

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRESENCIO TABUGOCA, ACCUSED-APPELLANT.

G.R. No. 125334. January 28, 1998

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PER CURIAM:

This is an automatic review of the joint decision[1] rendered by Branch 18 of the Regional Trial Court of Ilagan, Isabela in Criminal Cases Nos. 2386 and 2387 finding accused –appellant Cresencio Tabugoca guilty of two counts of rape committed against his very own daughters and imposing upon him the penalty of reclusion perpetua in the first case and death penalty in the second.

In two informations simultaneously filed on January 20, 1995 in the aforesaid trial court, accused-appellant was accused of raping his daughters in two separate incidents. The information in Criminal Case No. 2386 charges him as follows:

That on or about the 28th day of March, 1992 in the municipality of Naguilian, province of Isabela, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously, by means of force, intimidation and with lewd designs, have carnal knowledge with his own daughter JACQUELINE A. TABUGOCA, a girl of 14 years old (sic), against latter's will and consent.[2]

The information in the Criminal Case No. 2387 alleges:

That on or about the 9th day of December, 1994, in the municipality of Naguilian, province of Isabela, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously, by means of force, intimidation and with lewd designs, have carnal knowledge with his own daughter JINKY A. TABUGOCA, a girl of 12 years old (sic), against the latter's will and consent.[3]

Accused-appellant pleaded not guilty when duly arraigned separately on the two indictments with the assistance of counsel de oficio.[4] After a consolidated trial on the merits, on March 15, 1996 the court a quo rendered the decision now under mandatory review.[5] The commission of the two felonies was found by the lower court to have been attended by the aggravating circumstances of relationship and intoxication purposely sought by accused-appellant to embolden him to commit the same.

In Criminal Case No. 2386, accused–appellant was sentenced to suffer the penalty of reclusion perpetua and directed to indemnify Jacqueline Tabugoca in the sum of P50,000.00. In Criminal case No. 2387, wherein the crime charged was committed after the effectivity Republic Act No. 7659 on December 31, 1993,[6] he was condemned to suffer the capital punishment of death and ordered to indemnify Jinky Tabugoca in sum of P50,000.00.

The trial court arrived at the conclusion that, beyond reasonable doubt, accused–appellant had committed the crimes charged on the bases of the testimonies of the victims, as corroborated by the medical reports, and the testimony of the physician who examined them.

The respective complainants in Criminal Case Nos. 2386 and 2387, namely, Jacqueline Tabugoca and Jinky Tabugoca, are the daughters of the accused-appellant.[7] This was not denied by him. He even expressly declared during his testimony that Jacqueline[8] and Jinky[9] are his daughters.

Complainant Jacqueline testified that she and her three younger sisters, Janet, Jinky and Jewel, lived under the sole care of their father after their mother died on August 28, 1991. While she and her sisters were sleeping in their house at Barangay Roxas, Naguilian, Isabela at around 10 o'clock in the evening of March 28, 1992, she was roused by her father who asked her to scratch his back. It turned out, however, that accused-appellant had other intentions that night aside from relief from his itchy discomfort.

While Jacqueline was thus scratching her father's back, he told her to stay and wait for a while. Without any intimation, accused-appellant then removed her shorts and underwear and made her lie down beside him. Jacqueline could only cry at this point. As soon as she was completely disrobed, accused-appellant inserted his penis into her vagina. With his manhood inside his daughter, accused-appellant warned her not to tell anyone of his dastardly act if she would not want to be harmed (makaala ha kaniak). Complainant was so petrified with fear that she did not even dare ask her father why he was sexually molesting her.[10]

Jacqueline was twelve years old and three months old at the time of the incident, she having been born on December 27, 1979.[11]

Because of the incident, Jacqueline harbored ill-feelings against her father, and she reportedly became the object of gossip by her classmates in school.[12] However, she did not tell anyone about her ordeal at the hands of her own father until she learned that the same misfortune had befallen her sister, Jinky.

