Supreme Court E-Library

EN BANC

[G.R. No. 148138. April 11, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOHNNY VIAJEDOR,** *accused-appellant.*

SYNOPSIS

Appellant was found guilty of raping his 13-year old daughter, and sentenced him to suffer the death penalty. The Court found no reason to reverse the ruling. As against denial and alibi, the positive testimony of the victim prevails. Death penalty, however, cannot be imposed on the ground that the victim's minority has not been sufficiently established. Thus, the proper penalty is *reclusion perpetua* with ₱50,000 civil indemnity, ₱50,000 moral damages and ₱25,000 exemplary damages

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; RAPE CASES; GUIDING PRINCIPLES.**— In adjudging rape cases, the Court is guided by the following principles: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) in view of the nature of the crime in which usually only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. Nevertheless, it is settled doctrine that the testimony of a rape victim alone, if found credible, is competent to convict the accused. When a rape victim's testimony is straightforward, without material or significant inconsistency, it deserves full faith and credit.

2. **ID.; ID.; FINDINGS OF TRIAL COURT, RESPECTED.**— The trial court's findings on the credibility of witnesses carry great weight and respect and will be sustained by the appellate courts unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter

Supreme Court E-Library

the assailed decision or affect the result of the case. The Court has carefully reviewed the records of this case and found no reason to disturb the findings of the trial court.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; AFFECTED BY EVIDENT INCONSISTENCIES.**— Appellant's version differs from that of his wife. Evidently, their different accounts were merely concocted in an attempt to exculpate appellant from liability. We observed that Mary's testimony was replete with inconsistencies. An evidence to be believed must come from credible witnesses and be credible in itself.

4. **ID.; ID.; ALIBI; WHEN APPRECIATED.**— Appellant also put up the defense of alibi. For his alibi to prosper, appellant must prove not only that he was at some other place at the time the crime was committed, but that it was likewise impossible for him to be at the *locus criminis* at the time of the alleged crime.

5. **ID.; ID.; ID.; CANNOT PREVAIL OVER POSITIVE TESTIMONIES.**— Appellant's defense of denial and alibi cannot prevail over complainant's positive identification of appellant as the one who raped her. Denials and alibis that are unsubstantiated by clear and convincing evidence are negative and self-serving; thus, they deserve no weight in law and cannot prevail over the testimony of a credible witness who testified on affirmative matters.

6. **ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM, UPHELD.**— It is inconceivable for a daughter to fabricate the charge of rape against her father, which may be punishable by death, if her sole purpose is to separate him from his mistress. Family resentment, revenge or feud have never swayed the Court from giving full credence to the testimony of a complainant for rape, especially a minor like Jonah, who remained steadfast in her testimony, throughout the direct and cross-examinations, that she was sexually abused. Based on the foregoing, the trial court correctly found appellant guilty beyond reasonable doubt of the crime of rape.

7. **CRIMINAL LAW; RAPE; ELEMENTS; VIOLENCE AND INTIMIDATION; SUBSTITUTED BY PARENTAL AUTHORITY AND MORAL ASCENDANCY.**— The force or violence necessary in rape is a relative term that depends on the age,

Supreme Court E-Library

size and strength of the persons involved and their relationship to each other. What is essential is that the act was accomplished against the will of the aggrieved person and in spite of her resistance. However, the Court has ruled that in a rape committed by a father against his own daughter, the father's parental authority and moral ascendancy over his daughter substitutes for violence and intimidation. In *People v. Rodriguez* (which involved the rape of a 16-year-old girl by her father), the Court held, "It would be plain fallacy to say that the failure to shout or offer tenacious resistance makes voluntary the victim's submission to the criminal act of the offender." It is quite enough that the victim repeatedly tried, albeit unsuccessfully, to resist the advances. In case at bar, complainant testified that appellant forced her to spread her legs. Furthermore, appellant made complainant drink *tuba* which weakened her and made it easier to violate her. Clearly, therefore, appellant committed rape as defined under Article 266-A, paragraph 1, subparagraph (a).

8. ID.; ID.; DEATH PENALTY; WHERE THE VICTIM IS A MINOR; ELUCIDATED.— Article 266-B of the Revised Penal Code provides: Art. 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.* xxx The death penalty shall xxx be imposed if the crime of rape is committed with any of the following aggravating/ qualifying 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. x x x The minority of the victim and the offender's relationship to the victim, which constitute only one special qualifying circumstance, must be alleged in the Information and proved with certainty. Recent rulings of the Court relative to the rape of minors invariably state that in order to justify the imposition of the penalty of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. A duly certified certificate of live birth accurately showing the complainant's age or some other authentic document such as a baptismal certificate or a school record has been recognized as competent evidence. The prosecution has the burden of proving all the elements of a crime, including the qualifying circumstances, especially in death penalty cases. Since the prosecution failed satisfactorily to prove the minority

Supreme Court E-Library

of the complainant, appellant can only be held liable for the crime of simple rape, which is punishable by *reclusion perpetua*.

