

EN BANC

[G.R. No. 130408, June 16, 2000]

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs.
DOMINADOR HISTORILLO, accused-appellant.**

D E C I S I O N

BUENA, J.:

Before us by way of automatic review is the judgment of conviction rendered by the Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 41, imposing the death penalty in an incestuous rape, said to have been perpetrated by the accused-appellant Dominador Historillo, on his own daughter Jennifer Historillo.

The criminal complaint dated November 29, 1995 reads:

"That in the month of March 1995, or thereabouts, at sitio Bacolod, Barangay Quinabigan, Municipality of Pinamalayan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Dominador Historillo, by means of force and intimidation, with lewd and unchaste design, did then and there willfully, unlawfully and feloniously lay with and have carnal knowledge with the undersigned, against her will and without her consent.

"CONTRARY to Article 335 of the Revised Penal Code, in relation to R.A. 7659.

Pinamalayan, Oriental Mindoro.

November 29, 1995.

(SGD) JENNIFER HISTORILLO
Offended Party"
(p. 1, Record)

During the arraignment, appellant, with the assistance of counsel, entered a plea of "not guilty."^[1]

Thereafter, trial ensued. However, when appellant testified, he admitted that he ravished and raped private complainant and that he entered a plea of "not guilty" during arraignment because his wife was then trying to settle the case.^[2]

On June 18, 1997, the trial court rendered a decision convicting appellant of the crime of rape and sentencing him to suffer the penalty of death. The dispositive portion of the decision reads:

"WHEREFORE, in the light of the foregoing, the Court finds and so holds that accused DOMINADOR HISTORILLO is guilty beyond reasonable doubt of the crime of RAPE as punished under Article 335 of the Revised Penal Code and in view of the new amendment introduced by Republic Act No. 7659 to Article 335 of the RPC, he is hereby sentenced to suffer the extreme penalty of DEATH and to indemnify the offended party in the amount of Fifty Thousand (P50,000.00) Pesos. Cost against the accused.

"SO ORDERED."^[3]

Considering the imposition of the extreme penalty of death, the records of the case were forwarded to this Honorable Court for automatic review.

The Solicitor General sums up the prosecution's case against accused-appellant, viz:

"Private complainant Jennifer Historillo was only between 12 and 13 years old when she was repeatedly raped by her own father. The first incident of rape happened in February 1994, the second in March 1994, the third in April 1994, the fourth in June 1994 and the last in March 1995, which happened at their residence in Quinabigan, Pinamalayan, Oriental Mindoro. (p. 19, tsn, March 6, 1997)

"According to the testimony of Jennifer Historillo, the last rape incident happened sometime in March 1995 at about 11:00 in the evening. Appellant came home drunk. At that time, Jennifer was sleeping in the bedroom together with her three (3) sisters, aged 6, 5, and 3. Her mother was then at Lipa City working as a maid. Appellant dragged Jennifer from the room to the sala. Her sisters who were awakened cried, but remained in the room. Appellant then strangled Jennifer's neck, removed her shorts and inserted his penis into her vagina. Jennifer shouted '*Huwag po Itay,*' however, it fell on deaf ears as appellant continued to satisfy his lust. He concluded by threatening to kill her. (pp. 4-6, tsn, ibid, p. 20, tsn, ibid).

"Jennifer told her sister Juliet about the incident, who in turn, told their mother about it. She did not report it directly to her mother because of her father's threat to kill them. Unfortunately, Jennifer became pregnant. (p. 6, tsn, ibid).

"In August 1995, their family moved to Naujan, Oriental Mindoro because her parents were trying to hide Jennifer's pregnancy from her aunts. (p. 8, tsn, ibid.)

"Jennifer's maternal aunts, Flora Marlin and Norma Mangaring later found out that she was pregnant and took custody of her on October 24, 1995 (p. 14, tsn, Jan. 9, 1995). On the same date, Dra. Ma. Cristina L. Gonzales, a medical officer at the Provincial Health Office, DOH, Calapan, Oriental Mindoro examined her and made the following medical findings:

x x x

`External genitalia: with old complete hymenal laceration at 5 o'clock position; with old incomplete hymenal laceration at 1, 3, 5, 6, 9 and 11 o'clock positions. Internal examination: Cervix - soft, closed, no wriggling tenderness. Uterus - enlarged to 7-8 months AOG. Adnexae - negative. Laboratory examination: Cervico vaginal smear for the presence of spermatozoa revealed positive result. Diagnosis - pregnancy uterine 35 weeks, cephalic, not in labor (SGA)' (p. 4, tsn, May 9, 1997)'

"As a result of the sexual abuse, Jennifer delivered a baby girl at the Provincial Hospital in Bongabong, Oriental Mindoro on November 16, 1996. (p. 9, tsn, March 6, 1997).