In criminal Case No. 2387, complainant Jinky declared in the court below that her father tried to rape her in the early morning of December 9, 1994. While she was cleaning some articles in their house, accused-appellant approached her and then took off his clothes. He then ordered Jinky to lie down and he removed her shorts and panty. Thereafter, he inserted his penis into her vagina. Jinky cried and complained to her father that she was in pain. Accused-appellant explained that it is ordinary to feel pain because it was her first time to experience coitus.

After a while, he did not persist anymore in his sexual pursuit. Appellant lay down beside Jinky and told her that they will continue the following day. At dawn of December 10, 1994, accused-appellant made another attempt to carnally molest Jinky. This time, however, Jinky resisted, thereby causing appellant to just lie down and leave her alone.[13]

Jinky was only 12 years and nine months old at the time of the incident, she having been born on March 5, 1982. [14]

Later, on the same day, while Jacqueline and Jinky were watching television at their grandmother's house nearby, Jinky confided to her grandmother about the sexual abuses of her father against her. Upon hearing the revelation of her sister, Jacqueline also disclosed to her grandmother her own experience with her father two years before.[15]

The victims' grandmother, Perlita Alejandro, forthwith brought her granddaughters to the police authorities and then to the Municipal Health Officer of Naguilian for physical examination. The two were examined on December 12, 1994 by Dr. Maryann M. Fontanares.[16]

For Criminal Case No. 2386, with respect to Jacqueline, the doctor reduced her findings into a medico-legal certificate[17] attesting as follows:

LEGAL FINDINGS:

1. PE findings:

essentially normal except for the anxiety that the victim exhibited

2. Internal Examination:

multiple healed lacerations/scars at 3, 5, 6 and 9 o'clock position of the hymen.

: introitus admits two fingers with ease * * * no other findings noted * * *

RECOMMENDATIONS:

Impression:

The above findings suggest that the victim was forcibly abused and the incident, the first one happened long ago based on the healed scars of the hymen.

For Criminal Case No. 2387, regarding Jinky, the medico-legal certificate[18] of the doctor states:

LEGAL FINDINGS:

1. The vulva is edematous although the hymen is intact.

* * * no other findings noted * * *

RECOMMENDATIONS:

The above findings suggest that full penetration was not successful although attempts were done based on the swelling vulva of the victim.

During her testimony in court, Dr. Fontanares explained that the lacerations found on Jacqueline's hymen were the result of sexual intercourse which happened approximately on the date alleged. She added that, aside from the swelling of Jinky's labia, she found out that they were tender and reddish.[19]

After the examination, Jacqueline executed a criminal complaint[20] for rape against accused-appellant, while Jinky charged accused-appellant with frustrated rape in her own criminal complaint.[21]

At the trial, accused-appellant raised the defense of his having been completely unaware of what transpired on March 28, 1992 and on December 9, 1994 as he was very drunk on those occasions.

According to him, he does not know if he had sexually assaulted his daughter, Jacqueline. He only came to know

of the complaint of Jacqueline against him after the policemen who arrested him on December 10, 1994 told him thereof. On the same day, Jacqueline allegedly informed him that he was drunk on March 28, 1992, but he claimed that he could not recall if indeed he drank liquor that day. He then surmised that perhaps he did drink liquor based only on the supposed statement of Jacqueline.[22]

With regard to the complaint of Jinky, accused-appellant similarly declared in the lower court that he drank liquor in their house on December 9, 1994. Again, he claimed that he could not recollect the ensuing events after he had finished drinking. He was allegedly merely informed by the arresting policemen on December 10, 1994 that Jinky was accusing him of attempted rape.

Jacqueline, on cross-examination, stated that her father smelled of liquor and may have taken some drinks at the time of the incident.[23] On the part of Jinky, she testified in turn that her father was drunk on the night of December 9, 1994.[24]

Accused-appellant claimed that he learned to drink liquor after his wife died on August 28, 1991. Prior to his wife's death, he was not used to drinking alcoholic beverages. He later resorted to alcohol whenever he would remember his deceased wife, but the allegedly drank only once in a while.

