

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LARRY MAHINAY Y AMPARADO, ACCUSED-APPELLANT.*G.R. No. 122485. February 01, 1999*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-122485/>**PER CURIAM:**

A violation of the dignity, purity and privacy of a child who is still innocent and unexposed to the ways of worldly pleasures is a harrowing experience that destroys not only her future but of the youth population as well, who in the teachings of our national hero, are considered the hope of the fatherland. Once again, the Court is confronted by another tragic desecration of human dignity, committed no less upon a child, who at the salad age of a few days past 12 years, has yet to knock on the portals of womanhood, and met her untimely death as a result of the "intrinsically evil act" of non-consensual sex called rape. Burdened with the supreme penalty of death, rape is an ignominious crime for which necessity is neither an excuse nor does there exist any other rational justification other than lust. But those who lust ought not to lust.

The Court quotes with approval from the People's Brief, the facts narrating the horrible experience and the tragic demise of a young and innocent child in the bloody hands of appellant, as such facts are ably supported by evidence on record:[1] *

"Appellant Larry Mahinay started working as houseboy with Maria Isip on November 20, 1993. His task was to take care of Isip's house which was under construction adjacent to her old residence situated inside a compound at No. 4165 Dian Street, Gen. T. de Leon, Valenzuela, Metro Manila. But he stayed and slept in an apartment also owned by Isip, located 10 meters away from the unfinished house (TSN, September 6, 1995, pp. 5-10).

"The victim, Ma. Victoria Chan, 12 years old, was Isip's neighbor in Dian Street. She used to pass by Isip's house on her way to school and play inside the compound yard, catching maya birds together with other children. While they were playing, appellant was always around washing his clothes. Inside the compound yard was a septic tank (TSN, August 22, 1995, pp. 29-31; September 6, 1995, pp. 17; 20-22).

"On June 25, 1995, at 8 o'clock a.m., appellant joined Gregorio Rivera in a drinking spree. Around 10 o'clock in the morning, appellant, who was already drunk, left Gregorio Rivera and asked permission from Isip to go out with his friends (TSN, September 6, 1995, pp. 9-11).

"Meantime, Isip's sister-in-law, Norgina Rivera, who also owned a store fronting the compound, saw Ma. Victoria on that same day three to four times catching birds inside Isip's unfinished house around 4 o'clock in the afternoon. The unfinished house was about 8 meters away from Rivera's store (TSN, September 18, 1995, pp. 9-11).

"On the other hand, Sgt. Roberto Suni, also a resident of Dian Street, went to his in-law's house between 6 to 7 o'clock p.m. to call his office regarding changes on the trip of President Fidel V. Ramos. The house of his in-laws was near the house of Isip. On his way to his in-law's house, Sgt. Suni met appellant along Dian Street. That same evening, between 8 to 9 o'clock p.m., he saw Ma. Victoria standing in front of the gate of the unfinished house (TSN, September 27, 1995, pp. 3-7; 14-17).

"Later, at 9 o'clock in the evening, appellant showed up at Norgina Rivera's store to buy lugaw. Norgina Rivera informed appellant that there was none left of it. She notice that appellant appeared to be uneasy and in deep thought. His hair was disarrayed; he was drunk and was walking in a dazed manner. She asked why he looked so worried but he did not answer. Then he left and walked back to the compound (TSN, September 18, 1995, pp. 4-8; 12-14).

"Meanwhile, Elvira Chan noticed that her daughter, Ma. Victoria, was missing. She last saw her daughter wearing a pair of white shorts, brown belt, a yellow hair ribbon, printed blue blouse, dirty white panty, white lady sando and blue rubber slippers (TSN, August 23, 1995, pp. 22, 33).

"Isip testified that appellant failed to show up for supper that night. On the following day, June 26, 1995, at 2 o'clock in the morning, appellant boarded a passenger jeepney driven by Fernando Trinidad at the talipapa. Appellant alighted at the top of the bridge of the North Expressway and had thereafter disappeared (TSN, September 20, 1995, pp. 4-9; September 27, 1995; pp. 14-17).

"That same morning, around 7:30, a certain Boy found the dead body of Ma. Victoria inside the septic tank. Boy immediately reported what he saw to the victim's parents, Eduardo and Elvira Chan (TSN, September 6, 1995, p. 13).

"With the help of the Valenzuela Police, the lifeless body of Ma. Victoria was retrieved from the septic tank. She was wearing a printed blouse without underwear. Her face bore bruises. Results of the autopsy revealed the following findings:

Cyanosis, lips and nailbeds,

Contusions, supra pubic area, 6.0 x 3.0 cm., thigh right,

Anterior aspect, middle third, 4.5 x 3.0 cm.

Contused-abrasions on the forehead, 5.0 x 5.0 cm, angle of the left eye, lateral aspect, 2.5 x 1.5 cm. left jaw, 13.5 x 7.0 cm. neck, antero-lateral aspect, right, 2.0 x 1.0 cm. and left, 7.0 x 6.0 cm., left iliac area, 9.0 x 5.5 cm. intraclavicular area, left, posterior aspect, 4.0 x 2.0 cm. scapular area, right 4.0 x 4.0 cm. subscapular area, left, 1.5 x 1.5 cm. lumbar area, left 7.0 x 8.0 cm. arm, left, posterior aspect, middle third, 11.00 x 4.0 cm. elbows, right, 4.0 x 3.0 cm. and left 6.0 x 5.0 cm. forearms, left, posterior aspect, lower rd, 5.2 x 4.0 cm. hand, left, dorsal aspect, 0.8 x 0.9 cm. thighs; right antero-lateral aspect, upper 33[rd], 12.0 x 10.0 cm. right anterior aspect, lower 3[rd] 5.0 x 2.0 cm. and left antero-lower 3[rd] , 5.5 x 2.5 cm. knee, right, lateral aspect, 1.5 x 1.0 cm. lateral mallcolum, left, 3.0 x 3.5 cm. foot, left, dorsal aspect 2.2 x 1.0 cm.

