PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICITO BARBOSA Y TURALLO, ACCUSED-APPELLANT.

G.R. No. 126899. August 02, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On January 30, 1996, the Regional Trial Court of Iriga City, Branch 36, in Criminal Cases Nos. IR-3448, 3449, 3450 and 3451, found accused-appellant Felicito Barbosa y Turallo guilty of four counts of rape, and sentenced him to reclusion perpetua for each count.

The conviction of the appellant stemmed from four separate informations all dated September 15, 1993, which read as follows:

> CRIM. CASE NO. IR-3450
>
> That during the year 1988 in Barangay La Purisima, Iriga City, and within the jurisdiction of the Honorable Court, the said accused did, then and there willfully, unlawfully and feloniously have carnal knowledge of complainant Analiza C. Barbosa who was then eleven (11) years old, on nine (9) separate occasions, against her will and by means of violence and intimidation, to the damage and prejudice of said complainant in such amount as maybe proven in court.
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> CONTRARY TO LAW.[1]
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> CRIM. CASE NO. IR-3448
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> That in or about November 1992 in Barangay La Purisima, Iriga City, and within the jurisdiction of this Honorable Court, the said accused, by means of violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of complainant Analiza C. Barbosa, a girl of 15 years, against her will, to the damage and prejudice of said complainant in such amount as may be proven in court.
>
> CONTRARY TO LAW.[2]
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> CRIM. CASE NO. IR-3449
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> That on or about February 6, 1993 in Barangay La Purisima, Iriga City, and within the jurisdiction of the Honorable Court, the said accused, by means of violence and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge of complainant Analiza C. Barbosa, a girl of 15 years, against her will, to the damage and prejudice of said complainant in such amount as may be proven in court.
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> CONTRARY TO LAW.[3]
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> CRIM. CASE NO. IR-3451
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> That on or about May 8, 1993 in Barangay La Purisima, Iriga City, and within the jurisdiction of the Honorable Court, the said accused, by means of violence and intimidation, did, then and there willfully, unlawfully and

feloniously have carnal knowledge of complainant Analiza C. Barbosa, a girl of 15 years, against her will, to the damage and prejudice of said complainant in such amount as may be proven in court.

CONTRARY TO LAW.[4]

Upon arraignment, appellant entered a plea of not guilty to all charges. Thereafter, the four cases were jointly heard. Subsequently, the trial court rendered judgment, disposing as follows:

WHEREFORE, premises considered, the Court finds the accused, FELICITO BARBOSA y TURALLO -

1. In Criminal Case No. IR-3450, guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code prior to its amendment by Rep. Act 7659, as charged in the information and despite the presence of one (1) aggravating circumstance, and the absence of any mitigating circumstance, hereby sentences the said accused to suffer in prison the penalty of RECLUSION PERPETUA, and to pay the private offended party, ANALIZA C. BARBOSA, the sum of P50,000.00 as moral damages;

2. In Criminal Case No. IR-3448, guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, prior to its amendment by Rep. Act 7659, as charged in the information, and despite the presence of one (1) aggravating circumstance and the absence of any mitigating circumstance, hereby sentences the said accused to suffer in prison the penalty of RECLUSION PERPETUA, and to pay the private offended party, ANALIZA C. BARBOSA, the sum of P50,000.00 as moral damages;

3. In Criminal Case No. IR-3449, guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, prior to its amendment by Rep. Act 7659, as charged in the information and despite the presence of one (1) aggravating circumstance and the absence of any mitigating circumstance, hereby sentences the said accused to suffer in prison the penalty of RECLUSION PERPETUA, and to pay the private offended party, ANALIZA C. BARBOSA, the sum of P50,000.00 as moral damages;

4. In Criminal Case No. IR-3451, guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, prior to its amendment by Rep. Act 7659, as charged in the information and despite the presence of one (1) aggravating circumstance and the absence of any mitigating circumstance, hereby sentences the said accused to suffer in prison the penalty of RECLUSION PERPETUA, and to pay the private offended party, ANALIZA C. BARBOSA, the sum of P50,000.00 as moral damages.

In all the aforesaid cases, to reimburse Juana Malate of the sum of P11,200.00 as attorney's fee and litigation expenses, and to pay the cost of suit.

