fixed the bed, what did he do if any?
A: Then, my father went to me and told me to transfer in their room since that place where I was lying is crowded.

Q: Why was it already crowded, who were with you?
A: My sister who is next to me.

Q: Did you accede to the request of your father for you to transfer inside his room?
A: Yes, sir because I was afraid he (would) scold me.

Q: When you were already inside the room of your father, would you tell us what happened next?
A: Then, I lied *(sic)* down.

Q: When you lied *(sic)* down, what happened next?
A: Then, I saw him holding a bladed instrument and he ordered me to undress.

Q: Did you undress?
A: Yes, sir because I was so afraid then.

xxx xxx xxx

Q: What exactly did your father tell you when your father told you to undress?
A: He ordered me to undress and he threatened me.

Q: How did your father threaten you?
A: He ordered me to undress and according to him if I will not undress, he will kill me.

Q: So, what exactly did you remove from your body when you were ordered to do so?
A: My short(s) and my panty.

Q: *When you were (sic) already undressed, after removing your short(s) and panty, what happened next?*
A: *He mounted me. He lied on top of me and he used my womanhood.*

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Q: *Now, you said he used your womanhood, how did your father use you?*
A: *He inserted his penis inside my vagina.*

Q: Could you recall how long was it?
A: Not so long, I cannot recall, sir.

Court:

Q: *What did you feel?*
A: *I felt pain.*

Prosecutor Bonto:

Q: Now, Dory, when your father was abusing you, what did you do?
A: I remained silent.

Q: *Why did you remain silent?*
A: *Because according to my father if I will talk or shout, I will be killed by him.*

Q: *But you (did) not cry when you felt pain?*
A: *I cried.*

Q: And then, after your father abused you, what happened next?
A: He stood up and wore his short(s).

Q: While he was raping you, did he remove his short pants?
A: No, he has already removed his short(s).

Court:

Q: He was already nude?
A: No, Your Honor.

Q: Who removed your short(s) and panty?
A: I was the one.

Q: Why did you remove your short(s) and panty?
A: Because I was threatened by my father.

Proceed.

Prosecutor Bonto:

Q: And then, after he ravished you, he wore his short pants?
A: Yes, sir.

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Q: What did you do?
A: And I also wore my short(s).

Q: After wearing again your short(s), what again happened?
A: I lied *(sic)* down and I cried.

Q: In what room did you proceed after being abused by your father?
A: Inside the room.

Q: Did you not leave the room of your father?
A: No, sir, but I was crying."

It is highly improbable for a daughter to go out in public to falsely accuse her father of rape if it were not true. It is against human nature for a girl to fabricate a story that would expose herself as well as her family to a lifetime of dishonor, especially when her charge could mean the death of her own father.[13]

Leonisa Ebio corroborated Dory's story of defilement. Leonisa testified as follows:[14]

"Prosecutor Bonto:

Q: Kindly tell us again your age?
A: I am 12 years old.

Q: Are you still studying?
A: Yes, sir.

Q: What grade are you in now?
A: I am in Grade VI.

Q: Do you.recall where were you on April 21, 2000 at past 10:00 o'clock?
A: Yes, sir.

Q: Tell us where were you then?
A: I was in the church.

Q: Until what time did you stay in the church?
A: We stayed there only for a short period of time.

Q: From the church, where did you proceed?
A: We went home.

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[13] *People vs. Manlod*, G.R. Nos. 142901-02, July 23, 2002.

[14] TSN, Leonisa Ebio, January 11,2001, pp. 19-21.

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Q: Where is your house located?
A: At Tugjan *(sic)*, Juban.

Q: Upon reaching your house, what did you find, if any?
A: I heard somebody crying.

Q: Who was that whom you heard, crying?
A: Dory, sir.

Q: Are you referring to Dory Ebio, who is the victim in this case?
A: Yes, sir.

Q: What did you do when you heard Dory crying?
A: I slowly went inside.

Q: Inside what?
A: Inside the room.

Q: What did you find out? Whose room was that?
A: That is the room of *Tiyo* Gerry and *Tiya* Cristy.

Q: *What did you find out, what did you see when you went slowly in the room?*
A: *I saw Tiyo Gerry on top of Dory.*

Q: Now, you mentioned *Tiyo* Gerry, look around the courtroom and tell us if he is inside the courtroom?
A: (witness pointing to a man who stood and identified himself to be the same Gerry Ebio the witness is referring to).

