

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO BRIGILDO, ACCUSED-APPELLANT.

G.R. No. 124129. January 28, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For automatic review is the consolidated Decision of the Regional Trial Court, Ormoc City, Branch 12, dated November 7, 1995, in Criminal Cases No. 4591-0 and No. 4607-0, for Rape; and No. 4606-0 for Attempted Rape allegedly committed by appellant Domingo Brigildo against complainant Marites Belic, the youngest daughter of his common-law spouse, Alfreda Mabale. He was acquitted of the charge of attempted rape. But the trial court found him guilty of two counts of rape, for which he was twice sentenced to death.

The accusatory portion of the Information in Criminal Case No. 4591-0 for Rape reads:

"That on or about the 30th day of March 1994, at Purok Bangkal, Barangay Anislag, Municipality of Isabel, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there wilfully (sic), unlawfully and feloniously have carnal knowledge of the herein offended party MARITES BELIC, his step daughter who is 11 years old, against her will and without her consent, by holding her arms and removing her panty, pin down to the ground, lock her limb (sic), lay on top of the victim, insert his penis over (sic) the victim's genital organ to accomplish his lewd design, to her damage and prejudice.

"CONTRARY TO LAW."[1]

In Criminal Case No. 4606-0 for Attempted Rape, the Information charged:

"That on or about the 3rd day of November 1994, at Purok Bangkal, Barangay Anislag, Municipality of Isabel, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs, did then and there wilfully (sic), unlawfully and feloniously with force and intimidation, touched (sic) the shoulder and vagina of the herein offended party MARITES BELIC, his step-daughter who is 11 years old, whereupon accused proceeded to perpetrate the initial acts of sexual intercourse with her, all these against the latter's tenacious desistance (sic), the accused thereby commencing the commission of the crime of rape directly by overt acts but nevertheless, unable to perform all the acts of execution which would have produced the crime of rape as a consequence by reason of causes other than accused's spontaneous desistance, the victim reported to her mother about the accused (sic) malicious intention, giving her the chance to escape.

"CONTRARY TO LAW."[2]

In Criminal Case No. 4607-0 for Rape, the Information alleged:

"That on or about the month of October 1994, at Purok Bangkal, Barangay Anislag, Municipality of Isabel, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully (sic), unlawfully, and feloniously have carnal

knowledge of the herein offended party MARITES BELIC, his step-daughter who is 11 years old, against her will and without her consent, and while she was in the copra drier in a (sic) broad daylight where the accused took a sack and there the victim was made to lie down, the accused lay on top of her, insert (sic) his penis over (sic) the victim's genital organ to accomplish his lewd design, to her damage and prejudice.

"CONTRARY TO LAW."[3]

When arraigned, appellant Domingo Brigildo, assisted by counsel, pleaded not guilty to the charges. Trial on the merits ensued.

As the charges were founded on a common set of facts, which formed a series of offenses and involved the use of common evidence, the cases were tried jointly.

The trial court synthesized the evidence for the prosecution as follows:

"The first witness for the government Dr. Refelina Cerillo, Rural Health Physician of Isabel, Leyte testified that on December 14, 1994, she conducted an examination on one Marites Belic and reduced her findings into writing. The Medical Certificate issued to Marites Belic was marked as Exhibit "A". She stated in the second paragraph of Exhibit "A" the [g]enital findings: Pubic hair absent labia majora & minora to (sic) slightly coaptated. Hymenal opening no longer intact with healed hymenal tear correspondent to the 7:00 o'clock & 1:00 o'clock position in the face of the watch. No present laceration abrasions or any injuries noted. Vaginal canal tight. In her findings; she could not definitely say that the victim has (sic) previous sexual intercourse because a hymen can be lacerated even if the victim has (sic) no previous sexual intercourse. Probably the victim has (sic) a previous trauma during childhood, fell down from a tree and hit her vaginal area, medical instrumentation and foreign bodies can also cause hymenal laceration. However, it could also be possible that this laceration could have been caused by sexual intercourse. In her findings, she testified that the healed hymenal tear has (sic) been there for more than a months (sic) time.