The accused, FELICITO BARBOSA y TURALLO shall serve the foregoing four (4) prison terms successively or one after the other, subject to the provisions of the fourth, fifth and sixth paragraphs of Article 70, of the Revised Penal Code, as amended.

The accused shall be credited with the period of preventive imprisonment that he may have undergone during the pendency of these cases in accordance with law.

SO ORDERED.[5]

The facts in this case as presented by the prosecution are summarized by the trial court as follows:

...[P]rivate offended party, Analiza C. Barbosa, was born on February 6, 1978. Her father is Julio Abad and her mother is Juliana C. Barbosa. Her parents were not married, so that she was registered in the Local Civil Registrar of Manila as Analiza Cornelio. When she was already five (5) years old, her mother, Juliana Cornelio married the accused, Felicito Barbosa. She continued using the surname Cornelio until she reached Grade 2. Then her mother instructed her to use the surname Barbosa, instead of Cornelio. Since then she has been using the said surname "Barbosa" and she calls her stepfather, Felicito Barbosa "Papa". Sometime in 1988 (she cannot remember the month) her mother went to Manila twice. The second time she went to Manila, her

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mother stayed there for a month. It was already March 1988 when she returned. She, together with her half sister Analyn who was then only one (1) year old, having been born on January 19, 1987, was left with her stepfather, the herein accused. They stayed at the house of the parents of her stepfather situated at La Purisima, Iriga City, because the latter were also in Manila at that time. The three of them, (Analiza, Analyn and Felicito Barbosa) slept only in one room and on one bed. On the third night after her mother left for Manila and they were already sleeping, she woke up and noticed that her short pants was already removed. Her stepfather was standing beside the bed where she was sleeping. He was holding a "Batangas knife" which was closed and which was poked at her side. When she saw these things she cried but the accused told her not to make any noise and not to tell her mother or he will kill her and he will not send her to school anymore. She then stopped crying as she was afraid of what the accused has said. The accused then told her to remove her panty which she did. The accused removed his shorts, reached for an oil from the kitchen which was adjacent to the bedroom and after applying oil into her vagina, the accused laid on top of her and inserted his organ into her organ. Analiza tried to push the accused because she did not like what the accused was doing as she felt pain. The accused, however, was too heavy for her and she did not succeed in dislodging him from his position on top of her. The accused stayed on top of her for about two (2) minutes. He then went to the sala, on her part, she put on her panty and short pants and kept on crying until she fell asleep. She further testified that during that period of one (1) month, the accused repeatedly abused her almost every night.

When her mother returned, Analiza Barbosa did not tell her about the abuses committed by her stepfather because her stepfather repeatedly warned her not to tell her mother, otherwise, he will kill her. But in the middle of 1990 Analiza ran away and stayed with her classmate, Quennie Sanglay. After one (1) week her mother and stepfather went to the house of Sanglay to fetch her. She refused to go with them. The following day her mother and grandmother went back to fetch her. Her grandmother asked her why she refused to go with her mother and stepfather. In answer, she told her grandmother of the abuses she suffered from her stepfather. Her mother and grandmother brought her to San Nicolas, Iriga City, where she stayed with her aunt Evelyn Cornelio. After one week she was brought to Manila to stay with her natural father, Julio Abad. She stayed there up to October 1992 and then she returned to Iriga City as her stepmother kept on scolding her. In Iriga City she again stayed in the house of her aunt Evelyn Cornelio at San Nicolas, Iriga City. After one week her mother got her again. Her mother told her that her stepfather will no longer abuse her. However, as soon as she was again with her mother and stepfather at their residence at La Purisima, Iriga City the evidence show that, in more or less the same pattern and circumstances and while her mother was out of town or just outside their house, her stepfather continued abusing her.

In November 1992, Analiza's mother again went to Manila. She stayed there for about two (2) weeks. She returned before the Barangay Fiesta of La Purisima on December 7. Her half sister, Analyn, was with her mother. On the third night after her mother left, Analiza was watching television at the sala of their house at La Purisima, Iriga City at about 6:00 o'clock in the evening and she fell asleep. When she woke up she noticed that her shorts and panty were already removed. Her stepfather, the herein accused, was standing beside her. She asked him why he removed her shorts and panty. He answered that he will repeat what he had done to her before, and further told her to lie down and not to make any noise otherwise he would kill her. She told him that she will not lie down for she did not want to be repeatedly abused. The accused then got a knife from the kitchen and showed it to her. She then laid down and the accused placed himself on top of her and inserted his organ into her vagina. He stayed on top of her for about three minutes. Then the accused left.

