

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFONSO BALGOS, ALIAS "LUPOG"; ACCUSED-APPELLANT.

G.R. No. 126115. January 26, 2000

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PER CURIAM:

In a criminal Complaint, dated 9 November 1995, Alfonso Balgos, alias "Lupog," was accused by Crisselle Ilanga Fuentes, a six (6) year old child, of the crime of rape. The complaint^[1] reads:

The undersigned complainant accuses ALFONSO BALGOS, alias "LUPOG", a resident of Brgy. Libas, Roxas City, Philippines, of the crime of RAPE, defined and penalized under Article 335, par. 3 of the Revised Penal Code, as amended by Republic Act No. 7659, committed as follows:

That on October 8, 1995 at about 2:00 o'clock in the afternoon, in the City of Roxas, Philippines, and within the Jurisdiction (sic) of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously had (sic) carnal knowledge with the undersigned who is six (6) years old, to the damage and prejudice of the complainant in such amount as may be awarded to her under the New Civil Code of the Philippines.

CONTRARY TO LAW.

Upon arraignment on 21 February 1996, the accused-appellant, assisted by counsel de oficio, pleaded "not guilty" to the crime charged.

The facts are as follows:

On the fateful day of 8 October 1995, at around 2:00 o'clock in the afternoon, Crisselle Fuentes went to the house of the accused-appellant to play with Michelle and Waday, both surnamed Balgos and nieces of the accused-appellant.^[2] Since the house of the accused-appellant abuts a river, the three girls played near the window so they could watch the small crabs (calamangi) wallowing in the said river. While they were playing, the accused-appellant went up to Michelle and asked her to go outside and buy cheese curls. When Michelle left the house, the accused-appellant directed her attention towards Crisselle. He opened the zipper of his pants.^[3] He then took Crisselle by the right forearm and made her hold his penis for a short time.^[4] When Michelle came back, the accused-appellant asked her and Waday to go outside and buy more cheese curls. The two girls acceded and left Crisselle with the accused-appellant. Whereupon, he closed the door and locked the same. He then removed Crisselle's shorts and underwear, took off his own pants and brief and laid her down on a mat.^[5] The accused-appellant next went on top of Crisselle and used his hand to direct his penis towards the opening of her vagina.^[6] He made a push and pull movement with penis into Crisselle's vagina which caused her to feel pain.^[7] However, the accused-appellant could not penetrate Crisselle's vagina and was only able to push his penis against the opening of the same.^[8] Because of this, he re-positioned his penis and tried again to penetrate Crisselle's organ.^[9] Despite this effort, he still failed.^[10] The accused-appellant stopped his bestial act when he noticed through the window that Michelle and Waday were returning and were about to unlock the door. He then put on his pants, covered Crisselle with a blanket and had her put on her underwear. When Michelle and Waday entered

the house, Crisselle was still covered with a blanket.

Crisselle did not tell anybody about the incident. However, on 12 October 1995, Crisart Fuentes, the older brother of Crisselle, told his mother, Criselda Fuentes, that Michelle and Waday had informed him that Crisselle was raped by the accused-appellant.[11] Criselda then asked Crisart to call Michelle and Waday to confirm his story. Upon being asked if Crisselle was raped by the accused-appellant, Michelle and Waday answered in the affirmative.[12] Thereupon, Criselda informed her husband, Arturo Fuentes, about the incident.[13] The spouses Fuentes asked Crisselle if the story was true. Crisselle cried and confirmed that she was raped by the accused-appellant.[14] Thereafter, Crisselle and her parents went to their Barangay Captain, Loreto Araw-araw, to report the incident.[15] The Barangay Captain, together with two of his tanods, picked up the accused-appellant and brought him to the Barangay Hall for questioning. Asked if he indeed raped Crisselle, the accused-appellant denied the accusation.[16] The Barangay Captain then asked Crisselle about the incident. Crisselle recounted her harrowing experience at the hands of the accused-appellant.[17] After finishing his inquiry, the Barangay Captain brought Crisselle, her parents and the accused-appellant to the police station for further investigation.[18]

The following day, Criselda brought Crisselle to the Roxas Memorial General Hospital for medical examination. Crisselle was attended to by Dr. Ma. Lourdes B. Lañada, a gynecologist-obstetrician, who, after her examination, issued a medical certificate[19] which states:

Physical Examination: No bruises, hematoma noted

I.E. Vagina - Introitus - admit one index finger with ease

Hymen - + 0.2 CM. Lacerated wound at 3 o'clock position (-) bleeding noted

Discharges - Negative

Spermatozoa Determination - Negative[20]

In his defense, the accused-appellant denied raping Crisselle but claimed that he only inserted his left index finger into her vagina because he was sexually aroused at that time.[21] In support of this contention, the accused-appellant testified that if his penis, with a circumference of 3 ½ inches,[22] had entered the vagina of Crisselle, the laceration of her hymen would have been bigger and not just 0.2 cm.[23] On cross-examination, the accused-appellant admitted that on 8 October 1995, he asked Michelle and Waday to go outside to buy food[24] but he was never left alone with Crisselle since his first cousin, Enecito Dalton, and his uncle, Rogelio Manalo, were also inside the house and listening to the radio.[25] He also admitted that he covered Crisselle with a blanket, but claimed that it was not only Crisselle who was under the blanket but also himself and his two (2) nieces, Michelle and Waday.

In its Decision, dated 19 July 1996, the trial court believed what it described as the "straightforward, clear and convincing" open court declarations of Crisselle as against the uncorroborated testimony of the accused-appellant.[26] It debunked the defense of the accused-appellant that he merely inserted his finger inside the vagina of Crisselle, saying that this was merely a last ditch effort to save himself from criminal responsibility.[27] The trial court also noted four circumstances that pointed towards the criminal culpability of the accused-appellant. First, his admission that he asked Michelle and Waday to buy food and leave the house showed his intention to create an opportunity to commit his "bestly act" against Crisselle.[28] Second, his disposition to play with young girls revealed his libidinal predilection" which he wanted gratified even on young girls like Crisselle.[29] Third, his admission that he was sexually aroused exposed his lustful desire for flesh.[30] Fourth, his failure to show that Crisselle was motivated by ill-will in fabricating her accusation lent credence to the testimony of his victim.[31] In the light of these observations, the trial court convicted the accused-appellant

of the crime of rape and imposed the supreme penalty of death, to wit:

WHEREFORE, finding accused Alfonso Balgos alias "Lupog" guilty beyond reasonable doubt of the crime of rape defined and punished under Art. 335 of the Revised Penal Code, as amended by RA 7659, judgment is hereby rendered imposing upon him the supreme penalty of death. He is likewise, ordered to indemnify private complainant Crisselle Fuentes fifty thousand pesos (P50,000.00) as civil damages.[32]

In accordance with Section 10, Rule 122 of the Rules of Court, the case is now before us for automatic review.

In his lone assignment of error, the accused-appellant contends that:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF RAPE AND NOT OF ACTS OF LASCIVIOUSNESS CONSIDERING THE TESTIMONY OF THE VICTIM HERSELF AND THE ACCUSED APPELLANT.[33]

The accused-appellant again plays up the fact that Dr. Lañada's medical examination showed that the hymen of Crisselle only had a 0.2 cm. laceration.[34] On this score, the accused-appellant admits that something was indeed inserted in Crisselle's vagina. However, he points out that it was only his finger that inflicted the said laceration and not his penis with a 3 ½ inch circumference.[35] He insists that if his penis was the one inserted in the victim's vagina, the laceration would have been more severe and she would have died from hemorrhaging.[36] The accused-appellant, likewise, asserts that since the prosecution claimed that there was an actual penetration, it must prove, therefore, that the small laceration in the victim's hymen was caused by the accused-appellant's sex organ. Considering the physical evidence adduced in the case, the accused-appellant claims that he should have only been convicted of acts of lasciviousness and not rape.

After a meticulous review of the evidence in this case, we find no cogent reason to disturb the findings of the trial court. The evidence clearly establishes the guilt of the accused-appellant beyond reasonable doubt.

Prefatorily, we note the well-established rule that the trial court's evaluation of the testimonies of witnesses is given great respect by the appellate court in the absence of proof that it was arrived at capriciously or that the trial court disregarded material facts which might affect the outcome of the case.[37] The rationale behind this rule is that the credibility of a witness can best be determined by the trial court since it has the Opportunity to observe the candor and demeanor of the witnesses.[38]

In the present case, the trial court is correct in giving credence to Crisselle's testimony over that of the accused-appellant. Crisselle's testimony was simple, concise and cohesive.

