PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO1 ALLAN TEJADA, ACCUSED-APPELLANT.

G.R. No. 126166. July 10, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

While the urgency of a man's bestial desire only lasts a few moments, the psychological trauma it causes to a young girl extends throughout her lifetime. Thus, for this Court, nothing is more disdainful than to see a young girl robbed of her sacred innocence.

For automatic review[1] is the joint decision[2] of the Regional Trial Court, Branch 38, Lingayen, Pangasinan, in Criminal Case Nos. L-5372 and L-5373[3] finding accused Allan Tejada guilty beyond reasonable doubt of the crime of rape on two (2) counts and imposing upon him the extreme penalty of death in each case.

The information in Criminal Case No. L-5372 reads:

> "The undersigned upon verified complaint filed by Charisse C. Mendoza, a minor of 13 years old hereby accuses POI ALLAN TEJADA, PNP of the crime of RAPE, committed as follows:
> "That on or about the 3[rd] day of April 1995 at dawn, in barangay Quibaol, Municipality of Lingayen, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his superior strength, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with Charisse C. Mendoza against her will, to her damage and prejudice.

CONTRARY to Art. 335 of the Revised Penal Code."[4]

The information in Criminal Case No. L-5373 reads:

> "The undersigned upon verified complaint filed by Charisse C.Mendoza, a minor of 13 years old hereby accuses POI ALLAN TEJADA, PNP of the crime of RAPE, committed as follows:
> "That on or about the 16[th] day of May 1995 at dawn, in barangay Quibaol, Municipality of Lingayen, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his superior strength, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have sexual intercourse with Charisse C. Mendoza against her will, to her damage and prejudice.

CONTRARY to Art. 335 of the Revised Penal Code."[5]

The two cases were consolidated upon the request of the prosecution.

On arraignment, the accused, with the assistance of counsel, pleaded NOT GUILTY. Thereafter, joint trial ensued. On June 16, 1996, the trial court rendered a decision, the dispositive portion of which reads:

> "Wherefore, in the light of all the considerations discussed above, judgment is hereby rendered in the above-entitled cases:

> In Criminal Cases Nos. L-5372 and L-5373, the court finds and holds the accused, Allan Tejada, guilty beyond preadventure (sic) of doubt of the crime of Rape on two counts as charged in the informations filed against him defined and penalized under the provisions of Article 335 of the Revised Penal Code, amended by Republic Act No. 7659 and conformable thereto, pursuant to law, hereby sentences said accused in each case to suffer the penalty of Death and to pay the costs of the proceedings.
>
> The court further orders the accused to indemnify the offended party, Charisse Mendoza, the sum of Fifty Thousand (P50,000.00) Pesos in each case or a total of One Hundred Thousand (P100,000.00) Pesos in both cases as moral damages without subsidiary imprisonment in case of insolvency. The accused is likewise ordered by the court to acknowledge and support the baby boy "James" who is his illegitimate child with the herein complainant.
>
> SO ORDERED."[6]

In his Appellant's Brief, accused Tejada ascribes to the trial court the following errors:

> "I
>
> THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE COMPLAINANT DESPITE THE MATERIAL AND MAJOR CONTRADICTIONS BETWEEN HER TESTIMONY IN COURT AND HER SWORN STATEMENT STATEMENT DATED OCTOBER 26, 1995 (EXH. "1").
>
> II
>
> THE LOWER COURT ERRED IN NOT BELIEVING THE APPELLANT'S DEFENSE OF ALIBI.
>
> III
>
> THE LOWER COURT ERRED IN IMPOSING THE DEATH PENALTY ON THE APPELLANT.

The version of the prosecution, as aptly narrated in the People's Brief, is reproduced hereunder:

