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[G.R. No. 146569. October 6, 2003]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOHN NEQUIA,** *appellant.*

SYNOPSIS

Appellant was convicted of qualified rape of his 13-year old minor stepdaughter Mary Ghel and was sentenced to death by lethal injection.

On appeal, he claimed that the prosecution failed to prove with certainty that he raped Mary Ghel. The prosecution proved that he inserted his fourth finger to Mary Ghel's vagina, but such act does not constitute rape under the Anti-Rape Law.

The Supreme Court affirmed his conviction on appeal. Mary Ghel testified that appellant licked her vagina with his tongue, inserted his fourth finger, then his penis into her vagina, although she did not know how deep the penetration was. The Supreme Court held: that rape is consummated by the slightest penetration of the female organ; that physical resistance need not be proven in rape when intimidation is exercised upon the victim and the latter is impelled to submit herself to the bestial desire of the accused; that appellant committed rape (sexual assault) as defined and penalized in Art. 266-A, par 2 of the Revised Penal Code, as amended by RA 8353, when he inserted his fourth finger in Mary Ghel's vagina, but since he was not charged with the said crime, he can only be convicted under the information filed against him, for rape under Art 266-A par. 1of the Code; and that a conviction for rape may be based solely on the uncorroborated testimony of the victim when the testimony *per se* is credible, natural, free from serious contradiction, as in this case; and that the testimonies of young and immature girls from ages twelve to sixteen in rape cases deserve full faith and credence when there is no showing of any ill-motive.

Supreme Court E-Library

SYLLABUS

1. **CRIMINAL LAW; RAPE; RAPE IS CONSUMMATED BY SLIGHTEST PENETRATION OF THE FEMALE ORGAN.** — In *People v. Salinas*, we held that in rape cases, there are no half measures or even quarter measures, nor is their gravity graduated by the inches of entry. Partial penile penetration is as serious as full penetration. In either case, rape is deemed consummated. We further said that in a manner of speaking, "bombardment of the drawbridge is invasion enough even if the troops do not succeed in entering the castle." In *People v. Campuhan*, we held that rape is consummated by the slightest penetration of the female organ, *i.e.*, touching of either *labia* of the *pudendum* by the penis.

2. **ID.; ID.; THREATS OF PHYSICAL HARM ON VICTIM IS NOT AN INDISPENSABLE ELEMENT IN RAPE.** — Threats of physical harm on the victim is not an indispensable element in the crime of rape. For rape to be consummated, it is enough that the victim is intimidated or forced into submitting to the bestial lust of the accused.

3. **ID.; ID.; INTIMIDATION AND/OR FORCE; AGE, SIZE AND STRENGTH OF THE VICTIM SHOULD BE TAKEN INTO ACCOUNT.** — In *People vs. Sagun*, we held that intimidation is addressed to the mind of the victim. It is subjective and its presence cannot be tested by any hard-and-fast rule but must be viewed in the light of the perception and judgment of the victim during the commission of the crime. The age, size and strength of the parties should be taken into account in evaluating the existence of the element of force or intimidation in the crime of rape. Though the accused lays no hand on the victim, yet if by any way of physical forces, he so overpowers her mind that she does not resist, or ceases resistance through fear of greater harm, rape is deemed consummated. Physical resistance need not be proven in rape when intimidation is exercised upon the victim and the latter is impelled to submit herself to the bestial desire of the accused.

4. **ID.; ID.; RAPE (SEXUAL ASSAULT) UNDER ART. 266-A, PAR. 2 THEREOF, AS AMENDED BY RA 8353; INSERTING A HUMAN FINGER INTO THE VICTIM'S VAGINA, A CASE OF.**— The Court, however, does not agree with the appellant's submission that he did not commit rape

Supreme Court E-Library

(sexual assault), as defined and penalized in Article 266-A, paragraph 2 of the Revised Penal Code, as amended by Republic Act 8353, when he inserted his fourth finger into Mary Ghel's vagina. . . In *People v. Perez,* the word "instrument or object" was construed to include a human finger. The Court reiterated its ruling in *People v. Soriano* and *People v. Bon.* The Anti-Rape Law transformed and reclassified rape as a felony against persons, under Title Eight, Chapter Two, Book II of the same Code. The criminalization of the penetration of a person's sex organ or anal orifice and the insertion of a person's penis into the mouth or anal orifice of another, whether man or woman, and the classification thereof as rape (sexual assault) were designed to prevent not only the physical injuries inflicted on the victim but also his subjection to personal indignity and degradation and affront to the psychological integrity associated with an unwanted violation. An unconsented intrusion by whatever object or instrumentality chosen by the perpetrator, whether animate or inanimate, is prohibited by the law. The fact that only digital penetration occurred did not lessen the victim's fear and humiliation or the violation of her bodily integrity. The public prosecutor should thus have filed two separate Informations against the appellant, one for rape under Article 266-A, paragraph 1 for the insertion by him of his penis into the vagina of the victim, and rape (sexual assault) under Article 266-A, paragraph 2 of the law for inserting his finger into the victim's vagina. However, only one information was filed against the appellant, for rape under Article 266-A, paragraph 1 of the Code. The appellant cannot thus be convicted of rape (sexual assault) under Article 266-A, paragraph 2, since he was not charged with the said crime.

