

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVID SILVANO Y HAYAG, ACCUSED-APPELLANT.***G.R. No. 127356. June 29, 1999*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-127356/>**PER CURIAM:**

It is not for human to ravish what they produced. The rape committed by a father against his own daughter regardless of whether it is done under the cloak of parental discipline has no place in our society. That is why, it is considered as a heinous felony meted with the supreme penalty of termination of the assailant's life. For indeed those who lust must not last.

Once again the Court is saddled with another nightmare of lustful and incestuous defloration committed by one from whom the victim expects protection. The facts given credence by the trial court and quoted by both the prosecution (with page reference) and the defense in their respective Briefs, which are ably supported by evidence on record happened this wise:\*

"Sheryl Silvano is a beautiful mestiza (as may be shown in the pictures, Exhs. "T" to "T-5"), and already 5'6 tall at her age of sixteen (16) years, having been born on January 20, 1980. (Exhs. F and F-1) Her height have been inherited from her parents as her father is 6'2 tall and her mother is a mestiza. She is the legitimate daughter of David Silvano y Hayag, the accused in this case, and Shirley Ann G. Pedrosa, as evidenced by a marriage contract (Exhs. "E" & "E-1"). Sheryl is the eldest and the only girl with two brothers, namely: John David, who was born on July 29, 1984 and Noel William, who was born on April 16, 1986. (pp. 1-5, tsn, August 14, 1996)

"On January 23, 1996 at 10:30 in the evening, while Sheryl was sleeping in her room at the second floor of their house located at 134-C Scout Rallos Street, Barangay Sacred Heart, Quezon City,\*\* she was awakened by her father, the accused in this case. The accused then started scolding Sheryl for her coming late. (pp. 6-7, tsn, *ibid.*) The accused who appeared tipsy, started undressing Sheryl by lifting her T-shirt, as a form of punishment for her coming home late, which punishment she has been experiencing from the accused since she was 13 years old. After lifting Sheryl's T-shirt, as she was not then wearing any bra, the accused started holding Sheryl's breast at the same time kissing it. As Sheryl was practically leaning on the bed, the accused dragged Sheryl at the edge of the bed so that she would be facing the accused a little bit. The accused then knelt down on the floor and continued holding the breast of Sheryl with one hand while the other hand was holding the private organ of Sheryl. Sheryl tried to prevent the accused from doing what he was doing but the accused told Sheryl "you did something wrong and I told you I would do that as a punishment to you" (p. 7, tsn, *ibid.*). Despite the pleas of Sheryl, the accused continued kissing her breasts. Afterwards, the accused pulled Sheryl at the side of the bed and the accused removed her pair of short pants and panty. After removing the pair of short pants and panty of Sheryl, the accused grasped the hips and waist of Sheryl and pulled her towards him. Thereafter, when the accused was already in between the thighs of Sheryl, the accused started kissing the private organ of Sheryl, the accused was at the same time inserting his finger into Sheryl's vagina (p. 8, tsn, *ibid.*). Thereafter, the accused stood up a bit, pulled down his short pants and knelt down at the side of the bed. The accused then got a hold of Sheryl's two feet and placed them on top of his shoulders. The accused once again grasped the hips of Sheryl and pulled her nearer to him. When Sheryl was pulled nearer to

the accused, the accused inserted his private organ into Sheryl's private organ. Although 'Sheryl tried to free herself by pushing the shoulders of the accused with her two feet and telling the accused to stop what he was doing to her, the accused, in order to have a full grip, got hold of the legs of Sheryl and placed them in between the arms of the accused (pp. 8-9, tsn, *ibid.*). After inserting the accused's private organ into the private organ of Sheryl, the accused performed a pumping motion. Subsequently, the accused's private organ was removed from the private organ of Sheryl and the accused rubbed his organ with the private organ of Sheryl. Thereafter, Sheryl felt something cold which was a sticky liquid emitted from the private organ of the accused and which the accused scattered in between Sheryl's private organ and on her stomach. Later on, the accused got a tissue paper and wiped the liquid-like substance. The accused then put on his pair of pants and left the room (pp. 9-11, tsn, *ibid.*). The following morning, Sheryl went to school at Jose Abad Santos Memorial School (JASMS) in Quezon City.

On February 12, Sheryl who could no longer bear the punishment in the form of sexual abuse she had been getting from her father as in fact she was first raped when she was thirteen (13) years of age, left their house at Scout Rallos, Quezon City, and stayed at her maternal grandmother's house at Scout Lozano, Quezon City. When she was asked to go back to her parents' house at and settle her differences with the accused, Sheryl confided to her mother and grandmother the real reason why she did not like to go back to their house. Thereupon, her mother and grandmother immediately sought the assistance of General Hercules Cataluña, Chief of the Central Police District Command, who happens to be married to a cousin of the mother of Sheryl."[1]

Consequently, appellant was charged with rape by his own daughter to which he pleaded not guilty when arraigned. Prior to the presentation of evidence for the prosecution, the complaint was amended without objection from appellant, who when re-arraigned entered the same plea. The amended complaint reads:

"That on or about the 23rd day of January, 1996 in Quezon City, Philippines, the said accused who is the father of the Complainant by means of force and intimidation, to wit: then and there wilfully, unlawfully and feloniously, undressing the undersigned complainant who is under eighteen (18) years of age and putting her legs on top of his shoulders, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent."[2]

After the prosecution presented its case, appellant filed a motion for leave to file demurrer to evidence on the ground that his guilt was not proven beyond reasonable doubt, which motion, however, was denied by the lower court. Appellant thus presented evidence for his defense. Thereafter, the lower court rendered judgment convicting appellant of the crime charged, sentenced him to suffer the penalty of death, and ordered him to indemnify the victim. The dispositive portion of the decision *a quo* states:

"WHEREFORE, this court finds the accused David Silvano y Hayag guilty beyond reasonable doubt of the crime of rape defined in and penalized by Article 335 of the Revised Penal Code, as amended, and sentences him to suffer the penalty of death and to pay the costs. The accused is hereby ordered to indemnify the victim, Sheryl P. Silvano, the amount of P50,000.00, as moral damages, and P30,000.00 as exemplary damages.

"SO ORDERED".[3]

Upon automatic appeal to this Court,[4] appellant assails his conviction by insisting on his innocence. He denied the accusation arguing that the charge leveled against him was a mere ploy of his wife and the latter's relatives for the purpose of severing their marital relationship.