February 6, 1993 was the 15th birthday of Analiza. The previous month, January 1993, her mother together with Analyn, again went to Manila to fetch Aljon, nephew of her stepfather. Upon her suggestion, her mother invited Jonah Ocine, a girl of seven years old, cousin of Analiza, to sleep in their house with her while her mother was away. Jonah, however, stayed only for three days and she left. And so, Analiza found herself alone again, with her stepfather, in their house at La Purisima, Iriga City. On that day, February 6, 1993, while Analiza was sleeping in the only bedroom in their house, at around midnight she noticed that her panty and shorts were already removed and her stepfather was standing beside the bed where she was sleeping. He was

> holding a knife which he poked at her waist. He told her that he will do again what he did to her before. He told her again not to tell her mother, otherwise, he would kill her. He then removed his short pants and laid on top of her, Analiza tried to push him but he told her if she will not stop pushing him, he will kill her. He inserted his penis into the vagina of Analiza. Then he left and went to the sala.
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> On May 8, 1993, complainant was at their house at La Purisima, Iriga City. At about 8:00 o'clock in the evening of that day she was lying down on the sofa at the sala of their house. She was alone. Her mother was at the house of her mother-in-law, helping in preparing "ibos" (suman in Filipino) to be placed in the refrigerator and cooked the following day. These "ibos" will be served during the baptism of the nephew of her stepfather on the fiesta of San Nicolas, on May 10, 1993. Analyn was with her mother. The accused then arrived. He told her to remove her shorts and panty as he again will do to her what he did before. After some hesitation, Analiza obeyed as she was afraid since appellant was again holding the "balisong" which the accused used to poke at her side during the previous times he abused her. The accused then laid on top of her on that sofa. He inserted his organ into the organ of Analiza. He stayed on top of her for about two (2) minutes and then left her, but he stayed in the house.
>
> On May 10, 1993, complainant went to the house of her grandmother, Juana Malate to attend the Barangay fiesta of San Nicolas. After the fiesta she refused to go back to La Purisima, with her mother and stepfather. She told her grandmother and her other relatives that the accused continues to abuse her....[6]

On May 12, 1993, accompanied by her aunt Evelyn Cornelio, complainant went to the Iriga City Police headquarters where she revealed to the police officers the abuses committed by her stepfather against her. She lodged complaints of four counts of rape against appellant. Then she was taken by the police to the City Health Office.

Dr. Tita Lalaine Rito, a city government physician, examined complainant. Dr. Rito later testified that she found old hymenal lacerations at 10:00 and 6:00 o'clock positions on the hymen of complainant which appear to be months or even years back, and that complainant was no longer a virgin.[7]

On October 5, 1993, appellant was apprehended and detained in the city jail.[8]

As summarized by the trial court, appellant's defense consisted of the following versions of denial and alibi:

> In Criminal Case No. IR-3450, the accused presented his wife, Juliana C. Barbosa. She testified that the complainant, Analiza lied when she said that she was raped by the accused in 1988 while she (Juliana) was in Manila, because she did not go to Manila the whole year of 1988. She was all the time in their house in La Purisima, Iriga City. When accused testified, he denied that he raped Analiza in 1988 and corroborated his wife's testimony that she did not go to Manila in 1988.
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> In Criminal Case No. IR-3448, accused has similar defense. He and his wife testified that the testimony of Analiza that she was raped by the accused in November 1992 at their residence in La Purisima, Iriga City, while Juliana Barbosa, her mother, was in Manila, was a lie, because Juliana Barbosa did not leave for Manila in November 1992. She was always in their house at La Purisima, Iriga City. Moreover, the accused further argued in his memorandum that this rape (in November 1992) could not have happened because at 6:00 o'clock in the afternoon, when the crime took place, people were still up and around. The house where it happened is very near several houses. It was by a pathway leading to the river. Analyn was just downstairs and Analiza's friend, Benelyn, just went to the house of the father of his stepfather. She may return at any time. And yet, Analiza did not cry out.
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> x x x
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> In Criminal Case No. IR-3449, the defense of the accused is to the effect that he could not have raped Analiza on February 6, 1993, at their house in La Purisima, Iriga City, as she claimed in her testimony, because he