5. **ID.; ID.; ID.; PLACE OF CRIME IMMATERIAL; CASE AT BAR.**— Rape can be committed in the same room where other members of the family are also sleeping.

6. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CONVICTION FOR RAPE MAY BE BASED SOLELY ON UNCORROBORATED TESTIMONY OF VICTIM WHEN IT IS *PER SE* CREDIBLE, NATURAL AND FREE FROM SERIOUS CONTRADICTION; CASE AT BAR.**— The appellant's attack on Helena's credibility as a witness and the veracity of her testimony is futile. Helena's

Supreme Court E-Library

account of the event is merely corroborative of Mary Ghel's testimony. Case law has it that it is perfectly acceptable to anchor a judgment of conviction for rape based solely on the uncorroborated testimony of the victim when the testimony *per se* is credible, natural, convincing and free from serious contradiction, and her sincerity and candor, free from suspicion. In this case, the trial court found the testimony of Mary Ghel spontaneous, sincere and entitled to full probative weight.

7. **ID.; ID.; ID.; TESTIMONIES OF YOUNG RAPE VICTIMS ENTITLED TO FULL FAITH AND CREDENCE WHEN NOT IMPELLED BY ILL-MOTIVE; CASE AT BAR.** — [W]e find no reason to deviate from the findings of the trial court and its calibration of the testimony of Mary Ghel. In *People v. Castillo*, we held that in rape cases where the offended parties are young and immature girls from the ages of twelve to sixteen, there is considerable receptivity on the part of this Court to lend credence to their testimonies, considering not only their relative vulnerability but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. There is no showing that Mary Ghel was impelled by any ill-motive in charging her stepfather with a heinous crime. Hence, her testimony is entitled to full faith and credence. No woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.

8. **CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; MINORITY AND RELATIONSHIP; PENALTY; RAPE OF A MINOR BY HER STEPFATHER WARRANTS DEATH PENALTY.** — The trial court correctly sentenced the appellant to suffer the death penalty. As alleged in the Information, the victim was under 18 years old when she was raped by her stepfather, the appellant. The victim's minority and her relationship with the appellant are circumstances which require the imposition of the death penalty under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659.

9. **ID.; ID.; CIVIL LIABILITIES; CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES, AWARDED IN CASE AT BAR.** — The trial court awarded ₱75,000 to Mary Ghel Guanco as civil indemnity, and ₱75,000 as moral damages. It did not

Supreme Court E-Library

award exemplary damages. Conformably to case law, the victim in rape cases is entitled to ₱75,000 as civil indemnity, and ₱75,000 as moral damages when the death penalty is imposed by the Court. She is also entitled to exemplary damages in the amount of ₱25,000 as a vindication of the undue sufferings and wanton invasion of her rights, and to punish the appellant for his outrageous conduct.

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:

This is an automatic review of the Decision[1] of the Regional Trial Court (RTC) of Iloilo City, Branch 23, convicting the appellant of qualified rape, sentencing him to death by lethal injection and directing him to pay the victim Mary Ghel P. Guanco, civil indemnity and moral damages.

The Antecedents

On May 10, 1999, an Information was filed with the RTC, charging John Nequia with rape. The accusatory portion of the Information reads:

That on or about January 23, 1999, in the Municipality of Oton, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with grave abuse of confidence, he, being the stepfather of the victim, with lewd design and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge of one MARY GHEL P. GUANCO, a 13 year-old minor, against her will and/or consent.

CONTRARY TO LAW.[2]

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[1] Penned by Judge Tito G. Gustilo.

[2] Records, p. 1.

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The accused, assisted by counsel, was arraigned on June 21, 1999 and entered a plea of not guilty.

The Case for the Prosecution

During their coverture, Helena Planta and her live-in partner German Guanco had three children, Mary Ghel, Gerlyn and John Gil. Mary Ghel, the eldest, was born on February 2, 1986. Helena eked out a living as a franchise dealer of Avon products.

Helena and German eventually separated. In March 1995, Helena and the accused lived as husband and wife in Pakiad, Oton, Iloilo. The children stayed with them. Helena and the accused were later married on December 5, 1997.