> "Born on May 19, 1982, in Lingayen, Pangasinan (Exh."B"), Charisse Mendoza is the eldest child of the couple Vergel A. Mendoza and Marichu S. Camiguing, who are residents of barangay Quibaol of the said municipality.(p.4, February 8, 1996, TSN) Her paternal grandmother, Lourdes Mendoza, owns a house in the same barangay which is about 120 meters away from their house. Living in the same house with her grandmother were Sandra Tejada, her first cousin on her paternal side, the latter's husband, Allan, who was a member of the Region I PNP Mobile Force stationed in San Fernando, La Union, and their two (2) children, namely Tonton and Celi. (pp. 4-7, February 1, 1996, TSN).
>
> "Her grandmother thought that Allan, who left for barangay Namolan, would not be coming home on April 2, 1995, so she asked Charisse to spend the night in her house to accompany her cousin Sandra. In the evening of the said date, Charisse, who would be turning 13 years old the following month, went to her grandmother's place with the permission of her father. After watching TV with her grandmother until 8:30 p.m., Charisse went to sleep on the sofa in the sala of the ground floor of the two-storey house of her grandmother. The sofa where she slept was about 3 meters away from her grandparents' bed, with some chairs separating them. Sandra and her children slept in a room upstairs. (pp. 7-9, Ibid.)
>
> "At around 10:00 o'clock in the evening, Charisse was awakened by the sound of the tricycle arriving at their place. Shortly afterwards, she heard Allan calling for his wife who then went down and opened the door for him. Allan took his supper and after which, he went upstairs while Charisse went back to sleep.(pp. 9-10, Ibid.)
>
> "At dawn of the following day, Charisse woke up when she felt that her legs were being pinned against the sofa and when she opened her eyes, she saw Allan sitting on the sofa. She asked Allan what he was doing but the latter told her instead to keep quiet. He then held her hands, covered her mouth and warned her not to

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shout, or else he will shoot her and her father. Allan's threat frightened her and made her feel nervous. (pp.10-11, Ibid.)

"After releasing her hands and uncovering her mouth, Allan went on top of her, removed her short pants and underwear and after removing his shorts and brief, repeated his earlier threat on her. Thereafter Allan inserted his penis into her vagina and made coitus movements which, in the process, caused her to feel some pains in her vagina. She could not shout because her mouth was covered by Allan's hand. After ejaculating, Allan pulled out his penis and with his hands covering Charisse's mouth, warned the latter not to reveal the incident to anyone, otherwise he will shoot her and her father. (pp. 11-12, Ibid.)

"After putting on his brief and shorts, Allan went up to their room, while Charisse put on her underwear and short pants, As it was still dark outside, she opted to stay in the sofa where she wept until 6:00 o'clock in the morning. She then woke up her grandmother and sought her permission to go home. She did not report the incident to her grandparents as she was frightened by the long firearm of Allan which was being kept in the kitchen, for it reminded her of Allan's threat. (pp. 12-13, Ibid.)

xxx xxx xxx

"On May 15, 1995, Charisse her two sisters, Jill and Candice, and brother George, were brought by their father to their grandmother to spend the night there as he was leaving then for Manila to follow his wife who was there working on his papers relative to his application for a job abroad. (Ibid.)

xxx xxx xxx

"Between 10:00 and 11:00 in the evening, Allan came home from La Union where he was assigned. George switch on the light while Sandra opened the door for him. Charisse and George then went back to sleep. At early dawn of the following day, Charisse was awakened when she felt that Allan was near her feet and pulling her blanket. She wanted to shout but Allan held her hands and covered her mouth and told her not to shout. (p. 17, Ibid)

"Allan then removed her pants and underwear and after removing his shorts and brief, went on top of her, inserted his penis into her vagina and made coitus movements. While she was being sexually abused by Allan, the latter told her not to shout or else, he will kill her and her father. Although she pulled the clothes of her brother and sister and tried to kick them, she was not able to wake them up. (p. 18, Ibid.)

"After the sexual abuse, Allan told her that should she reveal the incident to anybody, he would tell her father that they were having an affair even if it were not true. Allan put on his pants and brief and went up to their room. Charisse embraced her brother and cried. She had wanted to kick Allan but could not do so because he was much stronger and stouter than her and was on top of her and holding her hands which were pinned against her breasts. (pp.18-19, Ibid.)

xxx xxx xxx

"On October 25, 1995, Charisse complained to her mother that she was having some pains in her stomach. Her mother brought her to the Sto. Niño Clinic in Lingayen, Pangasinan where she was examined by a certain Dr. Casipit who advised her mother that she should undergo an ultra sound examination. On the following day, Charisse was taken by her mother to the Nazareth General Hospital where she was examined by Dr. Ricky Querubin with the use of ultra sound machine. Dr. Querubin issued a medical report on the result of the ultra sound examination of Charisse showing that she was 20 weeks and 4 days pregnant. (pp. 22-23, Ibid.)

