PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHARITO ISUG MAGBANUA, ACCUSED-APPELLANT.

G.R. No. 128888. December 03, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Before the Court for automatic review is the decision[1] rendered by the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46,[2] in Criminal Case No. R-3996, finding accused-appellant Charito Isug Magbanua guilty of the crime of rape against his own daughter and sentencing him to suffer the supreme penalty of death and to indemnify the victim in the amount of P50,000.00 as damages.

In an Information filed on 29 May 1996, Charito Magbanua was charged with the crime of rape allegedly committed as follows:

> That sometimes (sic) on (sic) the year 1991 and the days thereafter, in Barangay Pawican, Municipality of San Jose, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused, with lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of Poblica Magbanua, against her will and consent.
>
> CONTRARY TO LAW.[3]

Upon his arraignment on 23 July 1996, appellant entered a plea of “NOT GUILTY.”[4] Thereafter, trial on the merits ensued.

The prosecution presented three witnesses, namely: Poblica Magbanua, the complaining witness; Leonilo Magbanua, the uncle of Poblica and older brother of appellant; and Dra. Arlene Sy, the physician who examined Poblica and issued the medical certificate.

The evidence for the prosecution is detailed as follows:

Poblica Magbanua, the complaining witness, is the eldest among the seven (7) children of appellant with his wife, Aniceta Magbanua.[5] She was eighteen (18) years old, single, jobless and a resident of Ilin, San Jose, Occidental Mindoro, at the time of the trial.

Poblica testified that in the year 1991, when she was barely thirteen (13) years old and not yet having her menstrual period, she was sexually abused by appellant, her own father.[6] It was around noon when appellant first molested her. She averred that appellant approached her and poked a knife at her.[7] Appellant then removed her panty and laid her down. Thereafter, he took off his own underwear and placed himself on top of Poblica. He directed his penis towards her vagina and pushed up and down.[8] Poblica felt appellant’s penis enter her vagina.[9] During the sexual encounter, she experienced pain in her vagina. Unable to resist appellant because the knife was constantly pointed at her, she could only cry. After the sexual intercourse, appellant warned Poblica not to tell anyone about what happened. Appellant then dressed up while Poblica put on her underwear. She then noticed that blood oozed from her vagina.[10] She narrated that her defilement did not end there. Since then until

1995, appellant continuously abused her several times a month.[11] The sexual assaults usually took place at noontime when she was left alone with appellant while her mother went to town to buy their basic needs and while her brother and sisters were at the house of their grandmother which was quite far from their house.

As a result of the frequent sexual violations, Poblica became pregnant. She gave birth to a baby boy on 15 November 1995[12] at the house of her grandmother where she temporarily transferred. She named the child Roger Roldan Magbanua and registered his birth with the local civil registry without stating the name of the natural father in the certificate of birth.[13] When asked about the identity of the father of the child, Poblica categorically answered that it was appellant who sired the baby. She explained that appellant fathered the child since he was the one who abused her from 1991 until she became pregnant.[14]

According to Poblica, she did not report the rape incidents to her mother because appellant threatened to kill her.[15] When her mother noticed her pregnancy and asked her about the supposed father, she did not tell her that it was appellant who authored her pregnancy. Instead, as suggested by appellant, she named one Ricky Pacaul as the one who impregnated her. However, later on, she claimed that she does not know any person by that name.[16]

Three months after she gave birth, she went to live with her Uncle Leonilo and his wife at Malvar Street, San Jose, Occidental Mindoro. She stayed with them and did not return any more to their residence at Pawican. While there, she disclosed to her aunt the harrowing experience she had in the hands of her father. Her uncle learned about her story and assisted her in filing the complaint for rape against appellant. She went to the police station where she voluntarily executed a “Sinumpaang Salaysay”[17] before SPO2 Resurrecion Atlas concerning the rape incidents.[18]

Prosecution witness Dr. Arlene S. Sy, Rural Helath Physician of San Jose, Occidental Mindoro, testified that she examined Poblica on 20 February 1996.[19] In the course of her physical examination of Poblica, she made the following findings:

> P.E.:
>
> Vagina admits 2-3 fingers
>
> Hymen not intact, with cervicitis
>
> Grms. Staining: with pus cells
>
> RBC moderate
>
> Negative to spermatozoa.[20]

Dr. Sy explained that Poblica’s vagina admits two (2) to three (3) fingers with less degree of resistance because its orifice was already wide and elastic as a result of the entry of a foreign object.[21] At the time of the examination, Poblica’s hymen was no longer intact and based on the cervical discharge she collected from the patient, it showed signs of cervicitis, an infection of the cervix.[22] According to Dr. Sy, cervicitis could have been sustained from the delivery of the child. When asked by the trial court to clarify this point, she averred that cervicitis may also be contracted through sexual intercourse with a man having a venereal disease. However, she did not negate the possibility that cervicitis could also result from the delivery of a child and by the poor hygiene of the patient.

The last witness presented by the prosecution was Leonilo Magbanua. Leonilo testified that sometime in

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November 1995, his mother, Perpetua Magbanua informed him about the pregnancy of Poblica. Perpetua then requested him to convince Poblica to stay with him so that he would be in the position to elicit from her the identity of the person who caused her pregnancy. Leonilo agreed and talked with his niece who had then a three (3) month old son. Poblica acceded and stayed with Leonilo and his wife at Malvar Street, San Jose, Occidental Mindoro. While he was away at work in his store Poblica related to his wife that it was appellant who sired her child.[23] Upon learning this, he immediately summoned appellant to discuss the matter with him. However, appellant did not heed his invitation. Thereupon, he asked Poblica if she would like to file a complaint against his father. Poblica answered in the affirmative. He then assisted her in filing a complaint for rape against appellant. He, likewise, executed a "Sinumpaang Salaysay"[24] to the effect that Poblica told him that she was raped by her father.[25] During the cross-examination, he declared that he bore no grudge against appellant.

On the other hand, the defense presented only one witness, the appellant himself. On the witness stand, appellant admitted that Poblica is his daughter, the latter being the eldest among his seven children.[26] However, he denied raping Poblica.[27] He pinned the commission of the crime on someone else. He claimed that, at one time, Poblica told him that it was a certain Ricky Pacaul who molested her.[28] He, likewise, disputed the allegation that he caused Poblica's pregnancy. Again he pointed to Ricky Pacaul as the culprit. However, appellant could not recall the time when Poblica allegedly revealed to him the identity of her aggressor. When subjected to cross-examination, he stated that he does not know any Ricky Pacaul.[29] He likewise admitted that despite the information he received regarding the identity of the person who allegedly molested her daughter, he did not find it necessary to locate him since they had no money to spend on the search for his whereabouts. He also did not attempt to investigate nor file a complaint against Ricky Pacaul. Finally, he alleged that he does not know of any reason why Poblica and his brother Leonilo testified against him and pointed to him as the perpetrator of the offense.[30] The defense tried to present appellant's wife and mother of Poblica, Aniceta Magbanua, but she refused to testify in appellant's favor.

After hearing the evidence from both sides, the trial court was convinced that appellant was guilty of the crime charged. The trial court believed the testimony of Poblica who positively identified appellant as the author of the sexual attack. The lower court rationalized that no daughter in her right mind would fabricate a rape charge against her own father unless the same had actually been committed. The lower court opined that Poblica, being unschooled and illiterate, could not be sophisticated enough to ascribe such a heinous crime against appellant. The trial court also noted that Poblica had no axe to grind against him and, in fact, was only nobly motivated to tell her story in order to protect her younger female siblings from possible abuse from their father. Thus, in a Decision, dated 27 February 1997, the trial court convicted appellant of rape and sentenced him to death. The dispositive portion of the trial court's decision reads:

> WHEREFORE, finding the accused Charito Isug Magbanua, guilty beyond reasonable doubt of the crime of rape, described and penalized under Article 335 of the Revised Penal Code and Section 11 of Republic Act No. 7659, otherwise referred to as the Death Penalty Law, this Court hereby sentences him to suffer the capital penalty of DEATH.
>
> The accused is ordered to indemnify the offended party, damages in the amount of FIFTY THOUSAND PESOS (P50,000.00).
>
> The accused who is presently detained at the Provincial Jail at Magbay, San Jose, Occidental, Mindoro is ordered immediately transferred to the New Bilibid Prisons, Muntinlupa City.
>
> SO ORDERED.[31]

The above decision is now the subject of the present review.

