

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE BAHUYAN, ACCUSED-APPELLANT.

G.R. No. 105842. November 24, 1994

Ponente: ROMERO, J.

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ROMERO, J.:

How can this Court employ words strong enough to describe the contemptible act of a lecherous widower claiming to be over eighty years old who, taking advantage of the innocence of an eleven-year old girl and his close relationship with her family, forced her at the point of a knife to surrender her virginity to him? Indeed, this will not be the first time, nor will it certainly be the last, that we shall reject the defense of advanced age in a charge of rape, particularly in affirmance of the lower court's factual finding that accused-appellant is literally and figuratively a "dirty old man."

On October 19, 1990, an information was filed against accused-appellant Felipe Bahuyan by Third Assistant City Fiscal Renee Dorado-Tan. It read:

"The undersigned Fiscal accuses FELIPE BAHUYAN of the crime of RAPE, committed as follows:

That on or about the 10th day of January, 1987 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused by means of force and intimidation and with the use of a deadly weapon, to wit: a knife, did, then and there wilfully, unlawfully and feloniously have carnal knowledge with one SHAREE ANN ROBINSON, against her will.

Contrary to Art. 335, par. 1 of the Revised Penal Code."[1]

The information was docketed as Criminal Case No. 9486 and was raffled off to Regional Trial Court, Branch 34 of Dumaguete City.

A warrant of arrest was issued on November 2, 1990[2] addressed to the Station Commander of Dumaguete City as accused-appellant was residing at Tabuc-tubig, Dumaguete City. This was returned with a notation that he was in Metro Manila. A second warrant of arrest,[3] issued on December 11, 1990, suffered the same fate. Acting on the information of private prosecutor Eduardo Sedillo that accused-appellant was residing at the house of one Talingting Bahuyan of Sta. Cruz Viejo, Tanjay, Negros Oriental,[4] a third warrant of arrest was issued on September 5, 1991.[5] A second indorsement was made by SPO3 Benedicto S. Ferrolino stating that, as per information received by the serving officer, P03 Charlito V. Lado, accused-appellant was residing in Campuyo, Manjuyod; Negros Oriental.[6] Another second indorsement was made by SPO3 Vicente R. Tundag stating that accused-appellant could not be located at his given address according to the certification issued by Barangay Captain Raymundo G. Banogon[7] but was reported to have transferred residence to Kabasalan, Ipil, Zamboanga del Sur.[8] Fourth and fifth warrants of arrest were issued addressed to the Station Commander of Campuyo, Manjuyod, Negros Oriental and of Kabasalan, Ipil, Zamboanga del Sur. Finally, on September 28, 1991, the law caught up with accused-appellant who was finally arrested and his detention ordered on October 9, 1991.

On November 12, 1991, accused-appellant was arraigned and he entered a plea of not guilty.[9]

Prosecutor Renee Dorado-Tan filed a motion to consolidate Criminal Case No. 9486 with Criminal Case No. 9485 pending before RTC, Branch 36 of Dumaguete City.[10] Both cases charged accused-appellant of rape committed against complainant Sharee Ann Robinson but when raffled off, were assigned to two different salas. On November 19, 1991, Judge Rosendo B. Bandal, Jr. denied the motion on the ground that "under existing law and jurisprudence, a person may be repeatedly charged of the crime of rape against the same offended party, provided these happened on different dates or are different occurrences." [11]

On December 13, 1991, Judge Bandal, Jr. adopted the continuous trial system after the offended party expressed her unwillingness to allow the accused-appellant to enter a plea of guilty to the lesser crime of acts of lasciviousness.[12]

The prosecution presented complainant Sharee Ann Robinson, her mother Melchora Vilan Robinson, Ruperta Baguasan of the local civil registrar's office and Dr. Weanchi B. Villegas.

According to complainant Sharee Ann Robinson,[13] in the morning of January 10, 1987, accused-appellant went to their house and told her "lolo", Nicholas Vilan, that he was giving them some "pandesal" which complainant should get from his house. She went there as instructed and returned home with bread in a tin container. At about ten o'clock of the same day, accused-appellant returned and asked complainant to return the bread container, a biscuit can with a soda cracker label.

