

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELANIO BOLATETE @ MELON, ACCUSED-APPELLANT.

G.R. No. 127570. February 25, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

On September 1, 1995, Reyah Lea Guivencan filed separate complaints accusing her stepfather Melanio Bolatete of three counts of statutory rape. She was assisted by Helen B. Ho, a municipal social welfare officer.

The amended complaints in Criminal Cases Nos'. 9459, 9460, 9461 respectively read as follows:

"AMENDED COMPLAINT

(Cc. No. 9459)

x x x

"That sometime in the second week of June 1993, in the municipality of Panglao, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to have sexual intercourse with the undersigned, a child under 12 years of age, did then and there willfully, unlawfully and feloniously force her to lie down, remove her panty and insert his penis to her vagina and have sexual intercourse with her against her will.

Cebu City (for Tagbilaran City), September 1, 1995.

(SGD) REYAH LEA GUIVENCAN
Offended Party

Assisted by:

(SGD) HELEN B. HO
MSWDO-Panglao, Bohol"

"AMENDED COMPLAINT
(Cc. No. 9460)

x x x

That on or about the 3rd day of August, 1994, in the municipality of Panglao, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to have sexual intercourse with the undersigned, a child under 12 years of age, did then and there willfully, unlawfully and feloniously force her to lie down, remove her panty and insert his penis to her vagina and have sexual intercourse with her against her will.

Cebu City (for Tagbilaran City), September 1, 1995.

(SGD) REYAH LEA GUIVENCAN

Offended Party

Assisted by:

(SGD) HELEN B. HO

MSWDO-Panglao, Bohol"

"AMENDED COMPLAINT

(Cc. No. 9461)

x x x

That sometime in the 3rd week of March, 1995, in the municipality of Panglao, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to have sexual intercourse with the undersigned, a child under 12 years of age, did then and there willfully, unlawfully and feloniously force her to lie down, remove her panty and insert his penis to her vagina and have sexual intercourse with her against her will.

Cebu City (for Tagbilaran City), September 1, 1995.

(SGD) REYAH LEA GUIVENCAN

Offended Party

Assisted by:

(SGD) HELEN B. HO

MSWDO-Panglao, Bohol"

The 3rd assistant provincial prosecutor filed a Manifestation in court that he has reviewed the complaints and the supporting evidence of the prosecution as well as the preliminary investigation conducted by the Municipal Circuit Trial Court of Dauis, Panglao, Bohol.[1]

The accused pleaded not guilty to each charge upon arraignment. Joint trial of the three cases ensued.

The prosecution presented the complainant and three other witnesses, namely: Dr. Maria Cyrilda Tallo, who examined complainant and found her to be a non-virgin;[2] Jovencia Asilo, the Municipal Civil Registrar of Panglao, Bohol, who identified complainant's birth record showing she was an illegitimate child born in Panglao, Bohol, on November 4, 1983;[3] and Helen B. Ho, MSWD social worker of Panglao, Bohol, who assisted complainant in the preparation and filing of the complaints against the accused.

The testimony of Reyah is substantially as summarized by the appellee in its brief as follows:

"Complainant testified that appellant is her stepfather, married to her mother Pedrita; she was raped by appellant several times but could only remember three specific dates; the first date fell on the second week of June 1993; she could recall this date because it was enrollment period; on that day, about 6 o'clock in the morning, she was awakened when appellant approached her at the upper floor of their house; at that time, her one-year old half-brother Rizal was also at the upper floor, while her mother was downstairs in the kitchen preparing breakfast; her other half-brother Rogelio was at the house of appellant's mother; appellant, who was only wearing brief, removed her short pants and her panties, after which he, too, removed his brief, then placed himself on top of her and made a push and pull movement with his buttocks; he was able to penetrate his penis into her vagina slightly; although she felt pain as appellant forced his penis into her vagina, she did not cry for help because she was afraid of appellant who threatened that he would bring her two brothers with him to Cotabato (TSN, January 17, 1996, pp. 2-8).