9. ID.; ID.; CIVIL LIABILITY IN CASE AT BAR.— The trial court correctly awarded civil indemnity in the amount of ₱50,000. This award is in the nature of actual or compensatory damages, and is mandatory upon a conviction for rape. Private complainant is also entitled to moral damages in the amount of ₱50,000.00 pursuant to Article 2219 of the Civil Code, without the necessity of additional pleading or proof other than the fact of rape. Moral damages is granted in recognition of the victim's injury necessarily resulting from the odious crime of rape. Exemplary damages may be awarded in criminal cases as part of civil liability if the crime was committed with one or more aggravating circumstances. Relationship as an alternative circumstance under Article 15 of the Revised Penal Code is considered aggravating in the crime of rape. In this case, private complainant was raped by her own father. Appellant admitted the allegation of such relationship in his direct testimony. Hence, complainant is entitled to the award of exemplary damages in the amount of ₱25,000 in order to deter fathers with perverse tendencies and aberrant sexual behavior from preying upon their young daughters. The aggravating circumstance of relationship, however, does not alter the imposable penalty of *reclusion perpetua* which is indivisible and, therefore, to be applied regardless of any attendant aggravating and mitigating circumstances.

APPEARANCES OF COUNSEL

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

D E C I S I O N

AZCUNA, *J.*:

Before the Court for automatic review is the Decision[1] of the Regional Trial Court, Branch 59, of San Carlos City, Negros Occidental, in Criminal Case No. RTC-1735, finding appellant

[1] *Rollo*, pp. 19-29.

Supreme Court E-Library

Johnny Viajedor guilty of the crime of rape and sentencing him to suffer the death penalty.

The Information[2] filed against appellant reads:

That, on or about the 14th day of December, 1997, in the Municipality of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the herein offended party, JONAH VIAJEDOR *y* MAHINAY, after the latter was forced to drink "*Tuba*" by the former which weakened and deprived said offended party of her strength and resistance, with the use of force and/or intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with the latter who was then 13 years old, without her consent and against her will, and to her damage and prejudice.

CONTRARY TO LAW.

When arraigned on March 2, 1999, appellant pleaded not guilty.[3] Trial ensued.

The Prosecution's Evidence

Private complainant *Jonah Viajedor* (Jonah) testified that on December 14, 1997, she was in their house in Balintawak, Escalante, Negros Occidental, watching her younger brother and two sisters. At that time, she was 13 years old. Her mother left the house at 6:00 a.m. to sell clothes. In the morning of said date, her father was at work. Her father was working with the municipal government of Escalante, Negros Occidental as a street cleaner of the public market.[4]

Jonah testified that her mother was not able to return to their house on December 14, 1997. Although her father's dismissal time from work was at 5:00 p.m., on December 14, 1997 her father arrived home, drunk, at 4:00 p.m. He brought

---

[2] Records, p. 1.

[3] Records, p. 61.

[4] TSN, September 1, 1999, pp. 2-5, 13.

Supreme Court E-Library

home one gallon of *tuba*. He made her and her younger brother and sisters drink the *tuba*. She drank three glasses of *tuba* and became weak. She asked permission from her father to sleep. Her father made her sit on his lap. He told her that she was already a big girl, as big as her mother. She replied, "You have now a daughter who becomes a lady." Her father then touched her right nipple.

At that time, they were in the sala, while her younger brother and sisters were already asleep in their room. Then her father carried her to her bedroom. She did not resist or struggle because she was very weak. While they were lying down on the bed, her father embraced and kissed her. She turned to her side. Her father undressed her, and she protested. Her father also undressed himself. When her father was undressing himself, she tried to shout but he covered her mouth. She tried to resist her father, but to no avail. Her father then lay on top of her and held his penis. He forced her to spread her legs and inserted his penis into her vagina. She felt pain and tried to shout, but her father covered her mouth. Her father started pumping. After her father made the push and pull movement, he warned her not to tell anyone. Then he went back to work. After her father left, she cleaned herself of bloodstain.[5]

Jonah further testified that after the incident she went to her classmate Noli Obregon who accompanied her to the police station. She reported the incident to the police authorities, but they did not believe her because they said she was still a minor. So she went home. When she arrived home, her mother was already in their house. She reported the incident to her mother. Her mother went to the workplace of her father to confront him and returned home with a black eye. The following day, her mother brought her to her grandmother's house in Sipalay to keep her away from her father. She stayed there until March 1998 when she was fetched by her parents. She did not immediately file a case against her father because she was

---

[5] TSN, September 1, 1999, pp. 5-11, 13, 15-16.