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In his brief, appellant imputes the following errors allegedly committed by the trial court, to wit:

> I
> THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE INFORMATION INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR ITS FAILURE TO STATE THE PRECISE DATE OF THE OFFENSE, IT BEING AN ESSENTIAL INGREDIENT OF THE CRIME CHARGED.
>
> II
> THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UPON ACCUSED-APPELLANT BY APPLYING RETROACTIVELY REPUBLIC ACT NO. 7659 (DEATH PENALTY LAW).[32]

Appellant faults the trial court in convicting him on the basis of an allegedly insufficient information for its failure to specify the exact dates when the rapes were perpetrated because it merely stated that these rapes were committed "sometimes (sic) on (sic) the year 1991 and the days thereafter." He asserts that since each sexual act is considered a separate crime, each of these acts should have been established as executed on certain dates or times and set forth in the information as such. He further argues that the indefiniteness of the information with respect to time could not have been cured by evidence presented by the prosecution in derogation of his right to be informed of the nature of the crime charged against him. In support of the above arguments, appellant cites the case of US vs. Dichao.[33]

Corollary to the first assignment of error, appellant contends that the trial court erred in imposing upon him the penalty of death. Since the information did not state the actual dates when the rapes took place, the sexual attacks on those unspecified dates should not have been considered as included within the coverage of Republic Act No. 7659 or the Death Penalty Law; thus, the Death Penalty Law should not have been applied retroactively in order to encompass the rapes which took place in 1991.

With respect to the allegation of insufficiency of the information, we find the contention devoid of merit. Failure to specify the exact dates or time when the rapes occurred does not ipso facto make the information defective on its face. The reason is obvious. The date or time of the commission of rape is not a material ingredient of the said crime[34] because the gravamen of rape is carnal knowledge of a woman through force and intimidation. Infact, the precise time when the rape takes place has no substantial bearing on its commission.[35] As such, the date or time need not be stated with absolute accuracy.[36] It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission. The purpose of the requirement is to give the accused an opportunity to defend himself.

Section 11, Rule 110 of the Rules of Court states thus:

> Section 11. Time of the commission of the offense.- It is not necessary to state in the complaint or information the precise time at which the offense was committed except when the time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit.

Although the information did not state with particularity the dates when the sexual attacks took place, we believe that the allegations therein that the acts were committed "on (sic) the year 1991 and the days thereafter" substantially apprised appellant of the crime he was charged with since all the essential elements of the crime of rape were stated in the information. As such, appellant cannot complain that he was deprived of the right to be informed of the nature of the case filed against him. An information can withstand the test of judicial scrutiny as long as it distinctly states the statutory designation of the offense and the acts or omissions constitutive thereof.[37]

Nevertheless, appellant insists that on the basis of US vs. Dichao, the information should have been considered as fatally defective, hence, void and incapable of supporting a judgment of conviction. The reliance of appellant in US vs. Dichao is misplaced. The dictum expressed by the Court therein is not applicable to the present case due to the difference in factual scenario. A careful study of the Dichao case reveals that what was questioned therein was an order of the trial court sustaining a demurrer to an information on the ground that it failed to substantially conform to the prescribed form when it did not allege the time of the commission of the offense with definiteness. The information therein stated that the sexual intercourse occurred "[o]n or about and during the interval between October, 1910, to August, 1912," which statement of time the Court described as "x x x so indefinite and uncertain that it does not give the accused the information required by law x x x" and the "x x x opportunity to prepare his defense x x x."[38] The lower court in allowing the demurrer authorized the dismissal of the case against the accused therein. The Court upheld the order of the trial court. In the case at bar, however, no such demurrer to the information was ever filed. As a matter of fact, no objection to the sufficiency of the information was ever raised by appellant before the trial court, unlike in Dichao; hence, appellant is deemed to have waived whatever formal defect in the information. The case in point is People vs. Garcia[39] where the Court ruled:

> Assuming that this is still good case law (referring to Dichao) reliance cannot be placed thereon by appellant since the dicta are not applicable to the present case due to factual differences. Taking into consideration the circumstances obtaining herein vis-à-vis the Dichao case, the distinguishing factor which is immediately apparent is the existence of a motion to quash in that case as pointed out in the aforequoted decision. There is no such motion in the case at bar, and this spells the big difference.
>
> The rule is that at any time before entering his plea, the accused may move to quash the information on the ground that it does not conform substantially to the prescribed form. The failure of the accused to assert any ground for a motion to quash before he pleads to the information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of the grounds for a motion to quash, except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty, and jeopardy.
>
> Perforce, a formal defect in the information not being one of the exceptions to the rule, appellant's failure to invoke the same through a motion to quash is deemed to be a waiver of such objection and he cannot now be heard to seek affirmative relief on that ground. Moreover, objections as to matters of form or substance in the information cannot be made for the first time on appeal.[40]

Explaining further why appellant therein cannot seek refuge in Dichao, the Court in People vs. Garcia said:

> It may readily be inferred from the decision in Dichao that where there is such an indefinite allegation in the information as to the time of the commission of the offense which would substantially prejudice the defense, a motion to quash the information may be granted and the case dismissed without the benefit of an amendment. On the other hand, where there is variance between the date of the commission of the crime alleged in the information and that proved at the trial, and it is shown to the trial court that the accused is surprised thereby, and that by reason thereof, he is unable to properly defend himself, the court may in the exercise of sound discretion based on all the circumstances, order the information amended so as to set forth the correct date. It may further grant an adjournment for such a length of time as will enable the accused to prepare himself to meet the variance in date which was the cause of his surprise.
>
> Apparently, that distinction was premised on the theory that the question on whether the allegations of the information are sufficiently definite as to time, and the question which arises from the variance between the particulars of the indictment and the proof, are different in nature and legal effect, and are decided on different principles.
>
> It would then result that, on the basis of the foregoing disquisition in Dichao, an amendment will not be

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> allowed, and the motion to quash should instead be granted, where the information is, on its face, defective for failure to state with certainty when the offense was committed, and such ambiguity is so gross as to deprive the accused of the opportunity to defend himself. For all intents and purposes, however, a strict adherence thereto would no longer be a sound procedural practice, especially in criminal proceedings which bears the mandate on speedy trial and where in the availability of bills of particulars have over time been adopted and recognized.[41]

The above ruling firmly sustained the pronouncement the Court made in Rocaberte vs. People[42] which we adopted in People vs. Garcia were we held:

> We believe that the principle laid down in the more recent case of Rocaberte vs. People, et al. involving exactly the same issue, presents the more logical and realistic interpretation of the rules. While the Court there adverted to the Dichao case, it nevertheless resorted to a less restrictive application of the rules by disposing of the case in this wise:
>
> "A defect in the averment as to the time of the commission of the crime charged is not, however, a ground for a motion to quash under Rule 116 of the Rules of Court. Even if it were, a motion for quashal on that account will be denied since the defect is one that can be cured by amendment; instead, the court shall order the amendment to be made by stating the time with particularity.
>
> The remedy against an indictment that fails to allege the time of the commission of the offense with sufficient definiteness is a motion for bill of particulars, provided for in Section 6, Rule 116 of the Rules of Court of 1964."[43]

As may be deduced from the above discussion, it is already too late in the day for appellant to question the sufficiency of the information. He had all the time to raise this issue during the course of the trial, particularly during his arraignment. He could have filed for a bill of particulars in order to be properly informed of the dates of the alleged rapes. However, appellant chose to be silent and never lifted a finger to question the information. As a result, he is deemed to have waived whatever objections he had and he cannot now be heard to seek affirmative relief. Furthermore, objections as to matters of form or substance in the information cannot be made for the first time on appeal.[44]

Moreover, in Dichao it cannot be denied that the information alleging the commission of one (1) rape "between October, 1910, to August, 1912" is so indefinite and uncertain as to afford the accused the necessary information to enable him to defend himself. The situation is different in the case at bar. The time specified in the information of the present case states that rape was committed, "on (sic) 1991 and the days thereafter." Clearly, the time set therein was particularly focused on a certain year, 1991, while the succeeding words "and the days thereafter" simply referred to a limited number of days following the year 1991. This is definitely a much shorter time than that involved in Dichao. Whereas in Dichao, only one sexual intercourse was proven to have been committed, in the present case, the victim testified that when she was barely thirteen (13) years old she was raped several times in a month which went on until she became pregnant and delivered a child four years later. It cannot, therefore, be logically argued that appellant was not sufficiently informed of the acts he was accused of to enable him to prepare his defense.