Hematoma, forehead, and scalp, left, 3.5 x 3.0 cm.

Hemorrhage, interstitial, underneath nailmarks, neck, subepicardial, subpleural petechial hemorrhages.

Hemorrhage, subdural, left fronto-parietal area.

Tracheo-bronchial tree, congested.

Other visceral organs, congested.

Stomach, contain 1/4 rice and other food particles.

CAUSE OF DEATH - Asphyxia by Manual Strangulation; Traumatic Head Injury, Contributory.

REMARKS: Hymen: tall, thick with complete lacerations at 4:00 and 8:00 o'clock position corresponding to the face of a watch edges congested with blood clots. (TSN, August 18, 1995; p. 4; Record, p. 126)

"Back in the compound, SPO1 Arsenio Nacis and SPO1 Arnold Alabastro were informed by Isip that her houseboy, appellant Larry Mahinay, was missing. According to her, it was unlikely for appellant to just disappear

from the apartment since whenever he would go out, he would normally return on the same day or early morning of the following day (TSN, September 6, 1995, pp. 6-11-27).

"SPO1 Nacis and SPO1 Alabastro were also informed that a townmate of appellant was working in a pancit factory at Barangay Reparo, Caloocan City. They proceeded to said place. The owner of the factory confirmed to them that appellant used to work at the factory but she did not know his present whereabouts. Appellant's townmate, on the other hand, informed them that appellant could possibly be found on 8[th] Street, Grace Park, Caloocan City (TSN, August 14, 1995, pp. 8-9).

"The policemen returned to the scene of the crime. At the second floor of the house under construction, they retrieved from one of the rooms a pair of dirty white short pants, a brown belt and a yellow hair ribbon which was identified by Elvira Chan to belong to her daughter, Ma. Victoria. They also found inside another room a pair of blue slippers which Isip identified as that of Appellant. Also found in the yard, three armslength away from the septic tank were an underwear, a leather wallet, a pair of dirty long pants and a pliers positively identified by Isip as appellant's belongings. These items were brought to the police station (TSN, August 14, 1995, pp. 10-13; August 18, 1995, pp. 3-8; August 23, 1995, pp. 21-25).

"A police report was subsequently prepared including a referral slip addressed to the office of the Valenzuela Prosecutor. The next day, SPO1 Virgilio Villano retrieved the victim's underwear from the septic tank (TSN, August 23, 1995, pp. 3-8; 14-17).

"After a series of follow-up operations, appellant was finally arrested in Barangay Obario Matala, Ibaan, Batangas. He was brought to Valenzuela Police Station. On July 7, 1995, with the assistance of Atty. Restituto Viernes, appellant executed an extra-judicial confession wherein he narrated in detail how he raped and killed the victim. Also, when appellant came face to face with the victim's mother and aunt, he confided to them that he was not alone in raping and killing the victim. He pointed to Zaldy and Boyet as his co-conspirators (TSN, August 14, 1995, pp. 13-21)."

Thus, on July 10, 1995, appellant was charged with rape with homicide in an Information which reads:[2]

"That on or about the 26[th] day of June 1995 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused, by means of force and intimidation employed upon the person of MARIA VICTORIA CHAN y CABALLERO, age 12 years old, did then and there wilfully, unlawfully and feloniously lie with and have sexual intercourse with said MARIA VICTORIA CHAN y CABALLERO against her will and without her consent; that on the occasion of said sexual assault, the above-named accused, choke and strangle said MARIA VICTORIA CHAN y CABALLERO as a result of which, said victim died.

"Contrary to law."[3]

to which he pleaded not guilty. After trial, the lower court rendered a decision convicting appellant of the crime charged, sentenced him to suffer the penalty of death and to pay a total of P73,000.00 to the victim's heirs. The dispositive portion of the trial court's decision states:

"WHEREFORE, finding accused Larry Mahinay y Amparado guilty beyond reasonable doubt of the crime charged, he is hereby sentenced to death by electricution (sic). He is likewise condemned to indemnify the heirs of the victim, Ma. Victoria Chan the amount of P50,000.00 and to pay the further sum of P23,000.00 for the funeral, burial and wake of the victim.

"Let the complete records of the case be immediately forwarded to the Honorable Supreme Court for the automatic review in accordance to Article 47 of the Revised Penal Code as amended by Section 22 of Republic Act No. 7659.

"SO ORDERED." [4]

Upon automatic review by the court en banc pursuant to Article 47 of the Revised Penal Code (RPC), as amended, [5] appellant insists that the circumstantial evidence presented by the prosecution against him is insufficient to prove his guilt beyond reasonable doubt. In his testimony summarized by the trial court, appellant offered his version of what transpired as follows:

"(T)hat on June 25, 1995, around 9:30 a.m. on Dian Street, Gen. T. de Leon, Valenzuela, Metro Manila, he joined Gregorio Rivera and a certain Totoy in a drinking spree. Gregorio Rivera is the brother of Maria Isip, appellant's employer. After consuming three cases of red horse beer, he was summoned by Isip to clean the jeepney. He finished cleaning the jeepney at 12 o'clock noon. Then he had lunch and took a bath. Later, he asked permission from Isip to go out with his friends to see a movie. He also asked for a cash advance of P300.00 (TSN, October 16, 1995, pp. 4-5).

"At 2 o'clock in the afternoon, appellant, instead of going out with his friend, opted to rejoin Gregorio Rivera and Totoy for another drinking session. They consumed one case of red horse beer. Around 6 o'clock p.m., Zaldy, a co-worker, fetched him at Gregorio Rivera's house. They went to Zaldy's house and bought a bottle of gin. They finished drinking gin around 8 o'clock p.m. After consuming the bottle of gin, they went out and bought another bottle of gin from a nearby store. It was already 9 o'clock in the evening. While they were at the store, appellant and Zaldy met Boyet. After giving the bottle of gin to Zaldy and Boyet, appellant left (TSN, October 16, 1995, pp. 6-7).