In the review of death cases, foremost in the mind of the Court is the heavy penalty which an accused faces. Aware that life once taken, is like virginity which once defiled, can never be restored,[5] a thorough scrutiny of the case is in order. Against the proffered excuses of appellant, however, and guided by the three principles in the review of rape cases, to wit:[6]

- a.) An accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;
- b.) In view of the intrinsic nature of the crime of rape, where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and
- c.) The evidence of the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense.

The fundamental presumption of innocence<sup>[7]</sup> enjoyed by appellant was overcome with the requisite quantum of proof in criminal cases and his guilt sufficiently established by proof beyond reasonable doubt.<sup>[8]</sup>

The qualified rape of an underaged relative for which appellant was charged is classified as a heinous crime and penalized under Section 335 of the Revised Penal Code (RPC), as amended by Section 11, Republic Act (R.A.) 7659,<sup>[9]</sup> which provides:

"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 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 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. (emphasis supplied)<sup>[10]</sup>

In proving such felony, the prosecution must allege and prove the ordinary elements of 1.) sexual congress 2.) with a woman 3.) by force and without consent,[11] and in order to warrant the imposition of death penalty, the additional elements that 4.) the victim is under 18 years of age at the time of the rape and 5.) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim should also be alleged and proven. All such elements are undisputedly present in this case. The victim herein at the age of sixteen (16) years was subjected to forced sexual intercourse by appellant, as duly shown in her testimony:

Q.

While you were sleeping at 10:30 in the evening of January 23, 1996, what happen?\*\*\*

ATTY. UMINGA:

Objection, your Honor, the question is misleading, "while you were sleeping" it does not mean established that she was sleeping.

COURT:

Witness may answer.

A. I was awakened by my father.

Q. When your father woke you up, what happened?

A. He was scolding me.

Q. What did he say?

A. He was asking me why I came home late. That I knew that I had a punishment.

Q. What else did your father do, if there was any aside from scolding you?

A. He was trying to undress me, particularly my shirt.

Q. Was he able to undress you?

A. Yes, he was able to lift up my shirt.

Q. And then what happen?

A. He was holding my breast and he was kissing my breast.

Q. What else did he do?

A. I was leaning on the bed, he dragged me on the side ways, so that, I will be facing him a bit and then he knelt down on the floor.

Q. After he knelt down on the floor, what else did he do?

A. He continued kissing and holding my breast, while he was holding his other hand to my breast and he was kissing it, he was holding my private organ his other hand.

Q. And what were you wearing at that time?

A. I was wearing t-shirt without bra.

Q. And when he was holding your private organ, what happened?

A.

I was trying to tell him, not to do this to me, but he insisted and said that "you did something wrong, and I told you that I would do that punishment to you" but I said that I did not agree.

Q. And then what did he do if any, after he was holding your private part and he was holding and kissing your breast?

A. He told me and he insisted that, he would do that to me, but I said "no, please don't."

Q. When you answered him stop, what did he do?

A. He still continued kissing my breast and kissing my private organ.

Q. After than, what happened?

A. He pulled me at the side of the bed.

Q. When he pulled you at the side of the bed, what did your father do?

A. He undressed my shorts and panty.

Q. After your father removed your shorts and panty, what else did he do?

A. He grasped me by my hips, he grasped me by my waist, and he pulled me towards him.

Q. And where was his position when he pulled you towards him?

A. He was at the side of the bed.

Q. And in relation to you, where was he located?

A. In between my thighs.

Q. What did he do after that?

A. He started kissing my private organ.

Q. When he was kissing your private organ, what else did he do?

A. He was putting his finger inside my vagina hole or opening and he continued kissing it.

Q. After putting his finger inside your private organ, what else did he do?

A. He stood up a bit, he removed or lowered down his pants and then he knelt down at the side of the bed.

Q.

After removing his pants, after lowering down his pants, and kneeling down a bit, what did your father do?

A. He got my two feet and placed him on top of his shoulder.

Q.

After putting your two feet on top of his shoulder, what did he do?

A. He grasped me by my hips, he pulled me nearer to him and he placed his organ inside my organ.

Q.

After the accused, your father, placed his organ inside your organ, what else happen?

COURT:

Put on record that the witness is crying.

ATTY. MENDOZA: (to the witness)

Q. After your father put his organ inside your organ, what else did he do?

A. He just put his organ inside my organ. He was almost on top of me.

COURT: (to the witness)

Q. What about you, what did you do, when your father, the accused in this case placed his organ inside your organ?

A. I was trying to remove my two feet on top of his shoulder, I was pushing him by his shoulder with my two

feet and I was telling him to "stop doing it to me."

Q. And what was the response of your father?

A. He kept on grasping my hips nearer to him.

COURT: (to Atty. Mendoza)

Go ahead.

ATTY. MENDOZA: (to the witness)

Q. So, while you were trying to free yourself, and your father continued grasping your hips closer to him, what else happen?

A. I was able to remove my feet a bit but in order for me not to break free, he placed my legs in between his arms and both feet and then he gripped it.

Q. When you were able to free your legs from the shoulder of your father, he grabbed your legs and grasped it with his arms, what happen?

A. He placed his organ in my organ.

Q. And was he able to put his organ inside your vagina?

A. Yes, then I felt pain.

Q. After that, what happen?

A. I tried again resisting him, moving again my two feet from his grasp. I tried to get far from the edge of the bed, far from him.

Q. And you were able to remove his arms from your legs?

A. No, sir.

Q. So, what happen?

A. His organ removed from my organ, but he tried to put it but since he can't.

Q. Since he can't, what did he do?

A.

He placed his organ on top of my organ.

Q. And then, what did he do?

Rubbing it on top of my organ.

