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EN BANC

[G.R. No. 142556. February 5, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUS PEREZ *y* SEBUNGA,** *accused-appellant.*

SYNOPSIS

Appellant was found guilty of Statutory Rape under Art. 335 of the Revised Penal Code with the qualifying circumstance that the victim Mayia, was only 6 years old at the time of the commission of the offense, in relation to Sec. 5 (b) Art. III, RA 7610, and was sentenced to death.

On appeal, he bewailed that his identification was not done with the usual police line-up; that the court allowed leading questions to Mayia; and that Mayia's minority was only alleged in the information but not established beyond reasonable doubt during the trial.

The Supreme Court affirmed his conviction on appeal, ruling: that leading questions are allowed when a witness is a child of tender years; that there is no law requiring a police line-up as essential to a proper identification; that the prosecution has indisputably proven that Mayia was below seven years old at the time appellant raped her; that her straightforward recount of her harrowing experience lends credence to the rape charge; and that her positive identification of appellant sufficed to establish clearly the identity of her sexual assailant.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; EXAMINATION OF WITNESSES; LEADING QUESTIONS ARE ALLOWED WHEN WITNESS IS A CHILD OF TENDER YEARS; CASE AT BAR.— As a rule, leading questions are not allowed. However, the rules provide for exceptions when the witness is a child of tender years as it is usually difficult for such child to state facts without prompting or suggestion. Leading questions are necessary to coax the truth out of their reluctant lips. In the case at bar, the trial court was justified in allowing leading questions to Mayia as she

Supreme Court E-Library

was evidently young and unlettered, making the recall of events difficult, if not uncertain.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; CHILD OF TENDER AGE WILL NOT LIKELY FABRICATE A RAPE CHARGE; CASE AT BAR.**— The Court has repeatedly stated that it is highly inconceivable for a child of tender age, inexperienced in the ways of the world, to fabricate a charge of defloration, undergo a medical examination of her private part, subject herself to public trial, and tarnish her family's honor and reputation, unless she was motivated by a strong desire to seek justice for the wrong committed against her.

3. **ID.; ID.; ID.; VICTIM'S POSITIVE AND STRAIGHTFORWARD RECOUNT OF HER HARROWING EXPERIENCE LENDS CREDENCE TO RAPE CHARGE; CASE AT BAR.**— Mayia's simple, positive and straightforward recounting on the witness stand of her harrowing experience lends credence to her accusation. Her tender age belies any allegation that her accusation was a mere invention impelled by some ill-motive. As the Court has stressed in numerous cases, when a woman or a child victim says that she has been raped, she in effect says all that is necessary to show that rape was indeed committed.

4. **ID.; ID.; ID. VICTIM'S POSITIVE IDENTIFICATION OF APPELLANT SUFFICED TO ESTABLISH CLEARLY THE IDENTITY OF HER SEXUAL ASSAILANT; CASE AT BAR.**— Mayia had a clear sight of appellant's face since the rape occurred at "noontime." Her proximity to appellant during the sexual assault leaves no doubt as to the correctness of her identification for a man and woman cannot be physically closer to each other than during the sexual act. Thus, even if Mayia did not give the identifying marks of appellant, her positive identification of appellant sufficed to establish clearly the identity of her sexual assailant.

5. **ID.; ID.; ID.; POLICE LINE-UP IS NOT ESSENTIAL TO A PROPER IDENTIFICATION; CASE AT BAR.**— Appellant's claim that the police improperly suggested to Mayia to identify appellant is without basis. True, Mayia did not identify appellant in a police line-up when Mayia identified appellant in his cell. However, appellant, in his testimony admitted that he had two

Supreme Court E-Library

other companions in his cell. Moreover, the Court has held that there is no law requiring a police line-up as essential to a proper identification. Even without a police line-up, there could still be a proper identification as long as the police did not suggest such identification to the witnesses. The records are bereft of any indication that the police suggested to Mayia to identify appellant as the rapist. Mayia's identification in open court of appellant as her rapist dispels any doubt as to the proper identification of appellant. Mayia positively identified and pointed to appellant as her rapist. We are satisfied that her testimony, by itself, is sufficient identification of her rapist.