Supreme Court E-Library

afraid he might kill them. On July 27, 1998, she reported the incident to the police and it was recorded in the police blotter.[6]

On cross-examination, Jonah testified that her father had many mistresses. Her mother quarreled with his mistresses. Her mother convinced her to file a complaint against her father because her mother was angry at him because of his mistresses and also because of what happened to her. She filed her complaint directly with the Department of Social Welfare and Development (DSWD) in Escalante after she returned from Sipalay.[7]

Dr. Nelly Ortines Añonuevo, rural health physician of the Municipality of Escalante, Negros Occidental, testified that on July 24, 1998, she conducted a medical examination on private complainant. Her two fingers were easily admitted in the vagina of complainant; hence, complainant was no longer a virgin. Moreover, complainant's hymen had incomplete lacerations at the 2:00 o'clock, 3:00 o'clock and 4:00 o'clock positions and a complete laceration at the 6:00 o'clock position. Said lacerations had healed. The lacerations could have been caused by the forceful penetration of a penis. The lacerations were possibly sustained by complainant around 5 months before the examination.[8]

Dr. Añonuevo issued a medical certificate[9] with the following findings:

Internal examination:

= Admits two fingers easily
= Hymen — with incomplete lacerations located at 2:00 o'clock, 3:00 o'clock and 4:00 o'clock
= complete laceration located at 6:00 o'clock

---

[6] TSN, September 1, 1999, pp. 11-13, 16-17.

[7] TSN, September 1, 1999, pp. 17-19.

[8] TSN, August 31, 1999, pp. 2-3, 6-7, 10-13.

[9] Exhibit "C", Records, p. 9.

Supreme Court E-Library

The Defense's Evidence

Johnny Viajedor,[10] 40 years old, a resident of Barangay Balintawak, Escalante, Negros Occidental, admitted that the private complainant is his daughter. He testified that he was a street cleaner of Balintawak. He worked from Monday to Sunday from 8:00 a.m. to 12:00 noon, then from 1:00 p.m. to 5:00 p.m. On December 14, 1997, he declared that he worked from 8:00 a.m. to 12:00 noon, then from 1:00 p.m. to 5:00 p.m. After he was off from work, he immediately went home. All the members of his family, including his wife, were at home. Nothing unusual happened on that day. He denied that he drank *tuba* or brought home a gallon of *tuba*. He denied that he raped his daughter Jonah on said date.[11]

On cross-examination, appellant testified that it would take about 5 minutes by *tri-sikad* from his workplace to their house. Sometimes he rode his bike to work.[12]

Moreover, appellant testified that as an employee of the local government, he was required to fill up a daily time record. He requested a copy of his daily time record for December 14, 1997 from his foreman, but it was already thrown away.[13]

Appellant further testified that the reason why Jonah filed this case against him was because he and his wife were always quarelling because he had a mistress. They said that they would put him in jail to stop his vicious habit.[14]

Mary M. Viajedor[15] (Mary), appellant's wife, declared that Jonah was the eldest of her seven children. Her children knew

---

[10] Also spelled "Viagedor" in TSN.

[11] TSN, March 7, 2000, pp. 2-3, 7.

[12] TSN, March 7, 2000, p. 4.

[13] TSN, March 7, 2000, p. 5.

[14] TSN, March 7, 2000, pp. 6-7.

[15] Also spelled "Viagedor" in TSN.

Supreme Court E-Library

that her husband had a mistress. Jonah told her that she would find a way to separate her father from his mistress.[16]

Mary testified that at 4:00 p.m. of December 14, 1997, she went after her husband at the market to ask money for viand. She returned home with her husband. They ate supper together with their children. That night, Jonah and her sisters and brothers occupied one bed, while she and her husband occupied another bed.[17]

According to Mary, it was not true that her husband raped Jonah because Jonah had a boyfriend with whom she would go out at night. When Jonah informed her on December 15, 1997 that she was raped by her father, she told Jonah not to file a case because she had a boyfriend. Jonah told her that the reason why she filed this case against her father is to stop him from going around or living with his mistress.[18]

On cross-examination, Mary admitted that she accompanied Jonah to the DSWD and told Mrs. Cañete, a social worker, that Jonah was raped. After one week, her second child told her that Jonah's complaint was not true. She did not inform the DSWD that Jonah's allegation against her husband was false because, at that time, Fely Pallotas of the DSWD already brought Jonah to Bonifacio. She however informed the police, particularly one Bobby Dejoras, that the allegation of Jonah was false.[19]

Mary further testified that on December 16, 1997, she brought Jonah to Sipalay because she had a boyfriend. At that time, Jonah was 13 years old.[20]

On September 27, 2000, the trial court rendered a decision, the dispositive portion of which reads:

---

[16] TSN, May 3, 2000, pp. 3-4.