Q. and what were you saying in tagalog?

A. " kinikiskis po."

Q. And then, what did you do?

A. And then, I still tried telling him "stop doing to me."

Q. You cannot free yourself from your father?

A. No, sir.

Q. And after that, he was rubbing his organ with your organ, what happen?

A. I felt cold, liquid-like substance on top of my organ and somewhere in between my stomach.

Q. And then, after that, what happen?

A. He got his shoe (should be tissue) and then he wiped it.

COURT: (to the witness)

Q. Where did that fluid came from?

A. It came from his organ.

Q. Did you see?

A. Yes, your Honor.

ATTY. MENDOZA: (to the witness)

Q. Will you please tell to the Honorable Court whether the place while your father was doing this to you was lighted?

A. Yes, sir.

Q. What was the lighting?

A. Flourescent light.

Q. And who put the lights on?

A. He opened it.

Q. After that, what did your father do?

A. He stood up and wore his underpants.

Q. And where did he go?

A. He went out of the room.

Q. And what did you do?

A. I wore my underpants too then I covered my face with the pillow. (*italics supplied*)[12]

The victim's claim that she was ravished is corroborated by the medical findings of the physician who examined her, to wit:

#### GENERAL AND EXTRAGENITAL

Fairly developed, fairly nourished and coherent female subject. Breasts are hemispherical with pinkish brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

#### GENITAL:

There is abundant growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same, disclosed an elastic, fleshy-type hymen with deep healed lacerations at 3, 7 and 9 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

#### CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of trauma at the time of examination.

#### REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa. (*emphasis supplied*)[13]

It is settled that carnal knowledge is consummated by the mere touching of the woman's labia of the pudendum by the male sex organ.[14] The briefest contact of penile invasion is as serious as full penetration and thus, rapture of the hymen is not required.[15] In addition, the absence of fresh lacerations does not disprove rape.[16] Appellant could have been held liable for "instrument or object rape" under R.A. 8353 when he inserted his tongue and finger into her daughter's vaginal orifice. Luckily for him, at the time he committed such act, "instrument or object rape" was not yet punishable.

For his defense, appellant claims among others, that the victim offered only a token resistance when the alleged sexual acts were being done. Be that as it may, the failure to shout or offer tenacious resistance cannot be construed as a voluntary submission to appellant's desires.[17] It is enough if the prosecution had proven that force or intimidation concurred in the commission of the crime as in this case. The law does not impose upon a rape victim the burden of proving resistance.[18] Moreover, physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for her life or personal safety.[19] The force, violence or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other.[20] Herein

victim is only 16 years old, about 5'6" and weighs 128 lbs. As compared to her father who is in his early 40's, about 6'2" weighs 210 lbs.[21] And a former driver/messenger in the Italian embassy.[22] Considering also that the assailant is no less than the victim's own father who wields parental influence over her person, the crime undoubtedly was committed with facility.[23] The latter's moral ascendancy over the former substitutes for violence or intimidation.[24] A woman at such young age like the victim herein can only cower in fear and yield into submission. Rape is nothing more or less than a conscious process of intimidation by which a man keeps a woman in a state of fear and humiliation. Thus, it is not even impossible for a victim of rape not to make an outcry against an unarmed assailant.[25]

Appellant's contention that he could not have possibly raped her own daughter in the room where the latter was sleeping on the night of the incident considering that it was small, is not a reason to exculpate him from his barbaric and prurient desires. There is also no merit in his assertion that the victim's two younger brothers - one of whom is deaf - who were sleeping in the same room, would have been awakened when she struggled against the advances of appellant. Suffice it to say, however, that while the brutish sexual assault on the victim was being committed under the cloak of the night and disguised as a form of parental sanction, it is "not impossible nor incredible for the members of the complainant's family to be in deep slumber and not to be awakened." [26] because rape can be committed in the same room where other members of the family are also sleeping.[27] His argument that it is "unusual" and "improbable" for the rape to occur at about 10:30 in the evening since people are not "yet soundly sleep"[28] lacks merit. Evidence without argument is worth more than argument without evidence. In their union they are inseparable.[29] In any case, as consistently ruled by the Court, lust is no respecter of time and place[30] and also of kinship. Non-consensual acts of sex can be done even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants,[31] and even in places which to many, would appear unlikely and high risk venues for its commission.[32] In any case, there is no rule that rape can be committed only in seclusion.[33]

Appellant alludes as "rather unusual" for him to rape his own daughter by scolding her first, as it would certainly cause some noise.[34] This is no excuse for a rapacious parent. Precisely, he scolded her to make a good pretext that any noise created thereafter was nothing but part of the parental sanction and discipline on an allegedly erring child and thus, distract, if not mislead, possible assistance once he performs his evil instincts. Appellant likewise argues that the rape is "implausible, improbable if not impossible"[35] considering that the series of acts allegedly lasted for about 40 minutes - 15 minutes for kissing and sucking her breast and nipples, 15 minutes for kissing her private parts and about 15 to 20 minutes for doing the motion. This is a trivial matter which does not go into the "why's" and "wherefore's" of the crime.[36] On the contrary, it strengthened rather than diminished the victim's credibility[37] as they erased suspicion of a rehearsed testimony.[38] Lust may be consummated in a matter of seconds or it could last for hours depending on the parties and the circumstances. To the helpless victim, every second of the monstrous act is transformed into a long period of agony. Besides, it is too much to demand from the rape victim to keep track of the exact duration of every humiliating act done to her or to make an accurate account of her traumatic experience.[39] Errorless testimony cannot be expected of her[40] for she may not be able to remember and recount every ugly detail of the harrowing experience and appalling outrage, especially so since she might in fact be trying not to remember them, [41] as they are painful to recall.[42] In any case, the undisputed fact remains that the copulation was against the victim's will. If somewhere along the motion, she stopped resisting, it is not unreasonable to conclude that the fear is still there or that fatigue had intervened in her tenacity to fight the rapacity. A victim who cries rape, more so if she is a minor, almost always says all that is needed to signify that the crime has been committed.[43] The intimate flow of revelations from a daughter to a mother of a father's outrageous conduct impelled them to seek assistance from their relatives including a police General. In turn, the latter ordered his men to invite the appellant to the precinct without any warrant of arrest, an

illegal act which would render all evidence obtained in violation of his right against a warrantless arrest inadmissible.[44]

Under R.A. No. 7438, the so-called "invitation" of a person in connection with an offense he is suspected to have committed is a prohibited act for which the inviting officer may be held liable.[45] Be that as it may, in accordance with settled jurisprudence, any objection, defect or irregularity attending an arrest must be made before the accused enters his plea.[46] Appellant pleaded without making such objection and the court has to call the attention to appellant's counsel on whether he is going to challenge the validity to the arrest. Despite his manifestation that he will do so, nothing was filed nor initiated to that effect after probably realizing the futility to such action. In addition thereto, appellant's failure to quash the information, his participation in the trial and by presenting evidence in his behalf, placed him in estoppel to make such challenge.[47] He has patently waived any objection or irregularities and is deemed as having submitted himself to the jurisdiction to the court.[48] It should be noted that the legality of arrest affects only the jurisdiction of court over the person of the accused.[49] Consequently, if objection on such ground is waived the illegality of the arrest is not sufficient reason for setting aside an otherwise valid judgment rendered after the trial, free from error.[50] The technicality cannot render the subsequent proceedings void and deprive the State of its right to convict the guilty when the facts on the record point to the culpability of the accused.[51] In any case, appellant is not herein convicted on the basis of whatever was illegally obtained by the police out of the "invitation" but by the admissible proof presented by the prosecution particularly, the victim's credible testimony.