"The second witness for the government Marites Belic, the private offended party, 11 years old...testified that she knows the accused Domingo Brigildo, the latter being her stepfather. x x x In the evening of March 30, 1994, while she was in the house, the accused held her shoulder, forcibly laid her down and removed her panties. Then the accused laid on top of her and performed a push and pull motion by inserting his penis into her vagina. Thereafter, the accused kissed her cheeks and neck. She cried and shouted for help but the accused choked her neck. After the accused inserted his penis into her vagina, the accused fucked her again for the second time on that same evening. At the time of the said incident, her mother was then fishing in the sea. She told her mother upon arrival that the accused raped her. However, her mother did not believe her. In October 1994, the accused raped her again at the copra drier owned by a certain Polinar in Brgy. Anislag, Isabel, Leyte. At that time, the accused held her shoulder and placed a sack on the ground. Thereafter, the accused laid on top of her, kissed her and performed a push and pull movement by inserting his penis into her vagina. She cried. However, the accused warned her that if ever she will tell somebody about the incident he will kill her. In the early morning of November 3, 1994, when her mother was preparing their food at their house, the accused held her up and was about to fuck her again but she was able to wake up. She resisted and stood up. She told her mother what the accused did to her. However, her mother replied: "You are just making wild accusations." Since her mother was accusing her of making wild accusations, she reported the matter to her elder sisters Jenny Belic, Ailene Belic, Nida Belic, Alita Belic and Aida Belic at Sitio Gemelina of Isabel, Leyte. Thereafter, they reported the incident to the police authorities of Isabel, Leyte. The Sworn Statement of Marites Belic taken before (sic) the Police Headquarters of Isabel, Leyte dated December 20, 1994 in the vernacular was marked as Exhibit "B" and the translation thereof was marked as Exhibit "C". The Complaint in Criminal Case No. 6739 which she filed before the office of the Municipal Trial Judge of Isabel, Leyte now attached to the record of Criminal Case No. 4591-0 was marked as Exhibit "D". Since only one case was filed at the Municipal Trial Court of Isabel, Leyte, she went to the office of the Provincial Prosecutor to lodge a complaint. The complaint in I.S. No. 9505 which she filed with the Prosecutor's Office now attached to

Criminal Case No. 4606-0 was marked as Exhibit "E" and her signature as Exhibit "E-1." The complaint in I.S. No. 95-04 which she filed with the Prosecutor's Office now attached to the Criminal Case No. 4607-0 was marked as Exhibit "F" and her signature thereof (sic) was marked as Exhibit "F-1." Further, she testified that she was examined by a doctor in Isabel, Leyte before she filed a complaint.

"The third witness for the government Ailyn Acebedo...testified that she knows the accused Domingo Brigildo, the latter being the husband of her mother. x x x She also knew the victim Marites Belic, the latter being her youngest sister. When Domingo Brigildo and her mother were living together, Marites Belic lived with them. She testified also that in the last part of November 1994, Marites Belic went to her house and told her that she was raped by "Minggoy". After she was told, they proceeded to see a doctor and submitted her sister Marites Belic for an examination. Thereafter, they reported the incident at the police headquarters....A complaint was also filed by her sister Marites Belic at the Municipal Trial Court of Isabel, Leyte." [4]

The accused, on the other hand, denied the accusations. His version as summarized by the trial court was:

"Accused Domingo Brigildo denied that he raped the private complainant Marites Belic inside his house on March 30, 1994 at Purok Bancal, Brgy. Anislag, Isabel, Leyte. He claimed that a case was filed against him because they wanted him and his wife to be separated from each other. Had he done what he is accused of, the private complainant Marites Belic would have reported it to her mother upon arrival and also to her brothers and sisters. He also denied of raping (sic) the said private complainant for the second time at the copra drier of Brgy. Anislag, Isabel, Leyte since the copra drier had no walling and was situated just beside the road. All the time, the people used that road in coming to and from the barangay. He did not bring the private complainant to the copra drier. It was the private complainant and her mother who went to the copra drier to bring food for him the following morning. The private complainant was not permanently staying at his house but in the house of Genita Noya. When the private complainant arrived at his house, the games that she usually played together with her friends were climbing the trees, Chinese garter and carabao riding. Further, he denied of (sic) attempting to rape Marites Belic in the early morning inside his house while his wife was present.