Q

When Michele (sic) and Waday left the house what did Alfonso Balgos do, if there were any?

A

He closed the door and then locked it and then he undress (sic) me and he also undress (sic) himself and took off his brief.

Q

When you said undress you meaning Alfonso Balgos removed your entire clothing?

A

I have (sic) my clothes on only the short (sic) and panty were taken off.

Q

When your panty and short (sic) was (sic) already removed by Alfonso Balgos and he already removed his pants and briefs (sic), what did Alfonso Balgos do, if any?

A

He lay (sic) on top of me and his penis he put it on my organ.

Q

Where did you lay (sic) down?

A

On the mat without a pillow.

Q

You said Alfonso Balgos while you were lying down on the mat without a pillow placed himself on top of you, did he placed (sic) his penis in your organ?

ATTY. POTATO :

Objection, leading.

COURT :

Already testified.

PROSECUTOR :

Q

When Alfonso Balgos placed his sex organ into your vagina, what was Alfonso Balgos doing?

A

His organ, he pushed it in and out of my organ.

Q

When Alfonso Balgos placed his organ into your vagina in and out, what did you feel?

A

Pain.

Q

About how long did Alfonso Balgos placed (sic) his organ into your vagina in and out about how long?

A

For a short period.

COURT :

Q

Did his organ enter your vagina?

A

No sir.

PROSECUTOR :

Q

But you can feel that it touched your vagina?

ATTY. POTATO :

Objection, leading.

COURT :

Sustained.

PROSECUTOR :

Q

When Alfonso Balgos stopped placing his organ into your vagina but having it in and out what did Alfonso Balgos do?

A

He again put his penis and push (sic) it in and out motion.

COURT :

Q

What happened to your vagina if anything happened to it?

A

Nothing.

Q

You said that the accused pushed his again in and out of your vagina, how long did he do that?

A

For a short period.

PROSECUTOR :

Q

When did Alfonso Balgos stop placing his organ into your vagina?

A

When Michele (sic) and Waday arrived.

Q

How did you know that Michele (sic) and Waday arrived already?

A

Because they were coming and they can be seen through the window and Alfonso Balgos out on his pants.

Q

How about you?

A

He covered me with a blanket and he he (sic) let me put on my panty because Michele (sic) and Waday were unlocking the door.

Q

Was (sic) Michele (sic) and Waday able to enter the house?

A

Yes sir.

Q

When Michele (sic) and Waday was (sic) already inside the house you were still covered with a blanket?

ATTY. POTATO :

Objection, question is leading.

COURT :

Let her answer.

A

Yes sir.

PROSECUTOR :

Q

What did Alfonso Balgos tell you if there was any?

ATTY. POTATO :

Objection, question is leading.

COURT :

No basis.

PROSECUTOR :

Q

Did you report of what Alfonso Balgos did to you in the afternoon of October 8, 1995 to your parents?

ATTY. POTATO :

Objection, question is leading.

COURT :

No basis.

PROSECUTOR :

Q

Did you meet your mother and father in the afternoon of that day?

A

Yes sir.

Q

Did you tell your parents about what happened to you?

ATTY. POTATO :

Objection, leading.

COURT :

Q

Did you have any conversation with your father and mother?

A

Yes sir.

PROSECUTOR :

Q

What was your conversation with your parents?

A

As to what Alfonso Balgos did to me that he wrestled me (gin dumog).

Q

If Alfonso Balgos is inside the court room now, will you point to the Honorable Court where he is?

A

There (witness pointing to a person sitting on the sidebench wearing orange t-shirt when asked of his name answered Alfonso Balgos.)

PROSECUTOR :

That would be all.

COURT:

Cross.

CROSS-EXAMINATION BY ATTY. ALBERT POTATO:

x x x x x x x x

Q

Now you also testified that Alfonso Balgos placed his sexual organ inside your vagina and push (sic) it in and out, is that correct?

A

Yes sir.

Q

Did you feel the sexual organ of Alfonso Balgos inside your vagina?