Accused-appellant also opined that Jacqueline and Jinky must have filed their respective complaints in order to get back at him for castigating or whipping them whenever they committed mistakes.

In view of the gravity of the crimes charged and of the penalty imposable therefor, we patiently considered and thoroughly deliberated on all the arguments and defenses presented by defendant-appellant not only in his brief but even in his memorandum before the trial court, with all the possible implications and possibilities thereof, no matter how specious and ridiculous some of them may appear to be. We have likewise taken into account the socio-economic status and the apparent intellectual level of accused-appellant as may be gleaned from the record.

After much thought and reflection, we find no reason to depart from the judgment of the court a quo.

On its own, the defense presented by accused-appellant before the lower court is pitifully and completely unavailing. In law and in truth, he neither denied the charges against him nor raised any absolatory cause in his defense. His feeble excuse of having been under the influence of liquor in order to disclaim knowledge of his felonious acts does not inspire belief at all. The defense did not even comply with the evidentiary elements whereby he could claim intoxication as a mitigating circumstance. The categorical and untraversed testimonies of his daughters as to how committed the bestial outrage, and their identification of accused-appellant as their defiler, remain uncontroverted and fully establish the charges.

Accused-appellant's pretext that he could not remember the events of March 28, 1992 and December 9, 1994 is rendered more effete in light of the arguments in his memorandum[25] submitted before the lower court. There, he claimed exemption from criminal liability on the ground of insanity brought about by intoxication, invoking therefor some dicta in American jurisprudence.

We have held that the law presumes every man to be sane. A person accused of a crime who pleads the exempting circumstances of insanity has necessarily the consequent burden of proving it.[26] Further, in order that insanity may be taken as an exempting circumstance, there must be complete depreciation of intelligence in the commission of the act or that the accused acted without the least discernment. Mere abnormality of his mental faculties does not preclude imputability.[27]

Accused-appellant has utterly failed to overthrow the presumption of sanity. The defense did not present any expert witness, any psychiatric evaluation report, or any psychological findings or evidence regarding his mental

condition at the time of the commission of the offenses. Accused-appellant's charade of amnesia is evidently a desperate gambit for exculpation. Yet, amnesia, in and of itself, is no defense to a criminal charge unless it is shown by competent proof that the accused did not know the nature and quality of his action and that it was wrong. Failure to remember is in itself no proof of the mental condition of the accused when the crime was performed.[28]

Also in the same memorandum, accused-appellant posits that he cannot be prosecuted for rape in Criminal Case No. 2386 because the criminal complaint of Jinky only accuses him of frustrated rape. With such a charge, he argues that the trial court's jurisdiction to punish him is limited only to said offense and cannot cover consummated rape.

This is a meritless argument. When it is said that the filing of the complaint by the offended party in case of rape is jurisdictional, what is meant is that it is the complaint that starts the prosecutory proceedings, but it is not the complaint which confers jurisdiction on the court to try the case. The court's jurisdiction is vested in it by the Judiciary Law.[29] Since the penalty for the rape in Criminal Case No. 21387 is properly within the jurisdiction of the regional trial court,[30] then Branch 18 of the Regional Trial Court of Ilagan, Isabela may hear and try the offense charged in the information and impose the punishment for it.

In *People vs. Bangalao, et al.*,[31] we convicted an accused of rape committed against a minor as charged in the information, despite the allegation in the complaint that the rape was committed through force and intimidation, on this ratiocination:

It must be borne in mind that complaints are prepared in municipalities, in most cases without the advice or help of competent counsel. When the case reaches the Court the First Instance, the Fiscal usually conducts another investigation, and thereafter files the information which the results thereof justify. The right and power of the court to try the accused for the crime of rape attaches upon the filing of the complaint, and a change in the allegations thereof as (to) the manner of committing the crime should not operate to divest the court of jurisdiction already acquired.