Whereupon complainant went back to the house of accused-appellant. As soon as she entered the door, accused-appellant immediately pulled her hand and poked a knife at her neck. He directed her to go upstairs, after which he closed the door, followed her and forced her to remove her clothes. His first attempt at having sexual intercourse with her was not successful. Later, he succeeded with "the help of his hand." Scared and in pain, she was not able to resist his moves.

Before allowing her to go home, she was warned, on pain of death, not to tell her mother about the incident.

During the cross-examination, complainant stated that she was close to accused-appellant who treated her as a granddaughter. He even stayed at their house for more than a year when she was younger. In fact, on other occasions, accused-appellant would voluntarily give her something for her "baon".

Complainant's mother, Melchora Vilan Robinson[14] confirmed their close relationship with accused-appellant and how she eventually learned of the incident. According to her, they have good relations with accused-appellant whom she treated as father and whose wife was her godmother. In fact, her daughter addresses him "Lolo". They were neighbors, too, accused-appellant's house being only seventy-five meters away from theirs.

On March 28, 1990, she heard from her neighbors that her daughter was raped by accused-appellant who himself started the talk. When confronted, her daughter tearfully admitted the same. Thereafter they proceeded to the house of a certain Inday Em who advised them to get a lawyer. When they expressed their apprehension about their inability to hire one, she assured them not to worry as there are lawyers who render services for free. She then introduced them to Atty. Trinidad who, in turn, introduced them to Atty. Sedillo.

On cross-examination, she stated that she lives with her father Nicholas Vilan, having separated from her husband in 1974 when she was pregnant with Sharee Ann, her only child. She explained that it took her three years to file the complaint because her daughter did not tell her about the incident after it happened and preferred to keep "her mouth shut".

Ruperta Baguasan,[15] assistant local civil registrar of Dumaguete City, was presented to prove that private

complainant was born on January 11, 1975.[16] This indicates that she was 11 years old at the time of the alleged rape which occurred on January 10, 1987 or the day before her 12th birthday.

Dr. Weanchi B. Villegas[17] of Negros Oriental Provincial Hospital was also presented as a witness after she conducted an internal examination on complainant on March 29, 1990 and issued the corresponding medical certificate.[18] Having found complainant to have sustained old hymenal lacerations, she opined that these may be due to several intercours or a single intercourse but resulting in several lacerations. When accused-appellant's counsel pressed her to answer whether a man over 80 years of age can still perform the sexual act, she answered in the affirmative. She cited her experience with her older female patients who usually do not want to have sex anymore but the male ones "still likes it even if they are already old."

Accused-appellant Felipe Bahuyan,[19] the sole witness for the defense, averred that the family of the victim, being poor and indigent, the complainant had been asking money from him as her "sugar daddy".

Accused-appellant testified that on January 15, 1988, complainant entered his house without permission, went directly to the table and drank coffee. She asked P100.00 from him to buy a half-slip and a pair of shoes. Looking at him in a meaningful manner, she approached him and removed her panty. When he became speechless, complainant told him to remove his pants as she would place herself on top of him. He did as told but he did not remove his short pants. However, nothing happened between them as he was "too old and cannot do it anymore." She then went downstairs and left.

Days later, complainant came back and demanded P100.00 from him in order to buy a polo shirt and skirt. She did not accept the P100.00 bill as she preferred that it be given in P5, P10 and P20-peso denominations.

After sometime, complainant returned asking for P150.00 which he gave. This time, she did not tell him what she would do with the money but told him not to leave the house as she would return for him. The next day, after verifying his SSS check downtown, he came back for lunch. Thereafter, complainant arrived and told him to brush his teeth. While he was brushing his teeth, complainant went upstairs and waited for him. She was already naked when he joined her. He undressed, too, and lay down beside her. However, like the previous encounter, nothing happened and she left.

On January 20, 1990, he again gave complainant P150.00. This was their last meeting and, like the previous ones, nothing happened between them.

During cross-examination, accused-appellant was asked why, inspite of his desire to prove his innocence, he eluded arrest for almost a year. He explained that on May 6, 1990, complainant's cousin came to see him three times, carrying a knife and threatening to kill him. This forced him to flee to Silay. However, he did not report this incident to the police.

