

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OMAR MEDINA Y LUMBERIO, ACCUSED-APPELLANT.

G.R. No. 126575. December 11, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

Accused-appellant Omar L. Medina was convicted of having raped the 13-year old daughter of his common-law spouse four (4) times in 1995, and was sentenced to suffer the death penalty for each of the four (4) counts of rape, with all its accessory penalties. Omar Medina was likewise ordered to pay the victim, Lodalyn Flores, for each count the sum of P50,000.00 as indemnity, P50,000.00 as moral damages and another P50,000.00 as exemplary damages. The judgment of conviction was rendered by the Regional Trial Court of Parañaque, Metro Manila, Branch 259, in a consolidated Decision[1] dated September 23, 1996, in Criminal Cases No. 95-710 to 713.

The judgment of the trial court is now before us for automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659,[2] and Sections 3 (e) and 10, Rule 122 of the Revised Rules of Court.

These four (4) cases of rape were commenced on the basis of four (4) separate complaints signed by complainant Lodalyn Flores and, upon prior authority by the Provincial Prosecutor, the same were filed with the trial court on November 24, 1995, docketed as Criminal Cases No. 95-710, 95-711, 95-712, and 95-713.

The crime was allegedly perpetrated by Omar Medina on four (4) occasions as set forth in each of the four (4) complaints which are similarly worded (except with reference to the dates the crime was allegedly committed), thus:

"The undersigned complainant accuses Omar Lumberio Medina of the crime of Rape, committed as follows:

"That on or about (July 25, 1995,[3] August of 1995,[4] September of 1995[5] and October of 1995[6]), in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant LODALYN FLORES, a minor, 13 years old, against her will.

"CONTRARY TO LAW."[7] (dates in parenthesis supplied)

Upon arraignment on the four (4) complaints, Omar Medina entered a plea of not guilty.

Based on the testimonies of complainant Lodalyn Flores and Dr. Floresto Arizala, Jr., the evidence for the prosecution runs as follows:

Lodalyn Flores is the stepdaughter of Omar Medina, he being the common-law husband of her mother, Lolita Flores. Having been born on March 26, 1982, Lodalyn was thirteen (13) years of age and a grade four student at

the time she was raped by Omar. She has a younger brother, Rizaldy, nine years of age, and a four-year old half-sister, Aileen, who is Omar's daughter with Lolita.[8]

On July 25, 1995, at about 1:00 o' clock in the afternoon, Lodalyn was awakened from her nap at their bedroom in Champaca St., UPS IV, Parañaque, when Omar covered her mouth and tied her hands. Omar threatened Lodalyn with a knife which he placed at her side and forcibly removed Lodalyn's T-shirt and shorts, including her undershirt and panty. He then removed his shorts and brief and placed himself on top of Lodalyn. He boxed her thighs and succeeded in sexually penetrating her. Afterwards, Lodalyn noticed some blood and slimy discharge in her vagina. At the time Lodalyn was sexually abused by Omar, there was no one else inside the house as her brother and sister were playing outside.[9]

Lodalyn kept mum about the unfortunate incident as she was afraid of Omar's threat to kill her and her mother.

Sometime in August of 1995, Omar again raped Lodalyn when her mother was away from their house and while her younger brother and sister were asleep as it was already 7:00 o' clock in the evening. This happened after Omar asked Lodalyn to prepare her mother's food and to get his T-shirt from the cabinet in the bedroom. While already inside the bedroom, Lodalyn noticed that Omar was at her back. He then gagged her mouth with a piece of cloth he was holding. Lodalyn struggled to free herself, but Omar boxed her stomach to submission and succeeded in sexually ravishing her. Again, Omar threatened to kill her and her mother if she would tell anyone about the incident.[10]

The third time Lodalyn was raped by Omar occurred in September of 1995 while her mother was not home yet and her brother and sister were at school. Omar asked Lodalyn to get the P20.00 under the pillow. She complied but as she turned around, Omar was already in front of her. Lodalyn boxed Omar in the chest but he slapped her and placed her on the bed. Omar raised her skirt, removed her panty, then his clothes and sexually assaulted Lodalyn.[11]

The fourth and last time Omar ravished Lodalyn took place in October of 1995. This time it was more violent. Omar repeatedly boxed Lodalyn in different parts of her body until she lost consciousness. When she regained consciousness, she felt pain in her vagina and noticed something sticky on the bedsheet where she was lying.[12]