On December 31, 1995, Helena was in their house cooking. The accused insinuated that he wanted to have sex with her. Helena told her husband not to bother her because she was busy cooking. The accused went up to the second floor of their house. When the accused came down, he kissed Helena. She upbraided her husband and told him: "*Ga*, your mouth is smelling [*sic*] vagina." He told her that he would just wash his mouth. After doing so, the accused went to the *camalig*. For her part, Helena went up to the second floor of their house and saw her daughter Gerlyn, who was then about eight years old, lying on the floor covered with a blanket. When Helena pulled the blanket away, she noticed that her daughter's panties were inverted. Suspecting that the accused had sexually abused her daughter, Helena proceeded to the *camalig* and confronted him. She demanded to know what he did to Gerlyn. The accused kept silent. Helena then told the accused that she would send her daughter to live with her parents and sisters in Barangay Pulo, Maestra Vita in Oton. The accused got angry. Helena then pleaded to him: "If you will not admit [it], please don't repeat it again [*sic*]." Helena told Gerlyn to be on guard henceforth. Helena did not report the incident to the police authorities hoping that the accused would not abuse her daughter again. As a precautionary measure, Helena brought her daughters Mary Ghel and Gerlyn to her parents' house at the end of the school year, and asked them if her daughters could stay there for a while. Her parents

Supreme Court E-Library

agreed. However, John Gil, who was then about five years old, stayed with his mother and the accused in Pakiad.

At 7:00 a.m. of January 23, 1999, a Saturday, Helena left their house to collect her customers' accounts. The accused, his mother Linda and John Gil were left in the house. At about 9:00 a.m., Mary Ghel, who by then was twelve years old, arrived at the house and asked the accused to make a flower vase for her as a school project. The accused agreed. By noontime, he had not yet finished his stepdaughter's project. After lunch, he ordered Mary Ghel and John Gil to go up to the second floor to sleep. The two children did as they were told. Mary Ghel and John Gil lay down on the floor face up beside each other. Mary Ghel could not sleep and merely closed her eyes, while her brother slept soundly.

Momentarily, the accused went up to the second floor, forcibly held Mary Ghel's hands and placed them behind her back. The accused hit her buttocks with his hand and placed a pillow on her face to prevent her from shouting or making any noise. Mary Ghel found it hard to breathe. She wanted to shout, but she could not. The accused then removed her clothes and panties, licked her vagina with his tongue and inserted his fourth finger. He then mounted Mary Ghel and inserted his penis into her vagina. Mary Ghel felt excruciating pain. After the accused was satiated, he dismounted from Mary Ghel and removed the pillow from her face. The pain Mary Ghel felt in her vagina made her cry out loud. Alarmed, the accused hastily put his clothes on and dressed up Mary Ghel as well. In his hurry, he forgot to put on Mary Ghel's panties. The accused then hurriedly went down to the ground floor. *Lola* Linda went up and inquired what the accused had done to her, but Mary Ghel could only cry.

Mary Ghel then put on her panties and woke up her brother. The two left the house and went to their maternal grandparents' house at Pulo Maestra Vita. Mary Ghel did not tell her grandparents Lola Etring and *Lolo* Emil, and her aunties Aya and Bingbing what the accused had done to her. She was afraid that if she did, the accused might harm her and her family.

Supreme Court E-Library

At about 6:00 p.m. of the same day, the accused fetched Helena at Barangay Cagbang and brought her home. In the days that followed, Helena noticed that the accused was not his usual self. He seemed absent minded. She asked her sister-in-law Milagrosa Senarlo, what caused the unusual behavior of her husband. Milagrosa replied that she did not know, but suggested that Helena talk to her daughter Mary Ghel.

On January 26, 1999, Helena went to the Pakiad Elementary School where Mary Ghel was studying. She wanted to talk to her daughter. She was unable to do so, however, because Mary Ghel was taking her tests at the time.

January 27, 1999 was Helena's birthday. She returned to the school and talked with Mary Ghel in the school canteen. When Helena asked her daughter what happened to her on January 23, 1999, Mary Ghel replied that nothing happened. However, Helena noticed that Mary Ghel was kicking her feet on the ground and that she had started crying. Mary Ghel then admitted that something indeed happened to her. Helena urged her daughter to reveal the incident and to consider the information as Mary Ghel's birthday gift to her. Touched by her mother's request, Mary Ghel finally told her mother that she was raped by the accused shortly after lunch on January 23, 1999. She told her mother how the accused sexually abused her. Helena was shocked by her daughter's revelation. Helena did not confront the accused because she was sure that he would not admit to any wrongdoing.

Nevertheless, Helena accompanied Mary Ghel to the Western Visayas Medical Center in Iloilo City on February 12, 1999. Dr. Encarnacion A. Rubinos examined Mary Ghel and later signed a medico-legal certificate containing the following findings:

INTERNAL EXAMINATION FINDINGS:

> COMPLETE HYMENAL TEAR, OLD, HEALED AT 5:00 and 7:00 o'clock POSITIONS.