When asked to describe his relationship with complainant's family, he replied that they were "very well-acquainted" and that they "treated him like a dog" and they "never showed any word of respect to me" because they are "quite a distance from me." He insisted that he stayed with complainant's family for five months only, from May to October, 1979 while he was looking for a job because he used to be a driver of Central Azucarrera de Bais.

He denied using a knife to threaten complainant as he has no knife nor any utensils as he takes his lunch in his children's house. He likewise denied that complainant ever called him "lolo". He insisted that he "felt nothing" for complainant who started frequenting his house in September of 1987 asking for small amounts of money and later, for pandesal. In their relationship, she "dominates" him and all he did was to "simply sit down" while "she did all those things to me." He maintained that the sexual act was never consummated as it was no longer possible

at his age.

He also made a statement that he never embraced complainant because "there's a law that prevent the man to hold a woman against her will." When confronted with his affidavit taken during the investigation where he admitted that he "hugged her very tightly and started to kiss her lips, but complainant resisted and pushed me hard that I have to let go my arms", accused-appellant denied ever making such a statement and that the affidavit was not translated to him in the Cebuano dialect.

The prosecution presented Fiscal Edna S. Villamil[20] to rebut the testimony of the accused that his counter-affidavit[21] was not translated to him in Cebuano, the dialect which he understands. The administering officer, Fiscal Villamil, testified that when accused-appellant and his counsel, Atty. Lupisan, came to her office with an affidavit prepared by the latter, she translated the same into Visayan. It was only when accused-appellant admitted that he understood its contents that she administered the oath to him. This being the standard procedure followed in her office, she observed the same in accused-appellant's case.

On sur-rebuttal, accused-appellant[22] admitted that it was his counsel who drafted the counter-affidavit in the latter's house, but denied that his counsel accompanied him to the Fiscal's office. He likewise denied that the affidavit was translated to him; hence, he did not understand even a single word contained therein.

On May 6, 1992, Judge Rosendo B. Bandal, Jr. found accused-appellant guilty as charged. The dispositive portion of the decision reads:

"WHEREFORE, accused FELIPE BAHUYAN is hereby found guilty beyond reasonable doubt of the crime of Rape, penalized under paragraph 1 of Article 335 of the Revised Penal Code, and the Court, after applying the Indeterminate Sentence Law, as amended, hereby imposes on him the penalty of RECLUSION PERPETUA. The Court cannot impose the death penalty on the accused considering that the same had been abrogated by the Constitution and considering further the old age of the accused.

Accused Felipe Bahuyan shall likewise indemnify the victim the sum of FIFTY THOUSAND PESOS (P50,000.00) as moral damages." [23]

Hence, this appeal claiming that the lower court erred:

"a) in giving full faith and credence to the testimony of the plaintiff despite the fact of lapse of three years from the alleged rape to the filing of complaint; and

b) totally believing without reservation the proposition of the prosecution as to the date of the alleged rape which is January 10, 1987, or conveniently a day before the 12th birthday of offended party." [24]

The appeal has no merit.

Accused-appellant submits that the lapse of three years from the date of the alleged rape on January 10, 1987 and the filing of the complaint on May 28, 1990 raise serious doubt as to complainant's motive in filing the case and the truth of her testimony.

While a complainant's act in immediately reporting the commission of rape has been considered by the Court as a factor strengthening her credibility,[25] delay or vacillation in criminal accusations does not necessarily impair the complainant's credibility if such delay is satisfactorily explained.[26]

In this case, complainant explained that accused-appellant threatened to kill her if she told anybody of what transpired that day. Her mother, when cross-examined, likewise explained that her daughter chose to "keep her mouth shut" for fear for her life. In *People v. Errojo*, [27] the Court took judicial cognizance of the fact that many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and

pain rather than reveal their shame to the world and risk the rapists' making good their threats to kill or hurt them. In addition, complainant was, at the time of the sexual assault, barely twelve years old. Indeed, one cannot expect her to act like an adult or a mature and experienced woman who would have the courage and intelligence to disregard a threat to her life and complain immediately that she had been sexually assaulted.[28] It is not uncommon for young girls to conceal for sometime the assault on their virtue because of the rapists' threats on their lives.[29] Compounded further by the shame inherent in the violation of her person, complainant opted to suffer in silence. When she was finally prevailed upon by her mother to admit her guarded secret and eventually file a case, the lapse of time cannot be said to affect her credibility.