> went to Manila on February 1, 1993 and stayed there until February 16, 1993. His alibi was corroborated by his wife and his mother, Bibiana Barbosa.
>
> In Criminal Case No. IR-3451, the defense put up was that the accused could not have raped Analiza on May 8, 1993 at about 8:00 o'clock in the evening because Analiza was at the church attending El Shaddai prayer meeting. She was there from 5:00 o'clock in the afternoon to 10:00 o'clock in the evening. The accused was in the town of Bula, Camarines Sur, delivering candies. [H]e left about 8:00 o'clock in the morning and returned to Iriga City at 5:00 o'clock in the afternoon. He was with his wife, Juliana, his cousin, Clemens [Turallo] and Judith Ibarreta. This alibi of the accused was provided by Joan Turallo, niece of the accused Juliana C. Barbosa, wife of the accused Clemens Turallo, cousin of the accused and Bibiana Barbosa, mother of the accused.[9]

After trial, the court found appellant guilty as charged. Insisting on his innocence, appellant promptly filed his notice of appeal before us. In his brief, appellant faults the trial court in:

> I
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> ...BASING ITS DECISION OF CONVICTION OF APPELLANT IN ALL FOUR (4) CASES ON THE BASIS OF ITS OBSERVATION ON THE MANNER AND DEMEANOR OF THE COMPLAINANT WHILE TESTIFYING;
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> II
>
> ...NOT BELIEVING THE TESTIMONY OF ACCUSED-APPELLANT AS CORROBORATED BY THE WITNESSES;
>
> III
>
> ...RELYING ON THE TESTIMONY OF THE WITNESSES FOR THE PROSECUTION RATHER THAN ON WEIGHING THE EVIDENCES DURING THE TRIAL IN FAVOR OF THE APPELLANT.[10]

At the heart of these assigned errors is the issue of the credibility of the witnesses. It is doctrinally settled that such issue is to be resolved primarily by the trial court because it is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying. Accordingly, its findings are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.

After trial, the court a quo gave full faith and credence to the testimony of the complainant because it found her testimony positive, straightforward, natural and sincere. It ruled that her testimony met the test of credibility.[11] In contrast, appellant failed to overcome the overwhelming force of complainant's evidence against him. We shall now consider the alleged errors of the trial court cited by appellant and his arguments raised in support of his appeal.

In Criminal Case No. 3450, appellant seeks to discredit complainant's testimony by citing her inability to recall the date when the sexual assaults were committed. He insists that complainant could not have been threatened by a closed Batangas knife. According to complainant, she was raped by appellant on the third night after her mother left for Manila in 1988. She recalled that her mother stayed there for about a month and returned only in March 1988.

But even if appellant could not recall the exact dates of the rape, it appears that complainant was below twelve years old when she was ravished in 1988 because she was born on February 6, 1978. Thus appellant would still be liable for statutory rape. Sexual congress of a victim below twelve years is rape, as provided for in Art. 335 of the

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Revised Penal Code, which states that:

> ART. 335. When and how rape is committed.--Rape is committed by having carnal knowledge of a woman under any of the following circumstances.
>
> 1. By using force or intimidation;
> 2. When the woman is deprived of reason or otherwise unconscious; and
> 3. When the woman is under 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 a 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 knows 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. (As amended by Sec. 11, R.A. 7659.)

Failure to recall the exact date of the crime is not an indication of false testimony. Moreover, the precise date when the victim was raped is not an element of the offense. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code. As long as it is alleged that the offense was committed at any time as near to the actual date at which the offense was committed an information is sufficient. The allegations that rapes were committed "before and until October 15, 1994", "sometime in the year1991 and the days thereafter", "sometime in November 1995 and some occasions prior and/or subsequent thereto" and "on or about and sometime in the year 1988" constitute sufficient compliance with Section 11, Rule 110 of the Revised Rules of Criminal Procedure.[12]

Although evidence with respect to the employment of force or intimidation upon complainant is mere surplusage in a charge of statutory rape, the prosecution still established its case against appellant by proving that the sexual assaults against complainant were committed with the use of force and intimidation, alluding to appellant's use of

a closed Batangas knife, and stressing that intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. It is enough that the intimidation produces fear that if the victim does not yield to the bestial demands of the accused, something dreadful would happen to her. Even the use of a weapon is not necessary. Its use serves only to increase the penalty.[13]

Furthermore, the stepfather of the victim enjoyed moral and physical ascendancy over complainant sufficient to cow her into submission to his bestial desires.[14] Appellant's moral influence over the complainant substitutes for violence and intimidation.