Another date complainant remembered was August 3, 1994. She particularly remembered this date because it was the day after her brother Rogelio's birthday. About 6 o'clock in the morning, at the upper floor of their house, appellant, who was only wearing brief, as was his wont asked her to come near him to scratch his back. At that time, her mother was in the comfort room a short distance away from their house, while her brothers Rogelio and Rizal were also at the upper floor. Rogelio, a retardate, who could neither talk nor walk, was sleeping on a hammock. Rogelio was then 4 years old while Rizal was 1 year old. When she was already near appellant, the latter removed her panties, made her lie down and placed himself on top of her. Appellant removed his brief and made a push and pull movement with his buttocks. This time, appellant was able to penetrate his penis deeper into her vagina. But like before, she did not cry for help as she was afraid of appellant who threatened that he would bring her two brothers with him to Cotabato (TSN, January 17, 1996, pp. 9-13).

The third date was sometime in the third week of March 1995. She recalled this date because it was the last time appellant raped her. On that day, her mother, who was leaving for Tagbilaran City, fetched her from the house of her neighbor, May Manliguez, and asked her to take care of her brothers in their house. Appellant was in Tagbilaran City where he worked as a carpenter. However, about noon, appellant arrived home drunk. He then undressed complainant, removed her panties and proceeded to rape her. This time, appellant penetrated his penis deep into her vagina. She was then 11 years old (TSN, January 17, 1996, pp. 1416).

After this last rape incident, complainant finally sought help from Zenaida Milay who brought the matter to the attention of Helen B. Ho, a DSWD social worker. Helen B. Ho interviewed and accompanied complainant to the Celestino Gallares Memorial Hospital where she was examined by Dr. Maria Cyrilda Tallo. Complainant was found to be a non-virgin. With the assistance of Helen B. Ho, complaints for rape against appellant were filed by herein complainant (TSN, January 30, 1996, pp. 2-5)." (pp. 4-7, Appellee's Brief, pp. 76-79, Rollo).

Witness Helen Ballecer Ho testified that Reyah Lea Guivencan, accompanied by one Zenaida Milay, sought her help to file rape charges against the accused; she interviewed Reyah who informed her that she was sexually abused by the accused. Helen brought Reyah to the police station of Panglao, where Reyah's affidavit was taken and took her to the Celestino Gallares Memorial Hospital where she was examined by Dra. Tallo, who issued a medico-legal certificate.[4] Helen turned over Reyah to their child specialist in Tagbilaran City and was placed in the custody of the Regional Social Welfare Office in Cebu City.[5]

Jovencia Asilo, Municipal Civil Registrar identified Reyah's record of birth; she was the one who signed Reyah's birth certificate[6] showing that Reyah's date of birth is November 4, 1983.[7]

Dr. Ma. Cyrilda Tallo identified the medico-legal certificate[8] which she issued and testified that when she examined Reyah on May 25, 1995, she noted that there was no bleeding or laceration on her genitalia nor bruises in the surrounding area; internal examination showed that her hymen was no longer intact as she was able to insert 1-2 fingers.[9]

The accused denied all the charges against him. He stated that Reyah had been living with Anastacia Manliguis, the aunt of his wife, since the first week of January, 1995 until the last week of April, when she was asked by her mother to stay in the house as she, together with the accused, was going to Cebu. He admitted that Reyah was living in their house in August 1994 and in June 1993. The accused claimed that he was accused by Reyah of three counts of rape because Reyah is a carefree child ("lakwatcha"), used to climb trees, and was always reprimanded for her wrong-doing.[10] On cross-examination, the accused testified that Reyah resented his scolding, and that her neighbor Zenaida Milay, a neighbor with whom she had a prior disagreement, and Carmencita Arcay, the grandmother of Reyah, were the persons who urged Reyah to file charges against him.[11]

The defense presented Pedrita Bolatete, the mother of the victim, who corroborated Melanio's testimony that Reyah "always commit wrong and Melanio would punish her physically.[12] However, she testified that Reyah

was living in the family house on August 3, 1994 and in the second week of June, 1993; but was living with her aunt from January, 1995 up to the third week of March 1995.[13]

The court a quo found the accused guilty of three counts of rape:

"IN VIEW OF ALL THE FOREGOING, the Court finds the accused GUILTY beyond reasonable doubt of all the crimes of statutory rapes committed against the complaining witness on the 2nd week of June, 1993, on the 3rd of August, 1994 and on the 3rd week of March, 1995 punishable under Article 335, par. 3 of the Revised Penal Code in relation to Sec. 11 of R.A. No. 7659 and for which crimes the Court hereby sentences the accused Melanio Bolatete to DEATH for Crim. Case No. 9459; to DEATH likewise for Crim. Case No. 9460 and finally also to DEATH for Crim. -Case No. 9461 and moral damages in the amount of P50,000.00 for each crime or a sum total of P150,000.00.