At any rate, although the prosecution failed to specify the particular dates in 1991 when the sexual assaults took place, we are convinced that it was able to establish the fact of rape. Thus, whatever vagueness may have attended the information was clarified when Poblica testified that she was defiled by appellant when she was barely 13 years old, having been born on 3 March 1978.[45] Poblica testified thus:

> Fiscal Salcedo:

x x x

Q Now, will you recall that sometime when you were 13 years old if ever your father Charito Isug Magbanua had sexually abused you?

A I was sexually abused when I was 13 years old. I am not yet having (sic) my monthly menstrual period, sir.

Q Will you kindly tell us how did your father abused you?

A He was abusing me by poking me with a knife, sir.

Q Tell us, the first time that you were abused by your own father what were you doing?

A I was crying, sir.

Q

My question is, was it night time or day time that you were abused by your father?

A Noon time, sir.

Q During that noon time what particular activity were you doing?

A None, sir.

Q Were you sleeping at that time?

FISCAL SALCEDO:

The witness has already stated, Your Honor please, that she did not even finish grade I and she couldn't write her name and that neither she could read. The way I appreciate the testimony of the witness, it would seem that she could not catch my direct question, perhaps of low mental ability. In view of this, predicament, Your Honor, may we request that we be allowed to propound direct leading question.

x x x

COURT:

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Your motion is granted.

FISCAL SALCEDO:

Q You were not doing anything during that noon time that your father first sexually abused you?

A None, sir.

Q And your father poked a knife at you?

A Yes, sir.

Q And after your father poked the knife at you, he removed your underwear?

A Yes, sir.

Q

And after he removed your panty he laid you down?

A Yes, sir.

Q And he also removed his underwear?

A Yes, sir.

Q And he placed himself on top of you?

A Yes, sir.

Q Why did you not resist?

A Because the knife was poked at me that time, sir.

Q

When he placed himself on top of you, he directed his penis into your vagina, is it not?

A Yes, sir.

Q He pushed up and downward?

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A Yes, sir.

Q And what did you feel when he was pushing up and downward?

A I felt pain, sir.

Q You feel (sic) that the private part of your father entered your private part?

A Yes, sir.

Q

What did you do at the time that your father was performing his sexual act?

A I just cried, sir.

Q For how long did your father stay on top of you?

A “Sandali lang po”, sir.

Q After your father perform (sic) that sexual intercourse what did he say if he said anything?

A He told me not to report to anybody what he did to me, sir.

Q And after that he wore his underwear?

A Yes, sir.

Q How about you, what did you do?

A I also wore my underwear, sir.

Q

But before you wore your underwear what did you notice in your vagina?

A I felt pain, I did not notice anything, sir.

Q Was it bleeding?

A Yes, sir.

Q Now, thereafter, your father again sexually abused you?

A Yes, sir.

Q If you could remember, how many times did your father sexually abused (sic) you in one month[‘s] time?

A Many times, sir.

Q

What time of the day or night [did] your father usually abused (sic) you?

A Noon time, sir.

Q Why, were was your mother during noon time?

A She is in the town, sir.

Q Why was she going to the town (sic)?

A She used to go to town to buy our needs, sir.

Q How about your sisters and brothers, where are (sic) they during the time that your father was abusing you?

A They were staying in my grandmother’s house, sir.

Q How far is the house of your grandmother from your house?

A It is quite far, sir.

Q

Now, as a result of [the] sexual abuses made by your father to you, what happened to you?

A I got pregnant, sir.

Q You got pregnant and you delivered a child?

A Yes, sir.

Q Do you remember when did you give birth?

A I can not remember, sir.