"Stunned by the said medical result, the mother of Charisse confronted her as to who was the father of the child in her womb. She told her mother that she would make the revelation at home but when they were in the restaurant, her mother kept crying, thus, forcing her, in the presence of her cousin Sandra, to reveal that Allan was the one responsible for her pregnancy. Surprised by Charisse's revelation, Sandra borrowed her watch and

> hurriedly left for San Fernando, La Union to see her husband. (p. 27 Ibid.)[7]

On October 26, 1995, Charisse and her mother went to the PNP Regional Office in San Fernando, La Union and lodged an administrative complaint against the accused. After investigation, the latter was discharged from the service.[8] On February 23, 1996, complainant gave birth to a baby boy who was named "James Mendoza."[9]

Accused Tejada did not deny that he had sexual contact with the complainant. In defense, however, he asserted that complainant was his sweetheart and that it was she who initiated the said act which happened thrice, i.e., November 10, 1994, December, 1994 and June 29, 1995.[10] He narrated that in July 1995, he and complainant talked about the latter's condition. When informed about her pregnancy, he advised her to take a rest. He further alleged that every time he visited his parents in Avenida Rizal West, complainant would always ask for "pasalubong," so he would give her chocolate, sometimes chico and biscuits.[11] They even addressed each other as "darling," especially when nobody heard them.[12]

The accused vehemently denied having raped complainant on April 3, 1995 and May 15, 1995. According to him, in April 1995, he was stationed in Laoag, Ilocos Norte, and in May, 1995, in Bulag, Bantay, Ilocos Sur.[13] His assignment in said places is evidenced by the "Disposition and Location of Troops"[14] and "Roster of Troops"[15] and by the testimonies of his Platoon Leaders, Lt. Ismael Atluna and Sgt.Espiritu Dulatre.

Sandra Tejada, wife of the accused, corroborated the claim of her husband. She presented his letter, personally delivered to her on March 29, 1995 by one Sgt. Del Rosario, informing her that he (her husband) would not be able to attend her birthday on April 2, 1995. Her husband did not arrive home in the evening of May 15, 1995 because he was then assigned in Bulag Bantay, Ilocus Sur.

To further bolster accused's alibi, the defense offered the testimonies of PNP Capt/ Sr. Inspector Deguillo Godoy, Police Inspector Ismael Atluna and Sgt. Espiritu Dulatre.

Capt./Sr. Inspector Godoy testified that he knows the accused because he was one of his men when he was the Company Commander at the Regional Mobile Force, Regional Office, San Fernando, La Union.[16] In a certification[17] he issued, Sr. Insp. Godoy confirmed that in the year 1995, particularly in the months of April and May, the accused was then under his command and was among those on duty as reflected in the Disposition and Location of Troops and Roster of Troops.

Police Inspector Ismael Atluna declared that he also knows the accused because the latter was one of his men.[18] He recalled that on the first week of April, 1995, the accused was in Camp 1 Laoag, Ilocos Norte and that after one week, he returned to San Fernando, La Union.[19]

Sgt. Espiritu Dulatre testified that he was the platoon sergeant of the company wherein the accused was one of those under his command.[20] On April 3, 1995, the accused was with him. But on May 16, 1995, he does not know his whereabouts.[21]

In convicting the accused, the trial court rationalized as follows:[22]

> "The court after carefully examining and studying the evidence on record as well as the facts obtaining in these cases, finds it easier to accept the theory of the prosecution for being more credible and in accordance with common sense, logic and promotions of human behaviour. The proposition of the defense that accused and complainant are lovers and that it was Charisse who seduced Allan while the latter was sleeping alone in their room in the afternoon of November 10, 1994 is utterly unnatural and patently a mere concoction and an afterthought of the accused to secure an acquittal of the charges filed against him. The court cannot accept with hospitality the argument of the defense that Charisse Mendoza who was then a little above 12 years old (12 years, 10 months and 14 days) will involve herself in a love affair with the accused who is much older than her

(accused was then 26 years old) and the husband of her own first cousin. To the mind of the Court Charisse is too young and ignorant to indulge herself in sexual intercourse, there being no evidence to show that she is a flirt or a girl of loose in rural ways and atmosphere, not affected by the modern and sophisticated ways of urban life. In fact, Charisse does not even know that she had conceived and was already pregnant not until she was subjected to ultrasound examination. The court had occasions to observe the complainant when she testified and found her to be a simple, humble and unassuming barrio lass.