On November 17, 1995, after Lodalyn and her mother quarreled when she confronted her mother about Omar's having hurt her brother by hitting the latter at the nape, Lodalyn confided to Consuelo Bofete, a neighbor, what she had suffered in the hands of Omar. In turn, Consuelo relayed to Fely Bofete what Lodalyn told her. Fely then informed Lolita Flores what Omar did to Lodalyn. Lolita was enraged over the report that he ordered Lodalyn, her brother and sister to leave the house.[13]

Lodalyn and Fely Bofete sought the assistance of Kagawad Fernando Beltran and the three then went to the National Bureau of Investigation (NBI). Dr. Floresto Arizala, Jr., a medico-legal officer of the NBI, conducted a medical examination on Lodalyn on November 23, 1995. In his medical report, the doctor found, among others, that Lodalyn's hymen has an "old healed deep laceration at 6:00 o'clock position" and "admits a tube 2.5 cm. in diameter." [14] Thereafter, Lodalyn lodged a complaint at the police station which eventually led to the filing of the four (4) charges of rape against Omar.

In his defense, Omar Medina admits that Lodalyn Flores, who is about 13 to 14 years of age, is his stepdaughter, he being a common-law husband of Lolita Flores (Lodalyn's mother). He testified that he has never been charged of any crime, except the present four (4) cases of rape. He denied, however, that he sexually abused or raped Lodalyn whom he treats as his very own daughter. During those dates of the alleged rape incidents, he was busy tending his household chores and was then cleaning their pigpens, fetching water and washing their clothes. He

believes that the reason why he was charged by Lodalyn is that he used to scold her for entertaining her suitors.[15]

Lodalyn's brother, Rizaldy Flores, nine (9) years of age, also testified that Lodalyn seems to dislike Omar since the latter has been telling her not to be too friendly with boys. Lodalyn has a boyfriend by the name of Singcol. Omar washes clothes, cleans the house, takes care of the pigs, fetches water everyday and also cooks for them. He never saw Omar kiss Lodalyn nor did he see them in any intimate situation. It is not true that Omar raped Lodalyn because before he leaves for school and when he comes home, his mother is at their house.[16]

After trial, the court a quo rendered judgment finding Omar Medina guilty beyond reasonable doubt of four (4) counts of rape based on the testimony of the victim, Lodalyn, whose version was considered "highly credible." [17] He was sentenced to the maximum penalty of death for each count pursuant to Section 11 of Republic Act No. 7659 on account of his relationship with the victim.

In his brief, Omar claims that "it is unlikely" for him to rape Lodalyn since he treats her as his very own daughter.[18]

We do not think so.

The bestiality in man whose conscience has been seared by his insatiable greed for lust shows no respect for blood or close kinship with his victim. The blood relationship between a father and a daughter does not by itself discount the probability of the father committing rape against his own daughter. More so in this case, considering that Omar is merely the common-law spouse of the victim's mother. In fact, this Court, in the recent case of *People v. Gallo*, [19] has made the following factual observation:

"It is disturbing enough to see that there has been a noticeable increase in the incidents of rape but one is left completely appalled that this still growing number includes cases of the bestial act being perpetrated on the young and innocent and, no longer too infrequently it seems, compounded by the close kinship of the offender and the victim.

"In *People vs. Malgar* (238 SCRA 512), the Court has had occasion to state that -

`A father is looked up to as the protector and as the guardian of his family, remaining ever wary of even the slightest harm that might befall it. It is difficult to thus imagine that any such man could instead stand as the predator of his own flesh and blood. Yet, we occasionally would find ourselves so regrettably contending with it as a fact.' [20] (at p. 513)" [underscoring supplied]

In rape cases, the accused may be convicted solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. [21] This is so because by its very nature, rape is committed with the least possibility of being seen by the public. [22] In fact, the presence of eyewitnesses could even raise serious doubts of its commission. [23]

The court a quo gave credence to the testimony of Lodalyn. And rightly so. Lodalyn was thirteen (13) years old at the time she was raped by Omar four times in 1995. As correctly observed by the trial court, no young and decent Filipina would publicly admit that she was ravished and her honor tainted unless such was true, for it is instinctive of her to protect her honor. [24] It is highly inconceivable for a lass of tender age to concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble, inconvenience, not to mention the trauma of a public trial, unless she was in fact raped. [25]

Lodalyn's failure to immediately report the rape after its initial occurrence does not cast grave doubts on her credibility. Such delay is understandable. It is not uncommon for a young innocent girl to conceal for some time the assaults on her virtue because of the rapist's threat on her life, more so when the rapist is living with her. [26]

Omar is Lodilyn's stepfather and he lived with her. She was in constant fear of Omar who threatened to kill her and her mother. Being the stepfather, Omar also exercised moral ascendancy and influence over her, who is thus expected to yield to his threats and intimidation. In *People v. Casil*,^[27] we held:

"... in rape committed by a father against his own daughter, the father's moral ascendancy and influence over the latter substitutes for violence and intimidation. The foregoing principle applies in the case of a sexual assault of a stepdaughter by her stepfather and of a goddaughter by a godfather in the sacrament of confirmation.