Q Is it not a fact that you gave birth on November 15, 1995?

A Yes, sir.

Q What is your baby, boy or girl?

A Boy, sir.

Q

Who is the father of this baby boy that you delivered?

A Charito, sir.

Q Why do you say that it is Charito, your father who is the father of your child?

A Because he was the one who sexually abused me, sir.

Q Do you want to tell us that from 1991 up to the time that you gave birth to your baby boy your father regularly had sexual intercourse with your?

A Yes, sir.[46]

Against this direct and categorical testimony of Poblica, appellant could only offer bare denial of the commission of the crime. The Court has of pronounced that denial, just like alibi, is insufficient to overcome the positive identification made by the witness for the prosecution.[47] Denial is an inherently weak defense which cannot prevail over the credible testimony of the witness that the accused committed the crime charged.[48] It must be supported by strong evidence of non-culpability in order to merit acceptability.[49] Appellant, in the present case, failed to discharge this burden. His lame attempt to shift the blame to a certain Ricky Pacaul, who may not even exist, in order to exculpate himself, cannot save him. Moreover, where there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[50] Hence, appellant's denial must fail.

Nevertheless, in view of the circumstances surrounding his case, we sustain his second assignment of error and hold that the trial court erred in imposing upon him the penalty of death by applying Republic Act No. 7659 retroactively.

Republic Act No. 7659 took effect on 31 December 1993.[51] Accordingly, the said law only applies to crimes defined therein, including rape, which were committed after its effectivity. It cannot be applied retroactively because, to do so, would go against the constitutional prohibition on ex post facto laws.[52] For this reason, in order for the death penalty to be imposable, it is incumbent upon the prosecution to establish beyond a shadow of doubt that the case of the accused is already covered by Republic Act No. 7659.

In the case at bar, the prosecution failed to discharge this burden. A perusal of the information reveals that the alleged rapes were committed in "1991 and the days thereafter." Clearly, since the time frame specified in the information antedates the effectivity date of Republic Act No. 7659, said law cannot be made applicable to the case of appellant.

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However, the trial court opined that the prosecution was able to establish the fact that Poblica was continuously raped from 1991 until she gave birth, as a consequence of the successive rapes, on 15 November 1995. Thus, the lower court argued that since the last rape occurred in the early part of 1995, which was approximately 280 days prior to the birth of the child, appellant's case was already covered by the Death Penalty Law. We do not agree.

Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. 7659, provides in pertinent part:

> Article 335. When and how rape is committed.-
>
> x x x
> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

x x x

In People vs. Perez,[53] this Court has declared that the special circumstances of rape introduced by R.A. 7659, including the above which call for the automatic application of the penalty of death, partake of the nature of qualifying circumstances since these circumstances increase the penalty of rape by one degree. As such, these circumstances should be pleaded in the information in order to be appreciated in the imposition of the proper penalty. Thus, the concurrence of the minority of the victim and her relationship to the offender should be specifically alleged in the information conformably with the accused's right to be informed of the nature and cause of the accusation against him.[54] In this case, although the minority of Poblica and her relationship with appellant were established by the prosecution beyond doubt, the death penalty cannot be imposed because these qualifying circumstances were not specified in the information. It would be a denial of the right of the appellant to be informed of the charges against him, and consequently, a denial of due process, if he is charged with simple rape and convicted of its qualified form punishable by death although the attendant circumstances qualifying the offense and resulting in capital punishment were not set forth in the indictment on which he was arraigned.[55] Therefore, despite the many rapes committed by appellant he cannot be meted the supreme penalty. Accordingly, the penalty of death imposed by the trial court must be reduced to reclusion perpetua. The Court, however, is sentencing appellant to a single punishment of reclusion perpetua only because despite the several rapes perpetrated by appellant on Poblica the information merely stated a lone allegation of rape. Appellant can only be penalized correspondingly.

Concerning the damages imposable upon appellant, we sustain the lower court's award of P50,000.00 as civil indemnity. However, we are giving Poblica an additional amount of P50,000.00 as moral damages, without the necessity of proof,[56] it being assumed that a victim of rape, such as her, suffered wounded feelings, besmirched reputation and other moral injuries.