We note that the information in Criminal Case No. 3450 charges appellant with nine counts of rape. This was objected to by appellant because the information charges more than one offense violating the proscription against duplicity of offenses in Section 13, Rule 110 of the Revised Rules of Court on Criminal Procedure. Indeed, a complaint or information must charge but one offense except when the law prescribes a single punishment for various offenses. The aim of the rule is to give the defendant the necessary knowledge of the charge to enable him to prepare his defense. The State should not heap upon defendant two or more charges which may confuse him in his defense. The trial court is correct in convicting appellant for only one count of rape under this particular information.

In Criminal Case No. 3448, appellant avers that he could not have raped complainant at around 6:00 P.M. sometime in November 1992 because his wife as always was at home after 5:00 P.M. and Analyn, complainant's younger sister, as always played downstairs. Moreover, Benelyn, complainant's friend, was just nearby and people were then still awake. He insists that his wife did not leave for Manila in November 1992, contrary to complainant's claim.

In a number of cases, the Court has observed that fear of discovery or the likely appearance of other people does not necessarily deter the commission of rape. It is not impossible to commit rape inside a house where there are several occupants and even in the same room where other members of the family are sleeping. Lust does not respect either time or place.[15] Appellant's assertion that his wife did not leave for Manila in November 1992 is immaterial.

In Criminal Case No. 3449, appellant contends that the identification of the perpetrator is uncertain because of the poor light. He also claims the defense of alibi, in that he alleges he was in Manila for medical treatment so he could not have committed the crime.

It is undisputed that complainant not only knew appellant personally; both she and appellant lived in the same house. At the time of this offense, only the two of them were home. Also, there was a vigil light in the altar which provided sufficient illumination in the room to enable complainant to recognize her aggressor. A man and a woman cannot be physically closer to each other than during the sexual act,[16] there is no doubt complainant had identified appellant positively.

Concerning appellant's alibi, it cannot prevail over the positive identification and unequivocal declaration of complainant that appellant was the author of the crime. What makes appellant's alibi weak is the fact that it is corroborated only by his wife and mother. These testimonies of close kin are suspect and cannot prevail over that of the complaining witness.[17]

In Criminal Case No. 3451, appellant asserts that complainant was in fact attending the El Shaddai prayer meeting when the alleged rape happened at about 8:00 P.M. As complainant explained during her cross-examination, she did not know what time they left the prayer meeting. But she declared that when she arrived home it was not yet

9:00 P.M. Complainant might have failed to note the exact time of her itinerary but these are minor details whose exactitude the victim could not be expected to remember. Her inability to remember these details even tend to buttress complainant's credibility that her testimony was not contrived.[18]

Appellant points out that while complainant's rape allegedly took place between 8:00 P.M. and 9:00 P.M. of that day in their residence, yet she admitted attending the prayer meeting at around 8:00 P.M. Appellant seeks to discredit complainant's testimony because of an obvious contradiction: she could not have been raped at home while attending the prayer meeting at the same time elsewhere.

Appellant's assertion can not stand scrutiny. Appellant admitted that he returned home at about 5:00 P.M. while complainant arrived home before 9:00 P.M. Complainant states she was raped between 8:00 P.M. and 9:00 P.M. Clearly, it was not impossible for the offense to have taken place in the indicated time frame, before 9 o'clock that evening. Further, considering the proximity of their residence and the venue of prayer meeting, according to complainant's testimony, it could have taken just a few minutes for her to get home from the meeting.

Appellant surmises that complainant filed the cases against him to spite her mother who banged her head on a wall. According to him, her grandmother, her auntie and she herself concocted said cases. In brief, appellant attributes the rape charges to family feud, resentment or vengeance. But, this attribution need not sway the Court from lending full credence to the testimony of complainant who remained steadfast throughout her testimony despite her minority, as in this case.[19] Nothing on record shows plausibly that complainant has any improper motive to frame-up appellant.

That complainant did not cry for help while being raped is not too difficult to comprehend. Complainant explained that her "uncles" are not her blood relations but relatives of appellant. She feared that they might also do what appellant had done to her. Further, she was cowed into submission by appellant's continuous threat that he would kill her, and that she would not be allowed to attend school anymore.

