

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISAGANI PARAISO Y HUTALLA, ACCUSED-APPELLANT.

G.R. No. 131823. January 17, 2001

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PER CURIAM:

The case before us for automatic review is a conviction for rape with homicide against appellant Isagani Paraiso y Hutalla, rendered in the judgment [1] of the Regional Trial Court xxx, dated September 29, 1997.

Paraiso was charged in an information [2] which reads as follows:

“That on or about the 5th day of August 1994, at xxx Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo, with intent to kill and taking advantage of his superior strength, did then and there willfully, unlawfully and feloniously attack, assault and hack several times with said weapon one AAA, a minor, 13 years of age, inflicting upon her fatal wounds on vital parts of her body, which directly caused her death; that on the same occasion, the said accused, with lewd design, did then and there willfully, unlawfully and feloniously have sexual intercourse with said AAA while she was already unconscious.”

During his arraignment on December 17, 1996, appellant, duly assisted by counsel, pleaded not guilty. [3] Thereafter, trial on the merits followed.

The Solicitor General, in his Brief for Plaintiff-Appellee, [4] related the facts, as follows:

“On August 5, 1994, at around 9:00 o’clock in the morning, BBB, AAA’s father, was having a drinking spree with appellant and Anthony Briones in the place of a copra dealer near the school of xxx. It lasted up to 1:00 o’clock in the afternoon when they decided to separate. Appellant told BBB that he had to proceed to the place of the ‘pamanhikan’ which concerned his son. Appellant likewise asked BBB who were the persons in their house. BBB told appellant his children AAA and two year-old CCC will be left in their house, as the other two children will buy rice.(TSN, 5-13-97, pp. 8-10)

On the same day of August 5, 1994, at around 4:00 o’clock in the afternoon, Benny Reoveros was in their house at xxx when he heard the voice of a young child shouting ‘Diyos ko po, Diyos ko po, tama na po, tama na po.’ He was thus impelled to proceed to the place where the shout came from. When he was already near, at a distance of about fifteen (15) meters more or less, he saw appellant Isagani Paraiso carrying a child face down, with his two hands. Benny hid himself in a shrubby place where there were several anahaw trees. The he saw appellant put down the child with her face up on the ground. The child was AAA. Benny was more or less twenty (20) meters away from the place of appellant and AAA. He saw appellant remove the shorts of AAA then raise her upper clothes and pull down his pants. Appellant then placed himself on top of AAA and raped her for about five minutes. Thereafter, appellant hacked AAA on the neck with a bolo. Because of fear, Benny ran to their house. He reported the incident to Barangay Captain Angel Roy Recilla who in turn summoned his barangay kagawad and they went to the place pointed by Benny. At the shrubby place, they found Arlene already dead. (TSN, 4-15-97, pp. 3-9)

Dr. Manuel L. Salaveria, Municipal Health Officer of xxx conducted the post mortem examination upon the

victim AAA with the finding that she was abused and the cause of death was ‘cardio respiratory arrest due to severe internal and external hemorrhage secondary, multiple hack wounds’ (Exhibit ‘B’). AAA was buried in the afternoon of August 7, 1994.”

Appellant relates his version of the facts, thusly: [5]

“Evidence for the defense shows that on August 5, 1994 at about 11:00 o’clock in the morning, the accused had a drinking spree with the father of the deceased. It lasted until about 1:00 o’clock in the afternoon. Thereafter, the accused readily went home riding his carabao. On his way, he met the brother and sister of the deceased. He asked them where they were going and the two answered that they were going to buy rice. He arrived at his house at more or less 2:30 in the afternoon. Upon reaching his place, he tied his carabao at a coconut tree. Since he was under the influence of liquor at that time and feeling sleepy, he immediately went into bed. At that time, his sister Florinda was with him. At around 3:00 o’clock of the same afternoon, Letecia Buizon, cousin of the accused dropped by the latter’s house in order to ask for bamboo poles to be used in the flooring of her house. Finding that the accused was sleeping, she went out of the house and got 8 pieces of bamboo poles, then returned to the house of the accused to inform the latter that she already got the bamboo poles. However, upon seeing that the accused was still sleeping, she just went home at xxx. xxx.”