WHEREFORE, the decision of the court a quo is AFFIRMED, with the MODIFICATION that accused-appellant Charito Isug Magbanua is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the offended party, Poblica Magbanua, in the amount of P50,000.00, plus an additional amount of P50,000.00, as moral damages, and to pay the costs.

SO ORDERED.

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

[1] Records, pp. 159-166.

[2] Presided by Executive Judge Ernesto P. Pagayatan.

[3] Records, p. 1.

[4] Id., at 11.

[5] TSN, August 8, 1996, p. 16; November 15, 1996, p. 3.

[6] TSN, August 8, 1996, pp. 4, 18.

[7] Id. at 6.

[8] Id.

[9] id

[10] TSN, August 6, 1996, p. 7.

[11] id. at 8.

[12] id. at 15.

[13] id. at 14-15. Exhibit “D,” Records, p. 48.

[14] id. at 8.

[15] id. at 9.

[16] id. at 19.

[17] Exhibit “B,” Records, p. 46.

[18] TSN, August 8, 1996, p. 11.

[19] TSN, August 7, 1996, pp. 3, 8.

[20] Exhibit “A,” Records, p. 45.

[21] TSN, August 7, 1996, p. 4.

[22] Id. at 4, 7.

[23] TSN, August 19, 1996, p. 5.

[24] Exhibit “E,” Records, p. 49.

[25] TSN, August 19, 1996, p. 8.

[26] TSN, November 15, 1996, p. 3.

[27] Id. at 4.

[28] Id.

[29] TSN, November 15, 1996, p. 6.

[30] Id. at 5.

[31] Records, p. 166.

[32] Appellant's Brief, Rollo, p. 35.

[33] 27 Phil. 421 (1914).

[34] People v. Dimapilis, G.R. Nos. 128619-21, December 17, 1998.

[35] People v. Bugarin, 273 SCRA 384, 399 (1997) citing People v. Empleo, 226 SCRA 454 (1993).

[36] People v. Hortillano, 177 SCRA 729, 736 (1989)

[37] People v. Dimapilis, supra note 34, citing Sta. Rita v. Court of Appeals, 247 SCRA 484 (1995).

[38] US v. Dichao, supra note 33 at 426.

[39] 281 SCRA 463 (1997).

[40] Id., at 472-473.

[41] Id. at 473-474. Underscoring supplied.

[42] 193 SCRA 152 (1991).

[43] People v. Garcia, supra note 39, at 474.

[44] Id. at 473, citing Francisco, Criminal Procedure, 1969, Second Ed., p. 610.

[45]45 TSN, August 8, 1996, p.

[46] Id. at 4-8.

[47] People v. Bernaldez, 294 SCRA 317, 329 (1998) citing People v. Nazareno, 260 SCRA 256 (1996).

[48] People v. Victor, 292 SCRA 186, 198 (1998) citing People v. Macagaling, 237 SCRA 299 (1994).

[49] Ibid. citing People v. Abonada, 169 SCRA 530 (1989).

[50] Id. at 199, citing People v. Pama, 216 SCRA 385 (1992).

[51] People v. Godoy, 250 SCRA 676, 732 (1995).

[52] Section 22, Article III, of the 1987 Constitution states:

> Section 22. No ex-post facto law or bill of attainder shall be enacted.
>
> An ex post facto law has been defined as one which:
>
> (a) makes criminal an act before the passage of the law and which was innocent when done, and punishes such an act;
> (b) aggravate a crime, or makes it greater than it was, when committed;
> (c) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;
> (d) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense;
> (e) assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and
> (f) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the

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> protection of a former conviction or acquittal, or a proclamation of amnesty. (In Re: Kay Villegas Kami, Inc. 35 SCRA 429, 431 (1970) (Underscoring supplied.)

[53] G.R. No. 122764, September 24, 1998.

[54] People v. Lucanas, G.R. Nos. 130599-600, April 21, 1999; People v. Ilao, G.R. No. 129529, September 29, 1998; People v. Ramos, G.R. No. 129439, September 25, 1998.

[55] People v. Garcia, supra note 39, at 489.

[56] People v. Mijano, G.R. No. 129112, July 23, 1999.

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