SO ORDERED."

Hence, this automatic review.

The appellant submits the following assigned errors in his brief:

- THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED AND PENALIZING HIM TO THE EXTENT OF DEATH WITHOUT APPARENTLY GIVING CREDIT TO HIS EVIDENCES;
- THE TRIAL COURT ERRED IN NOT TAKING INTO ACCOUNT THE INCONSISTENCIES OF THE PROSECUTION'S WITNESSES WHICH IF GIVEN WEIGHT COULD HAVE EITHER EXONERATE(D) THE ACCUSED OR MITIGATE(D) THE PENALTY."

and discussed the same simultaneously.

In essence, accused-appellant claims that complainant led a carefree and happy-go lucky life and resented the "hard discipline" imposed by her stepfather; she concocted the accusations out of hatred. It is unbelievable that the accused succeeded in ravishing her despite the absence of serious threats or intimidation, and that the accused submitted to her step-father's wishes because she was afraid he would carry out his threat to take away her brothers.

The appeal has no merit.

Melanie was born on November 4, 1983[14]. She was accordingly nine (9) years and seven (7) months old at the time of the first rape incident on June 1993, ten (10) years and eight (8) months old at the time of the second rape incident on August 3, 1994, and eleven (11) years and four (4) months old at the time of the third rape incident in March, 1995. She was clearly less than twelve years old at the time of the three rape incidents subject of her complaints.

Rape is defined and penalized under Article 335 of the Revised Penal Code as amended by Section 11, R.A. 7659,[15] which provides:

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

- By using force or intimidation.
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

This Court has held that if the woman is under 12 years of age, proof of force and consent becomes immaterial, not only because force is not an element of statutory rape[16] but the absence of free consent is presumed when the woman is below such age. The two elements of statutory rape are: 1) that the accused had carnal knowledge of a woman; and 2) that the woman is below twelve years of age.[17] Sexual congress with a girl under twelve (12) years old is always rape.[18]

The testimony of the victim Reyah Lea is reproduced hereunder:

Q

Do you know what happened to a child if he tells a lie in court?

A

Yes sir.

Q

What happened?

A

If she dies she will be in hell.

Q

So here in this court, you are not going to tell a lie?

A

I will not tell a lie.

Q

That is also the meaning of your taking oath that you should tell the truth?

A

That is correct.

Q

You are the complainant in this case against Melanio Bolatete, why are you charging him in this case?

A

Because he raped me.

Q

How many times did Melanio Bolatete raped you?

A

Many times, I cannot remember the rest.

Q

You said you were raped several times and you cannot remember most of the dates, the question is: Do you remember some of the months or the year wherein you were sexually abused or raped by the accused in this case?

A

Yes sir.

Q

How many times do you remember?

A

Three times.

Q

What is the first time wherein you can remember the rape committed against you by the accused in this case?

A

Second week of June, 1993.

Q

In what particular place where you were sexually abused or raped by the accused in this case in the second week of June, 1993?

A

He raped me in our house.

Q

At that time how old were you?

A

I was yet nine years old.

Q

You remember what time was that when you were raped by Melanio Bolatete in the second week of June, 1993?

A

Yes sir, 6:00 o'clock in the morning.

Q

Where was your mother at that time?

A

My mother was downstairs cooking our food.

Q

And who were upstairs at that time?

A

My younger brothers and my stepfather, and I.

Q

Who among the two younger brothers were present at the time you were raped in the second week of June, 1993?

A

Rizal was present.

Q

How old was Rizal Bolatete at that time?

A

One year old.

Q

How about Rogelio, where was he at that time?

A

He was with the mother of my stepfather.

Q

At that time 6:00 o'clock of the second week of June, 1993, what were you doing then in the early morning?

A

I was sleeping.

Q

And then you were awoken?

A

Yes sir.