"On his way home, appellant passed by Norgina Rivera's store to buy lugaw. Norgina Rivera informed him that there was none left of it. He left the store and proceeded to Isip's apartment. But because it was already closed, he decided to sleep at the second floor of Isip's unfinished house. Around 10 o'clock p.m., Zaldy and Boyet arrived carrying a cadaver. The two placed the body inside the room where appellant was sleeping. As appellant stood up, Zaldy pointed to him a knife. Zaldy and Boyet directed him to rape the dead body of the child or they would kill him. He, However, refused to follow. Then, he was asked by Zaldy and Boyet to assist them in bringing the dead body downstairs. He obliged and helped dump the body into the septic tank. Thereupon, Zaldy and Boyet warned him that should they ever see him again, they would kill him. At 4 o'clock the following morning, he left the compound and proceeded first to Navotas and later to Batangas (TSN, October 16, 1995, pp. 4-13).

"Subsequently, appellant was apprehended by the police officers in Ibaan, Batangas. The police officers allegedly brought him to a big house somewhere in Manila. There, appellant heard the police officer's plan to salvage him if he would not admit that he was the one who raped and killed the victim. Scared, he executed an extra-judicial confession. He claimed that he was assisted by Atty. Restituto Viernes only when he was forced to sign the extra-judicial confession (TSN, October 16, 1995, pp. 9-11)." [6]

This being a death penalty case, the Court exercises the greatest circumspection in the review thereof since "there can be no stake higher and no penalty more severe x x x than the termination of a human life." [7] For life, once taken is like virginity, which once defiled can never be restored. In order therefore, that appellant's guilty mind be satisfied, the Court states the reasons why, as the records are not shy, for him to verify.

The proven circumstances of this case when juxtaposed with appellant's proffered excuse are sufficient to sustain his conviction beyond reasonable doubt, notwithstanding the absence of any direct evidence relative to the commission of the crime for which he was prosecuted. Absence of direct proof does not necessarily absolve him from any liability because under the Rules on evidence [8] and pursuant to settled jurisprudence, [9] conviction may be had on circumstantial evidence provided that the following requisites concur:

- there is more than one circumstance;

- the facts from which the inferences are derived are proven; and
- the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Simply put, for circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt.[10] Facts and circumstances consistent with guilt and inconsistent with innocence, constitute evidence which, in weight and probative force, may surpass even direct evidence in its effect upon the court.[11]

In the case at bench, the trial court gave credence to several circumstantial evidence, which upon thorough review of the Court is more than enough to prove appellant's guilt beyond the shadow of reasonable doubt. These circumstantial evidence are as follows:

"FIRST - Prosecution witness Norgina Rivera, sister-in-law of Maria Isip, owner of the unfinished big house where the crime happened and the septic tank where the body of Maria Victoria Chan was found in the morning of June 26, 1995 is located, categorically testified that at about 9:00 in the evening on June 25, 1995, accused Larry Mahinay was in her store located in front portion of the compound of her sister-in-law Maria Isip where the unfinished big house is situated buying rice noodle (lugaw). That she noticed the accused's hair was disarranged, drunk and walking in sigsaging manner. That the accused appeared uneasy and seems to be thinking deeply. That the accused did not reply to her queries why he looked worried but went inside the compound.

"SECOND - Prosecution witness Sgt. Roberto G. Suni, categorically, testified that on June 25, 1995 between 6:00 and 7:00 in the evening, on his way to his in-law's house, he met accused Larry Mahinay walking on the road leading to his in-law's residence which is about 50 to 75 meters away to the unfinished big house of Maria Isip. That he also saw victim Maria Victoria Chan standing at the gate of the unfinished big house of Maria Isip between 8:00 and 9:00 in the same evening.

"THIRD - Prosecution witness Maria Isip, owner of the unfinished big house where victim's body was found inside the septic tank, testified that accused Larry Mahinay is her houseboy since November 20, 1993. That in the morning of June 25, 1995, a Sunday, Larry Mahinay asked permission from her to leave. That after finishing some work she asked him to do accused Larry Mahinay left. That it is customary on the part of Larry Mahinay to return in the afternoon of the same day or sometimes in the next morning. That accused Larry Mahinay did not return until he was arrested in Batangas on July 7, 1995.

"FOURTH - Prosecution witness Fernando Trinidad, a passenger jeepney driver plying the route Karuhatan-Ugong and vice versa which include Diam St., Gen. T. de Leon, Valenzuela, Metro Manila, pinpointed the accused Larry Mahinay as one of the passengers who boarded his passenger jeepney on June 26, 1995 at 2:00 early morning and alighted on top of the overpass of the North Expressway.

"FIFTH - Personal belongings of the victim was found in the unfinished big house of Maria Isip where accused Larry Mahinay slept on the night of the incident. This is a clear indication that the victim was raped and killed in the said premises.

"There is no showing that the testimonies of the prosecution witnesses (sic) fabricated or there was any reason for them to testify falsely against the accused. The absence of any evidence as to the existence of improper motive sustain the conclusion that no such improper motive exists and that the testimonies of the witnesses, therefore, should be given full faith and credit. (People vs. Retubado, 58585 January 20, 1988 162 SCRA 276, 284; People vs. Ali L-18512 October 30, 1969, 29 SCRA 756).