6. **CRIMINAL LAW; RAPE; SPECIAL QUALIFYING CIRCUMSTANCE OF MINORITY INDISPUTABLY PROVEN DURING THE TRIAL; CASE AT BAR.**— At the pre-trial, the parties mutually worked out a satisfactory disposition of the criminal case. Appellant, assisted by counsel, signed a Pre-Trial Agreement which, as incorporated in the Pre-Trial Order, stated that: "x x x. *3. The victim in this case, Mayia P. Ponseca was born on 23 May 1990 as evidenced by her birth certificate*; x x x." During the pre-trial, the prosecution marked in evidence Mayia's birth certificate as Exhibit "A". The prosecution submitted its Offer of Evidence which included Exhibit "A", a certified true copy of Mayia's birth certificate. The trial court admitted Exhibit "A" without any objection from the defense. . . Moreover, Mayia herself testified in open court as to her age. During the trial on December 15, 1998, which was about twenty-three (23) months after the rape incident occurred on January 17, 1997, Mayia testified on cross-examination that she was "8 years old last May 23." Thus, by deduction, since Mayia was born on May 23, 1990 as shown in her birth certificate, she was about six (6) years and seven (7) months old on January 17, 1997, the day the crime took place. We rule that the prosecution has indisputably proven that Mayia was below seven years old at the time appellant raped her.

7. **ID.; RAPE COMMITTED AGAINST A CHILD BELOW SEVEN (7) YEARS OLD; PROPER PENALTY AND DAMAGES; CASE AT BAR.**— Finally, the trial court was correct in imposing the death penalty on appellant. Under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, the death penalty shall be imposed if the crime of rape

Supreme Court E-Library

is committed against a child below seven (7) years old. Mayia was six (6) years and seven (7) months old when appellant raped her.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Felix O. Lodero, Jr. for accused-appellant.

D E C I S I O N

***PER CURIAM*:**

For automatic review is the Decision[1] dated October 26, 1999 of the Regional Trial Court of Iba, Zambales, Branch 69, in Criminal Case No. RTC-2116-I, finding appellant Jesus S. Perez ("appellant" for brevity), guilty of raping Mayia P. Ponseca ("Mayia" for brevity) and imposing on appellant the death penalty.

On January 22, 1997, the Second Assistant Provincial Prosecutor[2] of Zambales filed an Information [3] charging appellant with the crime of rape "penalized under Article 335 of the Revised Penal Code in relation to Section 5 (b), Article III of Republic Act No. 7610," committed as follows:

"That on or about the 17th day of January, 1997 at 12:00 noon at Sitio Baco, Brgy. Macarang, in the Municipality of Palauig, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design and by means of coercion, inducement and other consideration, did then and there, wilfully (*sic*), unlawfully and feloniously have sexual intercourse with one Mayia P. Ponseca, a minor of 6 years old, without her consent and against her will, to the damage and prejudice of the latter."

Upon arraignment, appellant, assisted by counsel *de oficio* Atty. Genaro N. Montefalcon, pleaded not guilty to the offense

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[1] Penned by Judge Rodolfo V. Toledano.

[2] Ramon S. Villa.

[3] Records of Criminal Case No. RTC-2116-I, docketed as I.S. No. 97-38-I, p. 2.

Supreme Court E-Library

charged.[4] Subsequently, the trial court allowed the withdrawal of Atty. Montefalcon as counsel for health reasons. The trial court appointed Atty. Roberto Blanco as appellant's counsel *de oficio*.[5]

At the pre-trial, the prosecution and defense stipulated on the following facts:

"1. The identity of the accused;

2. The accused was at the time of the incident in the vicinity thereof;

3. The victim in this case, Mayia P. Ponseca, was born on 23 May 1990 as evidenced by her birth certificate;

4. That after the incident, the child was subjected to a medico-legal examination to which a medico-legal certificate was issued by Dr. Editha Divino.