LABORATORY FINDINGS: NO SPERMATOZOA SEEN

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IMPRESSION: COMPLETE HYMENAL TEAR, OLD, HEALED AT 5:00 & 7:00 O'CLOCK POSITIONS.[3]

On February 4, 1999, Helena and Municipal Social Worker Raquel Baldovese accompanied Mary Ghel to the Oton Police Station where they reported the incident, as well as the December 31, 1995 occurrence when the accused had also apparently sexually abused the younger Gerlyn.[4] On February 15, 1999, Chief of Police Antonio B. Bersamin filed a criminal complaint for rape against the accused with the Municipal Trial Judge of Oton. Appended to the complaint was the affidavit executed by Mary Ghel.

The Evidence of the Accused

The accused denied the charge. He claimed that Helena instigated the charge against him because she wanted to leave him but he prevented her from doing so. He testified that he was heavily indebted and that in 1998, Helena was asked to pay his debts. At 6:30 a.m. on January 23, 1999, he accompanied his wife Helena to Barangay Cagbang, Oton. He returned to the house and saw Mary Ghel who asked him to apply *shellac* on her bamboo project. He told Mary Ghel that he had no *shellac* but that his brother-in-law Roger Planta, Helena's brother, had some. After a short time, the accused left to pass by Roger's house and to fetch Helena. On the way, he also passed by the house of a friend, Nestor Espada, at Barangay Abilang Sur. Fifteen minutes later, he arrived at Roger's place. The accused asked Roger if he had *shellac* and the latter replied that he had already used them up. Roger then invited the accused to a drinking spree. The accused agreed. They were joined by Torpo, and later by Joseph. The drinking spree ended at around 2:30 p.m. Thereafter, the accused proceeded to Barangay Cagbang where he fetched Helena. The couple arrived home at 6:30 p.m. By then, Mary Ghel had already left the house with her brother.

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[3] Exhibit "C," Folder of Exhibits, p. 3.

[4] Exhibit "E," *Id.* at 5.

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Milagrosa Senarlo, the sister of the accused, testified that she lived about ten meters away from her brother's house. Helena's relationship with her brother turned sour when Helena started arriving home late. The accused became "absent-minded" because he and Helena were heavily indebted. Helena had been to Hongkong in 1998 and spent so much money for her trip. They also gambled at Pakiad.

The witness also testified that in the early morning of January 23, 1999, the accused and Helena left their house and went to Barangay Cagbang. The accused returned at 9:00 a.m. Mary Ghel, who was wearing pants and a blouse, arrived at the house with her school project. The accused then left. His mother Linda told Mary Ghel to leave her project in the house. As it was getting late, Linda accompanied Mary Ghel and John Gil to the nearby store. From there, Mary Ghel and John Gil left for Pulo Maestra Vita by themselves. According to the witness, Mary Ghel and John Gil were even playing together on their way to the store.

The next day, January 24, 1999, the accused and Helena went to the city to see a movie. Mary Ghel brought her brother John Gil back to the house of the accused at 4:30 p.m. in a tricycle.

After due proceedings, the trial court rendered judgment convicting the accused of qualified rape and sentencing him to death. The decretal portion of the decision reads:

> WHEREFORE, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crime of Rape defined and penalized under Arts. 266-A and 266-B of Republic Act 8353 hereby sentencing the accused John P. Nequia to the supreme penalty of DEATH by lethal injection, further condemning the said accused to pay the victim Mary Ghel Guanco the sum of ₱75,000.00 by way of civil liability and the amount of ₱75,000.00 moral damages.
>
> The Warden, Iloilo Rehabilitation Center, Iloilo City where the accused is detained is ordered to immediately remit said accused to the National Penitentiary. Let the entire records of this case be elevated to the Honorable Supreme Court, Manila for automatic review.
>
> SO ORDERED.[5]

[5] Records, p. 239.

Supreme Court E-Library

The appellant assails the decision of the trial court, raising the lone assignment of error that —

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF CONSUMMATED RAPE DESPITE UNCERTAINTY OF ITS COMMISSION.[6]

The appellant asserts that, as can be gleaned from Mary Ghel's affidavit and the complaint filed with the MTC, the appellant did not insert his penis into Mary Ghel's vagina. Mary Ghel admitted when she testified that she did not see the penis of the appellant. She admitted that she was lying beside her brother John Gil when the appellant raped her, and was forced to close her eyes when the appellant had sex with her.