[17] TSN, May 3, 2000, pp. 5-6.

[18] TSN, May 3, 2000, pp. 5-7.

[19] TSN, May 3, 2000, pp. 7-8.

[20] TSN, May 3, 2000, p. 9.

Supreme Court E-Library

WHEREFORE, it having been established beyond reasonable doubt that accused Johnny Viajedor had raped his own daughter, who at the time of the incident was only thirteen (13) years of age, he is hereby found GUILTY beyond reasonable doubt of the crime of "Rape," as charged, and is hereby sentenced to suffer the death penalty, as provided for by law, to pay the costs and to pay the victim, his daughter Jonah Viajedor, the sum of ₱50,000.

SO ORDERED.[21]

Appellant contends that the trial court erred, thus:

I

THE TRIAL COURT ERRED IN NOT ABSOLVING AND FREEING THE ACCUSED-APPELLANT OF THE CRIME CHARGED IN THE INFORMATION IN THE CASE AT BAR DUE TO THE EXISTENCE OF REASONABLE DOUBT.

II

THE REGIONAL TRIAL COURT IN SAN CARLOS CITY, NEGROS OCCIDENTAL (BRANCH 59) HAS COMMITTED AN ERROR IN IMPOSING OR METING OUT THE SUPREME PENALTY OF DEATH ON THE ACCUSED-APPELLANT.[22]

The Court's Ruling

First Issue: Whether appellant's guilt has been proven beyond reasonable doubt

Appellant contends that the trial court erred in not absolving him of the charge of rape. He denies that he raped his daughter Jonah in the afternoon of December 14, 1997 in Escalante, Negros Occidental. He asserts that his defense of denial was corroborated by his wife, who was in their house in the afternoon and in the evening of December 14, 1997. Moreover, he claims that the charge was only fabricated by his daughter who wanted him to leave his mistress. Hence, he prays for his acquittal on the ground of reasonable doubt.

---

[21] *Rollo*, p. 29.

[22] *Rollo*, p. 49.

Supreme Court E-Library

Appellant's contention is without merit.

In adjudging rape cases, the Court is guided by the following principles: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) in view of the nature of the crime in which usually only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[23]

Nevertheless, it is settled doctrine that the testimony of a rape victim alone, if found credible, is competent to convict the accused.[24] When a rape victim's testimony is straightforward, without material or significant inconsistency, it deserves full faith and credit.[25]

In this case, the trial court found Jonah's testimony to be categorical, straightforward, spontaneous and frank and gave it full credit.[26] The trial court held that said testimony could not have been concocted by a 13-year-old girl against her father, just to make him leave his mistress.[27] The trial court's findings on the credibility of witnesses carry great weight and respect and will be sustained by the appellate courts unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case.[28] The Court

---

[23] *People v. Platilla*, G.R. No. 140723, March 6, 2002; *People v. Barcelona*, 325 SCRA 168, 175 (2000); *People v. Panique*, 316 SCRA 757, 764 (1999).

[24] *People v. Navida*, 346 SCRA 821, 831 (2000).

[25] *People v. Penaso*, 326 SCRA 311, 318 (2000); *People v. Barcelona, supra*, note 23, at 178.

[26] *Rollo*, p. 24.

[27] *Ibid.*

[28] *People v. Banela*, 301 SCRA 84, 90-91 (1999).

Supreme Court E-Library

has carefully reviewed the records of this case and found no reason to disturb the findings of the trial court.

Jonah convincingly testified that appellant raped her on December 14, 1997, thus:

Prosecutor Libutan —

Q In other words, your father is working in the municipal government of Escalante, Negros Occidental as a street cleaner?

A Yes.

Q Was your mother able to return to your house on December 14, 1997?

A No.

Q How about your father, was he able to return to your house on December 14, 1997?

A Yes.

Q What time did your father return to your house on December 14, 1997?

A At 4:00 o' clock.

Q In the morning or in the afternoon?

A In the afternoon.

Q When your father returned to your house on December 14, 1997 at about 4:00 o' clock in the afternoon, what did you notice if any?

A He was drunk.

Q When he arrived in your house, did he bring some drinks?

A Yes.

Q What kind of drink?

A One gallon of *tuba.*

Q And what did your father do with that gallon of *tuba*?

A He made me drink.

x x x x x x x x x

Supreme Court E-Library

Court —

Q Did he also drink *tuba* with you?

A He drunk a little.

Prosecutor Libutan —

Q How many glasses of *tuba* were you forced to drink?

A Three glasses.

Q And were you able to consume three glasses of *tuba*?

A Yes.

Q After you were able to consume the three glasses of *tuba*, what did you feel if any?

A I got drunk and became weak.

Q Since you got drunk and became weak after drinking three glasses of *tuba* which you said your father Johnny Viajedor forced you to drink, what happened next?