With regard to appellant's claim that it was rather unusual for him to have sexual congress with complainant without foreplay like kissing or caressing her, hence the charges could not be true, suffice it to say that it is too trivial a matter to merit further discussion.

More substantially, appellant argues that if indeed complainant was raped continuously from 1988 until 1993, she should have not kept her silence until she was fifteen years old, since she had all the available remedies for redress as well as relatives who could help her. But as observed by the Court on numerous occasions, delay in reporting rape cases may be justified if there are strong reasons like death threats against the victim. Worth stressing, complainant was a girl of tender age who was completely under the moral ascendancy and control of appellant. Fear alone of what appellant would do if she exposed his evil deeds was reason enough for her to suffer in silence for a long time. Then too her mother's apathy after she told her about the abuses committed by appellant was another reason explaining delay in reporting the sexual assaults to the authorities. That she did not file charges promptly against appellant could not diminish her credibility,[20] given her tender age, the moral ascendancy of appellant, and the continuous threat on her life.

Appellant claims there was no tenacious resistance shown on complainant's part. Physical resistance, however, need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for life and personal safety.[21]

Finally, appellant points out that the medical certificate, Exhibit "C", does not clearly show that complainant was raped. It is settled that a medical report is not even necessary in a prosecution for rape as long as the evidence on hand convinces the court that conviction is proper.[22] In this case, the examining physician found old lacerations

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on complainant's hymen which appear to have been caused months or even years back. While hymenal lacerations may also be caused by other factors such as extraneous physical activities, no evidence was adduced by the defense to support this possibility. But note the complainant testified that appellant succeeded in inserting his genital into her organ during the times she was raped. Hence, the hymenal lacerations bolster complainant's assertion that appellant raped her on several occasions.

Under the penal law then prevailing, whenever the crime of rape was committed with the use of a deadly weapon, such as the knife used by appellant,[23] the penalty should be reclusion perpetua to death, a penalty composed of two indivisible penalties. In this case, considering that there was neither mitigating nor aggravating circumstance in the commission of the offense, the lesser penalty of reclusion perpetua should be imposed.

We note that the trial court awarded the amount of P50,000.00 as moral damages to complainant in each case. This however is inadequate. In addition, complainant must also be awarded the amount of P50,000.00 in each case as civil indemnity in accordance with prevailing jurisprudence.[24]

WHEREFORE, the judgment of the lower court in Criminal Case Nos. IR-3450, IR-3448, IR-3449 and IR-3451 convicting appellant FELICITO BARBOSA of four counts of rape and sentencing him to reclusion perpetua in each case is AFFIRMED, with the MODIFICATION that appellant shall also pay to the victim for each count of rape the amount of P50,000.00 as civil indemnity, in addition to the P50,000.00 moral damages, P11,200.00 as attorney's fees and litigation expenses, and the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, (Acting Chairman), and De Leon, Jr., JJ., concur.
Buena, J., on official leave.

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[1] Rollo, p. 17.

[2] Id. at 13.

[3] Id. at 15.

[4] Id. at 20.

[5] Id. at 61-63. Stress supplied.

[6] Id. at 45-48.

[7] RTC Records, p. 10; TSN, July 26, 1994, p. 18.

[8] Id. at 31, 82.

[9] Rollo, pp. 216-217.

[10] Id. at 162.

[11] Id. at 216.

[12] People vs. Gianan, GR-135288-93, September 15, 2000, p. 9.

[13] People vs. Patriarca, 319 SCRA 87, 97 (1999).

[14] People vs. Casil, 241 SCRA 285, 292 (1995).

[15] People vs. Lusa, 288 SCRA 296, 304 (1998).

[16] People vs. Prades, 293 SCRA 411, 422 (1998).

[17] People vs. Jerez, 285 SCRA 393, 402 (1998).

[18] People vs. Ching, 240 SCRA 267, 280 (1995).

[19] People vs. Dacoba, 289 SCRA 265, 272 (1998).

[20] People vs. Montefalcon, 243 SCRA 617, 623-624 (1995).

[21] People vs. Padre-e, 249 SCRA 422, 429 (1995).

[22] People vs. Auxtero, 289 SCRA 75, 82 (1998).

[23] People vs. Alquizalas, 305 SCRA 367, 379 (1999).

[24] People vs. Gementiza, 285 SCRA 478, 492 (1998).

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