"In the present recourse, appellant being in fact, if not in law, the stepfather of the victim, who was at the tender age of thirteen years when the first defilement was perpetrated, definitely enjoyed moral and physical ascendancy over complainant. The latter could thus be expected to yield to the threats and intimidation of appellant with less resistance by reason of his dominance over her."

Lodilyn's story was full of details that it could not be a product of fabrication. At her age, she could not have narrated in such a straight-forward and convincing manner her defloration, if it were not true. Note her pertinent testimony:

"Q -

At around 1:00 p.m. of July 25, 1995, where were you?

"A -

I was at home, in the bedroom.

"Q -

What were you doing then?

"A -

I was playing with my brother and sister.

"Q -

After playing with your brother and sister, what did you do next?

"A -

After playing, I was able to sleep at about 1:00 p.m.

"Q -

After you woke up, what did you see or what did you notice, if any?

"A -

My mouth was gagged and my hands were tied.

x x x

"Q -

When you woke up and saw yourself gagged by the mouth and your hands were tied, where was accused Omar Medina?

"A -

He was on top of my thigh.

x x x

"Q -

So, while Omar Medina was on top of you, did you notice if Omar Medina was armed or not at that time?

"A -

He was armed, sir.

"Q -

What kind of arm did he have?

"A -

A big knife.

"Q -

And what was he doing with that knife?

"A -

He place the knife on my side.

"Q -

While Omar Medina was on top of you, what was he doing to you?

"A -

He forcibly removed my panty and shorts and then my t-shirt and sando.

x x x

"Q -

After Omar Medina removed your panty as well as your shorts and tore off your t-shirt, what did he do next, if any?

"A -

He removed his shorts and brief up to his knees.

"Q -

After that, what did he do next?

"A -

Pinatungan niya ang dalawa kong hita.'

"Q -

'What was his purpose in laying on top of your legs?

"A -

To rape me.

"Q -

Madam witness, how did Omar Medina manage to separate your legs?

"A -

He boxed my thighs.

"Q -

After you were boxed, you already spread your legs, is that correct?

"A -

Yes, sir.

"Q -

What did you feel when you were boxed by Omar Medina on both thigh?

"A -

'Nanlambot po ako.'

"Q -

After you have already spread your legs, what did Omar Medina do after that?

"A -

He was forcing to insert his penis inside my private organ.

"Q -

Going back in the stage wherein the accused Omar Medina was already inserting his penis inside your private organ, did he succeed in inserting his penis inside your vagina?

"A -

Yes, sir.

x x x

FISCAL RAMOLET:

While Omar Medina, the accused in this case, was inserting his penis inside your vagina, what did you do, if any?

"A -

I was trying to struggle.

"Q -

While you were struggling, what did Omar Medina do, if any, on you?

"A -

'Dinaganan niya ang dalawa kong hita' so that I cannot move.

"Q -

You claimed that Omar Medina, the accused in this case, succeeded in inserting his penis to your private part, why did you say that he succeeded in inserting his penis to your private organ?

"A -

I felt his penis getting in and out of my private organ.

x x x

"Q -

Madam witness, in August 1995, were you raped again by accused Omar Medina?

"A -

Yes, sir.

x x x

"Q -

So, you were gagged by accused Omar Medina?

"A -

Yes, sir.

"Q -

After you were gagged, what happened next?

"A -

I tried to run away.

"Q -

And what happened?

"A -

I was not able to go out.

"Q -

Why?

"A -

Because he pulled me and then when he pulled me, I tried to struggle but he boxed me.

"Q -

What part of your body did the accused box you?

"A -

In my stomach.

"Q -

What did you feel when you were boxed by the accused in your abdomen?

"A -

It was painful, sir.

"Q -

After that, what did he do?

"A -

After that he carried me and brought me to bed.

"Q -

After you were brought to bed, what did he do, if any?

"A -

He kneeled on my palms.

"Q -

So, he knelt on your palms when you were already lying down on the bed?