"When appellant testified in court, he admitted that he raped his daughter, Jennifer and that he was aware of the consequences of his admission that he might be sentenced to death."^[4]

Although appellant raises a lone assignment of error, to wit:

"The trial court erred in convicting the accused of the crime of rape."

four issues have to be resolved, viz.:

I

Whether or not lack of oath in a criminal complaint invalidates the judgment of conviction.

II

Whether or not appellant was correctly convicted of rape.

III

Whether or not the qualifying circumstance of relationship must be alleged in the complaint to justify the imposition of the death penalty.

IV

Whether or not the rape victim is also entitled to moral and exemplary damages.

On the first issue, accused-appellant maintains that he was convicted based on a defective criminal complaint because the complaint was not sworn to by Jennifer Historillo herself, and assuming the unsubscribed complaint to be valid, the same was not introduced as evidence for the prosecution.

Appellant's contention is untenable. A complaint presented by a private person when not sworn to by him, is not necessarily void. The want of an oath is a mere defect of form which does not affect the substantial rights of the defendant on the merits. Such being the case, it is not permissible to set aside a judgment for such a defect.

^[5] Also, the failure of the prosecution to formally offer in evidence the sworn

complaint of the offended party or the failure to adhere to the rules is not fatal and does not oust the court of its jurisdiction to hear and decide the case. If the complaint is forwarded to the Court as part of the record of the preliminary investigation of the case, the court can take judicial notice of the same without the necessity of its formal introduction as evidence of the prosecution.^[6]

Anent the second issue, the accused-appellant alleges that the prosecution failed to establish by convincing proof that Mr. Historillo employed force and intimidation against the offended party in order to attain his purpose; that although Jennifer manifested initial reluctance to her father's erotic demands, she may have later on consented or even voluntarily submitted herself to the consummation of the carnal act allegedly because: 1.) Jennifer did not exhibit a sincere struggle to resist her father's sexual assault, 2.) Jennifer claims she was raped by her father several times so that she had countless opportunities to bring her father to justice, yet she opted to remain silent for quite a longer period of time until she could no longer hide her pregnancy; that her delay in filing a case against her father raised the presumption that it was not rape that was truly committed but a consented crime where she partly assumes the blame; and, 3.) it could not be gleaned from Jennifer's testimony that she was bothered by the incident; normally, a rape victim is expected to recount the incident as had happened actually; and the victim is supposed to remember vividly her revolting experience but that Jennifer seemed to be trying to concoct the events to suit her theory.

The Court is not persuaded by the above arguments of the appellant.

The law does not impose upon a rape victim the burden of proving resistance where there is intimidation.^[7] Moreover, in rape committed by a father against his own daughter, as in this case, the former's moral ascendancy and influence over the latter substitutes for violence or intimidation.^[8]

On the alleged delay in filing the case against her father, suffice it to state that failure of the complainant to immediately report the rape to the police authorities does not detract from her credibility, her hesitation being attributable to her age, the moral ascendancy of the appellant and his threats against the former.^[9] A victim's disclosure that she has been raped must not be taken lightly, as it is not uncommon for a young girl to conceal for some time the assault on her virtue because of the rapist's threats on her life, fear of public humiliation, and/or lack of courage and composure to immediately complain that she has been sexually assaulted.^[10]

Appellant alleges that a rape victim is expected to recount the incident as had happened actually; and the victim is supposed to remember vividly her revolting experience but that Jennifer seemed to be trying to concoct the events to suit her theory.

On the contrary, this Court has held countless times that a rape victim is not and cannot be expected to keep an accurate account of her traumatic experience.^[11] A court cannot expect a rape victim to remember every ugly detail of the appalling outrage especially so since she might in fact have been trying not to remember them.^[12] Rape victims do not cherish in their memories an accurate account of the