"SIXTH - Accused Larry Mahinay during the custodial investigation and after having been informed of his constitutional rights with the assistance of Atty. Restituto Viernes of the Public Attorney's Office voluntarily

gave his statement admitting the commission of the crime. Said confession of accused Larry Mahinay given with the assistance of Atty. Restituto Viernes is believed to have been freely and voluntarily given. That accused did not complain to the proper authorities of any maltreatment on his person (People vs. delos Santos L-3398 May 29, 1984; 150 SCRA 311). He did not even inform the Inquest Prosecutor when he sworn to the truth of his statement on July 8, 1995 that he was forced, coerced or was promised of reward or leniency. That his confession abound with details known only to him. The Court noted that a lawyer from the Public Attorneys Office Atty. Restituto Viernes and as testified by said Atty. Viernes he informed and explained to the accused his constitutional rights and was present all throughout the giving of the testimony. That he signed the statement given by the accused. Lawyer from the Public Attorneys Office is expected to be watchful and vigilant to notice any irregularity in the manner of the investigation and the physical conditions of the accused. The post mortem findings show that the cause of death Asphyxia by manual strangulation; Traumatic Head injury Contributory substantiate. Consistent with the testimony of the accused that he pushed the victim and the latter's head hit the table and the victim lost consciousness.

"Pagpasok niya sa kuwarto, hinawakan ko siya sa kamay tapos tinulak ko siya, tapos tumama iyong ulo niya sa mesa. Ayon na, nakatulog na siya tapos ni-rape ko na siya."

"There is no clear proof of maltreatment and/or tortured in giving the statement. There were no medical certificate submitted by the accused to sustain his claim that he was mauled by the police officers.

There being no evidence presented to show that said confession were obtained as a result of violence, torture, maltreatment, intimidation, threat or promise of reward or leniency nor that the investigating officer could have been motivated to concoct the facts narrated in said affidavit; the confession of the accused is held to be true, correct and freely or voluntarily given. (People v. Tuazon 6 SCRA 249; People v. Tiongson 6 SCRA 431, People v. Baluran 52 SCRA 71, People v. Pingol 35 SCRA 73.)

"SEVENTH - Accused Larry Mahinay testified in open Court that he was not able to enter the apartment where he is sleeping because it was already closed and he proceeded to the second floor of the unfinished house and slept. He said while sleeping Zaldy and Boyet arrived carrying the cadaver of the victim and dumped it inside his room. That at the point of a knife, the two ordered him to have sex with the dead body but he refused. That the two asked him to assist them in dumping the dead body of the victim in the septic tank downstairs. (Tsn pp8-9 October 16, 1995). This is unbelievable and unnatural. Accused Larry Mahinay is staying in the apartment and not in the unfinished house. That he slept in the said unfinished house only that night of June 25, 1995 because the apartment where he was staying was already closed. The Court is at a loss how would Zaldy and Boyet knew he (Larry Mahinay) was in the second floor of the unfinished house.

"Furthermore, if the child is already dead when brought by Zaldy and Boyet in the room at the second floor of the unfinished house where accused Larry Mahinay was sleeping, why will Boyet and Zaldy still brought the cadaver upstairs only to be disposed/dumped later in the septic tank located in the ground floor. Boyet and Zaldy can easily dispose and dump the body in the septic tank by themselves.

"It is likewise strange that the dead body of the child was taken to the room where accused Larry Mahinay was sleeping only to force the latter to have sex with the dead body of the child.

"We have no test to the truth of human testimony except it's conformity to aver knowledge observation and experience. Whatever is repugnant to these belongs to the miraculous. (People vs. Santos L-385 Nov. 16, 1979)"

"EIGHT - If the accused did not commit the crime and was only forced to dispose/dumped the body of the victim in the septic tank, he could have apprise Col. Maganto, a high ranking police officer or the lady reporter who interviewed him. His failure and omission to reveal the same is unnatural. An innocent person will at once naturally and emphatically repel an accusation of crime as a matter of preservation and self-defense and as a

precaution against prejudicing himself. A person's silence therefore, particularly when it is persistent will justify an inference that he is not innocent. (People vs. Pilonos, L-32754-5 July 21, 1978).

"NINTH - The circumstance of flight of the accused strongly indicate his consciousness of guilt. He left the crime scene on the early morning after the incident and did not return until he was arrested in Batangas on July 7, 1995." [12]

Guided by the three principles in the review of rape cases, to wit: [13]

- 1). An accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;
- 2). In view of the intrinsic nature of the crime of rape, where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and
- 3). The evidence of the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.

the foregoing circumstantial evidence clearly establishes the felony of rape with homicide defined and penalized under Section 335 of the Revised Penal Code, as amended by Section 11, R.A. 7659, which provides:

"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 or is demented.

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.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- 1.)

When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

- 2.)

When the victim is under the custody of the police or military authorities.

- 3.)

When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

4.)

When the victim is a religious or a child below seven (7) years old.

5.)

When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

6.)

When committed by any member of the Armed Forces of the Philippines or Philippine National Police or any law enforcement agency.

7.)

When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.[14]

At the time of the commission of this heinous act, rape was still considered a crime against chastity,[15] although under the Anti-Rape Law of 1997 (R.A. No. 8353), rape has since been re-classified as a crime against persons under Articles 266-A and 266-B, and thus, may be prosecuted even without a complaint filed by the offended party.

The gravamen of the offense of rape, prior to R.A. 8353, is sexual congress with a woman by force and without consent.[16] (Under the new law, rape may be committed even by a woman and the victim may even be a man.)[17] If the woman is under 12 years of age, proof of force and consent becomes immaterial[18] not only because force is not an element of statutory rape,[19] but the absence of a free consent is presumed when the woman is below such age. Conviction will therefore lie, provided sexual intercourse is proven. But if the woman is 12 years of age or over at the time she was violated, as in this case, not only the first element of sexual intercourse must be proven but also the other element that the perpetrator's evil acts with the offended party was done through force, violence, intimidation or threat needs to be established. Both elements are present in this case.

Based on the evidence on record, sexual intercourse with the victim was adequately proven. This is shown from the testimony of the medical doctor who conducted post mortem examination on the child's body:

Q: And after that what other parts of the victim did you examine?

A: Then I examined the genitalia of the victim.

Q: And what did you find out after you examined the genitalia of the victim?

A: The hymen was tall-thick with complete laceration at 4:00 o'clock and 8:00 o'clock position and that the edges were congested.

Q: Now, what might have caused the laceration?