A I asked permission from my father that I wanted to sleep.

Q Did your father permit you to sleep?

A He made me sit on his lap.

Q When your father Johnny Viajedor made you sit on his lap, what did he do next?

A He told me that I am a big girl now, as big as my mother.

Q What is your response?

A I answered that you have now a daughter who becomes a lady.

Q At that time, [did] you already have your menstrual period?

A No.

Q While you were seated on the lap of your father Johnny Viajedor, what did your father do?

A He touched my nipple.

Court —

Q Left or right?

A Right.

Supreme Court E-Library

Prosecutor Libutan —

Q While you were seated on the lap of your father and he touched your right nipple, where were your younger sisters and brother?

A Already asleep.

Q What part of the house did they sleep?

A In our room.

Q At the time while you were seated on the lap of your father and [he] touched your nipple, where were you situated?

A At the sala.

Q After your father touched your right nipple while you were seated on his lap, what did your father do if he did anything?

A He carried me towards the bed.

Q Where was that bed situated?

A At my bed.

Q Was that bed inside your room?

A Yes.

Q And was your father able to bring you inside the room?

A Yes.

Q Will you inform this court how your father brought you inside the room?

A He carried me with both arms.

Q When you were already inside the room where your father brought you, what happened?

A He kissed me.

Q Were you standing or lying down?

A Lying down.

Q When you were brought by your father inside the room, you were made to [lay] down by your father?

A Yes.

Supreme Court E-Library

Q And when you were already lying down your father started kissing you?

A Yes.

Q And that was the time he embraced you?

A Yes.

Q When your father started kissing you and embraced you, what did you do?

A I started to turn to the other side.

Q After your father embraced you, what did he do next?

A He undressed me.

Q Was he able to undress you?

A Yes.

Q When your father undressed you, did you not make any protest against his action?

A I made a protest.

Atty. Libutan —

Q When you tried to make a protest, what did your father do?

A He also undressed himself.

Q While your father was undressing himself, where were you?

A In bed.

Q After your father undressed himself, what did he do next?

A He [lay] flat.

Q Where did he lie?

A On top of me.

Q When your father Johnny Viajedor [lay] on top of you, what did he do next?

A He was holding his penis.

Q And did you hold your father's penis?

A No.

Supreme Court E-Library

Q When your father was holding his penis, what did your father do next?

A He forced me to spread my legs.

Q And when your legs were spread, what did your father do next?

A He inserted his penis.

Q Where did your father insert his penis?

A In my vagina.

Q Was your father able to insert his penis [into] your vagina?

A Yes.

Q And when your father inserted his penis into your vagina, what did you feel?

A I felt pain.

Q When the penis of your father was inside your vagina, what did he do?

A He started pumping.

Q And how long did the penis of your father inside your vagina (*sic*)?

A I could not remember how long.

Q Since according to you, you felt pain when your father inserted his penis into your vagina, were you not able to shout?

A I tried to shout but he covered my mouth.

Q In other words, you were not able to shout?

A No.

Court —

Q When your father was doing these things to you, did you not plead to your father not to do it to you?

A I pleaded to him but he said not to tell anyone.[29]

---

[29] TSN, September 1, 1999, pp. 5-10.

Supreme Court E-Library

Significantly, the complainant's testimony is supported by the medical evidence on record. Dr. Añonuevo, who examined complainant, testified that complainant's hymen had incomplete lacerations at the 2:00 o'clock, 3:00 o'clock and 4:00 o'clock positions and a complete laceration at the 6:00 o'clock position.[30] Said lacerations could have been caused by the forceful penetration of a penis.[31] According to Dr. Añonuevo, the vaginal lacerations were sustained by Jonah about 5 months before the medical examination held on July 24, 1998, which is close to the time Jonah was raped on December 14, 1997 (7 months before said medical examination).[32] Dr. Añonuevo also stated that complainant's vagina easily admitted her two fingers during the internal examination, which indicated that complainant was no longer a virgin.[33] As the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient evidence of the existence of carnal knowledge.[34]

Appellant, however, denies that he raped his daughter Jonah. He insists that he went home at 5:00 p.m. of December 14, 1997 and all the members of his family were then at home. He also asserts that his defense of denial was corroborated by his wife, who was in their house in the afternoon and evening of December 14, 1997. He testified, thus:

x x x x x x x x x

Atty. Saldavia —

Q And you also worked in the afternoon and went home at 5:00 P.M.?

A Yes.

Q And that when you were off on December 14, 1997, you went home immediately?

A Yes.

---

[30] TSN, August 31, 1999, p. 7.

[31] TSN, August 31, 1999, pp. 10–13.

[32] TSN, August 31, 1999, p. 8.

[33] TSN, August 31, 1999, p. 6.