A

No sir.

Q

You mean it never touched your vagina, the sexual organ of Alfonso Balgos never touched your vagina?

A

It touched the top.

COURT :

Q

On what part of your vagina did the penis of Alfonso Balgos touches (sic)?

A

In the hole.

Q

But it did not enter the hole of the vagina.

A

No sir.

ATTY. POTATO :

Q

Now you said that Alfonso Balgos was on top of you, was it not?

A

Yes sir.

Q

So, you could not see what was actually touching your vagina because she was on top of you?

A

No sir.

COURT :

Q

How did you come to know that it was the organ of the accused which touches (sic) the hole of your vagina?

A

I know because with his hand he held his organ and put it in my vagina.

ATTY. POTATO :

Q

But as you have stated he was on top of you and you could not see what was touching your vagina whether it was a sex organ, the sex organ of Alfonso Balgos or the finger of Alfonso Balgos, is it not?

A

No sir.

Q

Have you ever felt before, prior to this incident in question, ever felt the touch of a male organ to your vagina?

A

No sir.

Q

So, you cannot distinguish whether what touched your vagina was a male organ or a finger to your vagina?

A

While we were watching TV in our neighbor's house, it was his finger that he put inside my vagina.

COURT :

Q

When did the accused place his finger in your vagina while watching TV, was it before the incident in question?

A

No sir.

Q

How many times before the incident in question did he place his finger in your vagina?

A

Only ones (sic).

Q

In what place did he did (sic) that?

A

In our neighbor's house.

Q

Was it inside your neighbor's house or outside?

A

Inside our neighbor's house.

ATTY. POTATO :

Q

Were there people inside the house of your neighbor at that time?

A

Yes sir.

Q

There were people watching?

A

Yes sir.

COURT :

Q

Watching what?

A

Watching power ranger in (sic) the TV.

x x x x x x x x

ATTY. POTATO :

Q

During the incident in question you could not definitely tell whether the accused placed his sexual organ in your vagina or just his finger, am I correct?

A

His organ.

Q

Did you see his sexual organ actually placed in your vagina, by the accused?

Q

No sir.

ATTY. POTATO:

That's all Your Honor.[39]

As shown in the above testimony, the trial court is correct in observing that the victim recounted her ordeal in a "straightforward, clear and convincing" manner.[40] Her testimony is very typical of an innocent child whose virtue has been violated.[41]

On the other hand, accused-appellant's assertion that he merely put his finger into the victim's vagina is incredible and contrary to the evidence. If this was all that he did, why did he have to pull down the zipper of his pants, put his penis out, lay himself on top of her, put his organ into hers, move it in and out of her organ, meaning doing a push and pull movement? And while he was doing this, Crisselle said she felt pain. On top of this, the medical examination conducted on her showed a lacerated wound in her organ positioned at 3 o' clock. If Crisselle's story was the product of her imagination, as the accused-appellant would like this Court to believe, she would have painted for the court a more dastardly and gruesome picture of her ordeal. But true to her innocence and coyness, being only six years old, the words she used on cross-examination were mild. She mentioned that his penis did not penetrate her vagina[42] but that it only touched its "hole,"[43] that the attempt of the accused-appellant to satisfy his lust for flesh was only for a short period,[44] that nothing happened to her vagina after the accused-appellant tried to insert his penis with an "in and out" motion,[45] and that she did not actually see the penis of the accused-appellant enter her vagina.[46] These are telltale signs of the victim's honesty and candor in relating her unsavory experience at the hands of accused-appellant. It has been stressed often enough that the testimony of rape victims who are young and immature deserve full credence.[47]

In any case, even if his organ merely touched the "hole" of Crisselle's vagina, this already constitutes rape since the complete penetration of the penis into the female organ is not necessary.[48] The mere introduction of the penis into the aperture of the female organ, thereby touching the labia of the pudendum, already consummates the crime of rape.[49] Since the labia is the outer lip of the genital organ,[50] accused-appellant's act of repeatedly placing his organ in the "hole" of Crisselle's vagina was rape.

