

## FIFTH DIVISION

[ CA-G.R. CR-H.C. NO. 00563, August 11, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ARTURO DOMINGO Y GATCHALIAN, ACCUSED-APPELLANT.**

### DECISION

**GUARIÑA III, J.:**

The accused Arturo G Domingo was the live-in partner <sup>[1]</sup> of the mother of Gloria Ventura, a young barrio maiden who had charged him of repeatedly violating her for a period of one year from May 1996 <sup>[2]</sup> to May 1997. He was indicted for five counts of rape in November 1999 in which it was uniformly stated that he had carnal knowledge of his 17-year old stepdaughter Gloria Ventura against her will.<sup>[3]</sup> Of the 5 counts, he was acquitted in two. <sup>[4]</sup> He was found guilty of three counts<sup>[5]</sup> under the provisions of Article 266-B of the Revised Penal Code as amended by the Heinous Crimes Act<sup>[6]</sup> and accordingly sentenced to three death penalties with all the accessory penalties and to pay the offended party *P50,000 for each count or a total of P150,000 as civil indemnity, another P50,000 for each or a total of P150,000, as moral damages, P10,000 for each or a total of P30,000 as exemplary damages, and costs.* <sup>[7]</sup>

The Heinous Crimes Act ordains that the death penalty shall be imposed if the crime of rape is attended by the following circumstances, among others - *when the victim is under 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.* In upgrading the offense to qualified rape, the trial court recognized the existence of the circumstances of minority and relationship alleged in the charges. The life of the accused was declared forfeit under mandate of statute.

The finding of guilt was anchored on the sole eyewitness testimony of the offended party. Gloria Ventura testified to these facts :

She was first raped by the accused in May 1996 at their house in Barangay San Roque, Malolos. It was lunch time. She was sleeping on the kitchen floor with her sister and brother aged 14 and 12, respectively,<sup>[8]</sup> when the accused stole to her side. He woke her up and undressed her, and removing his own clothes, lay on top of her. She tried to resist him , but he was too strong for her and was threatening her with a knife. She cried as he spread her thighs and kissed her breasts. He groped for her private parts, finally inserting his penis into her vagina and causing her pain. She told him to stop, but he ignored her. After satisfying his lust, he left her in tears.

Afraid of his threats, she did not report him to anyone. Months later, on New Year's Eve, the accused sent the girl's two siblings out of the house, leaving her alone with him. With a bladed weapon, he ordered her to remove her clothes. He took two pillows and told her to lie down on them. He forced her to spread her legs. He lay on top of her, touched her breasts and inserted his organ into her. She felt pain and cried. [9]

In May 1997, around midnight, he mounted her again. She was quietly submissive to his advances. She undressed and lay down as he kissed, touched and ravished her. She cried after he was through with her. [10]

A couple of years passed before she finally mustered the courage to disclose her ordeal. She was emboldened by the fact that one of her sisters filed a complaint against the accused for attempting to rape her.[11] She also resolved to go to the authorities. Accompanied by her mother and sister, she executed a sworn statement at the police station of Malolos reporting the accused as her rapist.[12] She also submitted to a medical examination by the medico-legal officer Manuel Aves. As detailed in his report,[13] the girl had multiple healed lacerations of the hymen. He concluded that she was in a *non-virgin state* at the time of the examination.

In the court's ken of the events,[14] the offended party Gloria Ventura was credible. She had given a candid, categorical and straightforward account of her harrowing experience and remained firm and consistent throughout her testimony. To the court, this was reflective of an honest and unrehearsed testimony. She was an adolescent with no proven motive to testify falsely against the accused who was her mother's common-law husband. The court found it difficult to believe that a girl of so young an age would go to the extent of fabricating a charge that was humiliating to her and her family if it were not true that she was subjected to the painful experience of sexual abuse. Settled jurisprudence allows it to conclude that if there is no showing that the offended party was impelled by any improper motive in making the accusation, the presumption is that there is none and the testimony is entitled to full faith and credit.