Taking into consideration the relationship of the accused and complainant, Charisse being the sister-in-law of the accused as well as the physical built, size and age of the parties, the force needed for the accused to be able to commit the sexual attacks need not be so great or of such nature as it could not be resisted. The force or violence employed by the accused upon the victim need not be over powering or irresistible but necessary only to achieve its purpose. In the cases at hand, the accused is stronger and sturdier than the victim and a policeman who has a firearm. The court further observed that the complainant in answering question propounded to her, was sincere and frank and at times shed tears from her eyes as she recalled and narrated the harrowing experiences and tragedy that befell on her, young as she is. The court likewise noted no hesitancy and artificiality on her voice when she testified how she was deflowered by the accused."

After a meticulous and careful evaluation of the entire records of this case, this Court agrees with the trial court's assessment of accused-appellant's guilt.

Young as she was, complainant displayed truthfulness in her testimony, thus:

"Q

Now, what happened when you proceeded to the house of your grandmother that early afternoon of April 2, 1995?

A

While I am already there at the house of my grandmother, sir, Sandra advised me to take care or watch her children and in that instance me and my grandmother were then viewing and watching TV, sir.

x x x x x x x x x

Q

Now, as you were slept, do you know of anything that woke you up?

A

When it was already around dawn time, I felt my two (2) legs were pinned because Kuya Allan sat on the sofa, sir.

COURT:

Q

You said pinned down or sidewise?

WITNESS:

A

My legs pinned sidewise not downward. Sir.

Q

Against the wall of the sofa?

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A

My legs were pinned because it was paused at the leaning of the sofa, sir.

FISCAL:

Q

Now, when you said Kuya Allan as the one who awakened you because he sat down on the sofa causing your legs pinned, who is this Kuya Allan you are referring to?

A

Allan Tejada, sir.

x x x

Q

Now, what transpired next after your legs were pinned as the accused sat on the sofa?

A

When I was awakened by reason of the pinning, I noticed Kuya Allan and I asked him, "Kuya Allan why?" then for a little: I asked him "why?' and he answered me, `Keep quite (sic).'

Q

What transpired next?

A

He held my two (2) hands, thereafter covered my mouth, Sir, after covering my mouth, he told me that he will shoot my father and I, sir.

Q

And how did you feel when you heard those remarks of you Kuya Allan?

A

I was frightened and got nervous, sir.

Q

What transpired after he covered your mouth and told you that he will shoot your father and you?

A

He released his hands on my two (2) hands and my mouth and went on top of me, then, removed my shorts and after removing my short pants he removed my panty and removed also his short pants and his brief, sir.

Q

What transpired next?

A

And then, he repeated the same remarks telling to shoot my father and I, sir.

Q

And what transpired next after that threatening remark that he will shoot your father and you?

A

Then, he inserted his penis in my vagina, sir.

Q

And what transpired next?

A

After he inserted his penis in my vagina, I felt the pain inside and then, he make push and pull movement, sir.

COURT:

Coitus movement.

FISCAL:

Q

How did you feel this coitus movement of Allan in your vagina?

WITNESS:

A

I felt pain, sir. In the process I felt pain in my vagina, sir.

Q

And how did you react because of this pain you felt because of coitus movement of the accused?

A

When I felt the pain, I was crying but I could not talk because he covered my mouth, sir.

x x x x x x x x x

FISCAL

Q

What transpired next?

A

After finishing that ejaculation, he removed his penis, sir, from my vagina.

Q

What transpired next?

A

Again, after removing his penis from my vagina while his hand covering my mouth he again warned me not to talk or else he will shoot my father and I, sir."[23]

Again, on May 16, 1995, appellant committed similar sexual acts against complainant to satisfy his bestial lust. She continued testifying, thus:

"Q

What was it that awakened you at early dawn of May 16, 1995.

A

I felt Kuya Allan who was near our feet and pulling the blanket, sir.

Q

What transpired next after you noticed your Kuya Allan near your feet pulling that blanket?

A

After pulling our blanket out from us then he held my two (2) hands again and covered my mouth, sir.

Q

What transpired next after he held your two (2) hands and covered your mouth with his hands?

A

After pulling out the blanket and held my two hands, he covered my mouth and told me not to shout. Thereafter, he removed his pants and brief and he removed also my pants and my panty and he inserted his penis in my vagina again, sir.

Q

What transpired again?