When charged before the court, appellant denied the accusation and prefaced such denial with the assertion that he is giving her financial, material and educational support. With respect to his denial, it is inherently a weak defense which cannot prevail over positive identifications.[52] It must be buttressed by strong evidence of non-culpability to merit credibility.[53] Otherwise, the same is self-serving and deserves no greater evidentiary value.[54] It should be noted that affirmative testimony, like that of the victim's, is stronger than a negative one.[55] His excuse regarding support is non-sequitur. The fact that he supports her does not give him the license to rape her. It is his obligation to give support to her daughter as provided in Article 195(2,3) as well as his right and duty under Article 220(1) of the Family Code which expressly provides:[56]

Article 195. "Subject to the provisions of the succeeding Articles, the following are obliged to support each other to the whole extent set forth in the preceding Article:

xxx xxx xxx

(2). Legitimate ascendants and descendants;

(3). Parents and their legitimate children

Article 220. The parents x x x shall have with respect to their unemancipated children or wards the following rights and duties:

(1). To x x x support" (emphasis supplied).

The victim testified that appellant told her that she will be punished for coming home late at night and the punishment is to have sex with him. This ratiocination is the product of a sick mind of an equally sick parent who does not deserve to be such. It is clear from the provisions of Article 209 of the Family Code that from the mere status of being a parent flows one's "natural right and duty" not only of the "caring for" and the "rearing of" their unemancipated children but above all "the development of their moral, mental, and physical character and well-being." Although the Family Code recognizes the parents' rights and duties to "impose discipline" on their unemancipated children; "Supervise their activities, recreation and association with others x x x; and prevent them

from acquiring habits detrimental to their x x x morals",[57] it does not authorize them to force their offspring to copulate with them under the mask of discipline, or invade their honor and violate their dignity nor does it give them the license to ravish the product of their marital union. Appellant's way of punishment comes not in the form of correction but of an insane sexual gratification. Sex with one's own child is per se abhorrent and can never be justified as a form of parental punishment. The practice of sexual exploitation of the youth in the guise of disciplinary action is not a solution to juvenile curiosity which is part of growing up. His gratification instills an unnamed trauma in the child's innocent mind when she still cannot understand the meaning of sexual behavior.[58] Moreover, instead of instructing and educating his own daughter with "the right precept and good example", appellant provided her with perverted and distorted "moral and spiritual guidance"[59] to the extent of brainwashing her that sex with one's father is nothing but a disciplinary sanction and "part of sex education"[60] which the latter teaches her. Worse, the daughter herein even entertained doubts as to the normality and abnormality of her father's deplorable acts.[61] It is also appellant's duty under the Family Code to give her "love and affection, advice and counsel, companionship and understanding." [62] Yet what she got was the humiliation and the destruction of her life, good future and the very essence of her existence.

Appellant further contends that her daughter's acts after the alleged rape, such as going to school the next day, leaving their home after more than two weeks had lapsed since the incident and reporting the same only when confronted by her mother are inconsistent with the behavior of a rape victim. The contention is without merit. The behavior and reaction of every person cannot be predicted with accuracy. It is a time-honored precept that "different people react differently to a given situation or type of situation and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience." [63] Not every rape victim can be expected to act conformably to the usual expectations of every one.[64] Some may shout; some may faint; and some may be shocked into insensibility; while others may openly welcome the intrusion.[65]

The failure of the victim to immediately reveal his father's incestuous acts is not indicative of fabricated charges. It should be noted that:

"Many victims of rape never complain or file criminal charges against their rapists. They prefer to bear the ignominy and pain rather than reveal their shame to the world or risk rapists making good their threats to kill or hurt their victims." [66]

The victim herein is in no case different. Her shame and genuine fear of what appellant might do to her or her brothers had temporarily sealed her lips. This is why she left their home, the scene of her defilement where her appellant father resides and went to her maternal grandmother's place. Only when confronted why she would not come back to their house did she reveal the avalanche of shame and degradation that had befallen her at that tender age of 16 years from her very own father. It is not uncommon for a young girl at such age to be intimidated into silence and conceal for sometime the violation of her honor, even by the mildest threat against her life.[67] Silence is not an odd behavior of rape victims who do not always immediately go to the rooftop and denounce their assailants.[68] This "natural reticence or aversion of the victims to reveal the humiliation attaching to the crime" is a "stigma they will have to bear indefinitely thereafter." [69] The fear of these young victims of reprisals upon them or their families easily cows them into submission and silence. Worse, in incestuous rape, that fear which compels non-revelation is further reinforced by the moral ascendancy of the rapist over his ravished relative.[70] As the father of the victim, appellant whom she called "Daddy" had assumed parental authority over her during her formative years. Undisputedly, he exerts strong moral influence over complainant.[71]

The imputation by appellant of wrongful motive to his wife who allegedly used their daughter as an instrument in concocting the rape just to sever their marital ties is too shallow. It is unnatural for a parent to use her offspring as an engine of malice especially if it will subject her to embarrassment and even stigma.[72] No mother in her right

mind would subject her child to the humiliation, disgrace and trauma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement[73] or if the same is not true.[74] In the same vein, a mother would not expose her daughter to such an ignominy merely to end her relationship with her husband or to retaliate against him for his transgressions as a family man.[75] And it is unbelievable for a daughter to charge her own father with rape at the expense of being ridiculed.[76] Accordingly, as the defense failed to prove that the principal witness was moved by improper motive, the presumption is that she was not so moved and her testimony entitled to full faith and credit.[77]