The prosecution marked in evidence the birth certificate of the victim Mayia O. Ponseca as Exhibit 'A', and the medico-legal certificate issued by Dr. Editha Divino as Exhibit 'B'."[6]

Thereafter, trial ensued. The prosecution presented the following witnesses: the victim, Mayia Ponseca; the victim's mother, Hermie Ponseca; the victim's father, Osias Ponseca; Virginia Espejo Giron; and Dr. Editha dela Cruz Divino. On the other hand, the defense presented appellant and his employer, Bartolome Tolentino.

The Office of the Solicitor General ("OSG" for brevity) summarized the prosecution's version of the incident in the appellee's brief, to wit:

"On January 17, 1997, about noontime, in Sitio Baco, Barangay Macarang, Palauig, Zambales, six-year old Mayia Ponseca was walking along Sulok on her way to her house in Sitio Camiling when appellant

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[4] *Ibid.*, p. 13, Order of February 11, 1997.

[5] *Ibid.*, p. 22, Order of February 18, 1997.

[6] *Ibid.*, p. 97, Pre-Trial Order of December 8, 1998.

Supreme Court E-Library

Jesus Sebunga Perez approached her (pp. 7-8, TSN, December 15, 1998). Appellant introduced himself as "Johnny" and immediately afterwards, strangled her neck and boxed her abdomen (p. 10, TSN, December 15, 1998). Still in shock, Mayia fell down (*id.*). At that point, a dog arrived and barked at them.

Appellant then proceeded to lower his black denim pants while simultaneously removing Mayia's panty. He then inserted his penis inside Mayia's vagina (p. 11, *id.*). Mayia felt excruciating pain in her private parts (*sic*) but was not able to repel her aggressor whose strength and weight totally engulfed her. Her only recourse was to cry while her young body was being ravished (p. 13, *id.*).

After satisfying his beastly desires, appellant raised his pants and ran away (p. 14, *id.*). Notwithstanding that her vagina was bleeding profusely and her dress now covered with her own blood, Mayia managed to stand up and seek help. She ran to the house of Virginia Giron, which was only fifty (50) meters away from the scene of the crime. In fact, Giron was outside when she heard her dog barking (apparently, it was the same dog barking at appellant while he was consummating his lust on Mayia, pp. 2-3, TSN, January 12, 1999; p. 11, TSN, December 15, 1998). Looking at the direction of the noise, she saw a confused Mayia approaching her with blood dripping from her private parts and thighs. When Giron asked Mayia what happened, the latter shouted "*ni-rape ako, ni-rape ako*" (p. 4, TSN, January 4, 1999). Giron then summoned her husband and other companions to look for Mayia's attacker but was unable to find him. Giron then proceeded to Hermie Ponseca and Osias Ponseca, Mayia's parents, to inform them of what happened (p. 5, TSN, January 5, 1999; p. 2, TSN, January 19, 1999).

When her parents asked Mayia if she knew her assailant, the latter answered the name "Johnny." (*id.*) The couple brought their daughter to the President Ramon Magsaysay Memorial Hospital for medical examination (p. 2, TSN, February 24, 1999). She was examined by Dra. Editha Dela Cruz Divino, who issued a medico-legal certificate dated January 23, 1997 stating the following:

> a. Bleeding of genitalia coming from median laceration at the vaginal floor around four (4) centimeters in size. Possible cause, a fall and then hitting a sharp object and also an alleged sexual assault (p. 4, TSN, February 24, 1999).

Supreme Court E-Library

b. Genitalia had hymenal lacerations at 3, 6, 9 and 12 o'clock positions.

(pp. 4-6 *id.*)

Because of the extent of the damage on her genitals, Mayia undertook an IV sedation operation to repair her lacerations (p. 6, *id.*) During her confinement at the hospital, the Ponseca couple reported the incident to the Palauig PNP Police Station and recounted their daughter's narration including the name of the culprit as "Johnny" who, according to their neighbors, was a worker at the fishpond of Bartolome Tolentino (pp. 11-12, TSN, January 5, 1999). Police operatives then proceeded to the said fishpond and arrested appellant. After her discharge from the hospital, Mayia learned that appellant was already apprehended (pp. 3-8, TSN, January 5, 1999). In the police station, she was able to positively identify the appellant as the person who sexually assaulted her (p. 18, TSN, December 15, 1998)."[7]

Appellant denied raping Mayia. Appellant testified that on the date of the alleged rape incident, he was working at a fishpond at Macarang, Zambales. He heard of the rape of a young girl from his manager, Bartolome Tolentino ("Tolentino" for brevity).[8] Appellant further testified that on January 25, 1997, policemen went to the fishpond where he worked. The policemen arrested appellant and brought him to the police station at Palauig. Later, the policemen took him to the municipal jail of Palauig.