The trial judge evaluated the credibility of the witnesses and their testimonies, viz.: [6]

“As shown by the records, witness Reoveros, at times, hedged and failed to answer some questions; and gave inconsistent statements, particularly when asked about distances and the four (4) cardinal directions, viz: (a) distance of his house to house of victim which he estimated to be 50 meters, more or less, if about ¼ of the distance from this Court to railroad crossing (TSN., April 7, 1997, pp. 3-5); (b) time consumed by the travel from the place of barangay captain to the place of victim which he stated is more or less 1 hour (TSN., pp. 14-15, supra); (c) failed to answer when asked three (3) times if he was definite that on the night of August 5, 1994, he did not inform the barangay captain that it was Isagani Paraiso who raped and killed AAA; and (d) his errors and inconsistencies in his rough sketch (Exh. ‘1’). He candidly admitted his non-familiarity with the four (4) cardinal directions due to his lack of education and that what he knew is going to ‘Ilaya’ or ‘Ibaba’. (TSN., 29, 1997).

These enumerated inconsistencies in the declarations of the eyewitness Benny Reoveros cannot destroy the totality of his testimony. These discrepancies do not negate the main thrust of his testimony that he saw the accused raped and hacked the victim on the date and time in question. ‘A truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and treachery of human memory. Thus, we have followed the rule in accord with human nature and experience that honest inconsistencies on minor and trivial matters serve to strengthen, rather than destroy, the credibility of a witness, especially of witnesses to crimes shocking to conscience and numbing to senses’ (People vs. Paule, G.R. Nos. 118168-70, September 11, 1996), as in this case at bar.

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The most important thing is that the eyewitness Benny Reoveros, on the witness stand, was firm, spontaneous and categorical in his declaration that it was accused Isagani Paraiso whom he saw that afternoon carrying the victim, face down and laid her on the ground, face up; then lowered her shorts and panty, pushed up her blouse and raped her. Thereafter, accused hacked her on the neck with his bolo. Reoveros stood by his declaration, unshaken throughout the entire trial, and never showed any hesitation in his identification of accused. His positive identification is unerring. He knows accused who is his uncle by affinity because the wife of accused and his mother are sisters. Moreover, nowhere in the records does it show that said eyewitness was impelled by improper motives to impute such false and serious charges. (People vs. Trilles, 254 SCRA 641). Even accused admitted, on record, that witness Reoveros, a nephew of his wife, has a very high respect from him, xxx.

xxx xxx xxx

xxx As witness Reoveros succinctly stated, he was bothered by his conscience for what accuse did to the child. Thus, despite his relationship to accused, he had to come forward and reveal what he saw.

This Court understands the failure of the witness Reoveros to immediately report the incident and reveal the identity of the accused after that startling and shocking occurrence. More so, when he is related by affinity to the perpetrator of the crime, as this makes it all the more traumatic. xxx

xxx xxx xxx

Furthermore, Reoveros' version of the incident is supported by the physical evidence of the case, the Post-Mortem Examination (Exh. 'B, B-1 to B-3'), showing that the victim, AAA sustained multiple hack wounds and her internal examination revealed the following: 'vagina admits one finger with ease. On opening up the introitus there is perineal laceration and minute hemorrhages at 3 o'clock and 9 o'clock positions. Hymen ruptured. Patient: abused.'

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Finally, accused's defense of alibi crumbles in the face of the positive identification of the accused as the perpetrator of the crime (People vs. Ferrer, 255 SCRA 19). Positive identification was made by eyewitness Benny Reoveros, his nephew by affinity. Reoveros could not, therefore, have been mistaken as to his identity. 'The doctrine constantly upheld by this Court is that alibi and denial cannot prevail over the positive identification of the accused as the perpetrator of the crime. In addition thereto, accused has failed to establish that it was physically impossible for him to have been at the crime scene when it happened' (People vs. Alimon, 257 SCRA 661). And it is well-settled that the testimony of a single eyewitness is sufficient to support a conviction so long as such testimony is found to be clear and straight-forward and worthy of credence by the trial court (People vs. De Roxas, 241 SCRA 369)."