A

When he inserted his penis in my vagina, he held my two (2) hands and told me not to talk or else he will shoot my father and then after making push and pull movement, he removed his penis thereafter and then threatened me not to talk again, otherwise he will shoot my father and me, sir.[24]

As can be gleaned, complainant's narration of the incidents is candid, straightforward and unflawed by any material inconsistency. Even on cross-examination, she never wavered in her recollection. Considering her age, it would be improbable for her to fabricate a charge so humiliating to her self and her family had she not been truly subjected to the painful experience of sexual abuse. It is for this reason that testimonies of child-victims are normally given full weight and credence, since when a minor says she was raped, she says in effect all that is necessary to show that rape was committed.[25]

At any rate, the trial court which has the unique opportunity to observe the facial expressions, gestures, and tone of voice of a witness while testifying, is competent to determine the testimony will be given credence. As there are many matters which cannot be photographed into the records, the decision of the trial judge, as in this case, will not be disturbed on review.[26] To be sure, this Court has almost no assistance in the examination of the testimony and must, therefore, rely upon the good judgment of the lower court.[27]

The "lovers' theory" of appellant must fail for being a flimsy effort on his part to escape culpability. Being a much-abused affirmative defense that rashly derides the intelligence of the Court,[28] the allegations of a love affair must be supported by convincing proof.[29] Here, complainant vehemently denied that she had an illicit love relationship with the appellant.[30] She was too young and ignorant to involve herself in sexual acts, there being no evidence on record as would show that she is a flirt or a girl of loose moral character. Other than appellant's assertion, there was no other evidence to show that he and complainant were sweethearts. There were

no letters or notes, no photos or mementos, nothing at all to prove that such romantic relationship existed.[31] The complainant was a little over 12 years old then. As properly observed by the trial court, to a young and naive girl like her, it is highly inconceivable to think that she would indulge herself in a love affair with the accused who is 14 years older than she and the husband of her own cousin.

Appellant initially asserts that the complainant's testimony is tainted with contradictions which clearly indicate that she deliberately distorted the facts. Appellant argues that while in her testimony and sworn declaration dated October 30, 1995, complainant declared that she was raped twice, on April 3 and on May 16, 1995, she, however, stated in her sworn statement dated October 27, 1995 which she executed before SPO2 Romero D. Edrina[32], that she was abused once by the appellant and that it happened sometime in June 1995. These contradictions in complainant's testimony, according to appellant, engender serious doubts on her credibility.

The Court is not convinced. It is a settled doctrine that discrepancies in the testimony of a complainant regarding the exact dates she was allegedly raped are inconsequential[33] since the date of the commission is not an essential element of the crime of rape, what is material being the occurrence of the rape, not the time of the commission thereof.[34] This is especially true in this case where complainant recounted the details of the crimes in a candid and straightforward manner, positively identifying the appellant as her rapist.

Even so, we agree with the trial court that the imputed discrepancy does not show that complainant perverted the truth. She satisfactorily explained the inconsistencies when she was subjected to cross-examination, thus:

> CROSS EXAMINATION
>
> ATTY. MERRERA
>
> x x x x x x x x x
>
> Q
>
> Now having been apprised of your affidavit, your signature, your personal circumstances, do you still affirm and confirm the correct veracity of all the statements stated therein? Please examine the same.
>
> A
>
> Yes, sir, this is mine. I have a mistake in my answer here in paragraph 8 because what I stated was June, 1995, sir.
>
> Q
>
> So, this month of June is not true.
>
> A
>
> Yes, Sir.
>
> Q
>
> And if you committed mistake, why did you not call the attention of the investigating officer - sir, that is a mistake that is not June. Why did you not call his attention?
>
> A
>
> Because at that time when my statement was given by me to that office, I cannot remember because I was still suffering from nervousness, sir.
>
> COURT:

Q

What is the real date?

A

It should be April 3, 1995 and May 16, 1995, sir.

ATTY. MERRERA:

Q

There were many Policemen in San Fernando, La Union, General, Colonel up to Private Corporal. Being in the company of your mother, you were still nervous?

WITNESS:

A

Yes, sir. The more I got nervous at the time because my mother was angry, sir.

x x x x x x x x x

Q

Again, on the basis of your Affidavit filed before the Inspector General, you were not raped only once.

A

No, sir, it was twice.

Q

At the time that you were being examined, were you still afraid because you were trembling, according to you?