On cross-examination, appellant testified that his nickname is not "Johnny" but "Jessie."[9] He testified that on January 17, 1997, at around 12 o'clock noon, he left the fishpond and walked home to Barangay Alwa which was about thirty meters from the fishpond.[10]

The defense formally offered the testimony of witness Tolentino to prove that appellant was employed as caretaker

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[7] *Rollo*, pp. 98-101, Appellee's Brief, pp. 2-5.

[8] TSN, April 14, 1999, pp. 3-4.

[9] *Ibid.*, p. 8.

[10] *Ibid.*, p. 10.

Supreme Court E-Library

of Tolentino's fishpond for almost two years before the alleged rape incident. Appellant was purportedly of good moral character while employed as a fishpond caretaker. The prosecution admitted the offer of testimony. Hence, the trial court dispensed with the testimony of Tolentino in open court.[11]

After trial, the court *a quo* rendered judgment[12] on October 26, 1999, the dispositive portion of which reads:

"WHEREFORE, foregoing considered, accused Jesus Perez *y* Sabung (*SIC*) is found GUILTY beyond reasonable doubt of the crime of Statutory Rape, defined and penalized under Article 335 of the Revised Penal Code with the qualifying circumstance that the victim was only 6 years old at the time of the commission of the offense, in relation to Section 5 (b), Article III, Republic Act 7610, and is sentenced to suffer the penalty of DEATH. Jesus Perez is directed to pay to the private complainant the amount of Seventy-Five Thousand Pesos (₱75,000.00) as and by way of civil indemnity and Fifty Thousand (₱50,000.00) as and by way of moral damages."

Hence, this automatic review.

In his brief, appellant raises the following lone assignment of error:

"THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT."

Appellant contends that his identification in open court by Mayia was highly irregular. Appellant points out that the prosecutor had already identified him as the man wearing an orange t-shirt when the prosecutor asked Mayia to identify her alleged rapist. Appellant stresses that when Mayia identified him in open court, she referred to him as a man named "Johnny" and did not give any description or any identifying mark. Moreover, appellant claims he was alone in the cell when Mayia identified

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[11] TSN, May 12, 1999, pp. 2-4.

[12] Records of Criminal Case No. RTC-2116-I, pp. 204-222.

Supreme Court E-Library

him after the police arrested him. Appellant bewails that the identification was not done with the usual police line-up.

Appellant's contention is untenable.

As a rule, leading questions are not allowed. However, the rules provide for exceptions when the witness is a child of tender years[13] as it is usually difficult for such child to state facts without prompting or suggestion.[14] Leading questions are necessary to coax the truth out of their reluctant lips.[15] In the case at bar, the trial court was justified in allowing leading questions to Mayia as she was evidently young and unlettered, making the recall of events difficult, if not uncertain.[16] As explained in *People v. Rodito Dagamos:*[17]

"The trend in procedural law is to give wide latitude to the courts in exercising control over the questioning of a child witness. The reasons are spelled out in our Rule on Examination of a Child Witness, which took effect on December 15, 2000, namely, (1) to facilitate the ascertainment of the truth, (2) to ensure that questions are stated in a form appropriate to the developmental level of the child, (3) to protect children from harassment or undue embarrassment, and (4) avoid waste

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[13] Section 10, Rule 132 (as amended effective July 1, 1989) of the Revised Rules of Court provides:

"SEC. 10. *Leading and misleading questions.* — A question which suggests to the witness the answer which the examining party desires is a leading question. It is not allowed, except:

(a) x x x

(b) x x x

(c) When there is difficulty in getting direct and intelligible answers from a witness who is ignorant, *or a child of tender years*, or is of feeble mind, or a deaf-mute: x x x." (Italics supplied)

[14] *People v. Losano*, 310 SCRA 707 (1999).