A: Under normal circumstances this might have (sic) caused by a penetration of an organ.

Q: So, the laceration was caused by the penetration of a male organ?

A: Adult male organ, sir.

Q: You are very sure of that, Mr. Witness?

A: I am very sure of that.[20]

Besides, as may be gleaned from his extrajudicial confession, appellant himself admitted that he had sexual congress with the unconscious child.

"15. T:

Ano ang nangyari ng mga sandali o oras na iyon?

S:

Natutulog po ako sa itaas ng bahay ni ATE MARIA, yung malaking bahay na ginagawa, tapos dumating yung batang babae. Pag-pasok niya sa kuwarto hinawakan ko siya sa kamay tapos tinulak ko siya. Tapos tumama yung ulo niya sa mesa. Ayon na, nakakatulog na siya tapos ni rape ko na siya.

"16. T:

Ano ang suot nung batang babae na sinasabi mo?

S:

Itong short na ito, (pointing to a dirty white short placed atop this investigator's table. Subject evidence were part of evidences recovered at the crime scene).

"17. T:

Bakit mo naman ni rape yung batang babae?

S:

Eh nasobrahan ako ng lasing. Hindi ko na alam ang ginagawa ko.

"18. T:

Ano ba ang inyong ininom bakit ka nasobrahan ng lasing?

S:

Red Horse po at saka GIN.

"19. T:

Saan lugar ng malaking bahay ni ATE MARIA mo ni rape yung batang babae?

S:

Sa kuwarto ko po sa itaas.

"20. T:

Kailan ito at anong oras nangyari?

S:

Mga bandang alas 8:00 ng gabi, araw ng Linggo, hindi ko na matandaan kung anong petsa, basta araw ng Linggo.

"21 T:

Saan lugar ito nangyari?

S:

Sa Diam, Gen. T. de Leon, Valenzuela, M.M.

"22. T:

Alam mo na ba ang pangalan ng batang babae na ni rape mo?

S:

Hindi ko po alam.

"23 T:

Ngayon, nais kong ipaalam sa iyo na ang pangalan ng batang babae na iyong ni rape at pinatay ay si MA. VICTORIA CHAN? Matatandaan mo ba ito?

S:

Oho.

"24. T:

Nung ma-rape mo, nakaraos ka ba?

S:

Naka-isa po.

"25. T:

Nais kong liwanagin sa iyo kung ano ang ibig sabihin ng 'NAKARAOS', maaari bang ipaliwanag mo ito?

S:

Nilabasan po ako ng tamod.

"26. T:

Nung nakaraos ka, nasaan parte ng katawan ng batang babae yung iyong ari?

S:

Nakapasok po doon sa ari nung babae.

"27. T:

Natapos mong ma-rape si MA. VICTORIA CHAN, ano pa ang sumunod mong ginawa?

S:

Natulak ko siya sa terrace.

"28. T:

Ano ang nangyari kay MA. VICTORIA matapos mong itulak sa terrace?

S:

Inilagay ko po sa poso-negra.

"29. T:

Saan makikita yung poso-negra na sinasabi mo?

S:

Doon din sa malaking bahay ni ATE MARIA.

"30. T:

Bakit mo namang naisipang ilagay si MA. VICTORIA sa poso-negra?

S:

Doon ko lang po inilagay.

"31 T:

Bakit nga doon mo inilagay siya?

S:

Natatakot po ako.

"32. T:

Kanino ka natatakot?

S:

Natatakot po ako sa ginawa kong masama, natatakot ako sa mga pulis.

"33. T:

Buhay pa ba si MA. VICTORIA nung ilagay mo siya sa poso-negra?

S:

Hindi ko po alam dahil nung pagbagsak niya inilagay ko na siya sa poso-negra.

"34. T:

Nung gawin mo ba itong krimen na ito, mayroon ka kasama?

S:

Nag-iisa lang po ako.

"35. T:

Noong mga oras o sandaling gahasain mo si MA. VICTORIA CHAN, buhay pa ba siya o patay na?

S:

Buhay pa po.

"36. T:

Papaano mo siya pinatay?

S:

Tinulak ko nga po siya sa terrace."[21]

In proving sexual intercourse, it is not full or deep penetration of the victim's vagina; rather the slightest

penetration of the male organ into the female sex organ is enough to consummate the sexual intercourse.[22] The mere touching by the male's organ or instrument of sex of the labia of the pudendum of the woman's private parts is sufficient to consummate rape.

From the wounds, contusions and abrasions suffered by the victim, force was indeed employed upon her to satisfy carnal lust. Moreover, from appellant's own account, he pushed the victim causing the latter to hit her head on the table and fell unconscious. It was at that instance that he ravished her and satisfied his salacious and prurient desires. Considering that the victim, at the time of her penile invasion, was unconscious, it could safely be concluded that she had not given free and voluntary consent to her defilement, whether before or during the sexual act.

Another thing that militates against appellant is his extrajudicial confession, which he, however, claims was executed in violation of his constitutional right to counsel. But his contention is belied by the records as well as the testimony of the lawyer who assisted, warned and explained to him his constitutionally guaranteed pre-interrogatory and custodial rights. As testified to by the assisting lawyer:

"Q -

Will you please inform the Court what was that call about?

"A -

We went to the station, police investigation together with Atty. Froilan Zapanta and we were told by Police Officer Alabastro that one Larry Mahinay would like to confess of the crime of, I think, rape with homicide.

"Q -

And upon reaching the investigation room of Valenzuela PNP who were the other person present?

"A -

Police Officer Alabastro, sir, Police Officer Nacis and other investigator inside the investigation room and the parents of the child who was allegedly raped.

"Q-

And when you reached the investigation room do you notice whether the accused already there?

"A -

The accused was already there.

"Q -

Was he alone?

"A -

he was alone, sir.

"Q -

So, when you were already in front of SPO1 Arnold Alabastro and the other PNP Officers, what did they tell you, if any?