"A -

Yes, sir.

"Q -

And after the accused knelt on your palms, what did you do next, if any?

"A -

None, because I could not struggle. I could not do anything.

"Q -

After that, what happened next, if any?

"A -

He removed my shorts and panty.

"Q -

Which hand did he use in removing your panty and shorts?

"A -

His right hand.

"Q -

What about the left hand, what was he doing with his left hand when he was removing your shorts and panty with his right hand?

"A -

'Nakatukod po uli.'

"Q -

Where was that left hand pointed to?

"A -

On the side of my body.

"Q -

Up to what extent was the accused managed to remove your underwear and shorts?

"A -

Below my knees.

x x x

"Q -

And after the accused lowered your shorts and panty, what did he do, if any?

"A -

He removed his shorts and brief up to his legs.

x x x

"Q -

After the accused lowered already his shorts and brief, what happened next, if any?

"A -

After that, he held his penis and inserted it on my private organ.

x x x

"Q -

Was he able to make a penetration in your private part?

"A -

Yes, sir.

x x x

"Q -

Did he succeed in inserting his penis on your private part?

"A -

Yes, sir.

"Q -

Where did the accused rape you in September 1995?

"A -

Also in their bedroom.

x x x

"Q -

And will you tell this Honorable Court how were you raped by the accused Omar Medina in September 1995 inside their bedroom?

"A -

He asked me to get the P20.00 under the pillow as my additional baon.

"Q -

Did you get it?

"A -

There was no money under the table.

"Q -

When you found out that there was no money, what happened next?

"A -

'Pagharap ko,' he was already in front of me.

"Q -

When he was already in front of you, what did he do, if any, at you?

"A -

He gagged my mouth with the piece of cloth he was holding.

x x x

"Q -

And after you were gagged by the accused, what did you do, if any?

"A -

After he gagged my mouth, I was able to run but he caught me by holding my t-shirt.

x x x

"Q -

Madam witness, when you were caught by the accused, what did you do?

"A -

When he pulled me, I boxed him on the chest.

"Q -

While you were boxing him, what happened next?

"A -

He slapped me.

"Q -

When you were slapped by him, what happened next?

"A -

I cried.

"Q -

After that, what did the accused do, if any?

"A -

He pushed me on the bed.

"Q -

Then after that, what happened, if any?

"A -

When I was already on the bed, he placed himself on top of me.

"Q -

While he was on top of you, what was he then doing?

"A -

He raised my skirt and removed my panty.

"Q -

What about his clothes, what did the accused do with his clothes?

"A -

He also removed his clothes.

x x x

"Q -

When the accused already removed his clothes, what happened next, if any?

"A -

He spread my legs.

"Q -

And how did he spread your legs?

"A -

'Pinatungan ng dalawang paa niya' and he spread my legs with his feet.

"Q -

After your legs were already spread by the accused, what happened next, if any?

"A -

I saw him held his penis.

"Q -

And then?

"A -

He forcibly inserted his penis inside my private organ.

x x x

"Q -

In October 1995, did the accused rape you again?

"A -

Yes, sir.

x x x

"Q -

How did the accused manage to rape you again for the fourth time?

"A -

He kept on boxing me.

x x x

"Q -

After you were boxed by Omar Medina, what happened to you?

"A -

I lost consciousness.

x x x

"Q -

You said you became unconscious because you were repeatedly boxed by accused Omar Medina, when you regained consciousness, what did you see or notice, if any, about yourself?

"A -

My shirts was up and my t-shirt also.

"Q -

What about your underwear, where was your panty when you regained consciousness?

"A -

I was still wearing it.

"Q -

Did you happen to see your private part after you regained consciousness?

"A -

No, sir.

"Q -

Did you notice anything when you woke up of bed?

"A -

Yes, sir.

"Q -

What was that?

"A -

When I woke up, I noticed something wet on the bedsheet and I touched it and found it to be a sticky substance.

x x x

"Q -

But immediately after regaining consciousness, did you feel any body pain?

"A -

Yes, sir.

"Q -

What about your vagina, did you feel anything at all?

"A -

It was painful."[28]

In contrast, the denials interposed by Omar are shallow and incredible. Obviously, the trial court rejected them. Omar claims that at the time the incidents of rape took place, he was busy doing the household chores and the cleaning of the pigpen.

But this assertion is puerile, especially so in the absence of any showing that the pigpen was located at a far distance from their house that it was impossible for him to be at home at those times that the rape occurred.