Accused-appellant compounded the incredibility of his defense when he, through his collaborating counsel, Atty. Benjamin R. Perez, filed a supplemental brief putting up an inconsistent story.[51] He now asserts that he was earlier persuaded by his lead counsel, Atty. Albert I. Potato, to admit that what he did to the victim was to insert

her finger into her vagina so as to characterize his crime merely as acts of lasciviousness. He claims that he could not have possibly raped Crisselle since he was then at sea engaged in deep sea fishing on 6 October 1995 and it was only on 8 October 1995, at around three o'clock in the afternoon, when he returned to shore. He was the last one to leave the boat since he was tasked to properly store their fishing equipment. Upon his arrival at his house, he listened to the radio with Enecito Dalton and Rogelio Manalo, then took his dinner and went to sleep. He further avers that it was only upon his arrival from another fishing expedition on 13 October 1995 that he learned from the Barangay Captain of the accusations against him.

The Court is not persuaded. Accused-appellant's new defense of alibi is the weakest of all defenses.[52] It cannot prevail over his positive identification by the victim whose testimony on the events that happened on that ill-fated day was direct and convincing.[53] Moreover, his shift of theory, upon realizing the futility of his earlier defense, rather than help his cause, only further damaged his credibility.[54]

The trial is court correct in imposing the supreme penalty of death on the accused-appellant. Under Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659,[55] the penalty of death shall be imposed if the crime of rape is committed against a child below seven (7) years of age. In the present case, there is no dispute that the victim was six (6) years of age when the accused-appellant had carnal knowledge with her. The victim's age was duly established by the prosecution, through the testimony of the victim's mother, Criselda Fuentes, and further corroborated by Crisselle's Certificate of Live Birth.[56] Criselda Fuentes testified as follows:

DIRECT EXAMINATION BY ASST. CITY PROSECUTOR VICTOR POSADAS :

FISCAL POSADAS :

Q

Criselda Fuentes, do you know a certain Crisselle Fuentes?

A

Yes sir, my daughter.

Q

How old is your daughter Crisselle Fuentes?

A

7 years old.

Q

Do you know when is the date of birth of your daughter?

A

November 24, 1988 .

Q

Do you have any documents to show that Crisselle Fuentes is your daughter and that your daughter Crisselle Fuentes was born on November 24, 1988 ?

A

Yes, sir.

Q

Now, I am showing to you a Certificate of live Birth, will you please go over this if this is the document which you said?

A

Yes, sir.

FISCAL POSADAS :

I request, Your Honor for the purpose of comparison, I am showing this certified original of the Birth Certificate of Crisselle Fuentes to be compared with the machine copy, Your Honor I request Atty. Potato to compare the original with the machine copy.

ATTY. POTATO :

Admitted, your honor.

COURT:

Noted.[57]

With respect to the award of damages, we have recently held that if the commission of rape is effectively qualified by any of the circumstances under which the penalty of death may be imposed,[58] the civil indemnity for the victim shall not be less than Seventy-Five Thousand Pesos (P75,000.00).[59] Based on the foregoing judicial prescription, the trial court's award of Fifty Thousand Pesos (P50,000.00) as civil indemnity[60] should be increased to Seventy-Five Thousand Pesos (P75,000.00). Moreover, the victim is entitled to moral damages under Article 2219 of the Civil Code,[61] without the necessity for pleading or proof of the basis thereof.[62] In line with current jurisprudence, accused appellant's victim is entitled to moral damages in the amount of Fifty Thousand Pesos (P50,000.00).[63]

Four members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional; nevertheless they submit to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should be accordingly imposed.

WHEREFORE, the decision of the trial court finding accused-appellant Alfonso Balgos, alias "Lupog," guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of death is hereby AFFIRMED, with the MODIFICATION that the accused-appellant is ordered to indemnify the victim in the amount of Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity and Fifty Thousand Pesos (P50,000.00) as 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 executive clemency or pardoning power.

No pronouncement as to cost.

SO ORDERED.