"On cross examination, he testified that Marites Belic treated him as her very own father. That the said child was calling him "Papa". He came to know that Marites filed the present cases for rape against him only upon his arrest on December 27, 1994." [5]

The defense also presented appellant's common-law spouse to testify on his behalf. The trial court summarized her testimony as follows:

"Defense witness Alfreda Mabale testified that she knows the accused Domingo Brigildo, the latter being her common-law husband. She also knew Marites Belic, the latter being her daughter. She testified also that she had ten (10) children with her first husband Sulpicio Belic. One of her children was residing at Cantohawon and some were residing at Brgy. Anislag. On March 30, 1994, she was then fishing in the sea. She left her home at about 4:00 o'clock in the afternoon. She went home at about 10:00 o'clock in the evening. She had no knowledge about the accusation made by her daughter Marites Belic against her common-law husband Domingo Brigildo because at that time, she was then fishing in the sea. When she arrived home at about 10:00 o'clock in the evening, her daughter Marites Belic was already sleeping. At that time, Domingo Brigildo was also sleeping. She did not notice anything unusual in the physical features of her daughter Marites Belic. In the following morning, her daughter Marites Belic did not tell her that she was raped. She came to know for the first time that Domingo Brigildo was charged of rape when the latter was arrested on December 16. She testified also that her daughter Marites Belic usually stayed at the house of the latter's elder sister and sometimes visit (sic) them. The games that Marites Belic usually play (sic) were climbing of tree (sic), riding on top of the carabao and Chinese garter. Further, she testified that the reason why her common-law husband was being charged with the crime of rape because they wanted her and Domingo Brigildo to be separated. That her daughter Ailyn wanted them to be separated.

"On cross examination, she testified that she had been living with her common-law husband Domingo Brigildo for about seven (7) years. At the time she started living with the said accused, her daughter Marites Belic was still eight (8) years old. That Marites Belic called her common-law husband as "Papa." That her common-law husband Domingo Brigildo treated her daughter Marites Belic as his own child while Marites treated him also as her true father. She was testifying in favor of Domingo Brigildo because of her undying love for him. She wanted to do everything to save him from this case, inspite of the fact that her children were mad at her. On November 3, 1994, she was not told by her daughter Marites Belic that Domingo Brigildo tried to rape again the said private complainant. She only knew it at the time that Domingo Brigildo was arrested."[6]

The lower court rendered its decision, the decretal portion of which reads:

"WHEREFORE, decision is hereby rendered in Criminal Case No. 4591-0 finding the accused Domingo Brigildo GUILTY beyond reasonable doubt of RAPE (as) defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 7659. Finding the victim Marites Belic to have been below eighteen (18) years of age at the time of the rape on March 30, 1994 and finding the offender to be the common-law spouse of Marites' mother, this court imposes upon the same Domingo Brigildo the mandatory penalty of DEATH. Further, the accused is directed to indemnify Marites Belic the sum of Thirty Thousand Pesos (P30,000.00) as moral damages, and to pay the costs.

"Decision is also hereby rendered in Criminal Case No. 4607-0 finding the accused Domingo Brigildo GUILTY beyond reasonable doubt of RAPE (as) defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 7659. Finding the victim Marites Belic to have been below eighteen (18) years of age at the time of the rape in October 1994 and finding the offender to be the common-law spouse of Marites' mother, this Court imposes upon the same Domingo Brigildo the mandatory penalty of DEATH. Further, the accused is directed to indemnify Marites Belic the sum of Thirty Thousand Pesos (P30,000.00) as moral damages, and to pay the costs.

"Decision is also hereby rendered in Criminal Case No. 4606-0 finding the accused Domingo Brigildo NOT GUILTY for insufficiency of evidence.

"As the penalty imposed is DOUBLE DEATH the jail warden of the Leyte Sub-Provincial Jail is directed to immediately commit the person of Domingo Brigildo to the National Prisons at Muntinlupa, Metro Manila.