Q

Why were you awoken?

A

Because my stepfather got near me.

Q

Are you referring to accused Melanio Bolatete in these three cases?

A

Yes sir.

Q

After getting near you, what did your stepfather do?

A

He removed my short and then he removed my panty.

Q

What was Melanio Bolatete wearing at that time?

A

He was wearing brief.

Q

Brief only?

A

Yes sir.

Q

After he got near you and removed your short and your panty, what did he do with his brief?

A

He also removed his brief.

Q

After removing his brief, what did accused Melanio Bolatete do to you?

A

He placed himself on top of me and pushed and pull his buttock.

Q

While doing the push and pull movement, what happened to his penis?

A

There was fluid coming out from his penis, there was white fluid coming out from his penis.

Q

Was his penis able to penetrate your vagina?

A

Yes, a little portion of his penis.

Q

What did you feel when his penis entered into your vagina a little?

A

I felt pain in my vagina.

Q

Did you not shout for help after you felt pain in your vagina because the penis of the accused was forcibly entered into your vagina?

A

No.

Q

Why?

A

Because he threaten me.

Q

How did accused Melanio Bolatete threaten you?

A

Because if I will report, he will bring my two brothers to Cotabato.

Q

Were you afraid by the threat?

A

yes because I loved my two younger brothers.

Q

In other words you do not want your two younger brothers to be separated from you and brought to Mindanao?

A

Yes sir.

Q

After feeling pain of your vagina because of the penis of the accused which entered into your vagina, what happened next?

A

When his semen flowed, he wiped it with his dirty clothes.

Q

This Melanio Bolatete who raped you, is he in court?

A

Yes sir.

Q

Will you point to him.

INTERPRETER:

Witness pointing to a person named Melanio Bolatete in open court.

Q After Melanio Bolatete wiped his penis with semen, what happened next?

A He went downstairs.

Q How about you what did you do?

A No more.

Q You still remain lying on the floor?

A I stood up already.

Q After you stood up, where did you go?

A I went downstairs.

Q Your mother was downstairs at that time, is that correct?

A That is correct.

Q

Did you tell your mother that you were raped by Melanio Bolatete upstairs immediately after you undergone the agony of the rape?

A No.

Q Why?

A Because I was afraid.

Q

This rape which you said you can remember, that was in the second week of June, 1993, do you remember having signed a complaint in connection with that rape?

A Yes sir.

x x x

Q

By the way, why do you remember that you were raped by the accused in this case in the second week of June, 1993?

A Because that was enrollment in our class.

Q What was your educational attainment at that time or grade at that time?

A I was Grade III.

Q

Aside from being the enrollment time for Grade III, what other circumstances would make you remember of the rape committed in the second week of June, 1993?

A Because that was the first time that he raped me.

Q

You said of the several rape committed by the accused on you in this case, you can only remember three wherein you can remember the month and the year, when was the second time wherein you remember the rape?

A August 3, 1994.

Q Why do you remember that rape committed against you by the accused in this case on August 3, 1994.

A Because on August 2 was the birthday of my younger brother Rogelio, they drank liquor.

Q You said they drank liquor, who drank liquor during the birthday of Rogelio?

A My stepfather.

Q

So what time was that on August 3, 1994 that you were raped by your stepfather accused Melanio Bolatete in

this case?

A 6:00 o'clock in the morning also.

Q And where was your mother at that time?

A She was in the CR.

Q You mean in the comfort room or toilet of your house?

A Yes sir.

Q How far is your toilet to your house?

A A little bit far.

Q Aside from you, who were the people upstairs in your house?

A Myself, my two younger brothers and my stepfather.

Q At that time, how old were you?

A I was ten years old.

Q

You said it happened at 6:00 o'clock in the morning of August 3, 1994, my question is: What time did you wake up on August 3, 1994?

A I woke up at 6:00 o'clock in the morning.

Q After you woke up at 6:00 o'clock, what did you hear or what did you observe?

A My stepfather lie down.

Q Did you hear something from him?

A Yes sir.

Q What did you hear from him?

A He required me to got near him and scratch his back.

Q

You mean to say that your sleeping quarter in the house of your mother is separated from the sleeping quarter of the accused in this case and your mother?