With its above findings, the lower court concluded that it was "fully convinced and morally certain that it was the accused Isagani Paraiso who raped and killed the victim AAA." Thus, the penalty of death was imposed, in accordance with article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act 7659. The dispositive portion of the Judgemnt dated September 29, 1997, reads:

"WHEREFORE, finding the accused Isagani Paraiso y Hutalla guilty beyond reasonable doubt of the crime of rape with Homicide, he is hereby sentenced to suffer the penalty of death, with its accessory penalties under Art. 40 of the Revised Penal Code, and to pay the Heirs of the deceased AAA the following: (a) P150,000.00 for actual and moral damages; and (b) P50,000.00 indemnity for death, without subsidiary imprisonment in case of insolvency, and to pay the costs.

Pursuant to Sec. 10 of Rule 122 of the Revised Rules of Court, as amended, let the whole records of this case be forwarded to the Supreme Court for automatic review and judgment."

In his Brief, [7] accused-appellant makes a single assignment of error, as follows:

"The Court a quo gravely erred in finding that the guilt of the accused for the crime charged has been proven beyond reasonable doubt."

To support his plea for acquittal, appellant points to alleged flaws in the prosecution evidence: (1) the delay of the eyewitness in identifying the appellant as the culprit; (2) the eyewitness' false statement during direct examination that appellant was his blood-relative while, in truth, they are only related by affinity; and (3) the improbability of the commission of such a crime in broad daylight and within hearing distance of neighboring houses. These circumstances, appellant avers, amount to a failure of the prosecution to meet the quantum of evidence required to overcome his innocence.

As to the first alleged flaw, jurisprudence is replete with rulings that delay in revealing the identity of the perpetrator of the crime will not impair the credibility of the witness, if such delay is sufficiently explained. [8] It

is not uncommon for witnesses to the commission of crimes to show reluctance in volunteering information thereon and getting involved in criminal investigations. [9] This is especially true when family members are the assailants. [10] In this case, the lone eyewitness, Benny Reoveros, is related by affinity to accused-appellant, the latter's wife being the sister of Benny's mother. Appellant himself admitted that he was highly respected by the eyewitness [11] and knows no reason why the latter would testify against him. [12] Indeed, the defense showed no reason why Reoveros would falsely implicate Paraiso in a despicable and grave offense as rape with homicide. As the Solicitor General correctly cites, "where there is no evidence and nothing indicates that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit." [13] Absent a corrupt intent, Reoveros' close relationship to and respect for appellant sufficiently explain his delay in identifying the latter as the wrongdoer.

Nevertheless, the Court carefully examined the lengthy testimony of Benny Reoveros. We find the meat of his testimony, as to how the crime was committed and by whom, to be clear, positive and unequivocal, as follows:

"PROSECUTOR MAGNO:

Q

Now, at around four o'clock in the afternoon on August 5, 1994, do you remember where were you?

A

Yes, sir.

Q

Where were you then?

A

I was in our house, sir.

Q

And where is your house located insofar as the barangay, municipality and province are concerned?

A

xxx, sir.

Q

And what were doing, if any, on that precise time, date and place?

A

I was making something where our stove will be placed, sir.

Q

And while you were making the patungan of the stove at around four o'clock in the afternoon on August 5, 1994, could you remember of any unusual incident that happened?

A

There was, sir.

Q

And what was that unusual incident you are referring to?

A

I heard somebody shouting, sir.

Q

And what was that shout that you heard?

A

He was shouting 'Diyos ko po, Diynos ko po, tama na po, tama na po.'

Q

And from what place were that shout you heard came from?

A

From the house of BBB, sir.

Q

And how far is that house of BBB from your house?

A

More or less fifty (50) meters away, sir.

Q

When you heard the shout coming from the house of BBB, what are those particular words that you heard?

A

He was shouting 'Diyos ko po, Diynos ko po, tama na po, tama na po.'

Q

And from the moment you heard that shout 'Diyos ko po, Diynos ko po, tama na po, tama na po,' is that coming from a man or a woman?