Moreover, as explained in *People v. Rostata*,[30] "the law on prescription of crimes would be meaningless if we were to yield to the proposition that delay in the prosecution of crimes would be fatal to the state and to the offended parties. In fixing the different prescriptive periods on the basis of the gravity of the penalty therefor, the law takes into account or allows reasonable delays in the prosecution thereof. In the instant case, the delay was satisfactorily explained."

Accused-appellant's next attack is on the testimony itself. He considers it impossible to consummate the sexual intercourse with only one hand while the other clasps a knife. He also points out that in the complaint, the complainant stated that she took off her panty[31] while during her direct examination, she said that it was the accused who removed her panty.[32] Accused-appellant sums up complainant's testimony as "not only hilarious but improbable as well."

There was nothing improbable in complainant's testimony. It is certainly not impossible for a man with lewd designs to consummate the crime of rape with one hand while holding a knife with the other hand. In *People v. Reyes*,[33] accused-appellant therein who also had a "hard time" in effecting sexual coitus, "took hold of his penis and helped it insert inside her vagina, as she was then a virgin" while he was covering complainant's mouth and threatening to kill her with a knife. The inconsistencies and minor lapses in her testimony are but to be expected when a person is recounting details of a humiliating experience too painful to recall.[34] Moreover, affidavits taken ex parte are generally considered to be inferior to testimony given in open court. Therefore, discrepancies between statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him.[35] Significantly, accused-appellant's counsel, despite opportunity to ask complainant about the seeming variance, did not cross-examine her on this point.

In addition, accused-appellant assails the prosecution's "choice" of the date of the commission of the rape, i.e., one day before complainant's twelfth birthday. He believes that the date was conveniently chosen by the prosecution in order to make the charge one of statutory rape and to relieve it of the burden of proving force or intimidation. He claims that instead of rape, what happened was a "mutual, consensual, lustful and dependable liaison between an old man and a young girl which started on January 15, 1988."

Art. 335 of the Revised Penal Code provides:

ART. 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

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The information categorically charged rape committed with the use of force or intimidation under par. 1 and also with the use of a deadly weapon, namely, a knife. During the trial, the prosecution proved not only the use of force or intimidation and of a deadly weapon, but also the fact that the rape was committed the day before complainant turned twelve years old. The lower court convicted accused-appellant of rape committed under par. 1 – using force or intimidation, and not under par. 3 – statutory rape.

Considering the facts of the case, the prosecution should have filed an information for statutory rape because of the materiality of complainant's age. When it failed to do so and instead filed an information for rape with the use of force or intimidation, complainant's age became inconsequential. Accused-appellant, therefore, has no basis in saying that the prosecution's burden of proof was relieved when it "conveniently" chose the date of the commission of the rape the day before complainant's twelfth birthday because, first, the prosecution had, in fact, proven force or intimidation, and second, the age of complainant is immaterial if the information is for violation of Art. 335, par. 1.

Moreover, under accused-appellant's version, he alleged that the sexual liaison happened under circumstances not constituting rape for it was complainant herself who initiated everything while he submissively followed her. He capsulized his defense, thus:

"The young girl is fatherless and her mother tries to make a living by selling mangoes and papayas. The girl has certain small but vital needs that the old man can provide. The only way she can pay him back is letting him have some moments of pleasure with her body. This goes on for sometime – years perhaps – until the neighbors notice it and tell her mother. The rest is the redemption of family reputation and the background of this case."[36]

