

EN BANC

[G.R. No. 136141, October 09, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINGO TUPAZ Y CASTOR, JR., ACCUSED-APPELLANT.**

DECISION

CORONA, J.:

Before us on automatic review is the Decision^[1] of the Regional Trial Court of Cavite City, Branch 16, in Criminal Case No. 237-95 convicting herein accused-appellant Domingo Tupaz y Castor, Jr. of the crime of rape and sentencing him to suffer the supreme penalty of death.

On September 22, 1995, Domingo Tupaz y Castor, Jr. was charged with the rape of his own daughter in an Information that reads:

That on or about the 7th day of May, 1995, at Barangay Ligdong I, Municipality of Rosario, Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, taking advantage of his superior strength over the person of his own daughter who is only sixteen years old, and by means of force, violence and intimidation, did, then and there, willfully, unlawfully and feloniously, have carnal knowledge of one Gemma Rose G. Tupaz against her will and consent to her damage and prejudice.

CONTRARY TO LAW.

Upon arraignment on October 25, 1995, Domingo Tupaz y Castor, Jr., assisted by counsel, entered the plea of "not guilty." Thereafter, trial on the merits ensued.

From the evidence adduced by the prosecution, it appears that, on May 7, 1995, Gemma Rose was in the company of her friends in their neighborhood in Barangay Ligdong 1, Rosario, Cavite. As her mother was out selling fish, Domingo told Gemma Rose to go home at around 1:00 in the afternoon and look after her two younger siblings. Despite her apprehension, she obliged for fear of her father's temper.^[2]

After an hour, Domingo came home drunk. He ordered Gemma Rose to follow him upstairs. When she refused, Domingo hit her with a stick. To avoid further violence, Gemma Rose reluctantly obeyed when she was told by the appellant to undress. Thereupon, Domingo raped her, for no less than thirty minutes, until he reached his climax. His lust spent, Domingo casually left.^[3]

Gemma Rose revealed in court that she had been raped several times in the past by her father since she was 12 years old.^[4] Her mother did nothing for fear of losing him despite being informed of his bestiality. She did not dare seek refuge elsewhere out of concern for her mother and younger siblings who were threatened with death

by her father.^[5] The sexual assault on May 7, 1995 was to be the last, however, as she finally mustered enough courage to reveal her misfortune to a relative. Domingo was eventually arrested on July 24, 1995 for the rape of his own daughter.^[6]

Gemma Rose underwent physical examination conducted by Dra. Ida Daniel, NBI Medico-Legal Officer, who came up with the following findings:

No evident sign of extra genital physical injury noted on the body of the subject at the time of examination. Hymen intact, distensible and its orifice wide (2.5 cms. in diameter) as to allow complete penetration of an average-sized adult Filipino male organ in full erection without producing any general injury.^[7]

Considering the size of the subject's vaginal orifice, Dra. Daniel concluded that it had already been penetrated by a hard object although the hymen remained intact due to elasticity.^[8]

Accused-appellant Domingo Tupaz y Castor, Jr. interposed alibi. His testimony showed that he was a fisherman in the employ of a certain Joven Samartino. As such, he usually left the house for the 15-minute trip to Long Beach, Noveleta, Cavite at 8:00 in the morning. Upon arrival, he would help mend the fishing nets until the afternoon before setting out to the sea for an overnight watch of the *pukot* (fishing nets). Early the following morning, after loading their catch, Domingo and his companions would sail back to the shore and go home. He followed that routine before his arrest on July 24, 1995. Hence, he could not have possibly raped his daughter in the afternoon of May 7, 1995. According to Domingo, his brother-in-law, Benjamin Guinto, and sister-in-law, Anita G. Custodio, enticed Gemma Rose to file the instant complaint to seek revenge for his violent temper whenever he got drunk.^[9]

Rosita and Christopher Tupaz, wife and son of Domingo Tupaz y Castor, Jr. respectively, also took the witness stand to corroborate the testimony of Domingo on material points.^[10]

On August 14, 1998, the trial court rendered its decision, the dispositive portion of which is quoted hereunder:

WHEREFORE, finding the accused DOMINGO CASTOR TUPAZ, JR. guilty beyond reasonable doubt for the offense of rape as charged in Criminal Case No. 237-95, the Court hereby sentences him to suffer the penultimate penalty of DEATH by lethal injection, as so provided under Republic Act No. 7659, and to indemnify GEMMA ROSE TUPAZ P50,000.00.

Aggrieved by the decision, Domingo Tupaz, Jr. interposed the instant appeal^[11] raising the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED DESPITE THE GROSSLY INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT.

II

GRANTING THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE FAILURE OF THE PROSECUTION TO PROVE THE PRIVATE COMPLAINANT'S MINORITY.

Accused-appellant points out that private complainant stated on direct examination that she was alone in the house when her father raped her while she admitted on cross that her two younger siblings were present then. Likewise, her declaration on direct examination to the effect that she informed her mother about the rape ran counter to her subsequent statement that she kept the matter to herself. Moreover, private complainant could not recall with certainty the date of the first rape and she gave conflicting accounts of the number of times the sexual assault was repeated prior to May 7, 1995.

Regarding the second assigned error, accused-appellant claims that no other evidence was presented by the prosecution to establish the age of the private complainant, aside from her testimony.

Representing the Appellee, the Office of the Solicitor General (OSG) counters that the alleged contradictions in the testimony of the private complainant are minor inconsistencies that do not detract from her credibility. Regarding the minority of the private complainant, her undisputed testimony shows that she was only 16 years old at the time of the sexual assault, thus, the trial court's decision should be affirmed *in toto*^[12].

In the review of rape cases, this Court is almost invariably guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution, and (3) the evidence of 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.^[13]

Summing up, the crucial issue in any prosecution for rape is always the credibility of the private complainant. For as long as the complainant's testimony meets the test of credibility, the accused may be convicted on the basis thereof.^[14]

After a painstaking review, this Court agrees with the trial court in giving credence to the private complainant's testimony as against the accused-appellant's implausible defense. The testimony of the private complainant was given in an honest and believable manner, devoid of any hint of falsity or attempt at fabrication. In several instances, her testimony was interrupted by fits of crying and outbursts of emotion,^[15] leaving no room for doubt that she was truthful in her narration of events and her misfortune in the hands of her own father, the accused-appellant.

Besides, it is inconceivable for a daughter to fabricate a web of lies to implicate her parent in a heinous crime unless she is solely motivated by a genuine desire to seek justice for a grievous wrong done to her. Extant in the records were the sustained efforts exerted by no less than her mother and younger brother, Christopher, for private complainant to withdraw the instant complaint for rape against the accused-appellant.^[16] Far from acceding to their pleas, however, private complainant never