In his brief,[32] accused-appellant contends that his guilt has not been proved beyond reasonable doubt by the prosecution. In support of this lone assignment of error, he seeks to capitalize, among others, on the failure of Jacqueline to immediately report the crime. Such failure, appellant contends, renders doubtful the truth of her accusation.

The failure of complainant Jacqueline to immediately report the incident to the authorities does not necessarily cast doubt on the credibility of the charge in Criminal Case No. 2386. It is a settled decisional rule that delay in reporting a rape case committed by a father against his daughter due to threats is justified.[33] In the numerous cases of rape that have reached this Court, we find that it is not uncommon for young girls to conceal, for some time, the assaults on their honor because of the rapist's threat on their lives.[34]

In many instances, rape victims simply suffer in silence. With more reason would a girl ravished by her own father keep quiet about what befell her. Furthermore, it is unfair to judge the action of children who have undergone traumatic experience by the norms of behavior expected of mature individuals under the same circumstances.[35]

In *People vs. Melivo*,[36] we declared that:

x x x. Delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim. A rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies this terror,

because the perpetrator is a person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and the degree of fear.

This Court further trechantly observed in the same decision that:

In all of these and other cases of incestuous rape, the perpetrator takes full advantage of his blood relationship, ascendancy and influence over the victim, both to commit the sexual assault and to intimidate the victims into silence. Unfortunately for some perpetrators of incestuous rape, their victims manage to break out from the cycle of fear and terror. In *People vs. Molero* we emphasized that “an intimidated person cowed into submitting to a series of repulsive acts may acquire some courage as she grows older and finally state that enough, the depraved malefactor must be punished.”

We cannot therefore expect young Jacqueline to disregard the threat to her life and immediately cry rape in the face of the threats of her father and his constant presence in their home.

Accused-appellant next asserts in his briefs that Jacqueline filed her complaint in Criminal Case No. 2386 only out of sympathy with, and by way of revenge for what her father had done to, her younger sister. We find it opportune to discuss, together with his contention, the lame excuse of the defense before the trial court that Jacqueline and Jinky filed their complaints because they suffered beatings from accused-appellant. We find that the motive imputed to the sisters are grossly implausible and insufficient to make them falsely charge their own father. It is highly inconceivable that they would claim having been raped just because their father spans them whenever they commit mistakes.

Mere disciplinary chastisement is not strong enough to make daughters in a Filipino family invent a charge that would only bring shame and humiliation upon them and their own family and make them the object of gossip among their classmates and friends. It is unbelievable that Jacqueline would fabricate a serious criminal charge just to get even with her father and to emphasize with her sister. The sisters would not contrive stories of defloration and charge their own father with rape unless these stories are true. For that matter, no young Filipina of decent repute would falsely and publicly admit that she had been ravished and abused considering the social stigma thereof.[37]

At their tender age, Jacqueline and Jinky needed sustenance and support from their father. They certainly were aware that they would be deprived of a provider once their accusations against him are proven. In fact, the consequences of filing a case of rape are so serious that an ordinary woman would have second thoughts about filing charges against her assailant. It requires much more for a thirteen-year old or a twelve-year old provincial lass to devise a story of rape, have her private parts examined, subject herself to the indignity of public trial and endure a lifetime of ridicule. Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to concoct a story which would at least put her own father for the rest of remaining life in jail and drag herself and the rest of her family into a lifetime of shame.[38]

Thus, the unfounded claim of evil motives on the part of the victims would not destroy the credibility reposed upon them by the trial court because, as we have held, a rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her, as in the case of a daughter against her father.[39] Furthermore, the testimony of the victim who was only twelve years old at the time of the rape as to the circumstances thereof must be given weight, for it is an accepted rule that testimonies of rape victims who are young and of tender age are credible.[40]

Accused-appellant also faults the trial court for not duly appreciating the testimony of Jinky to the effect that he only attempted to rape her and then desisted after she felt some pain. In relation to this, appellant maintains that

there was no rape in Criminal Case No. 2387 because of the absence of laceration on Jinky's vagina as found after medicolegal examination.