[34] *People v. Brondial*, 343 SCRA 600, 620–621 (2000).

Supreme Court E-Library

Q So that while you were in your home will you please tell the court what happened?

A Nothing unusual happened.

Q Were the members of your family present in your house when you went home?

A Yes, they were all there.

Q How about your wife, was she also there?

A She was there.[35]

As pointed out by the trial court, said testimony of appellant was belied by the testimony of appellant's wife, thus:

x x x x x x x x x

Atty. Garcia —

Q At the time of the incident alleged by your daughter that she was raped by your husband at 4:00 o'clock in the afternoon of December 14, 1997, were you present at that date and time?

A I was at the public market.

Q Jonah Viagedor alleged that there were only two persons in your house, herself and your husband at that time, is that correct?

A We were all there together with my children.

Q You want to tell us that all of you were present?

A Yes.

Q Can you tell the persons who were there?

A Johnny, Jonah, Gina and other children.

Q So from 4:00 o'clock in the afternoon of December 14, 1997 you were in your house together with your husband and children?

A I went after my husband to ask money for viand and they were already there.

---

[35] TSN, March 7, 2000, p. 3.

Supreme Court E-Library

Q Why, where was Johnny Viajedor at that time[?]

A In the market.

Q And when you returned home, were you together with your husband?

A Yes.[36]

Appellant's version differs from that of his wife. Evidently, their different accounts were merely concocted in an attempt to exculpate appellant from liability. We observed that Mary's testimony was replete with inconsistencies. Notably, she admitted on cross-examination that she accompanied Jonah to the DSWD and told Mrs. Cañete, a social worker, that Jonah was raped.[37] We can infer from Mary's admission that, contrary to her testimony on direct examination, she was not actually present in their house in the afternoon of December 14, 1997 when the rape incident supposedly took place. If she were in their house at that time, she would have been certain that Jonah was not raped by her husband and therefore she would not have accompanied Jonah to the DSWD nor would she have informed a social worker there that Jonah was raped. In view of said admission, we cannot give credence to Mary's testimony that her husband did not rape Jonah in the afternoon of December 14, 1997 because she, Mary, went home with her husband that afternoon. An evidence to be believed must come from credible witnesses and be credible in itself.[38]

Appellant also put up the defense of alibi. For his alibi to prosper, appellant must prove not only that he was at some other place at the time the crime was committed, but that it was likewise impossible for him to be at the *locus criminis* at the time of the alleged crime.[39]

---

[36] TSN, May 3, 2000, pp. 5-6.

[37] TSN, May 3, 2000, p. 7.

[38] *People v. Dequito*, 332 SCRA 117, 125 (2000).

[39] *People v. Marquez*, 347 SCRA 520, 521 (2000), citing *People v. Altabano*, 317 SCRA 708, 715 (1999).

Supreme Court E-Library

Appellant testified that on December 14, 1997, he worked from 8:00 a.m. until 5:00 p.m. He failed, however, to adduce in evidence his daily time record to prove said fact on the flimsy excuse that it was thrown away by his foreman. He also failed to prove that he did not go home at 4:00 p.m. of said date. Appellant declared that their house was only about 5 minutes ride on a *tri-sikad* from his workplace and that, sometimes, he biked to work.[40] According to the trial court, if appellant rode on his bike on that fateful day, it would have taken him less than 5 minutes to go home.[41] Considering that the house of appellant was just near his workplace, appellant failed to prove that it was physically impossible for him to be in his house at the time the rape was committed.

Appellant's defense of denial and alibi cannot prevail over complainant's positive identification of appellant as the one who raped her.[42] Denials and alibis that are unsubstantiated by clear and convincing evidence are negative and self-serving; thus, they deserve no weight in law and cannot prevail over the testimony of a credible witness who testified on affirmative matters.[43]

Appellant further asserts that the rape charge was only fabricated by his daughter who wanted him to leave his mistress.

The Court is not persuaded.

It is inconceivable for a daughter to fabricate the charge of rape against her father, which may be punishable by death, if her sole purpose is to separate him from his mistress. Family resentment, revenge or feud have never swayed the Court from giving full credence to the testimony of a complainant for rape, especially a minor like Jonah, who remained steadfast in her

---

[40] TSN, March 7, 2000, p. 4.

[41] *Rollo*, p. 27.

[42] *People v. Alvarado*, G.R. No. 145730, March 19, 2002.

[43] *People v. Llamo*, 323 SCRA 791, 806 (2000).

Supreme Court E-Library

testimony, throughout the direct and cross-examinations, that she was sexually abused.[44]

Based on the foregoing, the trial court correctly found appellant guilty beyond reasonable doubt of the crime of rape.