A Yes sir.

Q

Is there partition that separates between your sleeping quarter and the sleeping quarter of your mother and her husband?

A Yes sir.

Q

Since you were called by your stepfather, the accused in this case to go near him because he like you to scratch his back, did you obey his request or command?

A Yes sir.

Q What was his position when you arrived near him?

A He was lying face down.

Q How old was Rogelio at that time?

A He was four years old.

Q And where was he sleeping at that time?

A He was sleeping on a hammock.

Q Why is Rogelio sleeping in a hammock?

A Because he could not walk.

Q Can Rogelio talk or communicate?

A No.

Q In other words he cannot walk and he is mentally retarded?

A Yes sir.

Q How about Rizal, how old was he at that time?

A Two years old.

Q Did you scratch the back of your stepfather Melanio Bolatete?

A Yes sir.

Q After you scratched his back, what happened?

A He told me to lie down.

Q Near the place where he was lying down?

A Yes sir.

Q After you were already lying down, what did he do to you?

A He again removed my panty.

Q After Melanio Bolatete removed your panty, what did he do to you?

A He placed himself on top of me.

Q Was he wearing anything when he placed himself on top of you?

A He was wearing his brief.

Q What did he do with his brief later on?

A He removed his brief.

Q So his penis was exposed, correct?

A

Yes sir.

Q And what did he do to you after his penis was exposed?

A He made a push and pull movement of his buttock.

Q How about his penis, was it directed towards your vagina?

A Yes sir.

Q Was his penis able to penetrate into your vagina?

A Yes sir.

Q How deep was his penis entered your vagina?

A A little bit deeper than the first one.

Q What did you feel after the hardened penis of Melanio Bolatete the accused in this case entered into your vagina?

A I felt pain in my vagina.

Q And what did you observe later on of the penis of the accused in this case that entered your vagina?

A His semen came out.

Q And what did he do with the semen that came out from his penis?

A He wiped it.

Q How about you, you said you felt pain, did you not cry for help?

A No.

Q

Why?

A Because I was afraid of him.

Q

Were you crying at that time?

A Yes sir.

Q Later on, did you report the rape committed to you by the accused in this case to your mother?

A No.

Q Why?

A Because I was afraid of his warning to me.

Q

Are you referring to his previous warning that if you report the rape committed to you, he will get your two younger brothers and bring them to Cotabato?

A Yes sir.

Q Why were you afraid that your two younger brothers will be brought to Cotabato?

A

Because I really loved my two younger brothers,

Q

And this rape committed against you by the accused on August 3, 1994, is this covered by a written complaint filed by you against the accused?

A Yes sir.

Q I am going to show you criminal complaint 9460, examine this and tell the court if that is the complaint of Rape committed by the accused against you on August 3, 1994?

A Yes that is the Amended Complaint of Criminal Case 9460.

FISCAL MAGDOZA:

Your Honor please, the Amended Complaint for Rape in Criminal Case 9460 is not yet duly page, there are no paging in the records of Criminal Case 9460, we will identify later. We request that the Amended Complaint in Criminal Case 9460 attached to the record of Criminal Case 9460 be marked Exhibit "C" for the prosecution.

Q

The bottom portion of Exhibit C is a signature above the typewritten name Reyah Lea Guivencan, whose signature is this?

A That is my signature.

INTERPRETER:

Witness referring to the signature appearing on top of the typewritten name Reyah Lea Guivencan.

Q

And below your signature is also a signature appearing above the typewritten name Helen B. Ho, whose signature is this?

A The signature of Helen Ho.

Q Were you present when Helen Ho affixed her signature?

A I was not present.

FISCAL MAGDOZA:

We will let Helen Ho testify about her signature Your Honor.

Q

You mentioned earlier that of the several rape committed against you by accused in this case, you remember only three, you have just identified the date of the two rape, you can remember the first one was in the second week of June, 1993, then the other one third day of August, 1994, how about the third one, which you remember, when was that?

A Third week of March, 1995.

Q

Why do you remember this rape committed against you by the accused that happened on the third week of March, 1995?

A That was the last time that he raped me.

Q This last time in this rape which was committed against you by the accused in this case in the third week of March, 1995, in what particular place did this rape happen?

A In our house also.