This brings us to the issue of credibility. Which version should the Court believe: the prosecution that charges rape or the defense which claims that everything that transpired was consensual. The Court finds the complainant's testimony credible and that of the accused-appellant, highly preposterous. Accused-appellant testified that complainant willingly dispensed sexual favors in exchange for some help he extended in money or in kind. Complainant does not deny that in several instances, accused-appellant gave her "baon" as he treated her as a granddaughter. In fact, she went to accused-appellant's house precisely to get the "pandesal" which the latter offered. It strains one's credulity to rely on accused-appellant's assertion that complainant offered her body in exchange for a measly amount of money and some bread. The so-called "payment" outweighs what she has received. Although accused-appellant owns the trees where complainant's mother used to get the fruits she sells, the former testified that the latter used to pay him for the same and does not owe him a single centavo. Accused-appellant is not justified in exploiting complainant simply because he can extend some assistance to her family who, though not so well-circumstanced, is not completely destitute as the mother has a means of livelihood.

Accused-appellant would even impress the Court that it was complainant who was active in their relationship. It taxes the imagination how an innocent girl barely twelve years of age could dominate an experienced man like accused-appellant on matters of sex. Accused-appellant's version, being patently contradictory, it does not deserve serious consideration. It can only come from a lecherous but remorseless man who is desperate for acquittal.

The lower court which had the opportunity to observe the demeanor of the witnesses noted:

"It has been observed by the Court and pointed out by the private prosecutor that while on the witness stand,

victim Sharee Ann was occasionally crying as she narrated the circumstances of how she was deflowered by the accused. The Court found all prosecution witnesses to be straightforward, candid and consistent in their testimonies, in all material respects. In fact, all the corroborative declarations and documentary evidences of the prosecution have shown beyond reasonable doubt that accused Felipe Bahuyan had raped the victim. On the other hand, rather than feel some degree of embarrassment and shame for the dastardly act done, accused Felipe Bahuyan seemed to have relished and enjoyed the thought of having ravished the victim. Accused tried in vain to evoke laughter as he gesticulated and described luridly how the youthful victim allegedly straddled him with her vagina wet and his advising the latter to go gentle as his testicles got hurt with the rough movement. And when the private prosecutor asked accused whether he was trying to impress upon the Court that the victim was in love with him, rather than answering the question, accused simply snapped back with a query 'Who told you that?'

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On the other hand, as aforementioned, the Court cannot give credence to the version of accused, especially taking into account the material inconsistencies in his testimony. Besides, it is inconceivable that an eleven (11) year old child, who has now bloomed into a seventeen-year old charming and attractive mestiza, would voluntarily offer her virginity and honor to a wrinkled, dirty old man so that the latter would continually give her money. The lies of the accused, however, were not able to withstand the pressure of truth when on further examination, he finally disclosed that actually he is a very poor man, totally dependent on his children for his meals. The accused's declaration that the victim would first ask him to brush his teeth before they perform the sexual act, rather than bolster his theory, weakened his defense inasmuch as it simply showed that the victim has some sense of hygiene and a discriminating taste. Without offending our customary reverential regard and respect for old age, the Court has observed that the accused is in its literal sense, a dirty old man.

As even admitted by the accused, prior to the rape incident, the relationship between the accused and the family of the victim was congenial. In fact, as disclosed by the accused, he even stayed with the family of the victim for five (5) months sometime in the past. There was no reason therefore, why the victim would expose herself to public scrutiny and humiliation if she did not experience the indignity to her honor. The failure of the victim to immediately divulge her sad experience can be satisfactorily explained by the fact that the accuser warned to kill her should she reveal it to anybody."^[37]

The Court, time and again, has adhered to the rule that, in matters of credibility, the trial court's findings are generally viewed as correct and entitled to the highest respect, it being more competent to conclude so, having seen closely the way the witnesses testified, their deportment, and the peculiar manner in which they gave their testimonies and other evidences in court.^[38]

Moreover, accused-appellant wanted to impress this Court that no sexual intercourse could have occurred because of his age since he claims to be 81 years old at the time of the rape. Considering that he strongly relies on his age to prove that he could not have committed the charge imputed to him, it is puzzling why no proof of his actual age was submitted by him. The lower court observed that, at the time of trial, "his physical appearance would indicate that he is beyond 70 years old." Assuming *arguendo* that this is the truth, his advanced age does not mean that sexual intercourse is no longer possible, as age is not a criterion taken alone in determining sexual interest and capability of middle-aged and older people.^[39] In *People v. De Guzman*,^[40] the Court convicted the accused who was already seventy years old when he raped the complainant who was only sixteen. The lower court observed that accused-appellant, despite his protestations of impotence, is literally and figuratively, a "dirty old man." The penetration is confirmed by the undisputed medical finding that there were lacerations of the hymen.^[41]