The contention that he cannot be convicted on the sole testimony of his daughter with respect to the rape[78] easily crumbles in the light of the doctrine that only two people are privy to the crime of rape and the evaluation of the evidence presented ultimately resolves around the credibility of complainant.[79] The trial court, giving full faith and credence to the victim's testimony found it to be "logical, straightforward and candid manner, without any artificialities or pretensions that would tarnish the credibility of her testimony".[80] It even observed that she "shamelessly cried as she was narrating the tragic experience" and her "stern demeanor evinces the hatred she had for the accused".[81] Notwithstanding that the victim's testimony is uncorroborated, the accused may be convicted solely on the basis thereof so long as it meets the test of credibility,[82] and the prosecution is not bound to present witnesses other than the victim.[83]

It is highly unlikely that the victim, a 16-year old high school student, presumably a virgin, an innocent and unsophisticated girl, unexposed to the ways of the world, would concoct a reprehensible story of defloration, no less than against her own father, allow an examination of her private parts and then subject herself to the rigors, trouble, inconvenience, ridicule and scandal of a public trial, where she has to bare her harrowing and traumatic experience, and be subjected to harassment, embarrassment and humiliation during cross-examination, unless she was in fact raped and deeply motivated by her sincere desire to do so solely to seek justice and obtain redress for the unforgivable and wicked acts committed upon her.[84] This Court has repeatedly ruled that no young and decent Filipina would publicly admit that she was ravished unless that is the truth for it is her natural instinct to protect her honor.[85]

Complainant's tender age further lends to her credibility.[86] Thus:

"Apparent from the Court's decisions in rape cases with the offended parties being young and immature girls from the ages of twelve to sixteen, x x x is (the) considerable receptivity on the part of this Tribunal to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. This is not to say that an uncritical acceptance should be the rule. It is only to emphasize that skepticism should be kept under control." [87]

Ultimately, all the foregoing boils down to the issue of credibility of witnesses. Jurisprudential annals is replete with the rule that the findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts[88] subject to certain exceptions,[89] none of which, however, is attendant in this case. Trial courts deal with live witnesses while appellate tribunals rely on the cold pages of the written records.[90] In this case, the lower court's findings, conclusions and evaluation of the testimony of witnesses is received on appeal with the highest respect,[91] the same being supported by substantial evidence on record. No cogent reason was shown that the court a quo had overlooked or disregarded material facts and circumstances which when considered would have affected the result of this case[92] or justify a departure from its assessments and findings.[93]

Coming now to the award of damages. Under the latest jurisprudence, a victim of simple rape is entitled to a civil

indemnity of Fifty Thousand Pesos (P50,000.00) but if the commission of the crime of rape is effectively qualified by any of the circumstances under which the death penalty may be imposed, the civil indemnity for the victim shall be not less than Seventy-Five Thousand Pesos (P75,000.00)[94] In addition to such indemnity, the victim or her heirs, as the case may be, can also recover moral damages pursuant to Article 2219 of the Civil Code[95] in such amount as the court deems just, without the necessity for pleading or proof of the basis thereof.[96] Civil indemnity is different from the award of moral and exemplary damages.[97] The requirement of proof of mental and physical suffering provided in Article 2217 of the Civil Code is dispensed with because it is "recognized that the victim's injury is inherently concomitant with and necessarily resulting from the odious crime of rape to warrant per se the award of moral damages".[98] Thus, it was held that a conviction for rape carries with it the award of moral damages to the victim without need for pleading or proof of the basis thereof[99] other than the fact of the commission of the offense.[100] Rape victims whose age ranges between 13 to 19 years are entitled to moral damages.[101] Under the circumstances of this case, appellant is liable to the victim for the amount of P75,000.00 as civil indemnity and P50,000.00 as moral damages.

With respect to the penalty, the sentence imposed by the trial court is proper. Under Article 335 of the RPC, as amended by R.A. 7659, this kind of qualified rape when concurred in by any of the 7[102] qualifying circumstances enumerated in the law carries the penalty of death, provided that such circumstance is alleged and proven.

In the case at bench, there is no dispute that appellant is the father of the victim, a fact which he even admitted during his direct examination[103] and is further corroborated by the victim's duly certified Certificate of Live Birth which indicates appellant as her father.[104] Moreover, such admission is sufficient to establish paternity without further proof. This is so because, acts and declarations about pedigree which includes "relationship" is an admissible hearsay under the rules.[105] Besides, appellant interposed no objection to the victim's testimony when she positively identified the former as the one who raped her on January 23, 1996.[106] Such relationship of father-daughter in rape cases is considered an aggravating circumstance under Article 15 of the RPC.[107]

Death being a single indivisible penalty and the only penalty prescribed by law for the crime of rape "when the victim is under eighteen (18) years of age and the offender is a parent", the court has no option but to apply the same "regardless of any mitigating or aggravating circumstance that may have attended the commission of the crime"[108] in accordance with Article 63 of the RPC, as amended.[109] In similar per curiam cases, involving the rape by a father of his minor daughter, the Court had imposed the penalty of death.[110] The case at bench carries with it the penalty of death which is mandatorily imposed by law[111] within the import of Article 47 of the RPC, as amended, which provides:

"The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen (18) years of age at the time of the commission of the crime or is more than seventy years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be reclusion perpetua."

In an apparent, but futile attempt to mislead this Court, appellant quoted the amended complaint in its Brief underscoring the words "eighteen (18) years of age"[112] but omitted the word "under" to show that the victim was already at least 18 years old at the time of the rape. And, it is neither controverted nor contested that the victim was below 18 years of age when her father raped her on January 23, 1996. It can be easily verified from the records that his daughter was born at about 5:30 a.m. on January 20, 1980 as shown in the latter's authenticated Certificate of Live Birth.[113] Simple arithmetic would show that on the day she was raped, only three days has just lapsed since the victim celebrated her sixteenth (16) birthday. Besides, appellant did not object to the victim's

testimony that she was 16 years old.[114] The testimony of a person as to her age is admissible although another hearsay, though she can have no personal knowledge of the date of her birth, as all knowledge as to one's age is acquired from whatever is told by the parents or relative[115]- and such testimony constitute an assertion of family tradition.[116] It is not also unreasonable to conclude that such was her age considering that her parents were married sometime in July, 1979[117] and that their first offspring, the victim herein, would probably be born within the next year.