[15] *People v. Vargas*, 257 SCRA 603 (1996).

[16] *People v. Esmeraldo Cana y del Valle*, G.R. No. 139229, April 22, 2002.

[17] G.R. No. 137385, January 23, 2002.

Supreme Court E-Library

of time. Leading questions in all stages of examination of a child are allowed if the same will further the interests of justice."

The Court has repeatedly stated that it is highly inconceivable for a child of tender age, inexperienced in the ways of the world, to fabricate a charge of defloration, undergo a medical examination of her private part, subject herself to public trial, and tarnish her family's honor and reputation, unless she was motivated by a strong desire to seek justice for the wrong committed against her.[18]

Mayia recounted her harrowing experience, thus:

"Q. What time was this when Johnny introduced himself to you?
A. I do not recall, ma'm.

Q. Was it in the morning, noontime or in the afternoon or in the evening?
A. Noontime, ma'm.

Q. So, when Johnny said, '*Ako si* Johnny,' what did you do?
A. None, ma'm.

Q. After that when Johnny said, '*Ako si* Johnny', what happened?
A. He strangled (*sinakal*) me.

Q. Were there persons around in the place when Johnny strangled you?
A. None, ma'm.

Q. So, what did he do then after he strangled you?
A. He boxed me on my stomach, ma'm.

Q. When he boxed you on your stomach, what happened to you?
A. I was shocked, ma'm.

Q. Did you fall down?
A. Before that, I was already lying down, so when he boxed me, I was shocked.

Q. You said that you were already lying down. Who made you lie down?
A. The person, ma'm.

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[18] *Supra*, see note 14.

Supreme Court E-Library

Q. Why were you shocked, Mayia?
A. Because he strangled me and boxed me.

Q. After he boxed you on your abdomen, what happened? What else did he do to you?
A. There was a dog that arrived in the place and it barked at us. Then Johnny moved in a hurry by penetrating my private part and after he dressing (*SIC*) me, he ran away.

Q. You said that Johnny penetrated your private part. With what instrument did he use in penetrating your private part?
A. His penis, ma'm.

Q. What was he wearing at that time?
A. A black denim, ma'm.

Q. When he used his penis in entering your private part, did he remove his pants?
A. No, ma'm.

Q. What did he do with his pants?
A. He brought out his penis, ma'm.

Q. You mean to say Mayia, he lowered his pants?
A. Yes, ma'm.

Q. What about you, were you wearing any panty?
A. Yes, ma'm.

Q. What was your clothes at that time?
A. A dress, ma'm.

Q. When his penis entered your vagina Mayia, did he remove your panty?
A. Yes, ma'm."[19]

The identity of appellant as the rapist has been established by the clear, convincing and straightforward testimony of Mayia. During the trial, she testified as follows:

"Q. Mayia, there is a man sitting wearing orange t-shirt, do you know this man?
A. Yes, ma'm.

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[19] TSN, December 15, 1998, pp. 9-12.

Supreme Court E-Library

Q. Do you know his name?
A. Yes, ma'm.

Q. What is his name?
A. Johnny, ma'm.

Q. Why do you know him?
A. Because he introduced himself to me.

Q. Where did he introduced himself to you?
A. At Sulok, ma'm.

Q. Sulok is a place?
A. Yes, ma'm.

Q. Do you have any companion when this man introduced himself to you?
A. None, ma'm.

Q. How did he introduce himself to you?
A. The man introduced himself to me by saying, '*Kilala mo ba ako? Hindi po. Ako si* Johnny.'"[20]

The trial court further asked Mayia:

"Q. You were talking of a certain Johnny. Is this Johnny in court now?
A. Yes, sir.

Q. Can you point to him?
A. Yes, sir.

Q. Point to him.
A. (Witness pointing to the person sitting at the accused bench and when asked of his name answered Jesus Perez)

Q. Is this Johnny whom you point to the person whom you saw in that 'Sulok?'
A. Yes, sir."[21]

Mayia's simple, positive and straightforward recounting on the witness stand of her harrowing experience lends credence

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[20] *Ibid.*, pp. 7-8.