A

Yes, sir. Especially so when I was interrogated, the more I got nervous because I was reminded of his threat, sir.[35]

To an innocent girl like complainant, she could not be expected to make an errorless recollection of a harrowing incident so humiliating and so painful as rape, for the trauma that she suffered still lingered in her mind. Jurisprudence abound that inconsistencies between testimony in open court and sworn statement given to investigators do not necessarily discredit a witness since ex-parte affidavits are almost always incomplete[36] or inaccurate for lack of or absence of searching inquiries by the investigating officer.[37] More so, sworn statements/affidavits are generally subordinated in importance to open court declarations because the former are often executed when affiant's mental faculties are not in such state as to afford a fair opportunity of narrating in full the incident which has transpired.[38] In this case, ample margin of error and understanding should be accorded to the young complainant who, naturally would be gripped with tension, certainly much more than adults, when required to relive an experience she would most definitely rather forget.

We reject appellant's defense of alibi. He was properly identified by the complainant. More importantly, said defense does not preclude his presence at the locus criminis. Appellant claims that he was assigned in Laoag City, Ilocos Norte and Dulag, Bantay, Ilocos Sur. Granting he was in any of these places, however, it was not physically impossible for him to be in Lingayen, Pangasinan at dawn of April 3, and May 16, 1995, since the two places may be travelled in few hours by an ordinary mode of transportation, not to mention the fact that the very

unit - Region I PNP Mobile Force - to which appellant belonged, was amply provided with utility vehicles.

Furthermore, upon careful scrutiny and review of the testimonies of the witnesses for the defense, the only evidence that would support appellant's claim that he was in Laoag City on April 3, 1995, and in Dulag, Bantay, Ilocos Sur on May 16, 1995, is the testimony of his wife.

As observed by the Solicitor General, appellant's alibi was never corroborated by Sgt. Espiritu Dularte and Inspector Ismael Atluna.[39] Sgt. Espiritu admitted that he did not know the whereabouts of the appellant on May 16, 1995 because on that day he (Espiritu) returned to the Regional Office in La Union.[40] Inspector Atluna, on the other hand, could not recall where the appellant was on April 3, 1995 because he did not usually mingle with his men. He just assigned his sergeant to conduct surveillance on them.[41] Likewise, Police Inspector Deguillo Godoy, the Company Commander of the appellant, had no personal and actual knowledge of his whereabouts on April 3, 1995 and on May 16, 1995.[42]

This Court has held that where an accused's alibi can only be confirmed by his relatives (here, by his wife), his denial of culpability deserves scant consideration, especially in the face of affirmative testimonies of credible prosecution witnesses as to his presence in the crime scene.[43] As between the uncorroborated negative testimony of the wife and complainant's positive identification of the appellant as her rapist, it is the latter that certainly deserves credence.

All told, we find no reason to depart from the findings of the trial court that the guilt of herein appellant passed the scrutiny and demands of moral certainty. We observe, however, that it committed an error in the imposition of penalty.

In each count of rape, the trial court imposed upon appellant the penalty of death pursuant to Article 335 of the Revised Penal Code, as amended by Sec. 11 of R.A. No. 7659, the pertinent portions of which provide:

> "The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.
>
> x x x x x x x x x
>
> 7. When committed by any member of the Armed Forces of the Philippines or Philippine National Police or any law enforcement agency;"

The trial court appreciated relationship and minority as qualifying circumstances considering that appellant is the cousin-in-law of the complainant, who, at the time of the commission of the crime was under 18 years of age.[44] The trial court also considered that appellant was a member of the PNP at the time of the commission of the crimes, hence it appreciated the same as another qualifying circumstance.

The fact that complainant was just 13 years old when she was raped is a matter well established by the prosecution. Standing alone, however, said fact would not justify conviction of rape in its qualified form. Not only was there failure in both informations to allege the fact of relationship[45] between appellant and complainant, but more significantly, the appreciation of such relationship is in itself legally flawed. Per express provisions of R.A 7659 quoted above, the required degree of relationship, whether by consanguinity or affinity, is up to third civil degree only. Here, the degree of relationship between appellant and the complainant, being cousins-in-law, is already in the fourth civil degree, a reason more than enough to bar its appreciation as a qualifying circumstance

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for purposes of imposing the death penalty under R.A 7659.

Likewise, there is substantial error with respect to the trial court's appreciation of appellant's being a member of the PNP as another qualifying circumstance. While the prosecution has proved that he was a member of the PNP when he committed the crimes, however, this fact has not been specifically alleged in both informations. The informations simply describe the appellant as a POI and/or a member of the PNP. There is no allegation that he committed the crimes while he was a member of the PNP. This dialectic defect cannot be considered as mere innocuous error. On the contrary, it is both substantial and procedural. If it is the prosecution's goal to have appellant adjudged guilty of rape in its qualified form, such conviction is manifestly not possible under both informations.