Four justices of the Court, however, have continued to maintain the unconstitutionality of Republic Act 7659 insofar as it prescribes the death penalty; nevertheless they submit to the ruling of the majority to the effect that this law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the conviction of appellant is hereby AFFIRMED with the MODIFICATIONS that appellant is ordered to pay his daughter P75,000.00 as civil indemnity, in addition to the moral damages of P50,000.00 awarded by the trial court. The award of exemplary damages is deleted for lack of legal basis.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let certified true copies thereof, as well as the records of this case be forwarded without delay to the Office of the President for possible exercise of the clemency or pardoning power.

**SO ORDERED.**

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

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[\* \*] Sic is not indicated so as not to clutter the narration.\*

[\*\* \*\*] At the time of trial, she gave her address as 59-D Scout Lozano St., Barangay Laging Handa, Quezon City.\*\*

[1]Regional Trial Court (RTC) Branch 95, Quezon City acting as Special Criminal Court. Decision in Criminal Case Q-96-65756 dated October 28, 1996 penned by Judge Diosdado Peralta, pp. 2-4; Appellant's Brief, pp. 14-15; Apellee's Brief, pp. 3-6; Rollo, pp. 56-57, 160-163

[2] RTC Records, p. 24; Rollo, p. 6.

[3] RTC Decision, p 16; Rollo, pp. 33, 125.

[4] Art. 47, Revised Penal Code, as amended by Sec. 22, R.A. 7659 provides in part: Automatic review of death penalty cases. - x x x In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment by the Court en banc, within twenty (20) days but not earlier than fifteen (15) days after promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. x x x.

[5] People v. Mahinay, (per curiam), G.R. No. 122485, February 1, 1999.

[6] People v. Gallo, 284 SCRA 590; People v. Abrecinoz, 281 SCRA 59; People v. Traverro, 276 SCRA 301; People v. Abad, 268 SCRA 246.

[7]Article III, Section 14 (1), 1987 Constitution provides in part that "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, xxx."

[8] Rule 133, Section 2, 1989 Revised Rules on Evidence.

[9]This case occurred after R.A. No. 7659 took effect on December 31, 1993 (People v. Midtomod, 283 SCRA 395; People v. Unarce, 272 SCRA 321; People v. Simon, 234 SCRA 555) but prior to the effectivity of R.A. 8353, or the Anti-Rape Law of 1997.

[10]Rape is now a crime against persons pursuant to R.A. No. 8353, the Anti-Rape Law of 1997, which introduced the new chapter III, Title Eight of the R.P.C. with the following new articles:

Art. 266-A. Rape; When and how committed.- Rape is committed -

1.) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

1.) Through force, threat, or intimidation;

2.) When the offended party is deprived of reason or otherwise unconscious;

3.) By means of fraudulent machination or grave abuse of authority; and

4.) When the offended party is under twelve years of age or is demented, even though none of the circumstances mentioned above be present.

2.) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Art. 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

"Whenever the rape is committed with 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 reclusion perpetua to death.

"When the rape is attempted 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, 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 aggravating/qualifying 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 or any law enforcement or penal institution;

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

4.) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

5.) When the victim is a child below seven (7) years old;

6.) When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired

Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

7.) When committed by any member of the Armed Forces of the Philippines or Philippine National Police or any law enforcement agency;

8.) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation;

9.) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

10.) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

"Rape under paragraph 2 of the next preceding Article shall be punished by prision mayor.

"Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prision mayor to reclusion temporal.

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

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

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

"Reclusion temporal shall also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article."

[11] *People v. Mahinay*, (per curiam), G.R. No. 122485, February 1, 1999.

[12] Transcript of Stenographic Notes (TSN), Sheryl Silvano, August 14, 1996, pp. 7-11.

[13] RTC Records, p. 7.

[14] *People v. Mahinay*, supra.; *People v. Castromero*, 280 SCRA 421; *People v. dela Peña*, 276 SCRA 558.

[15] *People v. Ayo y Ato*, G.R. No. 123540, March 30, 1999; *People v. Evangelista*, 282 SCRA 37; *People v. Oliva*, 282 SCRA 470.

[16] *People v. Erardo*, 277 SCRA 643.

[17] See *People v. Dupalo*, 230 SCRA 62; *People v. Grefiel*, 215 SCRA 596 cited in *People v. Talaboc*, 326 Phil. 451.

[18] *People v. Dusohan*, 227 SCRA 87.

[19] *People v. Ramos*, 245 SCRA 405; *People v. Angeles*, 222 SCRA 451.

[20] *People v. Taneo*, 284 SCRA 251, citing *People v. Alcid*, 135 SCRA 280 and 7 C.J.S. 475; *People v. Magpayo*, 226 SCRA 13; *People v. Alvarez*, 213 SCRA 722; *People v. Natan*, 193 SCRA 355.

[21] TSN, Sheryl Silvano, August 14, 1996, p. 11.

[22] TSN, Sheryl Silvano, August 26, 1996, p. 23.