It is axiomatic in criminal law that in order to sustain a conviction for rape, full penetration of the female genital organ is not required. It is enough that there is proof of the entrance of the male organ within labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of hymen, suffices to warrant conviction for rape. The rupture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape. Thus, a finding that the victim's hymen is intact and has no sign of laceration does not negate a finding that rape was committed.[41]

Jinky, being young and unschooled in the ways of the law, may have entertained the notion that complete penile penetration is necessary when she declared that her father only attempted to rape her. She was, of course, not in any position to legally distinguish consummated from attempted rape. This matter concerns a conclusion of law addressed to the judgment of the court. The declaration of Jinky that her father inserted his penis into her vagina and the finding of swelling on her labia are enough to prove that rape was committed as these are telltale signs of entry into the vaginal lips.

Accused-appellant contends in his memorandum that the prosecution failed to prove the employment of force and intimidation against complainants in both criminal cases. Corollary to his reliance on the absence of force or intimidation, he asseverates in his brief that the absence of resistance from Jinky suffices to hold that the sexual intercourse was voluntary. The defense then begs for this Court's liberality in considering that Jinky was moved to engage in copulation by a spirit of adventurousness.

There is no doubt that the appellant had carnal knowledge of his two daughters. The fact of sexual intercourse was indubitably shown by the testimony of Dr. Fontanares, and even by the alternative submission of appellant that his sexual intercourse with Jinky was consensual. Clinging to his vain hope for acquittal, he then claims that the element of force or intimidation essential in rape is lacking in the cases filed against him.

In direct refutation of appellant's theory, we once again declare that in incestuous rape, it is not necessary that actual force and intimidation be employed. It is sufficient that the accused exercised a pervasive influence and control over the victim.[42] Even if there was no violence employed in sexual congress, the moral influence of appellant over the complainant suffices to constitute it into the crime of rape.[43]

In *People vs. Mabunga*,[44] where we convicted the accused for raping his thirteen-year old daughter, we held that:

x x x Hence, even assuming that force or intimidation had not been actually employed, the crime of rape was nevertheless committed. The absence of violence or offer of resistance would not be significant because of the overpowering and overbearing moral influence of the father over the daughter which takes the place of violence and offer of resistance required in rape cases committed by an accused having no blood relationship within the victim.

The rationale for such a ruling can be found in our discourse in *People vs. Matrimonio*[45] to effect that:

In a rape committed by a father against his own daughter, the former moral ascendancy and influence over the latter substitutes for violence or intimidation. That ascendancy or influence necessarily flows from the father's parental authority, which the Constitution and law recognize, support and enhance, as well as from the children's duty to obey and observe reverence and respect toward their parents. Such reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law. Abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants.

Thus two forms of intimidation under Article 335 of the Revised Penal Code were recognized in *Matrimonio*, that is (1) threats and (2) overpowering moral influence. Accused-appellant exercised such moral influence over herein complaints. Being the victims' father, accused-appellant had that moral ascendancy and influence over his daughters which, in itself was sufficient to intimidate and force them to submit to his desires.[46] The fact that no resistance was offered by Jinky did not any way qualify the coitus as freely consented to by her. Judging accused-appellant's threats and intimidation in the context of Jinky's understanding at the time of the rape, it can readily be concluded that her will to resist was overcome by her father's strong parental authority.

As we held in the aforecited case of *Mabunga*, in rape the manner, form and tenacity of resistance of the victim therein are dependent on a number of factors, among which are the age and size of the victim, as well as of the aggressor himself; the degree of actual force and intimidation employed; and., of utmost importance, the relationship between the rapist and his prey. Complementary thereto, we ruled in *People vs. Navarrete*[47] that –

It must be emphasized also that considering the relationship between father and daughter, the degree of force or intimidation need not be the same as in other cases of rape where the parties involved have no relationship at all with each other; because the father exercises strong moral and physical control over his daughter.