"A -

They told us together with Atty. Zapanta that this Larry Mahinay would like to confess of the crime charged, sir.

"Q -

By the way, who was that Atty. Zapanta?

"A -

Our immediate Superior of the Public Attorney's Office.

"Q -

Was he also present at the start of the question and answer period to the accused?

"A -

No more, sir, he already went to our office. I was left alone.

"Q -

But he saw the accused, Larry Mahinay?

"A -

Yes, sir.

"Q -

Now, when Atty. Zapanta left at what time did the question and answer period start?

"A -

If I am not mistaken at around 4:05 of July 7, 1995 in the afternoon, sir.

"Q -

And when this question and answer period started, what was the first thing that you did as assisting lawyer to the accused?

"A -

First, I tried to explain to him his right, sir, under the constitution.

"Q -

What are those right?

"A -

That he has the right to remain silent. That he has the right of a counsel of his own choice and that if he has no counsel a lawyer will be appointed to him and that he has the right to refuse to answer any question that would incriminate him.

"Q -

Now, after enumerating these constitutional rights of accused Larry Mahinay, do you recall whether this constitutional right enumerated by you were reduced in writing?

"A -

Yes, sir, and it was also explained to him one by one by Police Officer Alabastro.

"Q -

I show to you this constitutional right which you said were reduced into writing, will you be able to recognize the same?

"A -

Yes, sir.

"Q -

Will you please go over this and tell the Court whether that is the same document you mentioned?

"A -

Yes, sir, these were the said rights reduced into writing.

ATTY. PRINCIPE:

May we request, Your Honor, that this document be marked as our Exhibit A proper.

"Q -

Do you recall after reducing into writing this constitutional right of the accused whether you asked him to sign to acknowledge or to conform?

"A -

I was the one who asked him, sir. It was Police Officer Alabastro.

"Q -

But you were present?

"A -

I was then present when he signed.

"Q -

There is a signature in this constitutional right after the enumeration, before and after there are two (2) signatures, will you please recognize the two (2) signatures?

"A -

These were the same signatures signed in my presence, sir.

"Q -

The signature of whom?

"A -

The signature of Larry Mahinay, sir.

"ATTY. PRINCIPE:

May we request, Your Honor, that the two (2) signatures identified by my compañero be encircled and marked as Exhibit A-1 and A-2.

"Q -

After you said that you apprised the accused of his constitutional right explaining to him in Filipino, in local dialect, what was the respond of the accused?

"A-

Larry Mahinay said that we will proceed with his statement.

"Q -

What was the reply?

"A -

He said "Opo".

"Q -

Did you ask him of his educational attainment?

"A -

It was the Police Officer who asked him.

"Q -

In your presence?

"A -

In my presence, sir.

"Q -

And when he said or when he replied "Opo" so the question started?

"A -

Yes, sir.

"Q -

I noticed in this Exhibit A that there is also a waiver of rights, were you present also when he signed this waiver?

"A -

Yes, sir, I was also present.

"Q -

Did you explain to him the meaning of this waiver?

"A -

I had also explained to him, sir.

"Q -

In Filipino?

"A -

In Tagalog, sir.

"Q -

And there is also a signature after the waiver in Filipino over the typewritten name Larry Mahinay, "Nagsasalaysay", whose signature is that?

"A -

This is also signed in my presence.

"Q -

Why are you sure that this is his signature?

"A -

He signed in my presence, sir.

"Q -

And below immediately are the two (2) signatures. The first one is when Larry Mahinay subscribed and sworn to, there is a signature here, do you recognize this signature?

"A -

This is my signature, sir.

"Q -

And immediately after your first signature is a Certification that you have personally examined the accused Larry Mahinay and testified that he voluntarily executed the Extra Judicial Confession, do you recognize the signature?

"A -

This is also my signature, sir." [23] (emphasis supplied).

Appellant's defense that two other persons brought to him the dead body of the victim and forced him to rape the cadaver is too unbelievable. In the words of Vice-Chancellor Van Fleet of New Jersey, [24]

"Evidence to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself- such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous, and is outside of judicial cognizance."

Ultimately, all the foregoing boils down to the issue of credibility of witnesses. Settled is the rule that the findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' department on the stand while testifying, which opportunity is denied to the appellate courts.[25] In this case, the trial court's findings, conclusions and evaluation of the testimony of witnesses is received on appeal with the highest respect,[26] the same being supported by substantial evidence on record. There was no showing that the court a quo had overlooked or disregarded relevant facts and circumstances which when considered would have affected the outcome of this case[27] or justify a departure from the assessments and findings of the court below. The absence of any improper or ill-motive on the part of the principal witnesses for the prosecution all the more strengthens the conclusion that no such motive exists.[28] Neither was any wrong motive attributed to the police officers who testified against appellant.

Coming now to the penalty, the sentence imposed by the trial court is correct. Under Article 335 of the Revised Penal Code (RPC), as amended by R.A. 7659 "when by reason or on occasion of the rape, a homicide is committed, the penalty shall be death." This special complex crime is treated by law in the same degree as qualified rape -- that is, when any of the 7 (now 10) "attendant circumstances" enumerated in the law is alleged and proven, in which instances, the penalty is death. In cases where any of those circumstances is proven though not alleged, the penalty cannot be death except if the circumstance proven can be properly appreciated as an aggravating circumstance under Articles 14 and 15 of the RPC which will affect the imposition of the proper penalty in accordance with Article 63 of the RPC. However, if any of those circumstances proven but not alleged cannot be considered as an aggravating circumstance under Articles 14 and 15, the same cannot affect the imposition of the penalty because Article 63 of the RPC in mentioning aggravating circumstances refers to those defined in Articles 14 and 15. Under R.A. No. 8353, if any of the 10 circumstances is alleged in the information/complaint, it may be treated as a qualifying circumstance. But if it is not so alleged, it may be considered as an aggravating circumstance, in which case the only penalty is death - subject to the usual proof of such circumstance in either case.