"SO ORDERED."[7]

In view of the imposition of the death penalty pursuant to R.A. No. 7659, the instant case was elevated to this Court for automatic review.

In his brief, appellant assigns the following as errors committed by the trial court:

I.

THE LOWER COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONY OF PRIVATE COMPLAINANT MARITES BELIC.

II

THE LOWER COURT (ERRED) IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.[8]

The issues to be resolved now are: (1) Whether the private complainant's testimony was credible; (2) Whether appellant's guilt was proved beyond reasonable doubt; and, if so, (3) Whether the penalty imposed on him is appropriate.

In reviewing rape cases, the Court has consistently observed the following long-standing guidelines:

(1)

An accusation for rape can be made with facility. Such accusation is difficult to prove but even more difficult for the accused though innocent to disprove it;

(2)

In view of the intrinsic nature of the crime of rape where only two (2) persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and

(3)

The evidence of the prosecution must stand and fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[9]

Appellant claims that he did not rape private complainant. Gleaning from the victim's own testimony, he now contends vehemently that the prosecution failed to prove that there was actual penetration of the private parts of private complainant and hence, there was no rape committed. He cites the testimony of the complainant during her re-direct examination:

"PROS. BELETA:

Q:

Now, Marites, you stated that on March 30, in your direct examination when this representation asked you, you stated that you were raped by the accused Domingo Brigildo; and you testified further that his penis was inserted into your vagina. And now, when you were asked by the defense counsel, you said that you did not know whether the penis of the accused was inserted into your vagina. Now, tell us, was the penis of the accused inserted into your vagina or not, on March 30, 1994 ? Tell us now, did it penetrate your vagina?

A: It did not."[10]

A closer scrutiny of the cited portion of the re-direct testimony of Marites Belic, however, shows that the above quotation was not only taken out of context but subsequent questions and answers were also self-servingly omitted. The entire pertinent transcript reads:

"PROS. BELETA

Q:

Now, Marites, you stated that on March 30, in your direct examination when this representation asked you, you stated that you were raped by the accused Domingo Brigildo; and you testified further that his penis was inserted into your vagina. And now, when you were asked by the defense counsel, you said that you did not know whether the penis of the accused was inserted into your vagina. Now, tell us, was the penis of the accused inserted into your vagina or not, on March 30, 1994 ? Tell us now, did it penetrate your vagina?

A:

It did not.

COURT:

That is not the accurate translation. The testimony of the witness is, she could not tell whether it was inside or not. You are translating it, it did not. There is a difference between those testimonies. Translate again.

WITNESS:

A:

It penetrated into my vagina, Your Honor.

COURT

Q:

Why do you say that it penetrated into your vagina?

A:

Because I felt pain on my abdomen, Your Honor.

Q:

How about your vagina, did you feel pain?

A:

I felt pain also, Your Honor.

Q:

When did you feel the pain?

A:

After the accused performed the push and pull movement, Your Honor.

Q:

When it penetrated, did you not feel pain?

A:

I felt pain, Your Honor."^[11]

The foregoing testimony of the victim leaves us no doubt that her mother's common-law husband had raped her. But even assuming for argument's sake, that the alleged penile penetration of private complainant's vagina had not been shown with indubitable proof, this Court has ruled consistently, that penetration is not an essential element of rape. The mere touching of the labia or pudendum by the phallus is already enough to consummate the crime of rape.^[12] Phallic intrusion necessarily entails contact with the labia and even the briefest contact under circumstances of force, intimidation, or unconsciousness, even without the rupture of the hymen is already rape.^[13]

Appellant's suggestion that complainant's testimony was "incredible" does not mean that he did not rape Marites. We have held that the revelation of an innocent child whose chastity was abused deserves full credit, as the willingness of the complainant to undergo the trouble and humiliation of a public trial is an eloquent testimony of the truth of her complaint.^[14] With respect to private complainant's credibility, the trial court made the following observation:

"This court had the opportunity to observe both the private complainant and the accused on the witness stand. From the manner they both testified this court finds good and strong reasons to give full faith and credit to Marites' account. Marites answered the questions propounded at her spontaneously and with candor, The

accused, on the other hand, was nervous and obviously withheld from the Court some vital information he knew about." [15]

Where the issue is one involving the credibility of witnesses, the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court. It had the unique opportunity to observe the witness firsthand and note their demeanor, conduct, and attitude under grilling examination, and it can be expected to determine with reasonable discretion, which testimony is acceptable and which witness is unworthy of belief. As a rule, findings of the trial court on such matters will not be disturbed on appeal unless the lower court did overlook, ignore, misapprehend, or misinterpret some facts or circumstances so material such as to affect the disposition of the case. [16]

In addition, the Court has repeatedly ruled that when a victim says she has been raped, she almost always says all that has to be said. [17] So long as the victim's testimony meets the test of credibility, the accused can be convicted on the sole basis thereof. [18] Moreover, the testimony of the victim as to the circumstances of the coital assault must be given weight, for testimonies of young and immature rape victims are almost always credible. [19] The Court finds it most unnatural for a young and immature girl to fabricate a story of her rape by her mother's common law spouse; allow a medical examination of her private parts; and subject herself to a public trial and possible ridicule simply because her older sisters want their mother to separate from her common law spouse. It is most improbable that a rural lass of tender years who is unexposed to the ways of the flesh, would impute so serious a crime to any man, let alone to her mother's common-law spouse whom she treated as her very own father, if the charge were not true. [20] The imputed motive is too shallow and too trite to lend any weight and credit to the defense. A careful scrutiny of the records shows that Marites' straightforward and candid account of her traumatic experience reveals that she was impelled by no other motive than to bring to justice the defiler of her maidenhood.

Appellant also strongly faults complainant's account of the second incident of rape as tainted with impossibility and falsehood. On cross-examination, complainant admitted that the incident happened in broad daylight in the copra drier with no walls, located beside a barangay road used by the people in Anislag as short cut to the poblacion. [21] Appellant insists that he could not have raped the complainant in this setting without being noticed by passersby. [22] His testimony on direct examination was as follows:

"x x x

Q:

Now, according to the accusation of the private complainant, you again raped her the second time at the copra dryer also at Brgy. Anislag, Isabel, Leyte ?

A:

No, sir. I did not do it. The copra dryer is situated just beside the road and all the time, people is (sic) using the road in coming to and from the barangay, and aside from that, the copra dryer has no walling, sir.

Q:

Why? Did you bring this private complainant Marites Belic to that copra dryer?

A:

I did not bring her, sir. It was she and her mother who went to the copra dryer the following morning to bring food for me." [23]

Private complainant, however, was emphatic that she was raped for the second time sometime in October 1994 at

the said copra drier. On cross-examination, she candidly, positively, and categorically testified as to her harrowing experience as follows:

"ATTY. OLIVER:

Q:

And this act of the accused which you said he repeated it (sic) in October, 1994, at the copra dryer were the same acts that he did to you...

COURT:

Q:

Now, you said earlier that your vagina and the penis of the accused were wet. What were they wet of?

A:

Whitish substance ejaculated from his penis, Your Honor.

COURT:

"Continue

ATTY. OLIVER:

Q:

On the second incident which you said happened in the copra dryer sometime in October, 1994, he again kissed you, embraced you, lie (sic) on top of you and did the same push and pull movement on (sic) you, and you consider that also as rape?

A:

Yes, Sir.[24]

x x x

Q:

Now, again, in October, 1994, at the copra dryer owned by one Polinar, the accused again lay on top of you, kissed you, (and) hugged you, but you are not sure whether his penis penetrated your vagina?

A:

It entered my vagina, Sir.

Q:

So on the second occasion, the penis of the accused penetrated your vagina?

A:

Yes, Sir.[25]

x x x

Q:

Now, this incident in October, 1994, at the copra dryer, is it not a fact, Marites, that this copra dryer has no walls?

A:

None, Sir

.

Q:

And, in fact, this copra dryer is located beside a barangay road. Am I right?

A:

Yes, Sir.