Parenthetically, we digress to observe that for rape to exist it is not necessary that the intimidation employed be so great or of such character as could not be resisted. It is only necessary that the intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation must be viewed in light of the victim's perception and judgment at the time of rape and not by any hard and fast rule. It is therefore enough that it produces fear -- fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. Intimidation would also explain why there are no traces of struggle which would indicate that the victim fought off her attacker.[48]

With the previous beatings Jinky received from accused-appellant, resistance could not have been expected from her. She dared not risk another whipping from her father should she defy his advances. Coupled with the respect demanded from Jinky by her father no matter how unreasoning the gap between their ages, and Jinky's own youthful immaturity, the lack of resistance from Jinky becomes easily understandable. And, if resistance would after all be futile because of continuing intimidation, as in the strong moral dominance of accused-appellant, then offering none at all would not mean consent to assault as to make the victim's participation in the sexual act voluntary.[49]

The insistence of accused-appellant that Jinky consented to his advances is downright ridiculous. It is hard to believe that a daughter would simply give in to her father's lascivious designs had not her resistance been overpowered.[50] If Jinky had consented to the sexual intercourse, she would have kept it to herself and not denounce it immediately as rape. Jinky's crying during sexual act, and her evasion of her father's advances the following day, belie his pretense that she voluntarily participated in the intercourse. There is no showing whatsoever that complainant Jinky is a sexually perverted woman or one of extremely loose morals.

Consent obtained by fear of personal violence is no consent at all. Though a man puts no hand on a woman, yet if by the use of mental and moral coercion the accused so overpowers her mind out of fear that as a result she dare not resist the dastardly act inflicted on her person, accused is guilty of the crime imputed to him.[51] On the other hand, it is hard to accept that Jinky was that audacious as to seek and satisfy wordly pleasures from her own father. To cite *Navarrete* again, no daughter in her right mind would voluntarily submit herself to her own father unless there was force or intimidation, as a sexual act between a father and a daughter is extremely revolting.

On the matter of the imposable penalties in the crime of rape when attended by modifying circumstances, it is

opportune to make some clarifications in light of succeeding amendments to Article 335 of the Code. With respect to simple rape, whether in the original codal provision or after the amendment thereto, the penalty being the single indivisible penalty of reclusion perpetua is not affected by the presence of ordinary mitigating or aggravating circumstances. However, under the amendments introduced by Republic Act No. 4111 consisting of the so-called “qualified” form of rape committed with the use of a deadly weapon or by two or more persons, or when an attempted or frustrated rape is accompanied by homicide, for which the penalty is reclusion perpetua to death, the presence of generic mitigating or aggravating circumstances will determine whether the lesser or the higher penalty will be imposed.[52]

Republic Act No. 7659 has added seven more attendant circumstances which, in effect also create other variants of “qualified” rape punishable with the single indivisible penalty of death. In line with the immediately preceding observation, the presence of ordinary mitigating or aggravating circumstances would be of no moment since the death penalty shall be imposed regardless of the number of any of them.[53] The only possible basis for a reduction of such penalty under the rules for graduating penalties under the code is the presence of a privileged mitigating circumstances.[54]

Now, it used to be the accepted doctrine that in crimes against chastity, such as rape, relationship was always aggravating.[55] However, among the “qualifying” circumstances introduced by Republic Act No. 7659 is the situation when the victim is under eighteen 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. Obviously, in such a factual milieu, relationship having been used as an element in that “qualified” form of rape, the same circumstance cannot be used again to aggravate the penalty to be imposed on the offender.[56]

In the case at bar, therefore relationship cannot be applied as an aggravating circumstance. However, we are persuaded to affirm the attendance of intoxication as an aggravating circumstance on the additional finding that it was habitual on the part of the accused-appellant. Indeed, he admitted in his memorandum[57] that he took liquor to forget the memory of his wife ever since she died on August 28, 1991. Such admission together with the declarations of his daughters and his own testimony in court that he was also inebriated on the two occasions when he separately raped the victims, reasonably yields the inference that accused-appellant was a habitual drunkard.