To charge appellant with rape in one of its simple forms and then try and convict him of rape in one of its qualified forms would be a prosecution without a valid accusation. Having been informed only of the elements of simple rape, which crime was duly established by the prosecution, appellant can be convicted only of such crime. It would be a denial of the right of the appellant to be informed of the charges against him, and consequently, a denial of due process, if he is charged with simple rape, on which he was arraigned, and be convicted of qualified rape punishable by death.[46] Accordingly, the penalty of reclusion perpetua should be imposed upon appellant, not death.

We also note that the trial court only awarded moral damages of P50,000.00 in each case. It failed to award civil indemnity which is now fixed at fifty thousand pesos (P50,000.00) in cases of simple rape.

WHEREFORE, the appealed judgment of the court a quo is AFFIRMED with the MODIFICATION that for each count of rape, appellant ALLAN TEJADA is sentenced to suffer the penalty of reclusion perpetua and to pay complainant Charisse Mendoza P50,000.00 as civil indemnity, in addition to the sum of P50,000.00 by way of moral damages awarded by the trial court for each count of rape.

SO ORDERED.

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

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[1] Pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act 7659 and Section 10, Rule 122 of the Revised Rules of Criminal Procedure, the records of these cases were forwarded to this Court for such automatic review.

[2] Penned by Judge Antonio M. Belen.

[3] Entitled "People of the Philippines vs. PO1 Allan Tejada.

[4] Criminal Case No. L-5372, Records, p.1.

[5] Criminal Case No L-5373, Records, p. 1.

[6] Decision, p.15; Rollo, p. 34.

[7] Rollo, pp. 88-94.

[8] TSN, February 8, 1996, pp. 25-28.

[9] TSN, April 17, 1996, p. 9.

[10] TSN, March 27, 1996, pp. 4-13.

[11] Id., p.25.

[12] Id., pp-25-26.

[13] Id., pp.18-20.

[14] Records, p.82-83.

[15] Exhibit 5, Id., p.84.

[16] TSN, March 4, 1996, pp. 3-4.

[17] Criminal Case No.L- 5372, Records p. 81.

[18] TSN, March 21, 1996, p. 2.

[19] Id., p. 3.

[20] Id., p. 6.

[21] Id., p. 9

[22] Pp. 12-13, rollo, pp. 31-32.

[23] TSN, February 1, 1996, pp. 7-12.

[24] Id., p.17-18

[25] People vs. Brandares 311 SCRA 159(1999); People vs. Silvano, 309 SCRA 362.(1999)

[26] People vs. Raptus, 198 SCRA 425 (1991) citing Wheeler vs. U.S., 159 US 523,

[27] People vs. Victor, 292 SCRA 186, p. 195 (1998), citing People v. Pamor,237 SCRA 462 (1994).

[28] People vs. Apostol, 320 SCRA 327 (1999)

[29] People vs. Monfero, 308 SCRA 396(199)

[30] TSN, April 17, 1996, p. 5, 7.

[31] People vs. Jimenez, 302 SCRA 607 (199); People vs. Marabillas, 303 SCRA 352 (1999).

[32] Criminal Case No. L-5372, Records, pp.78-79.

[33] People vs. Alba, 305 SCRA 811 (1999).

[34] People vs. Losano, 310 SCRA 707 (1999).

[35] TSN, February 1, 1996. pp. 32-34.

[36] People vs.Banela, 301 SCRA 84 (1999); People vs. Reduca, 301 SCRA 516 (1999).

[37] People vs. Perez, 307 SCRA 276 (1999).

[38] People vs. Sanchez, 302 SCRA 21 (1999).

[39] Rollo, p. 105.

[40] TSN, March 21, 1996, p. 9.

[41] Id., p. 4

[42] TSN, March 4, 1996, p.4, pp. 8-9.

[43] People vs. Ocumen, 319 SCRA 422 (1999); People vs. Santiago, 319 SCRA 644 (1999); People vs. Ablog, 309 SCRA 222 (1999).

[44] Rollo, p. 33

[45] People vs. Ambray, 303 SCRA 697.

[46] People vs. De la Cuesta, 304 SCRA 83 (1999).

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