The appellant contends that although the prosecution proved that he inserted his fourth finger into the private complainant's vagina, such act does not constitute rape (sexual assault) under the Anti-Rape Law.[7] He argues that the insertion of a human finger into the victim's vagina has been excluded in Senate Bill No. 950 and House Bill No. 6265. He also cited Memorandum Circular No. 22, dated September 28, 2000 of the then Secretary of Justice Artemio Tuquero. Furthermore, there is no evidence that the appellant threatened the victim with physical harm. The prosecution thus failed to prove with certainty that the appellant raped Mary Ghel.

According to the appellant, the victim and her mother Helena were even smiling and were in a happy mood during the trial. Despite Helena's knowledge that the appellant had abused her daughter, she never confronted him. Helena even admitted that despite her knowledge that the appellant had raped her daughter, she still agreed to have sex with the appellant, and prodded the latter to have more sex although he had already ejaculated.

The contention of the appellant does not hold water. Mary Ghel testified that the appellant licked her vagina with his tongue, inserted his fourth finger, then his penis into her vagina, although

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[6] *Rollo*, p. 56.

[7] Republic Act No. 8353.

Supreme Court E-Library

she did not know how deep the penetration was. She felt pain in her vagina as the appellant penetrated her:

Q At around 12:30 o'clock [*sic*] at noon, can you tell this Honorable Court what were you doing at that time inside the house of your stepfather?

A He told us to go to sleep.

Q You said "us," who was your companion at that time?

A My younger brother.

Q Your younger brother John Gil?

A Yes, sir.

Q When your stepfather told you to sleep, did you sleep?

A I slept on the upper portion.

Q You mean the house of your stepfather and mother has a [*sic*] 2 storey?

A Yes, sir.

Q That place, the upper part of the house where you were told by your stepfather to sleep, how many rooms are there?

A One.

Q And where did you and your brother sleep that noon of January 23, 1999 because you were told to sleep?

A At the upper portion.

Q On the bed?

A No, sir.

Q Where?

A On the floor.

Q There is no bed on the upper part of the house of your stepfather?

A No, sir.

Q By the way, were you able to sleep that afternoon of January 23, 1999?

A I was not able to sleep, I only closed my eyes.

Q When you said you only closed your eyes, and [were] not able to sleep, can you tell this Honorable Court what happened?

Supreme Court E-Library

A My stepfather went upstairs and held my [*sic*] both hands and placed it [*sic*] on my back.

COURT:

Q About what time is this, more or less?
A I can not recall.

Q Have you already taken your lunch when you went to sleep?
A Yes, sir.

COURT:

Proceed.

FISCAL:

Q When you said your stepfather came and held your 2 hands and put them at your back, what was your position at that time?
A I was facing upwards.

Q Can you demonstrate what was your position at that time?
A Yes, sir. (Witness demonstrating by sitting and placing both hands on the back).

Q After your stepfather held your both hands and put [them] on [*sic*] your back, what did he do after that?
A He covered my eyes and mouth with a pillow.

Q After he covered your eyes and mouth with a pillow, what did he do?
A He slapped my buttocks so that I will not shout.

Q And after that?
A Then he took off my pants and panty.

Q What were you wearing at that time?
A Pants.

Q What kind of pants was that?
A Maong.

COURT:

Q Is that a long or short pants?
A Long.

Supreme Court E-Library

Q And after he took off your long pants and panty, what did he do?

A He placed a pillow under my buttocks.

Q And what did he do after that?

A He lipped [*sic*] my vagina and fingered my vagina.

Q What did you do at that time when your stepfather lipped and fingered your vagina?

A I can not move at that time.

Q And after he lipped and fingered your vagina, what did he do?

A He laid on top of me and inserted his penis [in]to my vagina.

Q And after he inserted his penis into your vagina what happened?

A Because of pain I shouted.

Q And when you shouted because of pain, what happened?

A He removed his penis in my vagina.

Q And what happened next?

A And my grandmother inquired from him what happened to Candy and he replied, "Nothing, he just quarreled with her brother."

Q Where was your grandmother?

A Downstairs.

Q What was she doing at that time?

A She finished already [*sic*] weeding.

COURT:

Q You said that when you shouted because of pain, the accused withdrew or removed his penis from your vagina, correct?

A Yes, sir.

Q Why, was his penis able to enter the opening of your vagina?

A Yes, sir.

Q Was it able to penetrate your vagina?

A It was not fully inserted.

Supreme Court E-Library

Q Was the tip of his penis able to touch the opening of your vagina?

A Yes, sir.

Q Was it able to penetrate the portion of your vagina?

A Yes, sir.

Q About how many inches was the penetration, if any?

A I do not know.[8]

COURT

Q You are sure that John Nequia, the accused inserted his penis into your vagina?

A Yes, Your Honor, because I felt pain when he inserted his penis.

Q Was his penis able to penetrate into your vagina?

A I cannot ascertain but I only felt pain.