Second Issue: The Penalty Imposed

Appellant contends that the trial court erred in imposing the death penalty because the prosecution failed to prove the minority of private complainant. Hence, he argues that he cannot be convicted of qualified rape, but only of simple rape which is punishable by *reclusion perpetua.*

Articles 266-A of the Revised Penal Code[45] provides, thus:

Art. 266-A. *Rape. When and how committed.*— Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the woman is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

The force or violence necessary in rape is a relative term that depends on the age, size and strength of the persons involved

---

[44] *People v. Miclat*, G.R. No. 137024, August 7, 2002, citing *People v. Batoon*, 317 SCRA 545, 554 (1999).

[45] As amended by Republic Act No. 8353 (The Anti-Rape Law of 1997), which took effect on October 22, 1997.

Supreme Court E-Library

and their relationship to each other.[46] What is essential is that the act was accomplished against the will of the aggrieved person and in spite of her resistance.[47] However, the Court has ruled that in a rape committed by a father against his own daughter, the father's parental authority and moral ascendancy over his daughter substitutes for violence and intimidation.[48]

In this case, the complainant testified that she was made to drink *tuba* by her father after he arrived home, drunk.[49] She drank three glasses of *tuba* and became very weak;[50] hence she did not struggle when her father carried her to the bedroom.[51] However, she protested when her father undressed her.[52] When her father was undressing himself, she tried to shout but he covered her mouth.[53] She tried to resist her father, but to no avail.[54]

In *People v. Rodriguez*[55] (which involved the rape of a 16-year-old girl by her father), the Court held, "It would be plain

---

[46] *People v. Rodriguez*, G.R. No. 133984, January 30, 2002; *People v. Daniel*, 86 SCRA 511, 529 (1978); *People v. Sarile*, 71 SCRA 593, 598 (1976); *People v. Savellano*, 57 SCRA 320, 328 (1974).

[47] *People v. Sarile, supra.*

[48] *People v. Tamsi*, G.R. Nos. 142928-29, September 11, 2002; *People v. Miranda*, G.R. No. 142566, August 8, 2002; *People v. Morfi*, G.R. Nos. 145449-50, August 1, 2002; *People v. Rodriguez, supra*, note 46; *People v. Del Mundo*, 356 SCRA 45, 52 (2001); *People v. Traya*, 332 SCRA 499, 513-514 (2000); *People v. Sancha*, 324 SCRA 646, 664 (2000); *People v. Docena*, 322 SCRA 820, 830 (2000); *People v. Silvano*, 309 SCRA 362, 384 (1999); *People v. Acala*, 307 SCRA 330, 359 (1999); *People v. Sandico*, 307 SCRA 204, 215 (1999); *People v. Igat*, 291 SCRA 100, 108 (1998).

[49] TSN, Sept. 1, 1999, pp. 5-6.

[50] *Ibid.*

[51] TSN, Sept. 1, 1999, p. 15.

[52] TSN, Sept. 1, 1999, p. 8.

[53] TSN, Sept. 1, 1999, p. 16.

[54] *Ibid.*

[55] G.R. No. 133984, January 30, 2002.

Supreme Court E-Library

fallacy to say that the failure to shout or offer tenacious resistance makes voluntary the victim's submission to the criminal act of the offender." It is quite enough that the victim repeatedly tried, albeit unsuccessfully, to resist the advances.[56] As shown earlier, complainant herein testified that appellant forced her to spread her legs. Furthermore, appellant made complainant drink *tuba* which weakened her and made it easier to violate her. Clearly, therefore, appellant committed rape as defined under Article 266-A, paragraph 1, subparagraph (a) above mentioned.

The trial court, however, erred in imposing the death penalty.

Article 266-B of the Revised Penal Code provides:

Art. 266-B. *Penalties.*— Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

x x x x x x x x x

The death penalty shall x x x be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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. x x x

The minority of the victim and the offender's relationship to the victim, which constitute only one special qualifying circumstance,[57] must be alleged in the Information and proved with certainty.[58] Recent rulings[59] of the Court relative to the rape of minors invariably state that in order to justify the imposition of the penalty of death, there must be independent evidence

---

[56] *Ibid.*

[57] *People v. Navida, supra,* note 24, at 833 (2000).

[58] *People v. Bayona,* 327 SCRA 190, 201 (2000); *People v. Navida, supra.*

[59] *People v. Tamsi, supra,* note 48; *People v. Aparejado,* G.R. No. 139447, July 23, 2002; *People v. Desayu,* G.R. No. 140406, April 17, 2002; *People*

Supreme Court E-Library

proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. A duly certified certificate of live birth accurately showing the complainant's age or some other authentic document such as a baptismal certificate or a school record has been recognized as competent evidence.[60]

In the case at bar, the Information alleged that Jonah was "then 13 years old." However, the only evidence presented by the prosecution was complainant's testimony that when she was raped on December 14, 1997, she was 13 years old.[61] The prosecution failed to present documentary evidence such as complainant's birth certificate or baptismal certificate or her school records as competent proof of her minority. The prosecution has the burden of proving all the elements of a crime, including the qualifying circumstances, especially in death penalty cases.[62] Since the prosecution failed satisfactorily to prove the minority of the complainant, appellant can only be held liable for the crime of simple rape, which is punishable by *reclusion perpetua*.