Q:

And, in fact, this is the road that the barangay people in Anislag use in going in (sic) and from the poblacion?

A:

Yes, Sir.

Q:

And this incident in October, 1994, happened in broad daylight. Am I right?

A:

Yes, Sir.

Q:

And despite the fact that this copra dryer has no walls and near a road where people pass by, still the accused was able to have sexual intercourse with you?

A:

Yes, Sir." [26]

In a string of cases we have repeatedly said that rape can be committed in places where people congregate, in parks, along the roadside, within the school premises, inside a house where there are occupants and even in the same room where other members of the family are also sleeping.[27] Its commission is not limited to isolated places.

Appellant's denial is also an intrinsically weak defense. To merit credibility, it must be buttressed by strong evidence of non-culpability.[28] The rule is that affirmative testimony is stronger than a negative one, especially when it comes from the mouth of a credible witness.[29] The elements of rape[30] and the identity of the malefactor, in our view, were adequately proven beyond moral certainty by the private complainant's positive testimony. In fine, the evidence introduced by the prosecution has successfully met the test of proof required by the Constitution and statutes to sustain a conviction.

Coming now to the third issue, Section 11 of R.A. No. 7659 provides that the death penalty shall be imposed if the crime of rape is committed with the following attendant circumstances:

xxx

- 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.

xxx

The separate Informations in Criminal Case Nos. 4591-0 and 4607-0 alleged that the offended party in the two rape cases was the appellant's "step-daughter who is 11 years old." It is undisputed that the victim in the instant case is a minor. However, the records are unclear as to her exact age. The prosecution failed to present her birth certificate or any other evidence to prove just how old she really is. The separate Informations filed alleged that the victim was 11 years old when she was raped in March and October, 1994. Yet, testifying a year later, complainant claimed she was only 11 years old.[31] Her mother's testimony on cross-examination, by contrast, would seem to indicate that she was around 15 years old at the time of the rapes complained of, to wit:

"Q: Alfreda Mabale, for how long have you been living with your husband Domingo Brigildo?

A: For seven (7) years, Ma'm. (Italics supplied).

Q: Of course, you will agree with me this complainant Marites Belic is your youngest child?

A: Yes, Ma'm.

Q: At that time you started living with the accused can you tell us how old was she?

A: She was then eight (8) years old. (Italics supplied).

Q: And because she was only eight (8) years old, of course, you took her under your custody with your husband?

A: She stayed at the house of her elder sister Jenny and sometimes visit(s) us."[32]

Thus, we are faced with uncertainty regarding private complainant's exact age, not only because of ambiguous testimony on record, but also because the prosecution failed to present her birth certificate or other equally acceptable official document concerning her date of birth.

Note also that the allegation in the separate Informations in Criminal Case Nos. 4591-0 and 4607-0, abovesited, that the victim is appellant's stepdaughter is incorrect. Private complainant is not appellant's stepdaughter. A stepdaughter is the daughter of one's spouse by a previous marriage, or the daughter of one of the spouses by a previous marriage.[33] Appellant is not legally married to complainant's mother. Appellant and the victim's mother admit only to a common-law relationship. This Court has ruled that the circumstances under Section 11 of R.A. No. 7659, which mandates the imposition of the death penalty, are in the nature of qualifying circumstances. This Court can not ignore erroneous reference to the victim as the "step-daughter" of appellant. For that error might lead to the further error of considering the accused as "step-parent" under Sec. 11 of R.A. No. 7659 as a qualifying circumstance, which cannot be proved unless properly alleged in the information.[34]

In sum considering that the true age of complainant was placed in doubt and not properly proved, while the allegation that she was the "step-daughter" of the accused is in error, the qualifying circumstances required under Sec. 11 of R.A. No. 7659 were not met. We are thus constrained to reduce the penalty of death imposed by the trial court to reclusion perpetua.

Finally, in line with current jurisprudence, the civil indemnity to be awarded to the victim for each count of rape has been increased to P50,000.00.[35] Thus the award here of P30,000.00 by the trial court should be increased to P50,000.00 for each count. Moreover, we find it proper to award the further sum of P50,000.00 as moral damages,

without need of further proof,[36] for every count of rape.

