

EN BANC

[G.R. No. 132133, November 29, 2001]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WILLIAM ALPE Y CUATRO, APPELLANT.

DECISION

PER CURIAM:

This is an automatic review of the December 8, 1997 judgment rendered by the Regional Trial Court of Naga City, Branch 28, in Criminal Case No. RTC'95-6000 convicting WILLIAM ALPE y CUATRO of qualified rape of his daughter, Mary Joy Alpe. The decretal portion of said Decision reads as follows:

"WHEREFORE, in view of all the foregoing findings that the prosecution was able to prove the guilt of accused William Alpe beyond reasonable doubt of the crime of rape, judgment is hereby rendered whereby said accused is sentenced to suffer the penalty of death and to pay the private complainant moral damages in the amount of FIFTY THOUSAND (P50,000.00) PESOS. With costs against the accused."^[1]

The accusatory Information^[2] against appellant reads as follows:

"That sometime in the month of January, 1995, in the Municipality of Gainza, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of his daughter Mary Joy Alpe y San Juan, then 14 years of age, against her will."

When arraigned on July 8, 1997, appellant, with the assistance of counsel pleaded "not guilty."^[3] In due course, appellant was tried and found guilty of qualified rape.

The Solicitor General summarized the evidence for the prosecution thusly:^[4]

"Appellant William Alpe and his wife, Virginia Alpe, and their four (4) children, namely, private complainant Mary Joy, the eldest, who was 14 years old at that time, and her younger siblings, Michael, Lorena and William, Jr., reside at their one-room affair house at Barangay Namuat, Gainza, Camarines Sur.

"Sometime in January 1995, around 3:00 o'clock in the morning, the Alpes were asleep at their house, with the spouses on one mat, and their four (4) children on another mat.

"Suddenly, private complainant Mary Joy was awakened when she felt that appellant was beside her, removing her clothes, and caressing her

breast and private parts. Appellant, who was only wearing a T-shirt and was naked from the waist down, then placed himself on top of her and inserted his penis into her vagina, and did a push and pull movement. She experienced extreme pain and described that it felt like she was dying when he inserted his penis into her sexual organ. She tried to extricate herself from appellant but she failed. Appellant warned her not to tell anybody, not even her mother, otherwise he would kill her and the other members of the family. She managed to call her mother who was just about an arm length away and shouted 'mother, my father is beside me.' Mary Joy's shout jolted her mother, Virginia, from her sleep. The latter rose up slowly as her knees trembled upon seeing that her husband was lying on top of their daughter, Mary Joy. She clearly saw them as the room was illuminated by the small lamp that was kept lighted throughout the night. Then she pulled appellant away from Mary Joy. Upon doing that, appellant pushed her towards the floor causing her to land on her back. Then appellant got hold of a piece of wood and struck her with it, twice. Then they [quarreled] and argued with each other. When she asked appellant if he had been sexually abusing their daughter, he replied that he was only showing affection. When she asked Mary Joy if her father had previously abused her, she did not reply but just went on crying. Her younger siblings, who were frightened by what they saw, also cried.

"It was on April 29, 1995 that Mary Joy revealed to her mother that appellant had previously raped her on three (3) other occasions, once in the month of May, 1993, and twice in the month of June, 1993, all at the time when her mother was in Biñan. Before she made the revelation, two (2) days before or on April 27, 1995, appellant had mauled her mother, which incident was the subject of another criminal case against appellant for which he had already been convicted. Mary Joy explained that the reason she did not immediately report those rape incidents to anybody, not even to her mother, was because she was afraid of appellant's threat that he would kill her and the other members of the family. She, however, later felt impelled to make the revelation because aside from the fact that she could no longer stand appellant's too frequent physical assault on her mother, she too could no longer bear appellant's sexual abuses, and she became afraid that he would also sexually abuse her younger sister, Lorena.

"Because of what Mary Joy revealed to her, Virginia Alpe decided to accompany her daughter to the police station and filed several complaints for rape against appellant. The other rape incidents which took place in 1993 became the subject of other rape cases against appellant, in addition to the one at bar. Consequently, Virginia and her four (4) children transferred residence to Barangay Cagbunga, Gainza, Camarines Sur.

"Upon the suggestion of the police authorities, Mary Joy was subjected to physical and internal examination by Dr. Elizabeth Fernandez on May 1, 1995.

"The following are the pertinent results of the examination by Dr. Fernandez:

Physical Findings: Internal Examination admits easily 1 finger, presence of a healed hymenal laceration at 9:00 o'clock.

The above described injury is found in the body of the subject, the age of which is compatible [with] the alleged date of infl[i]ction.