[21] *Ibid.*, p. 21.

Supreme Court E-Library

to her accusation. Her tender age belies any allegation that her accusation was a mere invention impelled by some ill-motive. As the Court has stressed in numerous cases, when a woman or a child victim says that she has been raped, she in effect says all that is necessary to show that rape was indeed committed.[22]

Mayia had a clear sight of appellant's face since the rape occurred at "noontime."[23] Her proximity to appellant during the sexual assault leaves no doubt as to the correctness of her identification for a man and woman cannot be physically closer to each other than during the sexual act.[24] Thus, even if Mayia did not give the identifying marks of appellant, her positive identification of appellant sufficed to establish clearly the identity of her sexual assailant.

Appellant's claim that the police improperly suggested to Mayia to identify appellant is without basis. True, Mayia did not identify appellant in a police line-up when Mayia identified appellant in his cell. However, appellant, in his testimony admitted that he had two other companions in his cell.[25] Moreover, the Court has held that there is no law requiring a police line-up as essential to a proper identification. Even without a police line-up, there could still be a proper identification as long as the police did not suggest such identification to the witnesses.[26] The records are bereft of any indication that the police suggested to Mayia to identify appellant as the rapist.

Mayia's identification in open court of appellant as her rapist dispels any doubt as to the proper identification of appellant.

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[22] *People v. Padilla*, 355 SCRA 741 (2001).

[23] *Ibid.*; TSN, December 15, 1998, p. 9.

[24] *People v. Gener Agoncillo*, 358 SCRA 178 (2001); *People v. Nestor Munta*, G.R. No. 142606, November 29, 2001.

[25] TSN, April 14, 1999, pp. 5-7.

[26] *People v. Andres Lubong*, 332 SCRA 672 (2000) citing *People v. Salguero*, 198 SCRA 357 (1991).

Supreme Court E-Library

Mayia positively identified and pointed to appellant as her rapist. We are satisfied that her testimony, by itself, is sufficient identification of her rapist. As held in *People v. Marquez*:[27]

"x x x. Indeed, the revelation of an innocent child whose chastity was abused deserves full credit, as the willingness of complainant to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of her complaint. Stated differently, it is most improbable for a five-year old girl of tender years, so innocent and so guileless as the herein offended party, to brazenly impute a crime so serious as rape to any man if it were not true."

In his Reply Brief, appellant contends that even assuming that the guilt of appellant has been proven beyond reasonable doubt, the trial court erred in imposing the death penalty. Appellant maintains that the death penalty cannot be imposed on him for failure of the prosecution to prove Mayia's age by independent evidence. Appellant points out that while Mayia's birth certificate was duly marked during the pre-trial, it was not presented and identified during the trial. Appellant asserts that Mayia's minority must not only be specifically alleged in the Information but must also be established beyond reasonable doubt during the trial.

Appellant's argument deserves scant consideration.

At the pre-trial, the parties mutually worked out a satisfactory disposition of the criminal case. Appellant, assisted by counsel, signed a Pre-Trial Agreement[28] which, as incorporated in the Pre-Trial Order, stated that:

"x x x x x x x x x

3. *The victim in this case, Mayia P. Ponseca was born on 23 May 1990 as evidenced by her birth certificate;*

x x x x x x x x x."(Italics supplied)

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[27] 347 SCRA 510 (2000).

[28] Records of Criminal Case No. RTC-2116-I, p. 96.

Supreme Court E-Library

During the pre-trial, the prosecution marked in evidence Mayia's birth certificate as Exhibit "A".[29] The prosecution submitted its Offer of Evidence[30] which included Exhibit "A", a certified true copy of Mayia's birth certificate. The trial court admitted Exhibit "A"[31] without any objection from the defense.

