

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOROTEO MEJORADA Y SILLAN, ACCUSED-APPELLANT.

G.R. No. 102705. July 30, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

On appeal is the 14 June 1991 decision[1] of Branch 19 of the Regional Trial Court (RTC) of Davao del Sur in Criminal Case No. 138 (88). The accused therein, now the appellant, was found guilty of the crime of rape and sentenced to suffer the "penalty of reclusion perpetua or imprisonment for life with the accessory penalties of the law." Fortunately for the accused, however, the court a quo decided not to award damages to the offended party since there was "no showing that filing and other fees have been paid."

It was on 11 October 1988 that the offended party, Mrs. Elizabeth B. Regino, filed a complaint against the accused with the Municipal Trial Court (MTC) of Sta. Cruz, Davao del Sur.[2] The latter was subsequently arrested after the court conducted a preliminary examination. Finding that a prima facie case existed against him, the MTC transmitted the case records to the Office of the Provincial Fiscal of Davao del Sur[3] which, in turn, filed on 8 November 1988 with the RTC in Digos an Information charging the accused with the crime of rape committed as follows:

"That on or about October 7, 1988, in Sta. Cruz, Davao del Sur, Philippines and within the jurisdiction of this Honorable Court, the accused aforementioned, being then armed with a knife, and after having forcibly dragged or pushed said Elizabeth B. Regino from her house into a (sic) grassy ground, and by the use of force and intimidation, did then and there willfully, feloniously and unlawfully have carnal knowledge of said Elizabeth B. Regino, against her will; to her damage and prejudice.

Contrary to Law and with the aggravating circumstance of the crime being committed in disregard of the respect due the offended party, she being a school teacher."[4]

No bail was recommended for the accused's temporary liberty.

Trial on the merits ensued after the accused entered a not guilty plea during his arraignment on 12 December 1988.[5]

Presented by the prosecution as its witnesses were Mrs. Elizabeth Regino, Lydia Duterte, Carlito Duterte, Vice Mayor Proceso Guido and Dr. Lydia Ozoa of the Davao Medical Center. Mrs. Regino and her husband, Eduardo, then testified as rebuttal witnesses.

On the other hand, the defense called on the accused himself, his wife Nilda and his daughter Nancy.

On 20 June 1991, the trial court promulgated the challenged decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, it is the inevitable conclusion of this Court that the accused Doroteo Mejorada is guilty of rape as charged beyond reasonable doubt. Consequently, this Court hereby sentences him to

suffer a penalty of reclusion perpetua or imprisonment for life with the accessory penalties of the law. Since there is no showing that filing and other fees have been paid, there is no award for civil damages. The kitchen knife used in the rape is confiscated in favor of the State. The accused, however, is entitled to deduction in the number of days in the service of his prison terms (sic).

SO ORDERED."[6]

The inculpatory facts, as established by the prosecution's evidence, are summarized by the trial court as follows:

"The prosecution's version may be narrated thus: Mrs. Elizabeth Regino, a public school teacher, then 25 years of age and married, worked as school (sic) teacher at Sta. Cruz National High School, Sta. Cruz, Davao del Sur, since 1986. She has been married for four years and has three children.

In the evening of October 7, 1988, she was sleeping at their house together with Nancy Mejorada, the accused's daughter. Her husband at that time was attending the nightly prayer for his dead grandmother. Their three children were brought by her husband to the house of her mother-in-law, because she was making test questions in preparation for the third grading period. That was also the reason why she requested Nancy to accompany her because she was alone in their house. At about 11:40 in the evening, she noticed that somebody forcibly opened the door. The person came in and was moving around. Their house is only half finished. So, the door was only tied with a rope. Believing that the person who went inside was her husband, she stood up in order to switch on the light. Before she reached the light, she was hugged by the person and a knife was pressed on her face. The accused pressed her downward and forced her in going out of their house. She was brought at the back of their house, particularly at the grassy area. She was able to recognize the accused when he was hit by the light in the chapel. She recognized the knife for the reason that she used to borrow the same with (sic) her sister. When they were in the grassy area, she struggled more to completely recognize the person. She made a sudden glance by swerving her face towards the left and she recognized him to be the accused, Doroteo Mejorada. She pleaded not (sic) to harm her. The accused did not heed her pleas. He forcibly pushed her down and she was at the kneeling position with her two hands as a support to her body. The accused bent his body towards her. She struggled. The knife was touching her side. The accused kept on telling her not to shout or else he will kill her. She was at the kneeling position when the accused removed her underwear downward up to her knee. He (the accused) pushed her down. He succeeded. At that time the accused started to have sexual intercourse with her by trying to insert his penis in her organ. She felt that it has penetrated. After the accused satisfied his lust, he withdrew, stood up and left her, leaving words 'ayaw tug-ani ang imong bana ha! Kon motug-an ka, patyon ta ka o kon dili ang imong bana akong patyon'. (Don't tell your husband, otherwise, I'll kill you or I'll kill your husband).