Q You cannot determine how deep was the penetration of his penis into your vagina?

A No, Your Honor.

Q Did you experience whether your vagina bled?

A No, Your Honor.

Q Did it bleed or it did not bleed?

A I do not know because I was not able to see.[9]

Although Mary Ghel testified that she did not see the penis of the appellant because of the pillow on her face, she was sure that the appellant inserted his penis because it was bigger than his finger:

ATTY. DEGUMA

Q Madam Witness, since you said your eyes were covered, how do you know that it was the penis of John Nequia that [was] inserted into your vagina?

A Because of that fact that I felt as if it is his finger because his finger is smaller than his penis.

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[8] TSN, 8 November 1999, pp. 6-10.

[9] TSN, 15 November 1999, pp. 23-24.

Supreme Court E-Library

COURT

Q Which is bigger, his penis or his finger?

A His penis, Your Honor.[10]

The trial court correctly convicted the appellant of consummated rape under Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353, the Anti-Rape Law.

In *People v. Salinas*[11] we held that in rape cases, there are no half measures or even quarter measures, nor is their gravity graduated by the inches of entry. Partial penile penetration is as serious as full penetration. In either case, rape is deemed consummated. We further said that in a manner of speaking, "bombardment of the drawbridge is invasion enough even if the troops do not succeed in entering the castle."[12]

In *People v. Campuhan*,[13] we held that rape is consummated by the slightest penetration of the female organ, *i.e.*, touching of either *labia* of the *pudendum* by the penis:

. . . As the *labias, which are required to be "touched" by the penis,* are by their natural *situs* or location *beneath* the *mons pubis* or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the *labia majora* or the *labia minora* of the *pudendum* constitutes consummated rape.

The *pudendum* or *vulva* is the collective term for the female genital organs that are visible in the perineal area, *e.g., mons pubis, labia majora, labia minora,* the hymen, the clitoris, the vaginal orifice, *etc.* The *mons pubis* is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the *labia majora* or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and

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[10] *Id.* at 24-25.

[11] 232 SCRA 274 (1994).

[12] *Id.* at 279.

[13] 329 SCRA 270 (2000).

Supreme Court E-Library

is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the *labia majora* is the *labia minora*. . . .

Mere contact by the male's sex organ of the female's sex organ consummates rape.[14]

Threats of physical harm on the victim is not an indispensable element in the crime of rape. For rape to be consummated, it is enough that the victim is intimidated or forced into submitting to the bestial lust of the accused. In *People v. Sagun*,[15] we held that intimidation is addressed to the mind of the victim. It is subjective and its presence cannot be tested by any hard-and-fast rule but must be viewed in the light of the perception and judgment of the victim during the commission of the crime.[16] The age, size and strength of the parties should be taken into account in evaluating the existence of the element of force or intimidation in the crime of rape.[17] Though the accused lays no hand on the victim, yet if by any way of physical forces, he so overpowers her mind that she does not resist, or ceases resistance through fear of greater harm, rape is deemed consummated. Physical resistance need not be proven in rape when intimidation is exercised upon the victim and the latter is impelled to submit herself to the bestial desire of the accused.[18]

In this case, the appellant was 28 years old and heavy in built. He overpowered the victim by holding both her hands and placing them at her back. The appellant even slapped her buttocks and put a pillow over her face to prevent her from shouting for help. The victim could hardly breathe as the appellant ravished her. She felt pain in her vagina when the appellant penetrated her.

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[14] *People v. Castillo*, 335 SCRA 100 (2000).

[15] 303 SCRA 382 (1999).

[16] *Id.* at 394.

[17] *People v. Cambi*, 333 SCRA 305 (2000).

[18] *People v. Sagun, supra.*

Supreme Court E-Library

The Court, however, does not agree with the appellant's submission that he did not commit rape (sexual assault), as defined and penalized in Article 266-A, paragraph 2 of the Revised Penal Code, as amended by Republic Act 8353, when he inserted his fourth finger into Mary Ghel's vagina. The aforesaid law reads:

Article 266-A. *Rape; When and How Committed.* — Rape is committed:

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

In *People v. Perez*,[19] the word "instrument or object" was construed to include a human finger. The Court reiterated its ruling in *People v. Soriano*[20] and *People v. Bon*.[21] The Anti-Rape Law transformed and reclassified rape as a felony against persons, under Title Eight, Chapter Two, Book II of the same Code.[22] The criminalization of the penetration of a person's sex organ or anal orifice and the insertion of a person's penis into the mouth or anal orifice of another, whether man or woman, and the classification thereof as rape (sexual assault) were designed to prevent not only the physical injuries inflicted on the victim but also his subjection to personal indignity and degradation and affront to the psychological integrity associated with an unwanted violation.[23] An unconsented intrusion by whatever object or instrumentality chosen by the perpetrator, whether animate or inanimate, is prohibited by the law.[24] The fact that

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[19] G.R. Nos. 141647-51, March 6, 2002.