Yet, even on the remote assumption *ex gratia argumenti* that intoxication can be considered as a mitigating circumstance in his favor, its presence would not affect the two penalties imposed by the court below. Being indivisible penalties, reclusion perpetua and death must be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed. The rule, however, is slightly different with respect to the civil liability.

On this point, we note that the lower court did not award moral and exemplary damages to either Jacqueline or Jinky Tabugoca. Having suffered wounded feelings and social humiliation,[58] Jacqueline is entitled to an award of moral damages therefor.[59] In view of the presence of an aggravating circumstance, exemplary damages should also be awarded to her.[60] An appellate proceeding in a criminal case, whether at the instance of accused or by mandatory provision of law, throws the whole case open for review, hence this modification by reason of the oversight of the trial court.

On the other hand, while Jinky is entitled to actual or compensatory damages, no moral damages may be awarded to her because no sufficient evidence was introduced in the court *quo* which would have entitled her thereto.[61] However, exemplary damages can be awarded to her since she has been correctly granted compensatory damages

and offense against her was committed with an aggravating circumstance.[62]

WHEREFORE, THE JUDGEMENT OF Branch 18 of the Regional Trial Court of Ilagan, Isabela, in Criminal Cases Nos. 2386 and 2387 is hereby AFFIRMED, with the modification that accused-appellant Cresencio Tabugoca is further ordered (1) in Criminal Case No. 2386, to pay Jacqueline Tabugoca the additional amounts of P25,000.00 as moral damages and P25,000.00 by way exemplary damages.

Two Members of the Court voted to impose on appellant the penalty of reclusion perpetua.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon the finality of this decision, let the record of this case be forwarded immediately to the office of the President of the Philippines for possible exercise of the pardoning power.

SO ORDERED.

Narvasa, C. J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Panganiban, and Martinez, JJ. ., concur

[1] Penned by Judge Juan A. Bigornia.

[2] Original Record , Criminal Case No. 2386, p. 24.

[3] Ibid., Criminal Case No. 2387, p. 21.

[4] Original Records, Criminal Case No. 2386, p. 27, and Criminal Case No. 2387, p. 25.

[5] Rollo, pp. 42-47.

[6] People vs. Simon, G.R. No. 93028, July 29, 1994, 234 SCRA 555; People vs. Godoy, G.R. Nos. 115908-09, December 6, 1995, 250 SCRA 676.

[7] Original Records, Criminal Case No. 2386, Exhibit E, p. 65, and Criminal Case No. 2387, Exhibit D, p. 46; TSN, June 7, 1995, p. 7 and July 25, 1995, p. 4.

[8] TSN, November 15, 1995, p. 4.

[9] Ibid., id., p. 7.

[10] Ibid., June 7, 1995, pp. 5-26.

[11] Original Record, Criminal Case No. 2386, Exhibit E, p. 65.

[12] TSN, June 7, 1995, p. 21.

[13] TSN, July 25, 1995, pp. 2-16.

[14] Original Record, Criminal Case No. 2387, Exhibit D, p. 46.

[15] TSN, June 7, 1995, pp. 17-18.

[16] TSN, July 26, 1995, pp. 15-16.

[17] Original Record, Criminal Case No. 2386, Exhibit A, p. 3.