On October 9, 1988, she narrated the whole incident to Vice Mayor Guido in the presence of her husband. She did not reveal the whole incident to her husband in their house because she was afraid that her husband might lose his control and probably kill the accused. Vice Mayor Guido then summoned the accused. When the accused was already with them, and was informed about her complaint, the accused asked forgiveness and appealed for settlement. Vice-Mayor Guido prepared a written settlement. When the accused was about to sign, she shouted, because her conscience could not tolerate being abused by the accused. Vice Mayor Guido then decided to bring this matter to the police station for the filing of the proper complaint, for the case cannot be settled. The accused was brought to the 46th IB's Station Commander.

On October 10, 1988, she went to Dr. Lydia Ozoa for a medical examination. This was also corroborated by the testimony of Dr. Ozoa. A medical certificate was then issued portion (sic) of which are quoted herein below:

‘(A) Physical Examinations:

1. Superficial Wound 0.5 cm. Palmar Aspect of Right Ring Finger. Distal 3rd.
2. Superficial Wound 0.25 cm. Proximal to Wound 1.
3. Superficial Wound 0.5 cm. Palmar Aspect of Left Thumb.
4. Superficial Wound 0.2 cm. at the Tip of left Middle Finger.
5. Superficial Wound 3 cm. Right Elbow.

(B) Vulva:

1. Old Median Periveal Laceration.
2. Caruncles Noted on the Hymen. In toitus is Parons Cervic is close, Non-tender Uterus is small, anteverted. No Adnexal masser: Whitish discharges.

Sperm cell Determination: Presence of Sperm cells.'

The same was properly explained and illustrated by Dr. Ozoa and (sic) further identified her signature in the said medical certificate; She (Dr. Ozoa) asked the victim how she incurred these injuries and she informed her that she was raped and that she resisted.

The testimony of the victim was also substantiated by Vice-Mayor Guido. The victim and her husband were in his house on October 9, 1988 at about 7:30 to 8:00 o'clock in the morning. The victim narrated to him the incident. Thinking that he could settle their conflict, being his neighbors, he requested the appearance of the accused Doroteo Mejorada. That was the time when the accused asked for forgiveness to (sic) the complainant, claiming that he was drunk during that incident.

Doroteo Duterte testified that on October 6, 1988 at 3:00 o'clock in the afternoon, the accused borrowed his knife because according to him (accused), he will use the knife in butchering the pig. He identified the knife (Exh. "A") used by the accused in threatening the victim to be the same knife borrowed by the accused from him." [7]

On the other hand, the accused's version of denial and alibi is condensed by the trial court in this wise:

"Against this evidence of the prosecution, the accused relied mainly on denial and alibi. He flatly rejected the complainant's allegations, claiming that on October 7, 1988 he was in the house of Carding Ayop, his companion, working in the Franklin Baker, to help in the preparation for the barrio fiesta in Astorga. At 10:45 in the evening of the same day, he went back to his house. He brought a little food for his family. After eating, he had a conversation with his wife. He slept together with his wife. The wife of the accused also corroborated his testimony. Same is true with Nancy Mejorada, the daughter of the accused. She declared that his (sic) father at that evening was in the house of Carding Ayop. She was told by her mother to accompany Elizabeth in their house. When she was in the house of Elizabeth, they had a conversation particularly on the fact that Elizabeth's husband left their conjugal home. At about midnight, when she was about to sleep, she noticed that Elizabeth rose from their bed and went out. Thinking that Elizabeth will just urinate outside, she continued sleeping.