A

That is the voice of a woman, sir.

Q

That voice that you heard come from and old woman or a young woman?

ATTY. BONIFACIO:

We will object, Your Honor.

COURT:

Sustained

PROSECUTOR MAGNO:

Q

Now and the moment that you heard the shout 'Diyos ko po, Diyos ko po, tama na po, tama na po,' what did you do if you did any?

A

And because of the shout of that young child, I could not avoid going to that place, sir.

Q

And you mean to convey before this Court that you went to that place where the shout came from?

A

Yes, sir.

Q

Now and what happened after you went to the house where the shout came from?

A

When I was already near, I saw isagani Paraiso, sir.

Q

And this Isagani Paraiso is the uncle and accused in this case?

A

Yes, sir.

Q

And what was the position of Isagani Paraiso when you saw him?

A

I saw that he was carrying the child AAA, sir.

Q

And who is this AAA in relation to the owner of the house BBB?

A

Father, sir, parent.

Q

and what was the position of AAA when she was carried by Isagani Paraiso?

A

She was face down carried by the two hands of Isagani Paraiso, sir.

INTERPRETER:

Witness demonstrated how AAA was carried by the two hands of Isagani Paraiso.

PROSECUTOR MAGNO:

Q

Now, for how long did you look at this Isagani Paraiso and AAA from the time that you saw Isagani Paraiso for the first time?

A

More or less one (1) minute, sir.

Q

And how far were you from Isagani Paraiso and AAA to the place where you were standing at that moment where you were?

A

More or less fifteen (15) meters, sir.

Q

Now and what did you do after seeing that Isagani Paraiso was carrying AAA?

A

What I did was I hid myself in a shrubby place where there were several anahaw trees, sir.

Q

And after hiding yourself at the anahaw trees, what happened next, if any?

A

I saw when this Isagani Paraiso put down this AAA with her face up, sir.

Q

And where did this AAA placed by Isagani Paraiso?

A

On the ground, sir.

Q

Now, how far is that house of BBB where you saw Isagani Paraiso and AAA up to the place where Isagani Paraiso carried AAA and placed on the ground?

A

More or less twenty (20) meters, sir.

Q

And how far were you from the place where AAA was placed on the ground by Isagani Paraiso?

A

More or less twenty (20) meters also, sir.

Q

And after AAA was placed on the ground by Isagani Paraiso, what happened next, if any?

A

I saw that he removed the shorts of the child, sir.

Q

And who removed the clothes of the child?

A

Isagani Paraiso, sir.

Q

And while Isagani Paraiso was removing the clothes of the child, what happened, next, if any?

A

He raised the upper clothes of the child, sir.

Q

And after that, what happened, if any?

A

I saw when he pulled down his pants, sir.

Q

To whom do you refer when you said 'he pulled down his pants'?

A

Isagani Paraiso, sir.

Q

And what happened after Isagani Paraiso pulled down his pants, if any?

A

He placed himself on top of the child, sir.

Q

And what did Paraiso do while he was on top of the child?

A

He already committed the rape (panghahalay), sir.

Q

And while Isagani Paraiso was taking off the clothes of this child and he took off his clothes and placed himself on top of the child, what did the child do, if any?

A

The child could not anymore, sir.

Q

Why did you say that the child could not shout anymore?

ATTY. BONIFACIO:

We would like to place on record that the witness took time in answering the question, Your Honor.

(Question repeated to the witness).

ATTY. BONIFACIO:

We would like to place on record after the question was repeated to the witness, the witness is not yet answering the question.

WITNESS:

A

Because Isagani is on top of her, sir.

PROSECUTOR MAGNO:

Q

You have made mention that Isagani Paraiso committed the act of 'panghahalay'. What do you mean when you said 'panghahalay'?

A

He did something bad, sir.

Q

And what is that something bad?

A

In short, sir, he raped her 'ginahasa', sir.

COURT:

Put the word 'ginahasa'.

PROSECUTOR MAGNO:

Q

And while Isagani Paraiso was on top of the child raping her, according to you, what did you do if you did anything?

