

EN BANC

[G.R. No. 137282, March 16, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO ALIPAR Y ALINSOD, ACCUSED-APPELLANT.**

DECISION

DE LEON, JR., J.:

Before us on automatic review^[1] is the Decision^[2] dated December 29, 1998 of the Regional Trial Court of Santa Cruz, Laguna, Branch 28 in Criminal Case No. SC-6759 finding Alfredo Alipar y Alinsod guilty beyond reasonable doubt of the crime of rape committed against his own daughter, Twinkle F. Alipar, and sentencing him to suffer the supreme penalty of death.

In the early morning of January 23, 1998, Twinkle Alipar, then 13 years old was sleeping near her mother, Annalie Alipar, inside their house in Barangay Sabung, Pagsanjan, Laguna, when her father, herein accused-appellant, Alfredo Alipar, who was already naked, sneaked beside Twinkle and, after tying her hands with a rope and gagging her mouth with a handkerchief, started to remove Twinkle's panty and, while doing so, told her not to tell anybody about what he was doing because he would be incarcerated again. Thereafter, accused-appellant inserted his finger into, and licked Twinkle's vagina. Accused-appellant also embraced Twinkle, kissed her cheeks and inserted his penis into her vagina. Then, his beastly desires satisfied, accused-appellant pretended to be asleep. On the other hand, Twinkle, after freeing herself, arose and washed her vagina because it was sticky and she saw something whitish on it. Twinkle then told her mother, Annalie Alipar, about the rape incident. This prompted Annalie to get hold of a knife and confront accused-appellant. They cursed each other and quarreled over that matter.^[3]

On that same day, Twinkle attended her class at Unson National High School and reported the rape incident to her class adviser, Nita P. Alvarado, who advised Twinkle to write, and she did, a letter^[4] addressed to the principal, Evangeline Gonzaga. Thus, the latter, together with another teacher, Edwina Romero, accompanied Twinkle on January 30, 1998, upon the advice of the local office of the Department of Social Welfare and Development (DSWD), to the Pagsanjan Police Station where Twinkle executed, in the presence of Gonzaga and Romero, a sworn statement^[5] regarding the rape incident.^[6] The rape incident was also recorded in the police blotter.^[7]

On the basis of the complaint^[8] of Twinkle, assisted by school principal Evangeline Gonzaga, an information^[9] for rape, was filed on February 10, 1998 against accused-appellant before the Regional Trial Court of Santa Cruz, Laguna. The information reads as follows:

That on or about January 23, 1998, in the municipality of Pagsanjan, province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and with the use of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one TWINKLE F. ALIPAR, his eldest daughter, 13 years of age, against her will and consent and to her damage and prejudice.

CONTRARY TO LAW.

Accused-appellant, with the assistance of counsel *de officio*, pleaded "Not guilty" upon arraignment on March 4, 1998.^[10]

At the ensuing trial, the prosecution presented the victim, Twinkle Alipar, who testified on the above factual narration. She further testified that even before the said rape incident on January 23, 1998, she was sexually assaulted by accused-appellant on two (2) separate occasions in March and April 1997; but the complaints filed before the court were dismissed upon the statement/affidavit of desistance which she and her mother executed.^[11]

Other prosecution witnesses presented were Edwina Romero, a school teacher of Twinkle in Unson National High School, who testified that she was informed by Twinkle that she was raped by accused-appellant;^[12] Evangeline Gonzaga, the school principal of Unson National High School, who corroborated the testimony of Edwina Romero and testified that she assisted Twinkle in filing the complaint for rape against accused-appellant;^[13] Dr. Joan Olivia Tobias, a physician at the Laguna Provincial Hospital, who testified on the medico-legal examination she performed on Twinkle on January 30, 1998, which revealed that Twinkle's hymen admitted one finger with ease and that it bore hymenal laceration at 3 and 6 o'clock positions which could have been caused by the insertion of a blunt object like a penis;^[14] PO3 Roberto Binucal, a policeman who testified on Twinkle's complaint for rape allegedly committed on January 23, 1998, which was recorded in the Police Blotter, as well as on other entries in the Police Blotter of another complaint for rape allegedly committed on April 29, 1997, which was reported and filed by Twinkle, with the assistance of her mother, Annalie, against the accused-appellant;^[15] and Annalie F. Alipar, the mother of Twinkle and wife of accused-appellant.^[16]

Accused-appellant denied the accusations against him and offered nary an alibi to support his defense.^[17] Instead, he claimed that somebody might have influenced Twinkle to revive the previous rape case which Twinkle had filed against him.^[18] He added that the only reason he knew why his daughter filed the instant case against him was because she hated him since he used to scold Twinkle whenever she disobeyed the orders of her mother, Annalie Alipar.^[19]

The trial court convicted accused-appellant in its Decision dated December 29, 1998,^[20] the decretal portion of which reads:

WHEREFORE, this Court finds the accused ALFREDO ALIPAR y ALINSOD GUILTY BEYOND REASONABLE DOUBT AS PRINCIPAL OF CONSUMATED RAPE defined and punished under Article 335 of the Revised Penal Code,

as amended by Republic Act No. 7659, otherwise known as the Death Penalty Law and hereby sentences him to suffer the SUPREME PENALTY OF DEATH and to pay the private offended party TWINKLE ALIPAR the following sums:

P50,000.00 - as civil indemnity;

50,000.00 - as moral damages and

50,000.00 - as exemplary damages.