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

- [1] Rollo, p. 5.
- [2] TSN, 1 March 1996, pp. 4-5.
- [3] Id., at 9.
- [4] Id., at 17-18.
- [5] Id., at 10.
- [6] Id., at 19.
- [7] Id., at 11.
- [8] Id., at 18-19.
- [9] Id., at 12.
- [10] Id.
- [11] TSN, 5 March 1996, p. 6.
- [12] Id., at 6-7.
- [13] Id., at 7.
- [14] Id.
- [15] TSN, 6 March 1996, p. 6.
- [16] Id.
- [17] Id., at 6-9.
- [18] Id., at 11.
- [19] TSN, 29 February 1996, pp. 4-5, 11.
- [20] Exhibit A, Records, p. 61.
- [21] TSN, 3 May 1996, p. 3.
- [22] Id., at 7.
- [23] Id., at 3.
- [24] Id., at 5.
- [25] Id., at 5-6.
- [26] Decision, Records, p. 107.
- [27] Id., at 112.

[28] Id.

[29] Id., at 112-113.

[30] Id., at 113.

[31] Id.

[32] Supra, note 26 at 117.

[33] Appellant's Brief, Rollo, p. 44.

[34] Id., at 47.

[35] Id., at 48.

[36] Id.

[37] People vs. Larena, G.R. Nos. 121205-09, 29 June 1999, p. 12; People vs. Akhtar, G. R. No.130640, 21 June 1999, p. 10; People vs. Sandico, G. R. No. 128104, 18 May 1999, p. 6; , People vs. Manggasin, G. R. Nos. 130599-600, 21 April 1999, pp. 10-11; People vs. Cantos, G. R. No. 129298, 14 April 1999, p. 6.

[38] People vs. Reñola, G. R. Nos. 122909-12, 10 June 1999, p. 8.

[39] TSN, 1 March 1996, pp. 9-23.

[40] Supra, note 26.

[41] People vs. Jose, G. R. No. 128789, 24 May 1999, p. 7.

[42] TSN, 1 March 1996, p. 19.

[43] Id., at 18-19.

[44] Id., at 11-12.

[45] Id., at 11.

[46] Id., at 19-20.

[47] People vs. Carullo, G. R. No. 129289, 29 July 1999, p. 9; People vs Pineda, G. R. No. 118312-13, 28 July 1999, p. 11.

[48] People vs. Peurtollano, G. R. No. 122423, 17 June 1999, p. 10; People vs. Quiñanola, G. R. No. 126148, 5 May 1999, p. 23; People vs. Almaden, G. R. No. 112088, 25 March 1999, p. 8.

[49] People vs. Silvano, G. R. 127356, 29 June 1999, p. 9; People vs. Ablog, G. R. No. 124005, 28 June 1999, p. 8.

[50] People vs. Ayo, G. R. No. 123540, 30 March 1999, p. 12.

[51] Rollo, pp. 87-90.

[52] People vs. Carullo, 289 SCRA 481, 496 (1998); People vs. Nang, 289 SCRA 16, 31 (1998); People vs. Azugue, 268 SCRA 711, 723 (1997).

[53] People vs. Lozano, 296 SCRA 403, 415 (1998).

[54] People vs. Trimor, 243 SCRA 129, 132 (1995).

[55] Further amended by Republic Act No. 8353, otherwise known as "The Anti-Rape Law."

[56] Exhibit B, Records, p. 62.

[57] TSN, 5 March 1996, p. 3.

[58] Under Art. 335 of the Revised Penal Code, the death penalty shall be imposed if the crime is committed with any of the following attending circumstances:

- 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.
- When the victim is under the custody of police or military authorities.
- 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.
- When the victim is a religious or a child below seven (7) years of old.
- When the offender knows that he is afflicted with Acquired Immunity Disease Syndrome (AIDS) disease.
- When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
- When by reason or on occasion of the rape, the victim has suffered permanent physical mutilation.

[59] *People vs. Losano*, G. R. No.127122, 20 July 1999, p. 17; *People vs. Aquino and Catap*, G.R. Nos. 123550-51, 19 July 1999, p. 24; *People vs. Alitagtag*, G. R. Nos. 124449-51, 29 June 1999, p.11.

[60] *Supra*, note 26 at 117.

[61] Art. 2219. Moral damages may be recovered in the following and analogous case:

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 or raped, or abused, referred to in No. 3 of this Article, may also recover moral damages.

x x x x x x x x

[62] *People vs. Mijano*, G. R. No.129112, p. 17, 23 July 1999.

[63] *People vs. Flores*, G. R. No.130546, p. 13, 26 July 1999.

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