After few (sic) minutes or an hour, Elizabeth woke her up and told her that she will accompany her to the place where the vigil was being conducted. She was then requested to get a glass of water. After drinking, they proceeded to the place of the vigil. On cross, she further testified that she did not notice any wound on Elizabeth's hands nor any dirt of (sic) her duster.

The defense' (sic) version was belied by the complaint and her husband Eduardo on rebuttal." [8]

We find both summaries to be accurate and fully supported by the transcripts of the stenographic notes of the

witnesses' testimonies.

The trial court accorded full faith and credit to the testimonies of the prosecution witnesses, particularly to the declarations of the offended party; it concluded that Mrs. Regino harbored no ill-motives to falsely charge the accused with the commission of rape. Moreover, the court found it difficult to believe that Mrs. Regino, a married woman, would tell her husband that she had been raped by another married man, a neighbor at that, if there was no truth to it. It rejected the accused's claim of denial and alibi in view of his having been positively identified.

Immediately after the promulgation of sentence, the accused filed a Notice of Appeal[9] which was given due course by the RTC on the same date.[10]

In the Appellant's Brief[11] filed on 21 September 1992, the accused assigns this single error:

"THAT THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF RAPE."

and, in support thereof, alleges that he is entitled to an acquittal on the basis of reasonable doubt because the prosecution's evidence is not clear and convincing while Mrs. Regino's testimony is "too incredible," "unnatural" and contrary to "common experience," and contains "deliberate and studied perjury" signifying falsehood. The accused then cites the incredible and improbable declarations of the offended party together with the reasons for such a characterization: (a) Mrs. Regino failed to attend the final night's prayer for her husband's deceased grandmother which would have ended, as it usually does, at 9:00 o'clock because she had to finish preparing 400 test questions for the third grading period in school; in fact, she even requested her husband to bring their children, including their two-month old baby, to her mother-in-law; and yet, Mrs. Regino went to sleep at 10:00 o'clock that same evening; (b) the accused entered her house to rape her knowing fully well that his twelve-year old daughter, Nancy Mejorada, was also there; the accused was supposed to have even struggled with the offended party in the very room where Nancy was sleeping; (c) she said that she thought it was her husband who entered the house that night; however, she also knew that the latter would be staying in the wake of his late grandmother; it also seems that forcing the door open was not her husband's way of entering their house; she likewise revealed that after discovering that the person who entered was not her husband, she did not shout for help; (d) the accused was wearing only a pair of briefs despite the fact that the place of the incident was surrounded by houses and had adequate lighting; moreover, employees of the Franklin Baker Company were reporting for duty at midnight; (e) she did not even tell Nancy Mejorada about the rape upon returning to the house; nor did she inform her husband later on that evening when she went to his grandmother's house and played "solitaire"; and (f) she said that she was bending over, with her hands supporting her body and her face looking downward, as she was being supposedly raped by the accused; despite such a position, she was unable to break free from him.

Insisting that his account is more credible, the accused conjures up a tale of infidelity on the part of Mrs. Regino. He claims that the latter was having an illicit affair with another man at the time of the incident. In fact, he avers that she stepped out of her house on the night in question to meet with the said man. Accused further states that he was framed by this man who is very powerful; that in the evening of 7 October 1988, Mrs. Regino deliberately avoided going to the wake of her husband's grandmother and even asked her husband to bring the children with him because she was going to have a tryst with her paramour; and that in order to avoid suspicion, she requested Nancy's mother to allow Nancy to accompany her.

The Appellee refutes the accused's contentions, explains the alleged improbable portions of the offended party's testimony and urges us to affirm the accused's conviction for rape, with the modification that moral damages be awarded in favor of the offended party despite the non-payment of filing and other fees.

The appeal is devoid of merit.

At the core of the controversy is the issue of the credibility of the witnesses. On such point, the trial court had this to say:

"In the case at bar, the complainant's version is not bare. It is supported with (sic) witnesses, especially that of Dr. Lydia Ozoa, who found several wounds and the presence of sperm cells. Besides, the weapon used in the intimidation was produced x x x.