- [23] See *People v. Mabunga*, 215 SCRA 694; *People v. Molero*, 144 SCRA 397.
- [24] *People v. Burce*, 269 SCRA 290; *People v. Caballes*, 199 SCRA 152; *People v. Lucas*, 181 SCRA 316; *People v. Erardo*, 127 SCRA 250.
- [25] *People v. Salem*, 280 SCRA 841.
- [26] *People v. Cura*, 310 Phil. 237, 247 citing *People v. Dabon*, 216 SCRA 656.
- [27] *People v. Villoriente*, 210 SCRA 647 cited in *People v. Tan, Jr.*, 264 SCRA 425.
- [28] Appellant's Brief, pp. 6, 32; Rollo, 48, 74.
- [29] Wrottesly on the Examination of Witnesses in Court, p. 36.
- [30] *People v. Bersabe*, 289 SCRA 685; *People v. Remoto*, 314 Phil. 432; *People v. Segundo*, 228 SCRA 691; *People v. Codilla*, 224 SCRA 104; *People v. Guibao*, 217 SCRA 64.
- [31] *People v. Remoto*, 314 Phil. 432; *People v. Ulili*, 44 SCAD 213, 225 SCRA 594; *People v. De los Reyes*, 203 SCRA 707; *People v. Viray*, 164 SCRA 135.
- [32] *People v. Dado*, 314 Phil. 635; *People v. Rafanan*, 182 SCRA 811.
- [33] *People v. Papa Talaboc*, 326 Phil. 451.
- [34] Appellant's Brief, p. 32; Rollo, p. 74.
- [35] Appellant's Brief, pp. 6, 32; Rollo, p. 48, 74-75.
- [36] *People v. Mayor Sanchez*, G.R. No. 121039-45, January 25, 1999.
- [37] *People v. Briones, Jr.*, 44 SCAD 1057 (1993).
- [38] *People v. Español*, G.R. No. 105673, April 10, 1996; *People v. Padilla*, 312 Phil. 721 (1995); *People v. Ducoy*, 225 SCRA 1 (1993); *People v. Jumamoy*, 221 SCRA 333 (1993); *People v. Lase*, 219 SCRA 584 (1993).
- [39] *People v. Garcia*, 281 SCRA 463.
- [40] *Antonio v. CA*, 273 SCRA 328; *People v. Cura*, *supra*. at 249.
- [41] *People v. Jimenez*, 250 SCRA 349 (1995); *People v. Adlawan*, 217 SCRA 489 (1993).
- [42] *People v. Olivar*, 215 SCRA 759 (1992); *People v. Abuyan, Jr.*, 211 SCRA 662 (1992).
- [43] *People v. Taneo*, 284 SCRA 251; *People v. Garcia*, 281 SCRA 463; *People v. Gabayron*, 278 SCRA 78; *People v. Bugarin*, 273 SCRA 384; *People v. de la Cruz*, 251 SCRA 77; *People v. Catoltol, Sr.*, 265 SCRA 109; *People v. Rosare*, 264 SCRA 398; *People v. Soterel*, 140 SCRA 400.
- [44] Article III, Section 4(2), 1987 Constitution provides "Any evidence obtained in violation of this or the preceeding Section shall be inadmissible for any purpose in any proceeding" in relation to Section 2, Article III.
- [45] R.A. 7438 (AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING, AND INVESTIGATING OFFICERS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF) which took effect on July 7, 1992, Section 2 (f) thereof provides in part that "custodial investigation" includes the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed.

[46] Padilla v. CA, 336 Phil. 383, 269 SCRA 402, citing People v. Rivera, 315 Phil. 454; People v. de Guzman, 231 SCRA 737; People v. de Guia, 227 SCRA 614; People v. Codilla, 224 SCRA 104; People v. Rabang, 187 SCRA 682. See also People v. Mahusay, 282 SCRA 80; People v. Silan, 254 SCRA 491.

[47] People v. Lopez, 315 Phil. 859 citing De Asis v. Romero, 41 SCRA 235; People v. Nitcha, 310 Phil. 287; People v. Hubilo, 220 SCRA 389; People v. Samson, 244 SCRA 146; Zacarias v. Cruz, 141 Phil. 417 citing US v. Grant, 18 Phil. 122; Doce v. Branch II, 22 SCRA 1028 citing Carington v. Peterson, 4 Phil. 134, all cited in Padilla v. CA, supra.

[48] People v. Dural, 223 SCRA 201; People v. de Guzman, 224 SCRA 93 cited in People v. Nazareno, 329 Phil. 16, 260 SCRA 256.

[49] People v. Abapo, 239 SCRA 373; Bagcal v. Villaraza, 120 SCRA 525; See also Callanta v. Villanueva, 77 SCRA 377.

[50] People v. de Guzman, 224 SCRA 93.

[51] People v. Manlulu, 231 SCRA 701; People v. Briones, 202 SCRA 708.

[52] People v. Taton, 282 SCRA 308; People v. Remoto, supra.; People v. Ramos, 315 Phil. 435 (1995); People v. Amador, 226 SCRA 241 (1993); People v. Ylarde, 224 SCRA 405 (1993).

[53] People v. Burce, 269 SCRA 293.

[54] People v. Paloma, 278 SCRA 114; People v. Parazo, 272 SCRA 512.

[55] People v. Estares, 282 SCRA 524; People v. Apangan, 270 SCRA 713. This is premised on the reason that the party denying may not exactly remember the circumstance on which he bases his denial. (People v. Mendoza, 236 SCRA 666).

[56] Executive Order No. 209, as amended by E.O. 227 and R.A. 6809.

[57] Article 220. The parents x x x shall have with respect to their unemancipated children or wards the following rights and duties:

- To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
- To give them love and affection, advice and counsel, companionship and understanding;
- To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
- To enhance, protect, preserve and maintain their physical and mental health at all times;
- To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with other, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
- To represent them in all matters affecting their interests;
- To demand from them respect and obedience;
- To impose discipline on them as may be required under the circumstances; and

- To perform such other duties as are imposed by law upon parents and guardians."

[58] *People v. Sangil, Sr.*, 276 SCRA 532.

[59] *Ibid.*

[60] TSN, Sheryl Silvano, August 26, 1996, pp. 2-3.

[61] TSN, *Ibid.*, pp. 20, 22-23.

[62] Article 220 (2), Family Code.

[63] *People v. del Rosario*, 282 SCRA 178; *People v. Rabosa*, 273 SCRA 142; *People v. Castillo*, 273 SCRA 22; *People v. Quinones*, 245 SCRA 87; *People v. Ching*, 240 SCRA 267; *People v. Raptus*, 198 SCRA 425.

[64] *People v. Cabel*, 282 SCRA 410.

[65] *People v. Grefiel*, 215 SCRA 596; *People v. Cabradilla*, 133 SCRA 413.

[66] *People v. Silvafan*, 151 SCRA 617, 629; See also *People v. Cabreros*, 314 Phil. 250.

[67] *People v. Quinones*, 315 Phil. 48 (1995); *People v. Manzana*, 250 SCRA 152 citing *People v. Oydoc*, 125 SCRA 250 (1993); *People v. Montefalcon*, 243 SCRA 617 (1995); *People vs. Soan*, 243 SCRA 627 (1995); *People v. Plaza*, 242 SCRA 725 (1995); *People v. Errojo*, 229 SCRA 49 (1994); *People v. Abordo*, 224 SCRA 725 (1993); *People v. Alib*, 222 SCRA 517, 519 (1993).

[68] *People v. Rejano*, 237 SCRA 627

[69] *People v. Jimenez*, 250 SCRA 349.

[70] *Ibid.*

[71] *People v. Obejas*, 229 SCRA 549 cited in *People v. Vitor*, 315 Phil. 419.

[72] *People v. Escobar*, 281 SCRA 498.