Omar also ascribes to Lodalyn ill-motive for filing the rape charges against him. He maintains that his having scolded her many times for entertaining her suitors has impelled her to get even with him. The motive ascribed is too trivial as to cause Lodalyn to charge appellant with such a serious crime that she had to expose herself to shame and scandal of a public trial. Moreover, the physical evidence of her defloration was corroborated by the medico-legal findings which showed that her hymen has an "old healed deep laceration at 6:00 o'clock position." [29]

While we agree with the trial court that the charge of rape against Omar was proven beyond reasonable doubt, we however cannot subscribe to the penalty of death imposed against him as this is contrary to the law and jurisprudence.

Although the matter of the proper imposition of the penalty is not assigned as an error by the appellant, nevertheless, it is a well-established rule in criminal procedure that an appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of the appellate court to correct an error as may be found in the appealed judgment, whether it is made the subject of assignment of errors or not.[30]

The four (4) separate complaints for rape filed against Omar merely charged him with the simple crime of rape under Article 335 of the Revised Penal Code which warrants the imposition of the penalty of reclusion perpetua. The basis for the imposition of the death penalty by the trial court was the existence of the attendant circumstance of relationship between the offender and the victim pursuant to Republic Act No. 7659 which amended Article 335 of the Revised Penal Code. Section 11 of R.A. 7659 reads:

"ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by reclusion perpetua.

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

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

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

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

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

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

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

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

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

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

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

"7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."
[underscoring supplied]

In the recent cases of *People v. Garcia*[31] and *People v. Ramos*,[32] this Court en banc, speaking through the learned Justice Florenz D. Regalado,[33] declared that these seven new attendant circumstances introduced in

Section 11 of R.A. No. 7659 "partake of the nature of qualifying circumstances and not merely aggravating circumstances," since the said qualifying circumstances are punishable by the single indivisible penalty of death and not by reclusion perpetua to death. A qualifying circumstance increases the penalty by degree, while an aggravating circumstance affects only the period of the penalty but does not increase it to a higher degree.[34]

In the aforecited case of *People v. Ramos*, we further explained that:

"While Republic Act No. 7659 did not give a legal designation to the crime of rape attended by any of the seven new circumstances introduced in Article 335 on December 31, 1993, this Court has referred to such crime as qualified rape in a number of its decisions. However, with or without a name for this kind of rape, the concurrence of the minority of the victim and her relationship with the offender give a different character to the rape defined in the first part of Article 335. They raise the imposable penalty upon a person accused of rape from reclusion perpetua to the higher and supreme penalty of death. Such an effect conjointly puts relationship and minority of the offended party into the nature of a special qualifying circumstance."

In the present case, we note that the qualifying circumstance of relationship was not alleged in the four (4) complaints of rape and, therefore, the said charges are not in its qualified form to fall under the circumstances stated in Section 11 of R.A. 7659. Thus, the penalty of death prescribed in R.A. 7659 should not have been imposed against appellant Omar. In the aforecited case of *People v. Garcia*, we ruled:

"x x x, it has long been the rule that qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances (*People v. Collado*, 60 Phil. [1934]; *People v. Jovellano, et al.*, 56 SCRA 156 [1974]; *People v. Fuertes*, 229 SCRA 289 [1994]; *People v. Rodico, et al.*, 249 SCRA 309 [1995]), since the later admit of proof even if not pleaded (*U.S. v. Campo*, 23 Phil. 368 [1912]; *People v. Domondon*, 60 Phil. 729 [1934]; *People v. de Guzman*, 164 SCRA 215 [1988]). Indeed, it would be a denial of the right of the accused to be informed of the charges against him and, consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form punishable with death, although the attendant circumstance qualifying the offense and resulting in the capital punishment was not alleged in the indictment on which he was arraigned.

"Recapitulating, the information filed against the appellant charged only the felony of simple rape and no attendant qualifying circumstance, specifically that of his being supposedly a guardian of the victim, was alleged. On this additional consideration, he cannot, therefore, be punished with the penalty of death even assuming arguendo that he is such a guardian. Neither can that fact be considered to aggravate his liability as the penalty for simple rape is the single indivisible penalty of reclusion perpetua (Article 63, Revised Penal Code).