[20] G.R. Nos. 142779-95, August 29, 2002.

[21] G.R. No. 149199, January 28, 2003.

[22] Under the Spanish Penal Code, rape is classified as a crime against honesty (*delito contra la honestidad*) which is equivalent to *moralidad sexual* (*Cuello Calon, Derecho Penal*, Vol. II, p. 505).

[23] *Harwood v. State*, 555 NE Rep. 2d. 513 (1990).

[24] *Steward v. State*, 555 NE Rep. 2d. 121 (1990).

Supreme Court E-Library

only digital penetration occurred did not lessen the victim's fear and humiliation or the violation of her bodily integrity.[25] The public prosecutor should thus have filed two separate Informations against the appellant, one for rape under Article 266-A, paragraph 1 for the insertion by him of his penis into the vagina of the victim, and rape (sexual assault) under Article 266-A, paragraph 2 of the law for inserting his finger into the victim's vagina. However, only one information was filed against the appellant, for rape under Article 266-A, paragraph 1 of the Code. The appellant cannot thus be convicted of rape (sexual assault) under Article 266-A, paragraph 2, since he was not charged with the said crime.

There is no discordance between Mary Ghel's affidavit, which was appended to the criminal complaint for rape, and her testimony. In her affidavit, Mary Ghel stated that the appellant had intercourse with her:

> That after a few minutes, my stepfather John Nequia came and he hold [*sic*] my hands, covered my mouth with a pillow and slapped my hip in order not to shout and he immediately took off my underwear, he put pillow my [*sic*] hips, kissed, sucked and finger [*sic*] my vagina and have intercourse with me but did not consum[m]ate because [*sic*] I shouted for [*sic*] the pain of my vagina.[26]

The credibility of Mary Ghel and the probative weight of her testimony are not impaired by the deficiency in the accusatory portion of the criminal complaint filed by Oton Chief of Police Bersamin, nor the latter's failure to testify for the prosecution, or the fact that Mary Ghel did not sign the criminal complaint. Besides, the criminal complaint was never adduced in evidence by the prosecution.

There is no evidence on record that Mary Ghel and Helena were always smiling and in a happy mood during the trial. On the contrary, the records show that when Mary Ghel testified, she cried:

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[25] *State v. Jacques*, 536 A2d 535 (R.I. 1988).

[26] Records, p. 7.

Supreme Court E-Library

REDIRECT EXAMINATION
BY PROSECUTOR CABALUM

Q. Madam Witness, how were you able to shout when you said before that the pillow was covering your mouth and your eyes?

A. I was able to shout when he was no longer lying on top of me.

Q. And you were able to remove the pillow covering your eyes and mouth?

A. Yes, Ma'[a]m.

Q. Madam Witness, why did you not tell your Lola Linda whom you first met after the incident?

A. I have not told anybody about it. I just continued to lie and I was afraid at the time.

COURT:

Q. Why are you afraid?

A. I was just afraid, Your Honor.

Q. You are afraid of whom?

A. John Nequia.

Q. Why are you afraid of John Nequia?

A. Because if I will reveal he might kill us.

ATTY. DEGUMA

Your Honor, I move to strike out the statement "*basi pamatyon ko sila.*" It is a presumption, Your Honor.

COURT

Q. Why, are you afraid that John Nequia will kill your parents if you will report the incident to them?

A. Because I love them, Your Honor.

Q. But John Nequia warned you not to report to your parents?

A. No, Your Honor, because my grandmother immediately went up.

Q. What I mean, John Nequia did not tell you not to report what he did to you to your parents?

A. No, Your Honor.

Supreme Court E-Library

COURT

Proceed.

PROSECUTOR:

I would like to put on record that the victim is crying.

COURT

Noted already.

PROSECUTOR

That will be enough.[27]

The testimony of Mary Ghel is not impaired by the evidence that the appellant raped her while John Gil was sleeping beside her. Rape can be committed in the same room where other members of the family are also sleeping.[28]

The appellant's attack on Helena's credibility as a witness and the veracity of her testimony is futile. Helena's account of the events is merely corroborative of Mary Ghel's testimony. Case law has it that it is perfectly acceptable to anchor a judgment of conviction for rape based solely on the uncorroborated testimony of the victim when the testimony *per se* is credible, natural, convincing and free from serious contradiction, and her sincerity and candor, free from suspicion.[29] In this case, the trial court found the testimony of Mary Ghel spontaneous, sincere and entitled to full probative weight:

Whereas, complainant Mary Ghel Guanco declared that she was raped by her stepfather and herein accused John Nequia, the said accused, relying on simple denial and alibi and further attributing ill-motive on the part of Helena P. Nequia, strongly denies having raped complainant Mary Ghel Guanco. That complainant Mary Ghel was only 13 years old then and a 6th grade student of Pakiad Elem. School in Brgy. Pakiad, Oton, Iloilo is given. She was not shown to have the shrewdness and callousness of a woman who would concoct

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[27] TSN, 15 November 1999. pp. 29-31.