[73] *People v. Romua*, 272 SCRA 818; *People v. San Juan*, 270 SCRA 693.

[74] *People v. Zaballero*, 274 SCRA 627; *People v. Bugarin*, 273 SCRA 384.

[75] *People v. Burce*, 269 SCRA 293.

[76] *People v. Gabayron*, 278 SCRA 78.

[77] *People v. Arellano*, 282 SCRA 500; *Ugaddan v. CA*, 275 SCRA 35; *People v. Sancholes*, 271 SCRA 527; *People v. Salvame*, 270 SCRA 766; *People v. Tabaco*, 270 SCRA 32; See also *People v. Ravanes*, 284 SCRA 634.

[78] Appellant's Brief, p. 7; Rollo, p. 49.

[79] *People v. Soriano*, 272 SCRA 760.

[80] RTC Decision, pp. 7-8; Rollo, pp. 78-79.

[81] RTC Decision, p. 12; Rollo, p. 83.

[82] *People v. Fuensalida*, 281 SCRA 452; *People v. Burgos*, 279 SCRA 697; *People v. Burton*, 272 SCRA 352.

[83] *People v. Gabayron*, 278 SCRA 78.

[84] *People v. Echegaray*, 257 SCRA 561, citing *People v. Espinoza*, 247 SCRA 66; *People v. Sanchez*, 250 SCRA 14; *People v. Godoy*, 250 SCRA 676; *People v. Magpayo*, 226 SCRA 13 (1993); *People v. Tismo*, 204 SCRA 535; *People v. Saldivia*, 203 SCRA 461; *People v. Patilan*, 197 SCRA 354; *People v. Yambao*, 193 SCRA 571 cited in *People v. Dado*, 314 Phil. 635 (1995).

[85] *People v. Gan*, 46 SCRA 667 (1972), *People v. Gamez*, 124 SCRA 260 (1983), *People v. Alcantara*, 126 SCRA 425 (1983); *People v. Ramilo*, 146 SCRA 256 (1986) cited in *People v. De Guzman*, 216 SCRA 754 (1992) and in *People v. Padilla*, 312 Phil. 721 (1995).

[86] *People v. Digno, Jr.*, 250 SCRA 237 (1995).

[87] *People v. Molina*, 53 SCRA 495, 500-501 (1973), reiterated in *People v. Egot*, 130 SCRA 134 (1984) and in *People v. Quidilla*, 166 SCRA 778 (1988).

[88] See *People v. Cura*, *supra*, and *People v. Dado*, *supra*; *People v. Tan, Jr.* 264 SCRA 425.

[89] See *People v. Ganan, et. al.*, 265 SCRA 260; *Olondriz, Jr. v. People*, 152 SCRA 65.

[90] *People v. Herbieto*, 269 SCRA 472.

[91] *People v. Baccay*, 284 SCRA 296; *People v. Tenorio*, 284 SCRA 420.

[92] *People v. Acabo*, G.R. No. 106977, July 17, 1996; *People v. Padilla*, 312 Phil 721 (1993), citing *People v. Florida*, 214 SCRA 227 (1992) and *People v. Matrimonio*, 215 SCRA 613 (1992); *People v. Codilla*, 224 SCRA 104 (1993); *People v. Dio*, 44 SCAD 559 (1993).

[93] *People v. Kyamko*, 222 SCRA 183 (1993); *US v. Macuti*, 26 Phil. 170 (1913).

[94] *People v. Perez*, G.R. No. 122764, September 24, 1998; *People v. Bernaldez*, G.R. No. 109780, August 17, 1998 citing *People v. Victor y Penis*, G.R. No. 127903, July 9, 1998.

[95] "Moral damages may be recovered in the following and analogous cases:

xxx xxx xxx

(3) seduction, abduction, rape or other lascivious acts;

xxx xxx xxx

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this Article, may also recover moral damages."

[96] *People v. De los Santos*, G.R. No. 121906, September 17, 1998; *People v. Victor y Penis*, *supra*.

[97] *People v. Prades*, G.R. No. 127569, July 30, 1998 cited in *People v. Mostrales*, G.R. No. 125937, August 28, 1998.

[98] *People v. Perez*, *supra*.

[99] *People v. Bartolome*, G.R. No. 129054, September 29, 1998 citing *People v. Prades*, *supra*.; *People v. Alfeche*, G.R. No. 124213, August 17, 1998; See also Article 2219 (3), New Civil Code.

[100] *People v. Estares*, 282 SCRA 524; *People v. Cabales*, 274 SCRA 83.

[101] *People v. Sabellina*, 238 SCRA 492; *People v. Liray*, 253 SCRA 654.

[102] Now ten (10) under R.A. No. 8353.

[103] TSN, David Silvano, September 20, 1996, p. 4.

[104] Exhibit "F", Folder of Evidence for the Prosecution, (RTC), p. 13.

[105] Section 39, Rule 130, Revised Rules on Evidence.

[106] TSN, Sheryl Silvano, August 14, 1996, p. 5.

[107] *People v. Busohan*, 227 SCRA 87; *People v. Lucas*, 181 SCRA 316; *People v. Porras*, 58 Phil. 578.1

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

[109] "Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, It shall be applied by the courts regardless of any mitigating or aggravating circumstance that may have attended the commission of the deed. x x x"

[110] *People v. Tabugoca*, 285 SCRA 312; *People v. Taneo*, 284 SCRA 251; *People v. Agbayani*, 284 SCRA 315; *People v. Gallo*, 284 SCRA 590;

[111] *People v. Taneo*, *supra.*; *People v. Echegaray*, 267 SCRA 682.

[112] Appellant's Brief, p. 11; Rollo, p. 53.

[113] Exhibit "F", Folder of Evidence for the Prosecution, (RTC), p. 13.

[114] TSN, Sheryl Silvano, August 14, 1996, pp. 2, 5.

[115] *U.S. v. Angeles and Sabacahan*, 36 Phil. 246; *U.S. v. Evangelista*, 32 Phil. 321; *U.S. v. Estavillo and Perez*, 10 O.G. 1084; *U.S. v. Bergantino*, 3 Phil. 118; See *People v. Alegado*, 201 SCRA 37.

[116] *Gravador v. Mamigo*, 20 SCRA 742. See *People v. Samillano*, 207 SCRA 50.

[117] Exhibit "E", Folder of Evidence for the Prosecution, (RTC), p. 12.

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