

EN BANC

[G.R. No. 134486, November 16, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CLEMENTE DAYNA, ACCUSED-APPELLANT.**

DECISION

QUISUMBING, J.:

Before us on automatic review is the decision^[1] of the Regional Trial Court of Dipolog City, Branch 8, finding accused-appellant Clemente Dayna guilty of rape and imposing on him the penalty of death.

Appellant was charged under an Information which reads:

The undersigned, Provincial Prosecutor, upon a sworn complaint, originally filed by the private offended party, accuses CLEMENTE DAYNA y Agayan of the crime of RAPE, committed as follows:

That, in the morning, on or about the 21st day of December, 1994, in the municipality of Piñan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused armed with a hunting knife, moved by lewd and unchaste desire and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with one EVELYN ELEMIA, a 15 year old orphan, against her will and without her consent.

CONTRARY TO LAW (Viol. Of Art. 335, Revised Penal Code), with the aggravating circumstances (sic) of the use of deadly weapon.

Dipolog City, Philippines.

February 14, 1995

RODOLFO T. MATA
Provincial Prosecutor^[2]

During his arraignment, appellant pleaded not guilty. Thereafter, trial on the merits ensued.

The first witness for the prosecution was the offended party, EVELYN ELEMIA, 15 years old and a resident of Adante, Piñan, Zamboanga del Norte. On direct examination, she testified that in the morning of December 21, 1994, at around 8:00 o'clock, she and her uncle Clemente Dayna were left alone in their house as her aunt Esperanza went out to buy fish. Clemente Dayna forced her to go upstairs, while he pointed a knife at her back. Upon reaching the second floor, he made her

lie down on the floor. Then he removed his shorts and her panty. He then proceeded to have sexual intercourse with her, by inserting his penis inside her vagina for about half an hour. On cross-examination, however, Evelyn stated that her private part was hit by his uncle with an umbrella and that she was told by her aunt and the DSWD personnel to testify that she had been raped.^[3]

DR. MEIMEI R. YU, the next witness, testified that she was employed as rural health physician of the Piñan Community Hospital and that she examined the complainant on December 27, 1994. Her findings revealed that the hymen of Evelyn was still intact and that she suffered no lacerations in that area. Neither did she suffer any bruise or injury on any part of her body. However, Dr. Yu stated that the *labia majora* was coapted with reddish discoloration which could have been caused by sexual intercourse. On cross, the doctor stated that this discoloration or irritation could have been caused by other hard objects such as the handle of an umbrella being pushed through this particular portion of the organ.^[4]

SPO3 RONALD SALATANDRE testified that he was the one who investigated the complaint for rape filed by the wife of Clemente allegedly committed against their niece Evelyn.^[5]

The defense, in turn, presented appellant CLEMENTE DAYNA, who denied the accusations against him. He alleged that he only hit Evelyn with the handle of an umbrella because of anger. He said he lost P50 from his pocket, and he suspected that Evelyn took the money. The handle hit Evelyn on her private part twice. He also alleged that his wife and her family were mad at him for having a paramour.^[6]

On May 13, 1998, the trial court promulgated its assailed decision disposing as follows:

WHEREFORE and for all the foregoing observations, with the guilt of the accused established beyond reasonable doubt, herein accused Clemente Dayna y Agayan is convicted as principal by direct participation of the crime of RAPE charged against him, and in the light of Article 335 of the Revised Penal Code, as amended by Republic Act 7659, which took effect on December 31, 1993, hereby sentenced to suffer the penalty of DEATH, by appreciating the aggravating circumstance of relationship, with all the accessory penalties as may be provided by law.

The accused is further sentenced to pay the offended party the sum of P20,000.00 as actual damages and the additional sum of P50,000.00 by way of moral damages.

SO ORDERED.^[7]

Appellant raises the following errors in his brief:

I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

EVEN ASSUMING THAT ACCUSED IS TRULY GUILTY OF THE CRIME OF RAPE, NONETHELESS, THE TRIAL COURT ERRED IN IMPOSING UPON HIM THE SUPREME PENALTY OF DEATH.

Appellant asserts that his guilt had not been established beyond reasonable doubt. He places much emphasis on the fact that the medical examination on the complainant revealed that her hymen was still intact, thus refuting the possibility that her organ was invaded by his penis. Appellant also notes that complainant admitted in her cross-examination that she was hit by an umbrella and that her aunt and the DSWD worker told her to tell the court that she was raped. He adds that his wife and her family had ill feelings against him since he has a lover. These things, according to appellant, place a serious doubt on the prosecution's case. In the alternative, appellant alleges that he cannot be sentenced to death because his relationship with the offended party was not alleged in the information.^[8]

The Office of the Solicitor General (OSG), for the State, argues that an intact hymen is not necessarily inconsistent with a finding of rape and that hymenal laceration is not an essential prerequisite to prove rape. The OSG also notes that Evelyn clarified that two incidents happened on December 21, 1994, one was the umbrella bashing and the other was the rape. There is likewise no reason to believe that complainant and her aunt were moved by ill motive in filing the complaint. Had the rape been a mere fabrication, this would have been evident in the testimony of complainant. On the contrary, complainant, despite her young age and the gruelling nature of the cross-examination, remained steadfast and consistent, tell tale signs that she was telling the truth in court. The OSG concedes that the trial court erred in appreciating the relationship of appellant and complainant as a ground in imposing the death penalty. However, the OSG insists that the penalty of death is still justified since the rape was attended by the aggravating circumstance of use of a deadly weapon. Finally, the OSG adds that the award of P20,000.00 as actual damages should be increased to P75,000.00.^[9]

In sum, the issues in this case are whether the guilt of appellant had been established beyond reasonable doubt and whether the penalty imposed is proper.

In resolving cases of rape, this Court is guided by the following principles: (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[10] In general, the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in the best position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying.^[11]

Guided by these principles and after a careful review of the records of this case, we find no reason to overturn the finding of guilt reached by the trial court.

The testimony of Evelyn was given in a candid and straightforward manner leaving