Death being a single indivisible penalty and the only penalty prescribed by law for the crime of "rape with homicide", the court has no option but to apply the same "regardless of any mitigating or aggravating circumstance that may have attended the commission of the crime"[29] in accordance with Article 63 of the RPC, as amended.[30] This case of rape with homicide carries with it penalty of death which is mandatorily imposed by law within the import of Article 47 of the RPC, as amended, which provides:

"The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen (18) years of age at the time of the commission of the crime or is more than seventy years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be reclusion perpetua." (emphasis supplied).

In an apparent but futile attempt to escape the imposition of the death penalty, appellant tried to alter his date of birth to show that he was only 17 years and a few months old at the time he committed the rape and thus, covered by the proscription on the imposition of death if the guilty person is below eighteen (18) years at the time of the commission of the crime.[31] Again, the record rebuffs appellant on this point considering that he was proven to be already more than 20 years of age when he did the heinous act.

Pursuant to current case law, a victim of simple rape is entitled to a civil indemnity of fifty thousand pesos (P50,000.00) but if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by present amended law, the civil indemnity for the victim shall be not less

than seventy-five thousand pesos (P75,000.00).[32] In addition to such indemnity, she can also recover moral damages pursuant to Article 2219 of the Civil Code[33] in such amount as the court deems just, without the necessity for pleading or proof of the basis thereof.[34] Civil Indemnity is different from the award of moral and exemplary damages.[35] The requirement of proof of mental and physical suffering provided in Article 2217 of the Civil Code is dispensed with because it is "recognized that the victim's injury is inherently concomitant with and necessarily resulting from the odious crime of rape to warrant per se the award of moral damages".[36] Thus, it was held that a conviction for rape carries with it the award of moral damages to the victim without need for pleading or proof of the basis thereof.[37]

Exemplary damages can also be awarded if the commission of the crime was attended by one or more aggravating circumstances pursuant to Article 2230 of the Civil Code[38] after proof that the offended party is entitled to moral, temperate and compensatory damages.[39] Under the circumstances of this case, appellant is liable to the victim's heirs for the amount of P75,000.00 as civil indemnity and P50,000.00 as moral damages.

Lastly, considering the heavy penalty of death and in order to ensure that the evidence against and accused were obtained through lawful means, the Court, as guardian of the rights of the people lays down the procedure, guidelines and duties which the arresting, detaining, inviting, or investigating officer or his companions must do and observe at the time of making an arrest and again at and during the time of the custodial interrogation[40] in accordance with the Constitution, jurisprudence and Republic Act No. 7438:[41] It is high-time to educate our law-enforcement agencies who neglect either by ignorance or indifference the so-called Miranda rights which had become insufficient and which the Court must update in the light of new legal developments:

- The person arrested, detained, invited or under custodial investigation must be informed in a language known to and understood by him of the reason for the arrest and he must be shown the warrant of arrest, if any; Every other warnings, information or communication must be in a language known to and understood by said person;
- He must be warned that he has a right to remain silent and that any statement he makes may be used as evidence against him;
- He must be informed that he has the right to be assisted at all times and have the presence of an independent and competent lawyer, preferably of his own choice;
- He must be informed that if he has no lawyer or cannot afford the services of a lawyer, one will be provided for him; and that a lawyer may also be engaged by any person in his behalf, or may be appointed by the court upon petition of the person arrested or one acting in his behalf;
- That whether or not the person arrested has a lawyer, he must be informed that no custodial investigation in any form shall be conducted except in the presence of his counsel or after a valid waiver has been made;
- The person arrested must be informed that, at any time, he has the right to communicate or confer by the most expedient means - telephone, radio, letter or messenger - with his lawyer (either retained or appointed), any member of his immediate family, or any medical doctor, priest or minister chosen by him or by any one from his immediate family or by his counsel, or be visited by/confer with duly accredited national or international non-government organization. It shall be the responsibility of the officer to ensure that this is accomplished;
- He must be informed that he has the right to waive any of said rights provided it is made voluntarily, knowingly and intelligently and ensure that he understood the same;
- In addition, if the person arrested waives his right to a lawyer, he must be informed that it must be done in writing AND in the presence of counsel, otherwise, he must be warned that the waiver is void even if he insist on his waiver and chooses to speak;

- That the person arrested must be informed that he may indicate in any manner at any time or stage of the process that he does not wish to be questioned with warning that once he makes such indication, the police may not interrogate him if the same had not yet commenced, or the interrogation must ceased if it has already begun;
- The person arrested must be informed that his initial waiver of his right to remain silent, the right to counsel or any of his rights does not bar him from invoking it at any time during the process, regardless of whether he may have answered some questions or volunteered some statements;
- He must also be informed that any statement or evidence, as the case may be, obtained in violation of any of the foregoing, whether inculpatory or exculpatory, in whole or in part, shall be inadmissible in evidence.

Four members of the Court - although maintaining their adherence to the separate opinions expressed in *People v. Echegaray*[42] that R.A. No. 7659, insofar as it prescribes the death penalty, is unconstitutional - nevertheless submit to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should accordingly be imposed.

WHEREFORE, the conviction of appellant is hereby **AFFIRMED** except for the award of civil indemnity for the heinous rape which is **INCREASED** to P75,000.00, PLUS P50,000.00 moral damages.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Martinez, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 146-154; Appellees Brief filed by the Solicitor General, pp. 2-10.

* Sic is no longer indicated so as not to clutter the narration and other quotations from the records and the transcript of Stenographic Notes (TSN).

[2] Information docketed as Criminal Case No. 4974-V-95 filed before the Regional Trial Court (RTC) of Valenzuela, Metro Manila.

[3] Rollo, p. 8; RTC Records, p. 2.

[4] Decision dated October 25, 1995 penned by Judge Adriano R. Osorio of Branch 171 of the RTC of Valenzuela; Rollo, p. 130.