These evidences and the natural and straightforward testimony of the victim alone would be too difficult to ignore. It was clear and free from any serious contradiction. It was ringing throughout with the bell of truth and it bears with (sic) the stamp of absolute candor. Undeniably, it was impeccable. Her mistakes are signs of a story that is free from rehearsals." [12]

It is settled that appellate courts will generally respect the findings of the trial courts on the credibility of witnesses since the latter are in a better position to weigh the conflicting testimonies, having heard such witnesses themselves and observed their deportment and manner of testifying, unless it is found that the trial courts have plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. [13] We find no reason to depart from this salutary rule as a careful examination of the records in this case reveals that the findings of the trial court are fully supported by the evidence.

Be that as it may, we shall meet the points raised by the accused head-on. We find to be neither incredible nor improbable the portions of the offended party's testimony which are assailed by the accused. Mrs. Regino's decision to stay home on the night of 7 October 1988 was satisfactorily explained by her. She had just reported back to her teaching post at the Sta. Cruz National High School after taking a maternity leave. As she was under pressure to catch up with her work in school, particularly in her preparation of the test questions for the grading period, she returned even before her 60-day leave period expired. Her staying home and failing to attend the wake of her husband's grandmother was prompted by nothing more than her desire to finish the 400 test questions which she had to submit to her school principal the following day. [14] Such behavior should therefore be seen as a measure of her dedication and devotion to duty as a public school teacher.

It is to be noted that the accused failed to present the principal, Mrs. Lourdes Bendigo, to rebut Mrs. Regino's claim regarding the test questions to be submitted for checking, despite his counsel's manifestation that she would be so summoned to testify. [15] Furthermore, the accused's own daughter, Nancy, declared that she saw the test questions in the house of Mrs. Regino [16] that night, thereby confirming the latter's testimony.

The accused's contention that he would not have been so minded to enter the offended party's house with rape in his heart because he knew that his daughter Nancy was there, had in fact been rendered academic by his own admission, during the confrontation at Vice Mayor Guido's house, that he committed the acts attributed to him; in fact, he even asked for forgiveness from Mrs. Regino. [17] Besides, no evidence was presented to show that the accused knew or was informed that his daughter was to sleep with Mrs. Regino that night. It is to be remembered that permission on Nancy's behalf was sought from her mother, and not from the accused who was then in barangay Astorga. And even if the accused was aware of such an arrangement, it would not have really mattered as the presence of close relatives has not deterred men who have descended to the level of beasts and forsaken the highest and noblest in their humanity. Indeed, we have affirmed many a conviction involving men charged with raping their own flesh and blood.

Nor would it have been improbable for the accused to have been wearing only a pair of briefs at the time of the rape because, as he claims, the place of the incident was well-lit and surrounded by houses, and there were

employees of the Franklin Baker Company reporting for duty at midnight. In the first place, the accused admitted that he was drunk. As the Appellee correctly noted, a person who is drunk would be capable of doing things he would not normally do if he were sober. Secondly, the accused's house is only 5-7 meters away from the house of the Reginos. Moreover, it was not proven that he had walked to the latter's house with only his briefs on. Hence, it could very well be that the accused removed his trousers just before entering Mrs. Regino's room. Lastly, the accused failed to present any witness to testify that at the time of the incident, employees of the Franklin Baker Company were indeed reporting for work.

Mrs. Regino's initial presumption that the person who entered their house that night was her husband should not be doubted. As was convincingly explained in the Appellee's Brief, her husband could have simply forgotten something that he needed for the wake. Besides, the wake was held in a house just 100 to 110 meters away.[18] It was because of this initial belief that she did not immediately shout when the accused hugged her from behind. By the time she realized that it was the accused who was behind her, however, she was already being tightly held by him and threatened with the knife he was poking at her face. Being thus effectively intimidated and overwhelmed, she could not be expected to shout. If Mrs. Regino failed to scream, it was precisely because she feared for her life. Under such circumstances, her failure to shout or offer tenacious resistance did not make her submission to the criminal acts of the accused voluntary, since there existed a continuing intimidation which cowed her and made her realize that crying out for help or offering a spirited resistance would prove futile. It would likewise be "demanding too much from an ordinary mortal placed under such a stressful psychological and emotional situation to require that she shout or ward off the impending evil." [19]