In one case, *People v. Pailano*,^[42] the Court acquitted the 69-year old accused who was likewise charged with rape. In that case, the Court found the version of the accused more credible than that of the complainant who

failed to mention whether or not the rape was committed with facility. Complainant's omission strengthened accused's version admitting his initial difficulty at copulation due to his age. The Court elaborated, thus:

"Given the choice between the separate accounts of the complainant and the accused-appellant, the Court inclines in favor of the latter. It is in our view more believable. Anita never spoke of any difficulty on the part of Pailano in violating her. She simply said he removed her panty and entered her. No effort was mentioned; it seemed she was talking of a vigorous stud. Yet, the accused-appellant was not a teen-ager or even only in the prime of his life of their sexual encounter. He was all of sixty-nine years old.

Considering his age and the emotional pressures of the moment, we doubt if Pailano could have accomplished the rape as easily as Anita narrated it. The prosecution has not offered any proof of his sexual prowess, and under stress at that. By contrast, the accused-appellant did not hesitate to testify, at the risk of his manly pride, that he did not easily have an erection during the tryst with Anita and that it took some fondling from her before his organ could respond. This was a hard and humiliating fact but it had to be admitted."^[43]

The instant case is different. Complainant herein categorically testified that accused did not succeed at first in his attempt at having sexual intercourse with her but later succeeded with "the help of his hand."

It is well to remember the Court's pronouncement in *People v. Palma*,^[44] that "impotency as a defense in rape cases must be proven with certainty to overcome the presumption in favor of potency." In fact, in *People v. Olmedillo*,^[45] the Court rejected the defense that "he had no more sexual urge at his age (65 years old), that he could not have an erection (impotentia erigendi) and that he could not do the sexual act (impotentia coeundi)" even after a doctor had examined the accused by stimulating his organ with a wisp of cotton for three minutes and there was no erection.

Lastly, accused-appellant's flight is another indication of his guilt. We do not accept his contention that complainant's cousin threatened him with bodily harm as no independent evidence was offered to support the same. Furthermore, it was proved that he had transferred to three different places before he was finally arrested. Moving from place to place would be unnecessary if his sole purpose were only to escape the threat on his life in the absence of evidence that he was being pursued. It was obvious that he was evading service of the warrant of arrest. "Flight evidences guilt and a guilty conscience; it strongly indicates a guilty mind or betrays the existence of a guilty conscience."^[46]

Totoong nakahahambal na mapuna sa ating lipunan ang dumaraming pangyayari ng panghahalay sa ating mga kababaihan, lalu't lalo na kung ang biktima ay mga dalagita at mga dalaga.

Higit na nakaririmarim ang kasong idinulog sa Hukuman ito sapagka't ang hinalay ay wala pa mang labing-dalawang taong gulang at ang gumahasa sa kaniya ay pitumpung taong gulang na singkad. Napagsamantalahan ng matanda ang bata sapagka't siya ay malapit sa pamilya nito, sa dahilang nanirahan siya sa kanilang tahanan ng limang buwan, at ang tawag sa kanya ay "lolo". Anupa't sa gayong pagsasamantala ng kasuklamsuklam na matanda, sinira niya ang kumpiyansa sa kanya ng pamilya ng biktima.

Walang humpay na babatikusin at paparusahan ng matindi ng Kataas-taasang Hukuman ang gayong mga salarin na sumisira sa katiwasayan ng ating lipunan at winawasak ang puri ng ating kababaihan na higit sa lahat ay dapat igalang at pagpitaganan.

We affirm the findings of the lower court that accused-appellant is guilty beyond reasonable doubt of the crime of rape committed with the use of force or intimidation. Accused-appellant having found to have likewise committed the same with the use of a deadly weapon, the penalty shall be reclusion perpetua to death. Considering that at the time of the commission of the crime, Republic Act No. 7659 was not yet effective, the maximum penalty of death cannot be imposed.