Q Do you remember where was your mother Pedrita at that time?

A She was in Tagbilaran City.

Q Do you know why she was in Tagbilaran City at that time?

A I forgot why she was in Tagbilaran City.

Q Is it not a fact that on March 3, 1995 you were no longer staying in the house of your mother?

A That is correct.

Q And why were you in the house of your mother in the third week of March, 1995 the last rape committed to you?

A I was there because my mother requested me to take care of my two brothers.

Q

My question is: You said you were no longer living in the house of your mother, what was the reason why you were no longer living in the house of your mother?

A Because they already knew that I was raped by my stepfather.

Q Who were these persons you said "they knew that you were raped by your stepfather?"

A My grandmother.

Q What was the advice of your grandmother after she knew the rape committed against you by your stepfather?

A My grandmother advised me not to stay in the house of my mother.

Q Before that last rape, where did you stay?

A I lived in the house of our neighbor.

Q What is the name of your neighbor?

A May Manliguez.

Q

Do you remember since when have you been living in the residence of May Mantiguez upon the advise of your grandmother?

A No I cannot remember.

Q

And you said you were in your house in the third week of March, the last rape committed to you because you were requested by your mother to take care of your two younger brothers, what time was that when you were raped by the accused in this case?

A I cannot anymore remember the time but it was noon time.

Q Is it not a fact that your stepfather, the accused in this case is working here in Tagbilaran as a carpenter?

A Yes I remember.

Q And why was he in your house in Panglao at that time?

A He came home because he was drunk.

Q And where was your mother at that time.

A My mother was still in Tagbilaran City.

Q

So when the accused arrived in their house and while you were also taking care of your two younger brothers, what did the accused do?

A He again raped me.

Q Immediately after he entered your house, what specific act did he do to you?

A He again removed my dress.

Q How about your panty, what did he do to it?

A He again removed my panty.

Q After removing your panty, what else did he do to you?

A He placed himself on top of me.

Q What about his penis, what did he do with it?

A It penetrated into my vagina.

Q Was his penis penetrated into your vagina?

A His penis penetrated into my vagina much deeper than the previous ones.

Q What did you feel after your penis penetrated deeply into your vagina on the third week of March, 1995?

A I felt very painful.

Q Did you cry?

A Yes sir.

Q Did you not ask Melanio Bolatete not to do it again on you?

A I did not.

Q Why?

A Because I was afraid of him."[19]

From the evidence on record, sexual intercourse with the victim who was below twelve years old was convincingly proven. When a woman, more so if she is a minor, says that she has been raped she says in effect all that is necessary to show that rape was committed. And as long as the testimony meets the test of credibility, the accused may be convicted on the basis thereof.[20] Well-entrenched is the doctrine which is founded on reason and experience that when the victim testifies that she has been raped, and her testimony is credible, such testimony may be the sole basis of conviction.[21]

We find no compelling reason to disturb the trial court's reliance on the testimony of the complainant which impressed the court as straightforward and "bore the hallmarks of truth." Moreover, complainant withstood a punishing cross-examination without wavering or being caught in inconsistencies.

The trial court's assessment of a witness' credibility will not be disturbed on appeal in the absence of palpable error or grave abuse of discretion on the part of the trial judge.[22] The defense attempts to discredit Reyah's testimony by showing that she had a cause for resentment toward the accused who used to scold her for her "carefree" ways. However, it defies belief that a twelve year old girl would fabricate a sordid tale of sexual abuse from her stepfather simply because she had been reproved or censured for her irresponsible ways as a child. The accused has adopted a self-serving illogical stance which cannot prevail over the categorical recital of facts contained in Reyah's testimony, which the trial court upheld. Reyah's testimony of the three incidents of rape recounted vivid details of the said incidents that could not have been concocted by a girl of tender age. The testimony of the complainant is consistent, clear and free of serious contradictions.

We therefore affirm the finding that the accused is guilty beyond reasonable doubt of the three counts of rape as charged.