Damages

The trial court correctly awarded civil indemnity in the amount of ₱50,000. This award is in the nature of actual or compensatory damages, and is mandatory upon a conviction for rape.[63]

---

v. Alvarado, supra, note 42; *People v. Alipar*, 354 SCRA 590, 604 (2001); *People v. Pecayo, Sr.*, 348 SCRA 95, 113 (2000); *People v. Marquez, supra*, note 39, at 523; *People v. Tabanggay*, 334 SCRA 575, 600 (2000); *People v. Cula*, 329 SCRA 101, 650 (2000); *People v. Brigildo*, 323 SCRA 631, 650 (2000); *People v. Javier*, 311 SCRA 122, 141 (1999).

[60] *People v. Pruna*, G.R. No. 138471, October 10, 2002; *People v. Marquez, supra*, note 39, at 523.

[61] TSN, September 1, 1999, p. 4.

[62] *People v. Alipar, supra*, note 59, at 607; *People v. Tabanggay, supra*, note 59, at 601.

[63] *People v. Miclat, supra*, note 44; *People v. Bañago*, 309 SCRA 417, 423 (1999).

Supreme Court E-Library

The trial court, however, erred in not awarding moral damages, which is separate and distinct from the civil indemnity awarded to rape victims.[64] Private complainant is entitled to moral damages in the amount of ₱50,000.00 pursuant to Article 2219 of the Civil Code,[65] without the necessity of additional pleading or proof other than the fact of rape.[66] Moral damages is granted in recognition of the victim's injury necessarily resulting from the odious crime of rape.[67]

Exemplary damages may be awarded in criminal cases as part of civil liability if the crime was committed with one or more aggravating circumstances.[68] Relationship as an alternative circumstance under Article 15 of the Revised Penal Code is considered aggravating in the crime of rape.[69] In this case, private complainant was raped by her own father. Appellant admitted the allegation of such relationship in his direct testimony.[70] Hence, complainant is entitled to the award of exemplary damages in the amount of ₱25,000 in order to deter fathers with perverse tendencies and aberrant sexual behavior from preying upon their young daughters.[71] The aggravating circumstance of relationship, however, does not alter the imposable penalty of *reclusion perpetua* which is indivisible and, therefore, to be applied regardless of any attendant aggravating and mitigating circumstances.[72]

---

[64] *People v. Miclat, supra*, note 44.

[65] Civil Code, Art. 2219. Moral damages may be recovered in the following and analogous cases: (1) A criminal offense resulting in physical injuries; (2) Quasi-delicts causing physical injuries; (3) Seduction, abduction, rape, or other lascivious acts x x x.

[66] *People v. Miclat, supra*, note 44, citing *People v. Quezada*, G.R. No. 13557-58, January 30, 2002.

[67] *People v. Alvarado, supra*, note 42, *People v. Tabanggay, supra*, note 59, at 601; *People v. Miclat, supra*, note 44.

[68] Art. 2230, Civil Code.

[69] *People v. Navida, supra*, note 24, at 835.

[70] TSN, March 7, 2000, p. 2.

[71] *People v. Alvarado, supra*, note 42.

[72] *People v. Miclat, supra*, note 44.

Supreme Court E-Library

WHEREFORE, the decision of the Regional Trial Court, Branch 59, of San Carlos City, Negros Occidental, in Criminal Case No. RTC-1735, finding appellant Johnny Viajedor guilty beyond reasonable doubt of the crime of rape and ordering him to pay civil indemnity in the amount of Fifty Thousand Pesos (₱50,000) is *AFFIRMED* with the *MODIFICATIONS* that the death penalty imposed is *reduced to reclusion perpetua*, and that appellant is further ordered to pay private complainant Jonah Viajedor moral damages in the amount of Fifty Thousand Pesos (₱50,000) and exemplary damages in the amount of Twenty-Five Thousand Pesos (₱25,000). Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, and *Callejo, Sr., JJ.*, concur.

FIRST DIVISION

[A.M. No. P-02-1645. April 21, 2003]
(Formerly OCA IPI No. 01-1179-P)

GILBERT HOWARD M. ATIENZA, Clerk of Court III, MTCC, Branch 1, Pallocan West, Batangas City, *complainant, vs.* **JOSEPHINE V. DINAMPO, Court Stenographer II,** *respondent.*

SYNOPSIS

Respondent is Court Stenographer II of the MTCC in Batangas City. She was charged for committing absences without official leave.