While the age of an offender over seventy years is a generic mitigating circumstance,[47] the same will not affect the sentence imposed on accused-appellant, not only because his actual age was not proved, but also, even if the same is true, when the law prescribes a penalty composed of two indivisible penalties and the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.[48]

However, the phrase "after applying the Indeterminate Sentence Law, as amended" in the dispositive portion is unnecessary, the same not being applicable to persons convicted of offenses punishable with reclusion perpetua which is an indivisible penalty.[49]

WHEREFORE, the appeal is DISMISSED and the assailed decision is AFFIRMED subject to the deletion of the above-quoted phrase.

SO ORDERED.

Bidin, (Acting Chairman), Melo, and Vitug, JJ., concur.
Feliciano, J., on leave.

[1] Records, p. 2.

[2] Ibid., p. 16.

[3] Ibid., p. 17.

[4] Ibid., p. 21.

[5] Records, p. 22.

[6] Ibid., pp. 24-25.

[7] Exh. "F", p. 31.

[8] Exh. "E", p. 28.

[9] Records, p. 46.

[10] Ibid., pp. 52-53.

[11] Records, p. 55.

[12] Ibid., p. 61.

[13] TSN of February 19, 1992, pp. 30-71.

[14] TSN, February 19, 1992, pp. 2-29.

[15] TSN of February 21, 1992, pp. 73-76.

[16] Exh. "B".

[17] TSN of March 11, 1992, pp. 81-98.

[18] Exh. "C".

[19] TSN of April 8, 1992, pp. 100-128.

- [20] TSN of April 13, 1992, pp. 130-146.
- [21] Exh. "G".
- [22] TSN of April 15, 1992, pp. 149-157.
- [23] Rollo, p. 32.
- [24] Appellants' Brief, p. 9.
- [25] *People v. Jaca*, G.R. No. 104628, January 18, 1994, 229 SCRA 332.
- [26] *People v. Errojo*, G.R. No. 102077, January 4, 1994, 229 SCRA 49.
- [27] *Ibid.*; See also: *People v. Ulili*, G.R. No. 103403, August 24, 1993, 225 SCRA 594; *People v. Silfavan*, G.R. No. 71510, June 30, 1987, 151 SCRA 617.
- [28] *Ibid.*
- [29] *Ibid.*; *People v. Raptus*, G.R. Nos. 92169-70, June 19, 1991, 198 SCRA 425.
- [30] G.R. No. 91482, February 9, 1993, 218 SCRA 657.
- [31] Exh. "2-C"; TSN, pp. 62, 65.
- [32] TSN, p. 35.
- [33] G.R. No. 62387, June 19, 1985, 137 SCRA 99.
- [34] *People v. Olivar*, G.R. No. 101577, November 13, 1992, 215 SCRA 759.
- [35] *People v. Dabon*, G.R. No. 102004, December 16, 1992, 216 SCRA 656.
- [36] Appellant's Brief, pp. 22-23.
- [37] Rollo, pp. 26-27; 31-32.
- [38] *People v. Carson*, G.R. No. 93732, November 21, 1991, 204 SCRA 266.
- [39] DICKINSON, ROBERT LATOU. HUMAN SEX ANATOMY. Second Edition. Baltimore, The Williams & Wilkins Company, 1949.
- [40] G.R. Nos. 51385-86, January 22, 1993, 217 SCRA 395.
- [41] *People v. Buyok*, G.R. No. 109771, August 25, 1994.
- [42] G.R. No. 43602, January 31, 1989, 169 SCRA 649.
- [43] *Ibid.*, p. 652.
- [44] G.R. No. 69152, September 23, 1986, 144 SCRA 236.
- [45] L-42660, August 30, 1982, 116 SCRA 193.
- [46] *Anciro v. People*, G.R. No. 107819, December 17, 1993, 228 SCRA 629.
- [47] REVISED PENAL CODE, Art. 13, par. 2.
- [48] *Ibid.*, Art. 63, par. 2.

[49] People v. Asturias, G.R. No. 61126, January 30, 1985, 134 SCRA 405.

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