The court did not find the credibility of the girl affected by her failure to report the incident promptly to her family or the authorities. It took her, in fact, two years to confess her defilement to her mother Marima Lorenzo. But, under the circumstances, the delay was not strange or unusual. It is already of judicial notice that young modest girls conceal the sexual assaults committed on them by other members of their families, especially by the much older males who are in a position of dominance and whose word is backed up with force and threats. The court observed that the only defense of the accused was denial, but like alibi, it is inherently weak and, if uncorroborated, regresses into inutility.

The accused, on appeal, is single-mindedly bent on discrediting the testimony of the offended party, an account that, he says, is full of inconsistencies, confusing and vacillating.[15] He argues, in particular, that (1) with respect to the May 1996 incident, it was highly improbable that she would be sexually assaulted in the presence of her two siblings who were sleeping beside her. She only belatedly mentioned that the accused was carrying a knife after being repeatedly asked why she did not resist or shout; (2) the offended party readily undressed and yielded to the advances of the accused during the December 1996 and May 1997 episodes

showing that *she was not an unwilling victim*, and (3) she waited for two years before reporting the rapes. The inordinate delay puts to doubt the veracity of the charges. It would not have taken her that long to file the complaint if, indeed, she was raped.

This is one case where the conviction of the accused hinges almost wholly on the testimony of the offended party. There is no doubt about the defense strategy. It is to bury this testimony. But since the quintessential issue is credibility, the findings of the trial court are of paramount importance. It is doctrinally settled that the determination of the trial court on the credibility of witnesses is accorded great weight and respect. The reason for this is the advantage that the court has in observing the natural responses of witnesses to the unfolding courtroom drama which give invaluable clues on the truth or falsehood of their testimonies. *People vs Alitagtag* 309 SCRA 325. In recognition of the primacy of the lower court's factual findings, the appellate court will extend a finality to its *imprimatur* on the supreme questions of innocence or guilt unless the lower court has clearly acted in an arbitrary fashion or there are matters of substance that it has overlooked or ignored and that, if considered, will most likely change the outcome of the case. *People vs Sunga* 154 SCRA 264.

We have no reason to disturb the lower court's evaluation of the testimony of the offended party. It is plain and uninvolved and devoid of any material inconsistency. There are no appreciable facts or circumstances to destroy her credibility. The defense argues that the offended party could not have possibly been assaulted in the presence of her siblings, but from judicial experience with cases of the same genre, courts have come to recognize that rape is *no respecter of time and place*. As culled in *People vs Viray* 164 SCRA 135, in not a few instances, the Supreme Court has held that rape can be committed even in places where people congregate – in parks, along the roadside, within school premises and inside a house where there are other occupants. In *Gloria Ventura's* case, she was alone with her brother and sister who were of tender ages. The only person in the family whose presence would have discouraged the accused from venting his desires on the hapless girl was the mother. But she was nowhere around.

The Court in *Viray* has also chronicled the cases where it was recognized that the element of force or intimidation in rape need not be of such character as to be irresistible. The degree of force needed in rape will depend on the circumstances of the case. A sensible yardstick was announced in *United States vs Villarosa* 4 Phil 434 : *It is only necessary that the force used by the guilty party be sufficient to consummate the purpose he had in view*. In cases of rape within the confines of the family, the moral ascendancy of the father or surrogate father over the daughter usually substitutes for the elements of force and intimidation. *People vs. Mantis* 433 SCRA 236. In the initial assault, the offended party had parried the hands of the accused, stiffened her legs from being spread, pleaded to him, cried, to no avail. On the second and third rapes, she was already submissive. But the mute evidence of her lack of consent could not be extinguished. She kept crying throughout her ordeal.

The same element of moral ascendancy of the accused over the girl satisfactorily explains the delay of the offended party in reporting the case to the authorities. As acknowledged in *People vs Ulili* 225 SCRA 594, many victims of rape do not even complain or file charges against their rapists. Delay in prosecuting the rape is thus