The purpose of pre-trial is to consider the following: (a) plea bargaining; (b) stipulation of facts; (c) marking for identification of evidence of the parties; (d) waiver of objections to admissibility of evidence; (e) modification of the order of trial if the accused admits the charge but interposes lawful defenses; and (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.[32] Facts stipulated and evidence admitted during pre-trial bind the parties. Section 4, Rule 118 of the Revised Rules of Criminal Procedure[33] provides:

"SEC. 4. *Pre-trial order.* — After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. *Such order shall bind the parties*, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice." (Italics supplied)

Moreover, Mayia herself testified in open court as to her age. During the trial on December 15, 1998, which was about twenty-three (23) months after the rape incident occurred on January 17, 1997, Mayia testified on cross-examination that she was "8 years old last May 23."[34] Thus, by deduction, since Mayia was born on May 23, 1990 as shown in her birth certificate, she was about six (6) years and seven (7) months old on January

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[29] *Ibid.*, pp. 97 & 154.

[30] *Ibid.*, pp. 152-153.

[31] *Ibid.*, p. 159, Order of April 20, 1999.

[32] Section 1, Rule 118 of the Revised Rules of Criminal Procedure.

[33] Effective December 1, 2000. This section was formerly Section 3 of the 1985 Rules on Criminal Procedure.

[34] TSN, December 15, 1998, pp. 3-4.

Supreme Court E-Library

17, 1997, the day the crime took place. We rule that the prosecution has indisputably proven that Mayia was below seven years old at the time appellant raped her.

Finally, the trial court was correct in imposing the death penalty on appellant. Under Article 335[35] of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659,[36] the death penalty shall be imposed if the crime of rape is committed

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[35] Article 335 of the Revised Penal Code, as amended by R.A. 7659, provides: "*When and how rape is committed.* — 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, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
2. When the victim is under the custody of the police or military authorities.
3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
4. When the victim is a religious or *a child below seven (7) years old.*
5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

[36] Further amended by Republic Act No. 8353, otherwise known as "The Anti-Rape Law," which took effect on October 22, 1997 (*People v. Ugang*, G.R. No. 144036, May 7, 2002). Under the new law, rape is no longer a private crime but has been reclassified as a crime against persons in Article 266-A (Rape, When and How Committed) and Article 266-B (Penalties) under Title Eight of the Revised Penal Code Article 266-B reads:

"Article 266-B. *Penalties.* — x x x.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

Supreme Court E-Library

against a child below seven (7) years old. Mayia was six (6) years and seven (7) months old when appellant raped her.

If rape is qualified by any of the circumstances[37] warranting the imposition of the death penalty, the civil indemnity for actual or compensatory damages is mandatory.[38] Following prevailing jurisprudence, the civil indemnity is fixed at ₱75,000.00. In

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1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;
2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;
3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third degree of consanguinity;
4) When the victim is a religious engaged in legitimate religious vocation or calling or and is personally known to be such by the offender before or at the time of the commission of the crime;
5) When the victim is *a child below seven (7) years old*;
6) When the offender knows that he is afflicted with Human Immune-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;
7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;
8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;
9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and
10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of crime."

[37] See notes 35 & 36.

[38] *People v. Banago*, 309 SCRA 417 (1999).

Supreme Court E-Library

addition, moral damages of ₱50,000.00 should also be awarded to the rape victim without need for pleading or proving it.[39]

WHEREFORE, the Decision dated October 26, 1999 of the Regional Trial Court of Iba, Zambales, Branch 69, in Criminal Case No. RTC-2116-I, finding appellant Jesus S. Perez guilty beyond reasonable doubt of the crime of qualified rape, sentencing him to suffer the death penalty,[40] and ordering him to pay the victim Mayia P. Ponseca the amount of ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages, is *AFFIRMED in toto*.

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

SO ORDERED.

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

Ynares-Santiago, J., on leave.

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[39] *People v. Salustiano Callos*, G.R. No. 133478, January 16, 2002; *People v. Felino Llanita*, G.R. No. 134101, September 5, 2001; *People v. Torejos*, 326 SCRA 75 (2000); *People v. Balgos*, 323 SCRA 372 (2000); *People v. Alba*, 305 SCRA 811 (1999); *People v. Ambray*, 303 SCRA 697 (1999); *People v. Bolatete*, 303 SCRA 709 (1999); *People v. Mahinay*, 302 SCRA 455 (1999).

[40] Three members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribed the death penalty, is unconstitutional (*People v. Echegaray*, 267 SCRA 682 [1997]). Nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty should be imposed in this case.