[5] Article 47, Revised Penal Code, as amended by Section 22, R.A. 7659 provides: In what cases the death penalty shall not be imposed; automatic review of death penalty cases. - x x x In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment by the Court en banc, within twenty (20) days but not earlier than fifteen (15) days after promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter. (Emphasis supplied).

[6] Rollo, pp. 152-154.

[7] *People v. Galera*, 280 SCRA 492.

[8] Section 4, Rule 133, Revised Rules on Evidence.

[9] *People v. Rivera*, G.R. No. 117471, September 3, 1998; *People v. Quitariorio, et. al.*, G.R. No. 116765, January 28, 1998; *People v. Berroya*, 283 SCRA 111; *People v. Abrera*, 283 SCRA 1; *People v. Doro*, 282 SCRA 1; *People v. Dabbay*, 277 SCRA 432; *People v. Bonola*, 274 SCRA 238; *People v. Grefaldia*, 273 SCRA 591.

[10] *People v. De Guia*, 280 SCRA 141.

[11] *People v. Alberca*, 257 SCRA 613 citing *People v. Abitona*, 240 SCRA 335.

[12] Rollo, pp. 126-129; RTC Decision pp. 15-18.

[13] *People v. Gallo*, 284 SCRA (1998) 590.

[14] Article 335 of the Revised Penal Code (RPC), as amended by R.A. No. 7659 and further amended by R.A. No. 8353, was renumbered to Articles 266-A and 266-B of the RPC which reads:

Art. 266-A. Rape; When and how committed. - Rape is committed -

1.) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a.)

Through force, threat, or intimidation;

b.)

When the offended party is deprived of reason or otherwise unconscious;

c.)

By means of fraudulent machination or grave abuse of authority; and

d.)

When the offended party is under twelve years of age or is demented, even though none of the circumstances mentioned above be present.

2.) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Art. 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

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

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion perpetua to death.

"When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

"The death penalty shall also be imposed if the crime of rape is committed with any of the following

aggravating/qualifying circumstances:

1.)

When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

2.)

When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

3.)

When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third degree of consanguinity.

4.)

When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

5.)

When the victim is a child below seven (7) years old;

6.)

When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

7.)

When committed by any member of the Armed Forces of the Philippines or Philippine National Police or any law enforcement agency.

8.)

When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

9.)

When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

10.)

When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

"Rape under paragraph 2 of the next preceding Article shall be punished by prision mayor.

"Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prision mayor to reclusion temporal.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion

temporal.

"When the rape is attempted and the homicide is committed by reason or on occasion thereof, the penalty shall be reclusion temporal or reclusion perpetua.

"When by reason or on the occasion of the rape, homicide is committed, the penalty shall be reclusion perpetua.

"Reclusion temporal shall also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article."

[15] This case occurred after the passing of the Death Penalty Law (R.A. No. 7659) which took effect on December 31, 1993.

[16] *People v. Philip Tan, Jr.* 264 SCRA 425.

[17] Article 266-A, Revised Penal Code, as amended by R.A. No. 8353,

[18] *People v. Lagrosa, Jr.*, 230 SCRA 298; The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below twelve years of age. (*People v. Andres*, 253 SCRA 751).

[19] *People v. Abordo*, 328 Phil. 80; *People v. Oarga*, 328 Phil. 395; *People v. Ligotan*, 331 Phil 98.

[20] TSN, September 1, 1995, Dr. Antonio Vertido, pp. 18-19.

[21] Sinumpaang Salaysay of appellant Larry Mahinay, dated July 8, 1995; RTC Records p. 20.

[22] *People v. Ligotan*, 331 Phil 98; *People v. Lazaro*, 249 SCRA 234.

[23] TSN, August 11, 1995, morning session, Atty. Restituto Viernes, pp. 6-11.

[24] Cited in *Daggers v. Van Dyck*, 37 N.J. Eq., 130, 132; See also *People v. Cara*, 283 SCRA 96.

[25] *People v. Philip Tan, Jr.* 264 SCRA 425.

[26] *People v. Baccay*, 284 SCRA 296; *People v. Tenorio*, 284 SCRA 420.

[27] *People v. Dio*, 44 SCAD 559; *People v. Matrimonio*, 215 SCRA 613.

[28] *People v. Ravanes*, 284 SCRA 634.

[29] *People v. Ramos*, G.R. No. 129439, September 25, 1998.

[30] "Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, It shall be applied by the courts regardless of any mitigating or aggravating circumstance that may have attended the commission of the deed. X x x"

[31] Article 47, RPC, as amended.

[32] *People v. Perez*, G.R. No. 122764, September 24, 1998; *People v. Bernaldez*, G.R. No. 109780, August 17, 1998 citing *People v. Victor y Penis*, G.R. No. 127903, July 9, 1998.

[33] "Moral damages may be recovered in the following and analogous cases:

x x x x x x x x

(3) seduction, abduction, rape or other lascivious acts;

x x x x x x x x

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this Article, may also recover moral damages."

[34] *People v. De los Santos*, G.R. No. 121906, September 17, 1998; *People v. Victor y Penis*, *supra*.

[35] *People v. Prades*, G.R. No. 127569, July 30, 1998 cited in *People v. Mostrales*, G.R. No. 125937, August 28, 1998.

[36] *People v. Perez*, *supra*.

[37] *People v. Bartolome*, G.R. No. 129054, September 29, 1998 citing *People v. Prades*, *People v. Alfeche*, G.R. No. 124213, August 17, 1998; See also Article 2219(3), New Civil Code.

[38] *People v. Bernaldez*, *supra*.

[39] *People v. Ramos*, G.R. No. 129439, September 25, 1998; *People v. Tabugoca*, 285 SCRA 312.

[40] *People v. Dicierdo*, 149 SCRA 496.

[41] Under R.A. No. 7438 (AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING, AND INVESTIGATING OFFICERS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF) which took effect only on July 7, 1992, "custodial investigation" includes the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed.

[42] 267 SCRA 682 (1997).

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