WHEREFORE, the decision of the trial court finding the appellant Domingo Brigildo GUILTY beyond reasonable doubt of two counts of rape, in Criminal Case Nos. 4591-0 and 4607-0, is AFFIRMED, but the penalty imposed upon appellant is hereby MODIFIED to that of reclusion perpetua for each count of rape. Further, he must pay complainant Marites Belic the amount of P50,000.00 as indemnity and P50,000.00 as moral damages, for each count of rape. Costs against appellant.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Records (Crim. Case No. 4591-0), p. 1.

[2] Id. at 126.

[3] Records, (Crim. Case No. 4607-0), p. 1.

[4] Supra note 2 at 127-128.

[5] Id. at 129.

[6] Id. at 129-130.

[7] Id. at 131-132.

[8] Rollo, p. 48.

[9] People v. Antonio Bea, Jr., G.R. No. 109618, May 5, 1999, p. 5; People v. Barrientos, 285 SCRA 221, 237-238 (1998); People v. Traverro, 276 SCRA 301, 308-309 (1997); People v. Echegaray, 257 SCRA 561, 569-570 (1996)

[10] TSN, August 14, 1995, pp. 37-38.

[11] Id. at 37-39.

[12] People v. Puertollano, G.R. No. 122423, June 17, 1999, p. 9; People v. Clopino, 290 SCRA 432, 442-443 (1998)

[13] People v. Evangelista, 282 SCRA 37, 42 (1997)

[14] People v. Mengote, G.R. No. 130491, March 25, 1999, p. 8.

[15] Records, (Crim. Case No. 4591-0), p. 130.

[16] People v. Basao, et al. , G.R. No. 128286, July 20, 1999, pp. 17-18; People v. Alojado, G.R. No. 122966-67, March 25, 1999, pp. 10-11; People v. San Juan, 337 Phil. 375, 385 (1997)

[17] People v. Ramon Flores, G.R. No. 130546, July 26, 1999, p. 10; People v. Dela Cruz, 321 Phil. 436, 443 (1995)

[18] People v. Garcia, 288 SCRA 382, 396 (1998); People v. Corea, 336 Phil. 72, 84 (1997)

[19] People v. Ambray, G.R. No. 127177, February 25, 1999, pp. 8-9; People v. Tabugoca, 285 SCRA 312, 328

(1998)

[20] *People v. Sagaral*, 335 Phil. 331, 342 (1997)

[21] *Supra* note 10, at 32-33.

[22] *Rollo*, pp. 58-59.

[23] *TSN*, September 21, 1995, pp. 6-7.

[24] *Supra* note 10, at 27-28.

[25] *Id.* at 30.

[26] *Id.* at 32-33.

[27] *People v. Sumampong*, 290 SCRA 471, 478 (1998); *People v. Devilleres*, 336 Phil. 688, 700 (1997); *People v. Cabillan*, 334 Phil. 912, 919-920 (1997). *Emphasis supplied.*

[28] *People v. Burce*, 336 Phil. 283, 302 (1997)

[29] *People v. Balmoria*, 287 SCRA 687, 709 (1998)

[30] The Revised Penal Code, prior to its amendment by Republic Act No. 8353, provides that:

"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 the twelve years of age or is demented.

x x x"

[31] *TSN*, August 14, 1995, pp. 3-4.

[32] *TSN*, September 14, 1995, pp. 9-10.

[33] *People v. Tolentino*, G.R. No. 130514, June 17, 1999, p. 8.

[34] *People v. Dimapilis*, 300 SCRA 279, 309 (1998)

[35] *People v. Maglente*, G.R. No. 124559-66, April 30, 1999, p. 36; *People v. Esteban Victor y Penis*, 292 SCRA 186, 200 (1998); *People v. Gementiza*, 285 SCRA 478, 492 (1998)

[36] *People v. Bation*, G.R. No. 123160, March 25, 1999, p. 20; *People v. Ilao*, 296 SCRA 658, 673 (1998); *People v. Prades*, 293 SCRA 411, 431 (1998)

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