

EN BANC

[G.R. No. 137842, August 23, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANILO CATUBIG Y HORIO, ACCUSED-APPELLANT.**

D E C I S I O N

VITUG, J.:

In an information, dated 29 January 1998, the accused, Danilo Catubig y Horio, was charged with the crime of rape before the Regional Trial Court, Branch 78, of Malolos, Bulacan; viz:

"The undersigned Asst. Provincial Prosecutor on complaint of the offended party Dannilyn Catubig y Lazaro accuses Danilo Catubig y Horio of the crime of rape, penalized under the provisions of Art. 335 of the Revised Penal Code, committed as follows:

"That on or about the 27th day of November, 1997, in the municipality of San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously, by means of force, threats and intimidation and with lewd design have carnal knowledge of the said offended party against her will."^[1]

When arraigned on 16 July 1998, accused Catubig, represented by *counsel de oficio*, pleaded "not guilty" to the offense charged; forthwith, trial ensued.

The case for the prosecution was laid bare in Appellee's Brief submitted by the Office of the Solicitor General.

"On November 27, 1997, at around 4:00 o'clock in the afternoon, private complainant Dannilyn Catubig, who was born on August 9, 1985, and her four (4) younger siblings were watching television in the sala of their house located at Sunlife Subdivision, San Jose del Monte, Bulacan.

"After an hour, Dannilyn's father, herein appellant Danilo Catubig, arrived and told Dannilyn's siblings to proceed, as in fact they did proceed, to her aunt's house which is just located nearby. Thereafter, appellant told Dannilyn to go inside a room and to lie down on the bed. After Dannilyn had complied, appellant removed Dannilyn's shorts and panty, while appellant, after removing his brief and t-shirt, [laid] on top of Dannilyn. Afraid of appellant who beat and raped her in the past, Dannilyn was not able to resist appellant who succeeded in inserting his penis into

Dannilyn's vagina.

"However, Dannilyn's aunt, who got suspicious of what appellant was doing to Dannilyn, informed the latter's mother, Jocelyn Catubig, about the said suspicion. Thus, when confronted by her mother, Dannilyn was forced to reveal that she was indeed raped by appellant. The sexual assault was reported to the San Jose del Monte Police Station where Dannilyn's sworn statement was subsequently taken on December 3, 1997.

"Upon the request of the police authorities, Dannilyn was examined on December 1, 1997 by Dr. Wilfredo E. Tiera, Medico-Legal Officer of the National Bureau of Investigation, who found out that Dannilyn's healed laceration in the hymen was caused by sexual intercourse."^[2]

The accused denied the accusation against him. He claimed that the rape charge was brought about only because of the ill-will between him, on the one hand, and his wife and daughter Dannilyn, on the other hand, following a quarrel. On 27 November 1997, he asseverated, he had fought with his wife, hitting her and his daughter. His wife then threatened him that it was the last time that she would allow him to harm her and that he would regret what he did. True to her foreboding, the next day, he was arrested and a complaint for rape was filed against him.

On 11 December 1998, the Regional Trial Court rendered a decision holding the accused guilty of the crime of rape; it adjudged:

"WHEREFORE, in view of the foregoing, the Court hereby finds accused DANILO CATUBIG Y HORIO GUILTY beyond reasonable doubt of the crime of Rape defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and hereby sentences him to suffer the penalty of DEATH, and to pay private complainant Dannilyn Catubig the amount of Fifty Thousand Pesos (P50,000.00) as moral damages."^[3]

With the imposition of the death penalty by the trial court, the records were elevated to this Court for automatic review.

In his brief, appellant submitted thusly:

"1. The lower court erred in finding the accused guilty of the crime of rape in violation of Article 335 of the Revised Penal Code as amended by Republic Act 7659.

"2. The lower court erred in not taking into consideration the fact that the information was defective for failure to state that the accused is the father of the victim and that the victim was under 18 years [of] age at the time of the commission of the alleged rape."^[4]

Private complainant Dannilyn Catubig narrated how she was repeatedly abused by her own father; she testified:

- "Q Now, after your sisters and brother [went] to the house of your aunt, what did your father do?
- "A He instructed me to go inside the room.
- "Q How many rooms were there in your house?
- "A Only one.
- "Q Did you go to the room per instruction?
- "A Yes, sir.
- "Q And what happened inside the room?
- "A My father entered the room.
- "Q And when your father entered the room, what did he do next?
- "A He removed my short [pants] and my panty.
- "Q What was your position at that time when your father removed your short pants and panty?
- "A I was lying.
- "Q When you entered the room, did you lie immediately?
- "A No, I just sat.
- "Q How come as you claimed a while ago, you were lying when your father removed your short pants and panty?
- "A Once I entered the room, I was sitting then he removed my short [pants] and panty.
- "Q You said upon entering the room, you sat and while sitting, all of a sudden your father removed your short pants and panty while already lying at that time, how come you were lying when according to you, you were sitting inside the room?
- "A I was sitting first and he instructed me to lie down.
- "Q While you were sitting inside the room and you were instructed by your father to lie, what comes to your mind?
- "A That he will rape me.
- "Q How did you come to know that?
- "A He was raping me before, doing that before.
- "Q In other words, that was not the first time your father raped you on that particular date?
- "A No, sir.
- "Q When was the first time, if you remember?
- "A When I was still in grade 1.
- "Q How many times were you raped by your father?
- "A I can no longer remember how many it was - several.
- "Q When was the last time your father raped you?
- "A November 27.
- "Q Now, when your father removed your short pants and panty, what did he do next?
- "A He removed his brief and shirt.
- "Q After removing his brief and shirt, what did he do?
- "A He [laid] on top me.
- "Q When your father [laid] on top of you, what did he do?
- "A He was inserting his penis to my vagina.
- "Q At this juncture, may we make of record that witness starts to cry.

"Q How did you know your father inserted his penis to your vagina?

"A I can feel it and it is painful.

"Q That was the time when your father was already lying on top of you?

"A Yes, sir.

"Q And what was the movement of the body of your father while he was lying on top of you?

"A Push and pull movement.

"Q For how long did your father stay on top of you doing that push and pull movement?

"A That must be about 1 hour, but my aunt arrived.

"Q Aside from the pain, what else did you feel?

"A Mahapdi at parang may pumipitik sa loob ng ari ko.

"Q Did you not try to resist?

"A No, because I am afraid of him.

"Q You are afraid of your father?

"A Yes, sir.

"Q Afraid of what?

"A Because he was beating us, hitting us.

"Q Why, what was the reason why your father was hitting you?

"A To threaten us.

"Q For what purpose?

"A Whenever my mother sided with us, my father and mother engaged in a fight.

"Q In this case, you were raped and sexually abused by your father, what made you afraid of him?

"A Because we were afraid of my father since childhood."^[5]

Dannilyn has given her testimony in a plain, categorical, spontaneous and frank manner, remaining consistent throughout, and there is hardly anything on record that can cast doubt on her sincerity. The revelations of an innocent child whose chastity has been abused, coupled with her willingness to face police investigation and to undergo the trouble and humiliation of a public trial, should merit credence unless strong justifications dictate otherwise. Indeed, it would take a most senseless kind of depravity for a young daughter to just make up a story which could put her own father to an undeserved indictment and to even possibly face death in the hands of the law.^[6]

When rape is committed against one's own daughter, the moral ascendancy and influence of the father, that necessarily flows from his parental authority, can sufficiently cow the child to submission and can rightly be held to substitute for the requisite "violence or intimidation" that, normally, would be characterized by physical acts and uttered threats made on the victim.

The trite defenses of *alibi* and denial proffered by appellant cannot prevail over the positive and categorical statements of private complainant. *Alibi* is often viewed with suspicion and received with caution not only because it is inherently weak and unreliable but also because it is easy to fabricate. In order that this defense can prosper, it must be convincing to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* at the time of the incident. These conditions have not been met in the case at bar.

The contention of appellant that his wife and daughter Dannilyn have accused him merely because of his violent ways is much too flimsy to be believed. The mere resentment of a wife and daughter is not so compelling as to have motivated them to wrongly lodge a complaint for a crime much more serious than might, if at all, be expected.

It is likewise a settled doctrine that the assessment made by the trial court on the credibility of witnesses deserves great regard and weight on appeal. The rule is not without reason; the trial judge has a unique position of hearing first hand the witnesses and observing their deportment, conduct and attitude during the course of the testimony in open court. There is no valid reason to now ignore this long accepted jurisprudence in this instance.

This Court, however, finds the second assignment of error impressed with merit.

Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, at times also referred to as the Death Penalty Law, states in part:

"Art. 335. When and how rape is committed. x x x

"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 concurrence of the minority of the victim and her relationship to the offender are special qualifying circumstances that are needed to be alleged in the complaint or information for the penalty of death to be decreed.^[7] The Constitution guarantees to be inviolable the right of an accused to be informed of the nature and cause of the accusation against him.^[8] It is a requirement that renders it essential for every element of the offense with which he is charged to be properly alleged in the complaint or information.

Here, the information failed to state the minority of the victim and her relationship with the offender, both special qualifying circumstances under Republic Act No. 7659, and for want of such allegations, the trial court erred in imposing the death penalty on the accused.^[9] Appellant could only thus be convicted under Article 335 of the Revised Penal Code, as amended, of simple rape punishable by *reclusion perpetua*.

Anent the award of damages, the trial court has correctly awarded P50,000.00 moral damages, an award that rests on the jural foundation that the crime of rape necessarily brings with it shame, mental anguish, besmirched reputation, moral