A

I could not do anything because I became afraid, sir.

Q

Now, for how long did Isagani Paraiso rape this child, AAA?

A

Maybe, more or less, five (5) minutes, sir.

Q

And after raping this child, what followed next, if any?

A

After he had already raped her, he hacked AAA on her neck, sir.

Q

Now and after Isagani Paraiso hacked Arlene AAA on her neck, what happened next, if any?

A

Because of my fear, I ran to our house, sir.

Q

Now, when AAA was hacked by Isagani Paraiso, was AAA hit with the hack?

A

She was hit, sir.

Q

On what part of her body was she hit?

A

On the neck, sir.

Q

And where did this Isagani Paraiso get his... I withdraw that.

Q

What kind of weapon did Isagani Paraiso use in hacking AAA?

A

A bolo which is as long as this, sir.

INTERPRETER:

Witness demonstrating a length by stretching apart his hands which, upon actual measurement, is eighteen (18) inches." [14]

To recapitulate, prosecution witness Reoveros actually saw the loathsome defilement and brutal slaying of 13-year-old AAA by appellant Paraiso. In his distant house, he heard a young girl's piteous cries, "Diyos ko po, Diyos ko po, tama na po, tama na po," which impelled him to approach the place where the cries came from and look into what could be happening. About 15 meters from the house of his neighbor BBB, he saw his uncle, appellant Isagani Paraiso, carrying AAA, face down, to a shrubby area a few meters from the house and where he laid her on the ground. Paraiso thereafter undressed the girl, ignominiously ravished her and, after satisfying his bestial lust, fatally hacked his victim's neck with his 18-inch long bolo, almost severing her head.

As stated earlier, the witness had no ill motive to testify against appellant. The trial court found him to be "firm, spontaneous and categorical in his declaration that it was accused Isagani Paraiso whom he saw that afternoon"

brutally rape and kill AAA. "Reoveros stood by his declaration, unshaken throughout the entire trial, and never showed any hesitation in his identification of accused. His positive identification is unerring," the judge observed.

Axiomatic is the rule that factual findings of trial courts are accorded the highest respect and are generally not disturbed by the appellate court, unless they are found to be clearly arbitrary or unfounded, or some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood or misinterpreted. [15] This rule is founded on the fact that the trial judge has the unique opportunity to personally observe the witnesses and to note their demeanor, conduct and attitude on the witness stand, which are significant factors in evaluating their honesty, sincerity and credibility. Through its direct observations in the entire proceedings, the judge can be expected to reasonably determine whose testimony to accept and which witness to disbelieve. [16] On the other hand, the reviewing magistrate has none of the advantages peculiar to the trial judge's position, and could rely only on the cold records of the case and on the judge's discretion. [17] In the present case, we find no reason to deviate from these rules.

The alleged inconsistencies and false averments of the principal prosecution witness are too trivial and inconsequential to merit consideration by the Court. The supposed variances in Reoveros' testimony refer merely to minor collateral circumstances -- such as distances between and location, relative to the four cardinal directions, of his and his neighbors' houses; when exactly and to whom he first revealed the identity of the assailant; and who first saw the victim on the night he reported the incident to barangay officials.

Time-honored is the doctrine that discrepancies referring only to minor details and collateral matters do not affect the veracity of the witness' declarations. [18] In fact, they even indicate truthfulness and erase any suspicion of rehearsed testimony, [19] rather than impair the witness' credibility. Indeed, errorless testimonies cannot be expected especially from a witness recounting the sordid details of a highly despicable and gory crime. [20]

Moreover, the witness admittedly lacked formal education, not having been able to finish even the fourth elementary grade. [21] Several times, he could not immediately answer questions propounded to him because he could not understand them. He was not even cognizant of the four cardinal directions. Slight variations in his testimony are, thus, not unexpected; and should be disregarded without diminishing his credibility. [22]

Appellant desperately assails the credibility of this lone eyewitness by averring that he falsely claimed to be a blood relative of appellant, whereas they are in truth only related by affinity. In this connection, Reoveros clearly stated during his direct examination that Isagani Paraiso's "wife is the sister of my mother." [23] In any case, whether they were related by blood or by affinity is hardly of significance.