Mrs. Regino also satisfactorily explained her failure to immediately inform both her husband and Nancy Mejorada about the rape. The former had, at that time, already positively identified the malefactor -- Nancy's own father -- and was thus understandably reluctant to disclose such a serious and delicate matter to the young girl. Mrs. Regino likewise declared that her immediate concern then was to leave the house as soon as possible because of the accused's threats of death and the fear that he might come back.[20] Furthermore, when she and Nancy arrived at the house of her husband's grandmother, her husband had just gone to sleep, and so she decided to wait until he woke up. In the meantime, however, she played solitaire by herself to give an appearance of normalcy because, in her own words, "there were many people" and she was ashamed to reveal the rape at that time. She added that as a teacher, she would be "put into shame." [21] When her husband finally woke up, she merely told him that somebody had entered their house. She revealed neither the rape nor the malefactor's identity for fear that her husband "might lose his control and might kill" the accused. She said that she did not want to be involved in two cases.[22]

On re-direct examination, Mrs. Regino further explained her decision not to divulge everything to her husband immediately and reveal instead the rape during the meeting at Vice Mayor Guido's residence, thus:

"Atty. Almazan (continuing):

Q [w]hy did you not at first tell the whole incident to your husband?

A [i] did not tell/reveal to him completely because of some reasons. [f]irst, [i] am afraid he might not believe me. [s]econd, [i] am afraid he might entertain doubts on his mind that the incident was voluntary on my part. [t]hird, [i] was afraid of his (accused) threat that he will kill my husband, me, and my family, and [i] am afraid to tell the whole story because the people of Sta. Cruz will know and it is shameful on my part as teacher (sic).

Q [w]hy did you decide to reveal the entire incident in the house of vice mayor Guido?

A [i] revealed it completely to him, ma'am, because [i] could not tolerate that [i] will hide something to (sic) my husband especially that [i] was sexually abused." [23]

Mrs. Regino's initial fears are not only consistent with the Filipina's traditional modesty and aversion for airing matters affecting their honor -- to the point that some would rather suffer in silence than admit the dishonor -- they are also well-founded in view of the accused's death threats.

Having been amply explained, the lapse of one and a half days from the time the rape was consummated until it was finally revealed and reported to the authorities, is no longer significant. Delay in reporting the rape due to death threats is justified,[24] especially in this case where the malefactor is the offended party's neighbor. We have also ruled that a delay of three days before complaining to the authorities due to embarrassment is justified,[25] and that a lapse of thirty-five days before the victim finally reported the sexual abuse done to her is not considered unreasonably long as to render the victim's testimony doubtful, if the same is fully explained and is due to a fear of the malefactor or the shame and dishonor that would follow its disclosure.[26]

Accused's contention that rape is not possible or could not have been consummated in the manner described by Mrs. Regino, that is, in a "dog-style" position, is without merit. As correctly pointed out by the Appellee, this Court, in *People vs. Saylan*,[27] sustained a conviction for rape where the accused used not only the "missionary position, i.e. male superior, female inferior, but also '[T]he same position as dogs do' i.e., entry from behind." In the case at bar, Mrs. Regino even asked if she could demonstrate in open court, during cross-examination, how the accused accomplished the sexual act, including the positioning of his hands. The defense counsel, however, denied the request.[28] The case of *People vs. Bania*,[29] which was cited by the accused, is not applicable since the position of the offended party therein was different; the latter was lying on her back with her panty rolled down to her knees. We declared in *Bania* that rape could not have been committed because the accused therein was clutching a knife on one hand and was holding the offended party's hands with the other.

The "other man" theory presented by the accused is nothing but a malicious imputation resorted to in a final attempt to create doubt on the prosecution's version. We find it highly improbable that the offended party, a public school teacher whose good reputation remains unsullied and who had just given birth to her third child, would carry on an immoral and illicit relationship with another man whose identity was never even revealed by the accused. The alleged liaison is pure concoction as no evidence in support thereof was offered. Moreover, defense witness Nancy Mejorada never mentioned during her testimony that she saw the offended party meet anyone on the night of 7 October 1988.