However, the penalty imposed should be modified. The first rape occurred in June 1993; the second on August 3, 1994; and the third in March 1995. Statutory rape as defined in Art. 335 of the Revised Penal Code is punishable by reclusion perpetual even after the amendment introduced by R.A. 7659, which took effect on December 31, 1993. Although it was established that the accused is the step-father of the victim, this qualifying circumstance was not alleged in the criminal complaints upon which the accused was arraigned. This omission bars conviction of rape in its qualified form which is punishable by death. Thus, in *People vs. Garcia*,^[23] it was held:

Now, it has long been the rule that qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances, since the latter admit of proof even if not pleaded. Indeed, it would be a denial of the right of the accused to be informed of the charges against him. and, consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form punishable with death, although the attendant circumstance qualifying the offense and resulting in capital punishment was not alleged in the indictment on which he was arraigned.

Recapitulating, the information filed against appellant charged only the felony of simple rape and no attendant qualifying circumstance, specifically that of his being supposedly a guardian of the victim, was alleged. On this additional consideration, he cannot, therefore, be, punished with the penalty of death even assuming arguendo that he is such a guardian. Neither can that fact be considered to aggravate his liability as the penalty for simple rape is - the single indivisible penalty of reclusion perpetua." (at p. 489)

As regards the accused's pecuniary liabilities, the complainant is awarded P50,000.00 as civil indemnity in addition to the P-50,000.00 awarded by the court as moral damages.

It has been the policy of the Court to outrightly award an amount not exceeding R50,000.00 to victims of rape upon indubitable showing of its commission; this is categorized as civil indemnity^[24] In response to the rising incidence of heinous crimes against chastity, the Court laid down the rule that if the crime of rape is committed and effectively qualified by any of the circumstances under which the death penalty is authorized by law, the indemnity for the victim shall be increased to the amount of P75,000.00.^[25] However, if the death penalty is not imposable due to the deficiency in the allegations of the information against the accused, e.g., it was not alleged that the accused is the step-father of the victim, the increased amount of civil indemnity cannot be imposed.

As regards the award for moral damages, the requirement of proof of mental and physical suffering has been dispensed with; it has been recognized that the victim's injury is inherently concomitant with, and necessarily resulting from the odious crime of rape to warrant per se an award for moral damages.^[26] Hence, the award of moral damages may be maintained.

WHEREFORE, the appealed judgment of the court a quo is AFFIRMED with the MODIFICATION that the accused-appellant is sentenced to suffer the penalty of reclusion perpetua and to pay the additional amount of P50,000.00 as civil indemnity to complainant Reyah Lea Guivencan for each count of rape in addition to the award of P50,000.00 by way of moral damages awarded by the court for each count of rape.

SO ORDERED

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

[1] p. 21, Rollo.

[2] Exhibit, "A".

- [3] Exhibit, "E".
- [4] Exhibit, "A".
- [5] Tsn., February 13, 1996, pp. 14-22.
- [6] Exhibit, "E"
- [7] Tsn., February 13, 1996, pp. 4-9.
- [8]Exhibit, "A"
- [9] Tsn., February 16, 1996, pp. 6-8
- [10] Tsn., September 6, 1996, pp. 3-10.
- [11] Tsn., August 13, 1996, pp. 7-10.
- [12] Tsn., August 21, 1996, pp. 8-9.
- [13] at pp. 7-1 1.
- [14] Exhibit, "E".
- [15] R.A. No. 8353, "The Anti-Rape Law of 1997" was not yet in effect at the time the crimes were committed
- [16]People vs. Lagrosa, Jr., 230 SCRA 298.
- [17] People vs. Andres, 253 SCRA 751.
- [18] People vs. Ligotan, 262 SCRA 602.
- [19] Tsn., January 17, 1996, at pp.4-16.
- [20] People vs. Adora, 275 SCRA 441; People vs. Tabao, 240 SCRA 758; People vs. Segundo, 228 SCRA 691.
- [21] People vs. Bernal, 131 SCRA 1; People vs. Soterol, 140 SCRA 400.
- [22] People vs. Balamban, 264 SCRA 619; People vs. Deopante, 263 SCRA 691; People vs. Escandor, 265 SCRA 444.
- [23] 281 SCRA 463.**
- [24] People vs. Gementiza, 285 SCRA 478; People vs. Dianos, G.R. No. 119311, October 7, 1998.
- [25] People vs. Victor, G.R. No. 127923, July 9, 1998.
- [26] People vs. Diones, supra.

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