[18] Ibid., Criminal Case No. 2387, Exhibit A, p. 4

- [19] TSN, June 14, 1995, pp. 3-18.
- [20] Ibid., Criminal Case No. 2386, Exhibit F, p. 2.
- [21] Ibid., Criminal Case No. 2387, Exhibit C, p. 2.
- [22] TSN, November 15, 1995, pp. 3-17.
- [23] Ibid., June 7, 1995, p. 24.
- [24] Ibid., July 25, 1995, p. 8.
- [25] Original Records, Criminal Case No. 2386, pp. 79-84, and Criminal Case No. 2387, pp. 54-58-B.
- [26] People vs. Catayag, G.R. No. 103974, September 10, 1993, 226 SCRA 293.
- [27] People vs. So, G.R. No. 104664, August 28, 1995, 247 SCRA 708.
- [28] Thomas vs. State, 310 S.W. 2d 358.
- [29] People vs. Leoparte, G.R. No. 85328, July 4, 1990, 187 SCRA 190.
- [30] Section 20, Batas Pambansa Blg. 129.
- [31] 94 Phil. 354 (1954).
- [32] Rollo, pp. 30-41.
- [33] People vs. Matrimonio, G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613.
- [34] People vs. Mabunga, G.R. No. 96441, November 13, 1992, 215 SCRA 694; People vs. Leoterio, G.R. Nos. 119405-06, November 21, 1996, 264 SCRA 608.
- [35] People vs. Alimon, 87758, June 28, 1996, 257 SCRA 658.
- [36] G.R. No. 113029, February 8, 1996, 253 SCRA 347.
- [37] People vs. Matrimonio, supra Fn. 33; People vs. Echegaray, G.R. No. 117472, June 25, 1996, 257 SCRA 561.
- [38] See People vs. Melivo, supra, Fn. 36
- [39] People vs. Matrimonio, supra, Fn. 33; People vs. Villanueva, G.R. Nos. 112164-65, February 28, 1996, 254 SCRA 202; People vs. Gaban, G.R. Nos. 116716-18, September 30, 1996, 262 SCRA 593.
- [40] See People vs. Gagto, G.R. No. 113345, February 9, 1996, 253 SCRA 455.
- [41] People vs. Pastores, et al., G.R. No. L-29800, August 31, 1971, 40 SCRA 498; People vs. Gagto, supra; People vs. Galimba, G.R. Nos. 111563-64, February 20, 1996, 253 SCRA.
- [42] People vs. Dusohan, G.R. No. 97307, October 5, 1993, 227 SCRA 87.
- [43] People vs. Bugarin, G.R. Nos. 110817-22, June 13, 1997.
- [44] Ante, Fn. 34.
- [45] Supra, Fn. 33
- [46] See People vs. Lucas, G.R. No. 80102, January 22, 1990, 181 SCRA 316.
- [47] G.R. No. L-43833, November 28, 1980, 101 SCRA 394.

[48] *People vs. Cañada*, G.R. No. 112176, February 6, 1996, 253 SCRA 277.

[49] *People vs. Bayani*, G.R. No. 120894, October 3, 1996, 262 SCRA 660.

[50] See *People vs. Lucas*, *supra*, Fn. 46.

[51] *People vs. Peña, Jr.*, G.R. No. 72354 June 30, 1987, 151 SCRA 638.

[52] Article 63, Revised Penal Code.

[53] The rule in Article 64(5) of the Code, which provides for the reduction of the penalty when there are two or more mitigating and no aggravating circumstances, is applicable only when divisible penalties are involved.

[54] See Article 68 and 69, Revised Penal Code.

[55] *People vs. Porras*, 58 Phil. 578 (1933); *People vs. Lucas*, *supra*, Fn. 46; *People vs. Dusohan*, *supra*, Fn. 42; *People vs. Matrimonio*, *supra*, Fn. 33.

[56] Article 62 (5), Revised Penal Code.

[57] Original Records, Criminal Case No. 2386, p. 80, and Criminal Case No. 2387, p. 55.

[58] TSN, June 7, 1995, p. 21.

[59] Article 2217, Civil Code.

[60] Article 2230, *id*.

[61] *People vs. Caballes and Mabini*, G.R. Nos. 102723-24, June 19, 1997.

[62] Article 2230 and 2234, Civil Code.

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