Further reinforcing our belief in Mrs. Regino's story is the fact that she is a married public high school teacher with three young children. Absent a most compelling reason or motive, it is inconceivable that she would allow the examination of her private part, subject herself to the ordeal of a public trial, risk receiving the stigma and social humiliation which accompany an admission of having been raped or openly and publicly lie or concoct a story which could very well send a man -- her neighbor, no less -- to jail.[30] The accused miserably failed to prove any ill-motive on the part of Mrs. Regino.

The court a quo correctly rejected the accused's claim of alibi. For this defense to have prospered, the latter should have proven that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime.[31] The accused admitted that he had gotten back from Astorga and was already in his house at around 10:45 p.m. in the evening of 7 October 1988 when the rape was committed. It bears stressing that his house is just 5 to 7 meters away from the house of the Reginos. Furthermore, he was positively identified by Mrs. Regino, first inside the house when his face was illuminated by the light coming from the chapel near her house, and then at the grassy area behind her house when she suddenly swerved to the left to look at her assailant's face.[32] Alibi cannot prevail over the positive identification by credible witnesses that the accused perpetrated the crime.[33]

It cannot likewise be doubted that in the commission of the rape, the accused used a deadly weapon -- a circumstance which, pursuant to Article 335 of the Revised Penal Code, raises the penalty to reclusion perpetua to death.

As indisputably shown by the evidence, the rape was consummated at the grassy portion behind the house of the Reginos. It was here that Mrs. Regino was, through threats and intimidation, forcibly dragged against her will by the accused. That the latter was moved by lewd designs is beyond doubt as he was wearing only his briefs at the time and did, in fact, eventually consummate the crime of rape against Mrs. Regino. While it may appear that forcible abduction, as defined and penalized under Article 342 of the Revised Penal Code, was also committed, we are not about to convict the accused for the complex crime of forcible abduction with rape. First of all, although the information sufficiently alleges the forcible taking of Mrs. Regino to the grassy ground, the same fails to allege "lewd designs." Secondly, it appears that the accused's real intention was to rape Mrs. Regino in her room but that since his daughter was in the same room as she, he decided to forcibly drag her instead to the rear of the house. Given such circumstances, the incidental forcible abduction was absorbed in the crime of rape. We have held that rape may absorb forcible abduction if the main objective was to rape the victim.[34]

The trial court should have, however, appreciated against the accused the generic aggravating circumstances of dwelling and ignominy[35] which, though not alleged in the information, were duly proven without objection on the part of the accused. At twenty minutes to midnight, the latter unleashed the fury of his criminal mind on a sleeping victim. He defiled the sanctity of Mrs. Regino's home by forcibly opening its door. Wanting to force upon her his evil desires, he hugged her and then pressed a knife to her face without any provocation on her part. He thereupon had sexual intercourse with her in a "dog-style" position. While such a position has been resorted to by consenting adults, it adds ignominy when employed in rape cases.[36]

Such aggravating circumstances would have justified the imposition of the greater penalty of death pursuant to Article 63 of the Revised Penal Code. Considering, however, that the Constitution prohibits its imposition,[37] the appropriate imposable penalty would be reclusion perpetua, which the trial court correctly imposed, although it sought to define the same as "imprisonment for life." The penalty of reclusion perpetua is not, of course, similar to or synonymous with "life imprisonment." As this Court has repeatedly ruled in many cases, reclusion perpetua and life imprisonment are not synonymous but distinct in nature, duration and accessory penalties.[38]

However, as correctly pointed out by the Solicitor General, the trial court erred in not awarding civil damages to Mrs. Regino for the alleged lack of payment of filing and other fees. There can be no question that rape necessarily entitles the victim to moral damages as a result of the mental anguish, fright, serious anxiety, besmirched reputation, moral shock and social humiliation[39] that accompany the crime. In fact, Article 2219 of the Civil Code provides that moral damages may be recovered in cases of, inter alia, rape.