Q: *Actually, what was Gerry* doing, when he was on top of Dory?
A: *He was abusing Dory.*

Court:

Q: *What do you mean by 'he was abusing Dory'?*
A: *She was being raped by Gerry.*

Prosecutor Bonto:

Q: What was Gerry wearing at that time if he was wearing anything?

A: He was wearing short(s).

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Court:

Q: Do you mean to say what you saw was that, Gerry was wearing shorts?
A: None, Your Honor.

Q: Was he wearing anything?
A: None, Your Honor.

Q: Do you mean to say he was naked?
A: Yes, Your, Honor.

Q: How about Dory?
A: She was also naked.

Q: Why can you say that there were persons inside the room, was there a light?
A: There was a light coming from the kitchen.

Court:

Proceed.

Prosecutor Bonto:

Q: What was your reaction upon seeing Gerry abusing Dory?
A: None, sir.

Q: Why did you not do anything?
A: I was afraid, sir.

Q: You were afraid of whom?
A: Because I might be killed.

Q: Be killed by whom?
A: By *Tiyo* Gerry.

Q: Why, did he threaten you?
A: No, sir.

Q: Now, after seeing that Gerry was abusing Dory, where did you proceed?
A: I went to the place where I was sleeping.

Q: Did you not relate the incident which you witnessed to anybody after?
A: No, sir.

Q: Why?
A Because I was afraid.

No further questions, Your Honor.

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Court:

Q: With whom are you afraid?
A: I am afraid of *Tiyo* Gerry.

Prosecutor Bonto:

For the record, Your Honor please, the witness is starting to cry..."

The rape is also supported by the medical findings of Dr. Olondriz-Orense. The lady doctor revealed that the hymen of the private complainant has healed lacerations at 4 o'clock and 6 o'clock positions. She explained that the lacerations could have been inflicted 5 or 6 days before the examination on April 27, 2000. Her opinion is consistent with the private complainant's claim that she was raped on the 21st of that month.[15]

We now review the penalty imposed.

Section 8, Rule 110 of the Revised Rules on Criminal Procedure states that "the complaint or information *shall* state the designation of the offense given by the statute, *aver the acts or omissions constituting the offense, and specify its qualifying* and *aggravating circumstances*. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it."

The first qualifying circumstance is the age of the victim.

The Information alleged that the private complainant was only 11 years old at the time she was raped. The prosecution submitted as proof of her age the following evidence: (1) the private complainant's birth certificate, marked as Exh. "B", and (2) her testimony that she was born on March 24, 1989, duly corroborated by her mother, Cristina Ebio. No contrary evidence was submitted by the appellant. Needless to state, the age of the private complainant was proved beyond reasonable doubt.

Similarly, the relationship of the offender to the victim was also duly established. The marriage of the appellant with Cristina

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[15] TSN, Dr. Erlinda Olondriz-Orense, January 11, 2001, p. 5.

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Ebio in 1985 is evidenced by their Marriage Contract.[16] They had six (6) children, all girls. The victim is their third child.

The private complainant's minority and her relationship to the appellant having been duly alleged and proven, the death penalty was correctly meted by the trial court.

As regards the damages, in addition to the civil indemnity and moral damages awarded to the victim, exemplary damages should be awarded to deter fathers with perverse tendencies and aberrant sexual behavior from sexually abusing their daughters.[17]

IN VIEW WHEREOF, the decision of the Regional Trial Court of Sorsogon, Branch 51, in Criminal Case No. 2000-5132, finding the appellant guilty beyond reasonable doubt of qualified rape under Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, and sentencing him to suffer the Death[18] Penalty, is *AFFIRMED*. The civil indemnity and moral damages awarded to the victim in the amounts of ₱75,000.00 and ₱50,000.00, respectively, are also *AFFIRMED*. In addition, the appellant is ordered to pay the victim the sum of ₱25,000.00 as exemplary damages.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this decision, let the records of this case be forwarded to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Corona, Carpio-Morales, and *Callejo, Sr., JJ.,* concur.

Bellosillo, Mendoza, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, and *Austria-Martinez, JJ.,* on official leave.

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[16] Exh. "E", Original Records, p. 44.

[17] *People vs. Sacapeno*, 313 SCRA 650 (1999), cited in *People vs. Dulay*, G.R. Nos. 144344-68, July 23, 2002.

[18] Three (3) members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional. Nevertheless, they submit to the ruling of the Court, by majority vote, that the law is constitutional and the death penalty should be accordingly imposed.