[28] *People v. Castillo, supra.*

[29] *People v. Burgos*, 279 SCRA 697 (1999).

Supreme Court E-Library

such a story and endure physical examination and public trial if her story were untrue. In *People vs. Victor,* the Court held that when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed (*People vs. Alejandro Devilleres*, G.R. No. 114138, March 14, 1997). That the herein accused John Nequia was married to her natural mother Helena C. Planta on December 5, 1997 (Exh. "B", p. 134, rec.) hence, said accused John Nequia is her stepfather, is also given. If we go by the testimony of complainant Mary Ghel *vis a vis* the denial by the accused John Nequia, it would not be difficult for the Court to readily give credence to the testimony of Mary Ghel which the Court finds replete with spontaneity and so overwhelming as to be impervious as to the mere denial of the accused. It is a well-settled rule that an affirmative testimony is far stronger than a negative testimony especially so when it comes from the mouth of a credible witness. (*People vs. Ramirez*, G.R. No. 97020, Jan. 20, 1997).[30]

After an incisive consideration of the evidence on record, we find no reason to deviate from the findings of the trial court and its calibration of the testimony of Mary Ghel. In *People v. Castillo*,[31] we held that in rape cases where the offended parties are young and immature girls from the ages of twelve to sixteen, *there is considerable receptivity on the part of this Court to* lend credence to their testimonies, considering not only their relative vulnerability but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to.[32] There is no showing that Mary Ghel was impelled by any ill-motive in charging her stepfather with a heinous crime. Hence, her testimony is entitled to full faith and credence. No woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.[33] All told then,

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[30] *Rollo*, pp. 81-82.

[31] *Supra*.

[32] *Id.* at 112.

[33] *People v. Aliviano*, 335 SCRA 371 (2000).

Supreme Court E-Library

this Court is convinced of the guilt of the appellant for qualified rape, and that the trial court correctly imposed the penalty of death in this case.

The Proper Penalty for the Crime

The trial court correctly sentenced the appellant to suffer the death penalty. As alleged in the Information, the victim was under 18 years old when she was raped by her stepfather, the appellant. The victim's minority and her relationship with the appellant are circumstances which require the imposition of the death penalty under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which reads:

x x x x x x 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.

The Civil Liabilities of the Appellant

The trial court awarded ₱75,000 to the victim Mary Ghel Guanco as civil indemnity, and ₱75,000 as moral damages. It did not award exemplary damages. Conformably to case law, the victim in rape cases is entitled to ₱75,000 as civil indemnity, and ₱75,000 as moral damages when the death penalty is imposed by the Court. She is also entitled to exemplary damages in the amount of ₱25,000 as a vindication of the undue sufferings and wanton invasion of her rights, and to punish the appellant for his outrageous conduct.[34]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Iloilo City, Branch 23, is *AFFIRMED with MODIFICATION*, in that appellant John Nequia is ordered to pay the victim Mary Ghel Guanco ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱25,000 as exemplary damages.

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[34] *People v. Catubig*, 416 Phil. 102 (2000).

Supreme Court E-Library

Three Justices of the Court maintain their position that Republic Act No. 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority that the law is constitutional, and that the death penalty can be lawfully imposed in the case at bar.

In accordance with Section 25 of Rep. Act No. 7659, amending Section 83 of the Revised Penal Code, let the records of this case be forthwith forwarded, upon finality of this Decision, to the Office of the President for possible exercise of the pardoning power. Costs against the appellant.

SO ORDERED.

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

Corona, J., is on leave.

EN BANC

[A.M. No. P-03-1744. October 7, 2003]
(formerly A.M. OCA IPI No. 00-947-P)

JUDGE FE ALBANO MADRID, *complainant, vs.* **ANTONIO T. QUEBRAL, Cash Clerk II, Office of the Clerk of Court, Regional Trial Court, Branch 21, Santiago City, Isabela,** *respondent.*

[A.M. No. P-03-1745. October 7, 2003]
(formerly A.M. OCA IPI No. 02-1317-P)

ANTONIO T. QUEBRAL, *complainant, vs.* **ANGELINA C. RILLORTA, Officer-In-Charge, Clerk of Court, and MINERVA B. ALVAREZ, Clerk IV, both of RTC, Branch 21, Santiago City, Isabela,** *respondents.*