The non-payment of the filing and other fees should not have barred the trial court from awarding damages. In *General vs. Claravall*,[40] this Court, in clarifying further the issue of filing fees for the civil action deemed impliedly instituted with the criminal case, ruled that:

"In any event, the Court now makes that intent plainer, and in the interests of clarity and certainty, categorically declares for the guidance of all concerned that when a civil action is deemed impliedly instituted with the criminal in accordance with Section 1, Rule 111 of the Rules of Court -- because the offended party has NOT waived the civil action, or reserved the right to institute it separately, or instituted the civil action prior to the criminal action -- the rule is as follows:

1) when 'the amount of damages, other than actual, is alleged in the complaint or information' filed in court, then 'the corresponding filing fees shall be paid by the offended party upon the filing thereof in court for trial;'

2) in any other case however -- i.e., when the amount of damages is not so alleged in the complaint or information filed in court, the corresponding filing fees need not be paid and shall simply 'constitute a first lien on the judgment, except in an award for actual damages.'"

Conformably with the current policy of this Court, we hereby award Mrs. Regino moral damages in the amount of P50,000.00.[41] Considering further the perversity with which the accused committed the crime -- particularly by his having violated the sanctity of her home and grievously defiled the institution of marriage by raping a married public school teacher -- the imposition of exemplary damages by way of example, i.e., to deter others from committing similar acts, or correction for the public good,[42] herein fixed at P25,000.00, is in order.

WHEREFORE, judgment is hereby rendered AFFIRMING, subject to the modification above indicated, the appealed decision of Branch 19 of the Regional Trial Court of Davao del Sur in Criminal Case No. 138 (88). As modified, the accused is further ordered to pay the offended party, Mrs. Elizabeth B. Regino, the sums of P50,000.00 in concept of moral damages, and P25,000.00 as exemplary damages.

Costs against the accused.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Original Record (OR), 166-172; Rollo, 15-20. Per Judge Dominador F. Carrillo.

[2] OR, 4. The complaint was docketed as Criminal Case No. 2774.

[3] OR, 15-17.

[4] Id., 1.

[5] Id., 24.

[6] OR, 172; Rollo, 20.

[7] OR, 166-169; Rollo, 15-18.

[8] OR, 169.

[9] OR, 173.

[10] Id., 174.

[11] Rollo, 27, et seq.

[12] OR, 172; Rollo, 20.

[13] *People vs. Santito*, 201 SCRA 87 [1991]; *People vs. Tismo*, 204 SCRA 535 [1991], and the cases cited therein.

[14] TSN, 20 June 1989, 7-8; 12.

[15] Id., 13.

[16] TSN, 7 May 1990, 8.

[17] TSN, 11 January 1989, 28-29; TSN, 3 July 1989, 10-11.

[18] TSN, 20 June 1989, 6.

[19] People vs. Grefiel, G.R. No. 77228, 13 November 1992.

[20] TSN, 19 September 1989, 12.

[21] TSN, 28 December 1990, 13.

[22] TSN, 11 January 1989, 28.

[23] TSN, 19 September 1989, 23-24.

[24] People vs. Vinas, 202 SCRA 720 [1991].

[25] People vs. Peña, 151 SCRA 638 [1987].

[26] People vs. Santiago, 197 SCRA 556 [1991].

[27] 130 SCRA 159, 167 [1984].

[28] TSN, 19 September 1989, 11.

[29] 134 SCRA 347 [1988].

[30] People vs. Tismo, supra., citing People vs. Avila, 192 SCRA 633 [1990].

[31] People vs. Penillos, 205 SCRA 546 [1992]; People vs. Buka, 205 SCRA 567 [1992]; People vs. Devaras, 205 SCRA 676 [1992].

[32] TSN, 11 January 1989, 23-24; TSN, 19 September 1989, 22.

[33] People vs. Lee, 204 SCRA 900 [1991].

[34] AQUINO, R.C., The Revised Penal Code, vol. III, 1988 ed., 446, citing People vs. Toledo, 83 Phil. 777 [1949].

[35] Paragraphs (3) and (17), respectively, of Article 14, Revised Penal Code.

[36] People vs. Saylan, supra., at 167.

[37] Section 19(1), Article III, 1987 Constitution.

[38] People vs. Baguio, 196 SCRA 459 [1991]; People vs. Penillos, supra.

[39] Article 2217, Civil Code; People vs. Saldivia, 203 SCRA 461, 473 [1991].

[40] 195 SCRA 623, 629 [1991].

[41] People vs. Tismo, supra.

[42] Articles 2229 and 2230, Civil Code; People vs. Grefiel, supra.

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