"x x x. He must, x x x, be further held liable for the corresponding indemnity to the victim, as well as exemplary damages for each count of rape (*People v. Villanueva*, 254 SCRA 202 [1996])." (underscoring supplied)

Since the qualifying circumstance of relationship was not alleged in the subject complaints for rape against Omar, he cannot be convicted of qualified rape as he was not properly informed that he is being accused of qualified rape.[35] Omar's conviction of qualified rape violates his constitutional right to be properly informed of the nature and cause of accusation against him.[36] In a criminal prosecution, it is the fundamental rule that every element of the crime charged must be alleged in the complaint or information. The main purpose of this requirement is to enable the accused to properly prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense.[37]

The non-allegation of the relationship between the appellant and the victim in the complaints for rape is a bar to the imposition of death penalty. Having been informed only of the elements of simple rape, the appellant can only

be convicted of such crime and accordingly be punished with reclusion perpetua.[38]

As regards the indemnity, moral and exemplary damages awarded by the trial court, we find the same to be proper. In the recent case of *People v. Prades*,[39] it was ruled that the award of moral damages to the victim is proper even if there was no proof presented during the trial as basis therefor. The circumstance of relationship between the offender and the victim as an aggravating circumstance becomes necessary in the matter of awarding civil damages.[40] The award of exemplary damages by the trial court is correct since the complainant has been correctly granted compensatory damages. Exemplary damages may be awarded in criminal cases when the crime was committed with one or more aggravating circumstances after proof that the offended party is entitled to moral, temperate or compensatory damages.[41]

WHEREFORE, the judgment of conviction against accused-appellant Omar L. Medina rendered by the Regional Trial Court of Parañaque, Metro Manila, Branch 259, in Criminal Cases Nos. 95-710 to 713, is hereby MODIFIED only relative to the death penalty for each of the four (4) counts of rape and is hereby REDUCED to RECLUSION PERPETUA.

SO ORDERED.

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

[1] Penned by Judge Zosimo V. Escano, Rollo, pp. 18-28.

[2] This amendatory law, entitled "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES," took effect on December 31, 1993 (see *People vs. Simon*, 234 SCRA 555, 569 [1994]).

[3] Criminal Case No. 95-713.

[4] Criminal Case No. 95-712.

[5] Criminal Case No. 95-711.

[6] Criminal Case No. 95-710.

[7] Rollo, pp. 4-7.

[8] TSN, July 11, 1996, pp. 4-5; August 20, 1996, pp. 3-6.

[9] *Ibid.*, pp. 7-15.

[10] TSN, July 11, 1996, pp. 16-27.

[11] TSN, July 20, 1996, pp. 31-34.

[12] TSN, July 20, 1996, pp.35-38.

[13] TSN, July 20, 1996, pp. 38-49.

[14] TSN, August 12, 1996, p. 5; Exhibits "F" and "G".

[15] TSN, August 20, 1996, pp. 2-15.

[16] TSN, August 19, 1996, pp. 2-28.

[17] Decision of RTC, p. 9; Rollo, p. 26.

[18] Appellant's Brief, p. 6.

[19] 284 SCRA 590 [January 22, 1998].

[20] Ibid., at pp. 592-593.

[21] *People v. Pasayan*, 261 SCRA 558, 572 [1996].

[22] *People v. Magana*, 259 SCRA 380, 397 [1996], citing *People v. Masongsong*, 174 SCRA 39, 47 [1989].

[23] Ibid.

[24] *People v. Cagto*, 253 SCRA 455, 468 [1996].

[25] Ibid.

[26] *People v. Vitor*, 245 SCRA 392, 403 [1995].

[27] 241 SCRA 285, 292 [1995].

[28] TSN, July 11, 1996, pp. 39-46, 50, 57-62, 64-73.

[29] Exhs. "F" and "G".

[30] See Section 11, Rule 124; *People vs. Correa, et al.*, G.R. No. 119246 [Jan. 30, 1998], citing *People vs. Olfindo, et al.*, 47 Phil. 1; *People vs. Borbano*, 76 Phil. 702, 708; *People v. Garcia*, 281 SCRA 463, 484 [1997].

[31] 281 SCRA 463, 489 [Nov. 6, 1997].

[32] G.R. No. 129439 [En Banc], Sept. 25, 1998.

[33] Retired as of October 12, 1998.

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

[35] *People v. Ramos*, *supra*.

[36] Section 14(2), Article III, Constitution.

[37] *People v. Ramos*, *supra*, citing *Balitaan v. CFI Batangas, Branch II, et al.*, 115 SCRA 729 [1982].

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

[39] G.R. No. 127569, July 30, 1998.

[40] *People v. Ramos*, *supra*.

[41] *People v. Ramos*, *supra*, citing Articles 2230 and 2234, Civil Code.

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