"Dr. Fernandez testified that just because only one laceration was found does not necessarily mean that there was only one infliction because the extent of the laceration depends much on the elasticity of the hymen. She further cited that there are even some cases wherein despite having delivered a baby, the hymen of a woman had remained intact, indicating that it was because of the extremely elastic nature of the hymen of that particular woman." (Citations omitted)

On the other hand, appellant merely "denied having raped her daughter MARY JOY ALPE, and stated that had he raped her, she `would have suffered multiple laceration because there are *bolitas* embedded in my organ. x x x implanted one on one side of my organ and the other one is under my penis so that if it will be used in sexual intercourse that *bolitas* would cause damage to the female organ.'" [5]

The court *a quo* disregarded appellant's denial and contentions. Instead, it gave full credence to the testimonies of both Virginia Alpe and Mary Joy Alpe that appellant had carnal knowledge of the latter, against her will one early morning in January 1995.

The court *a quo* also found that, as evidenced by her birth certificate, Mary Joy was just 14 years old when the accused raped her.

In his Appellant's Brief, [6] appellant faults the court *a quo* with the following alleged errors:

"I

"The court *a quo* erred in finding the accused-appellant guilty beyond reasonable doubt of the crime of rape.

"II

"The court *a quo* erred in ordering the accused-appellant to pay private complainant moral damages in the amount of P50,000.00"

More specifically, appellant contends that the delay in reporting the alleged rape and the presence of *bolitas* in his penis in conjunction with the proof of only a single laceration in Mary Joy's hymen create reasonable doubt about his guilt.

We are not persuaded. Well-settled is the rule that delay in reporting the offense of incestuous rape is not an indication that the charge is fabricated. Neither does it cast doubt on the credibility of the complainant, as it is not uncommon for young girls to conceal for sometime the assault on their virtue because of the rapist's

threat on their lives.^[7] In this case, appellant consistently intimidated Mary Joy by threatening to kill her and the other members of the family if she revealed the rape committed against her. She satisfactorily explained^[8] that she did not immediately report the rape incidents, because she was afraid of the threats made by appellant. "Delay in reporting a rape incident neither diminishes complainant's credibility nor undermines the charges of rape where the delay can be attributed to the pattern of fear instilled by the threats of bodily harm, specially by one who exercised moral ascendancy over the victim."^[9]

The existence of *bolitas* in appellant's penis also fails to raise any reasonable doubt that he raped Mary Joy. Appellant opines that the presence of *bolitas* in a man's penis will result in multiple lacerations in a virgin's hymen. Other than his opinion, there is, however, no evidence proving its truth. Significantly, he has not been shown to be in possession of special knowledge or experience on the subject matter.^[10] Hence, his opinion on the number of lacerations a penis with *bolitas* would cause has no probative value. Thus, his claim that he could not have had carnal knowledge of Mary Joy, since she had only one hymenal laceration, cannot be given weight.

On the other hand, the claim of Mary Joy that appellant had carnal knowledge of her against her will is supported not only by her clear and convincing testimony but also by that of her mother. After carefully going over the records of this case, we find no cogent reason to disturb the finding of the trial court upholding the credibility of both.

Virginia Alpe testified:

"A It was one night while our family was sleeping when I heard Mary Joy shouting, maam.

Q What was she shouting?

A She shouted 'Mother, my father is beside me', maam.

Q When did this happen?

A Last January, 1995, maam.

Q Where?

A In Barangay Namuat, maam.

Q More or less what time?

A Around 3:00 o'clock in the early morning, maam.

Q So when you heard your daughter shouting, what did you do?

A After I was awakened I was surprised with what I saw because I saw William Alpe lying on top of our daughter Mary Joy Alpe, maam.

Q And what was William Alpe doing on top of Mary Joy Alpe?

A He was having a sex with our daughter, maam.

PROS. TURIANO:

May we put on record that the witness is now crying. May we

further state that as per the testimony of the witness, the accused is doing a push and pull movement and saying I saw him making a push and pull movement on top of our daughter.

Q What was your daughter doing when you saw them?

A She was resisting her father and she was crying and fleeing to her father, maam.

Q What were they wearing, if any, when you saw them?

A The two (2) of them were naked, maam.

Q And so when you saw them how far where you from them?

A Around one (1) arm length, maam.

Q And what enable you to see them?

A I saw them because we have no room in the house, maam.

Q Can you tell this Honorable Court whether or not there was an illumination at that time?

ATTY. OCAMPO:

Objection Your Honor, leading.

PROS. TURIANO:

Whether or not Your Honor please is not leading.

COURT:

Yes, its a choice in other words, alright question from the court.

Q How were you able to see them when it was 3:00 o'clock in the morning?

A We have a small lamp that was lighted throughout the night, sir."^[11]

On the other hand, Mary Joy testified as follows:

"PROS. TURIANO:

Q So we bring you now to the incident that took place in January 1995. What time did it happen?

A 3:00 o'clock in the early morning, sir.

Q Do you recall the exact date in January when this incident took place?

A I cannot remember the date, maam.

Q Can you tell us how it happened?

A Yes, maam.

Q How did it happen?

A We were sleeping at that time, maam.