The accused is further ordered to pay the cost of the instant suit.

SO ORDERED.^[21]

Accused-appellant ascribes to the trial court a lone, albeit, encompassing error,^[22] to wit:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY AS CHARGED AND IN IMPOSING THE DEATH PENALTY DESPITE THE INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT AND THE FAILURE OF THE PROSECUTION TO PROVE THE QUALIFYING CIRCUMSTANCE OF FILIATION AND AGE.

Accused-appellant assails the testimony of Twinkle as incredible since it is allegedly improbable that the rape occurred without being noticed by the other house occupants, particularly the mother of Twinkle, Annalie, who was sleeping just an arm's length away from her. Besides, if indeed she was raped, Twinkle did not make enough noise to call the attention of her mother.^[23] Moreover, since Twinkle testified that on January 1, 1998 there was an attempt of her father to molest her and the rape incident on January 23, 1998 was not the first attack against her womanhood, and that she filed, together with her mother, two (2) complaints for rape against her father in 1997 but those were withdrawn later, Twinkle was already forewarned of the impending attack of her father and she could have devised ways and means to avoid or repel any further assault upon her womanhood.^[24]

Accused-appellant's assault on the credibility of Twinkle stands on tenuous grounds. When faced with the issue of credibility of the witnesses, this Court ordinarily defers to the factual assessment made by the trial court for the latter is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying on the witness stand. Absent any showing that such assessment is tainted with arbitrariness or oversight of some fact or circumstance of weight and influence, this Court will not depart from the factual conclusions of the trial court.^[25] That is the jurisprudential rule. None appears in the record of the case at bar to warrant departure from the said rule.

From this Court's own meticulous review of the testimony of complainant Twinkle Alipar, it appears that the said testimony, with all the attendant emotional overtures, is plain, straightforward, to the point and unflawed by any material or significant inconsistency, very typical of that an innocent child whose virtue has been violated, and thus, deserves full faith and credit.^[26] She testified, thus -

PROSECUTOR:

Q Twinkle Alipar, please tell us when you were born?

A August 26, 1984, sir.

Q Please tell us the name of your mother?

A Analyn Alipar, sir.

Q How about your father?

A Alfredo Alipar, sir.

Q Is this Alfredo Alipar now being charged for the crime of rape your father?

A Yes, sir.

Q Now, can you tell us Twinkle when you were raped by your father?

A On January 23, 1998, sir.

Q Please tell us where said incident happened?

A I was raped in the living room of our house in Brgy. Sabang, Pagsanjan, Laguna, sir.

Q Can you recall more or less what time you were raped on January 23, 1998?

A No, sir.

Q Was it morning or evening?

A It was nearing morning, sir.

Q Please tell us how you were raped by your father in the early morning of said date?

A I was sleeping near my mother when my father "kinuhit" me, sir.

Q After your father "kinuhit" you ...

COURT:

Let it be made of record that the complaining witness is crying.

PROSECUTOR:

Q What happened after your father "kinuhit" you?

A He tied me, thereafter, he undressed me (hinubuan).

Q You said your father tied you, what did he use in tying you?

A A rope and a big handkerchief, sir.

Q Where was that handkerchief placed?

A The handkerchief was tied on my mouth, sir.

Q How about that rope. Where did your father tie that rope?

A On my hands, sir.

Q Could you please demonstrate to us your position when both of your hands were tied by that rope by your father?

A I was lying down when my father tied both of my hands. (Witness demonstrating by putting up and clasping both her hands).

Q How about your mother, where was she at the time when your father tied both of your hands and mouth?

A My mother was on the bed in our house.

Q How far were you from your mother when your father tied your hands and mouth?

A I was on the side of the bed.

Q Was your mother sleeping or awake at the time when your father tied your hands and mouth?

A She was sleeping, sir.

Q What did your father do next after tying your hands and mouth?

A That was the point in time when he molested me.

Q Could you please tell us how he started molesting you?

A He was already undressed when he started undressing me while uttering the words "don't tell to anybody because I would be incarcerated again".

Q When he was able to take off your panty, what else did he do?

A He was fingering my private part, sir. (finifinger po niya ako) (witness continuously crying while answering the question).

Q Was there a light at the time when your father was fingering your private part?

A Yes, sir.

Q What light?

A A bulb.

COURT:

Q Inside or outside your house?

A Inside the house, Your Honor.

COURT:

Proceed.

PROSECUTOR:

Q Now, what else did he do to you aside from fingering your private part?

A He was licking my vagina, sir.