As to appellant's assertion that the commission of such crime during broad daylight was highly improbable, it has been oft said that lust is no respecter of time and place. Rape can be committed in places where people congregate, in parks, alongside the road, within school premises, inside a house where there are other occupants, and even in the same room where there are other members of the family who are sleeping. [24] How much more in a remote hilly place where houses are distantly situated, such as in the instant case. While the defense tried to establish through prosecution eyewitness Reoveros that there were other houses near the victim's, it has not shown that there were occupants present during the perpetration of the crime who could have witnessed or perceived it, but failed to. Nothing on record contradicts the eyewitness' testimony as to the commission of the crime by appellant during that fateful hour and day at the place where the victim was found.

Appellant merely claims that he was sleeping in his house some 2,000 meters away from 2:30 p.m. to 6:00 p.m. during that ill-fated afternoon of AAA's rape-slaying. His cousin, Letecia Buizon, corroborates his tale. She supposedly arrived at appellant's house about 3:00 p.m. and saw him sleeping. When she left at 5:00 p.m., appellant was still sleeping. In the interval, however, she went out to gather bamboo trees.

The defense of alibi, as a rule, is considered with suspicion and is always received with caution, not only because it is inherently weak and unreliable but also because it can be easily fabricated. It cannot prevail over the positive identification of the appellant by a credible eyewitness who has no ill motive to testify falsely. For such defense to prosper, it must be convincing enough to preclude any doubt on the physical impossibility of the presence of the accused at the locus criminis at the time of the incident. [25]

But, according to appellant, his house was merely about two thousand meters from that of the BBBs. Even by foot, such distance is not impossible to trek in less than an hour. [26] By the eyewitness' account, the victim's unlawful defilement took no more than five minutes and, immediately thereafter, appellant savagely hacked her neck. All these could, therefore, have happened when defense witness Buizon was out gathering bamboo trees. She simply presumed that appellant was asleep all throughout.

Moreover, given the positive identification of appellant by a credible eyewitness -- his own nephew -- as the rapist-killer, his defense of alibi must necessarily fail.

In addition, the testimony of the eyewitness is fully corroborated by the post mortem examination report [27] of municipal health officer Manuel L. Salaveria, which stated as follows:

“FINDINGS

- Wound, incised, both edges sharp, measuring 7 inches x 2 inches with a depth of 5 inches from the left posterior ear extending up to the right posterior ear, occipital area. Head with evisceration of the brain tissue.
- Wound, incised, both edges sharp, measuring 4.5 inches x 1.5 inches with a depth of 1.5 inches, nape.
- Wound, incised, 1 inch x 0.5 inch left parieto-occipital area.
- Wound, incised, 1.5 inch x 1 inch right parieto-occipital area.
- Hematoma, 2.5 inches 0.5 inch Right scapular area.
- Wound, incised, 4.5 inches x 2.5 inches with a depth of 4 inches, anterior neck severing the esophagus.
- Wound, lacerated, 3 inches x 2 inches left deltoid area.
- Wound, incised, 1.5 inch x 0.5 inch left big finger.
- Wound, incised, 1 inch x 0.5 inch left index finger.
- Wound, incised, 1.5 inch x 0.5 inch Right middle finger.

Internal examination: Normal external genitalia, vagina admits one finger with ease. On opening up the introitus there is perineal lacerations and minute hemorrhages at 3' o'clock and 9' o'clock positions. Hymen ruptured.

Patient: Abused

Cause of Death: Cardio Respiratory Arrest due to severe Internal and External Hemorrhage secondary multiple Hack Wounds.”

With all the foregoing circumstances, the prosecution has clearly adduced the requisite quantum of proof to find appellant guilty beyond reasonable doubt of raping and killing AAA. Additionally, appellant offered thirty thousand pesos (P30,000.00) to the victim's father as settlement of the case and so that he could be released from confinement. [28] Such offer can only be taken to mean an admission of guilt. In criminal cases, except those involving criminal negligence or those allowed by law to be amicably settled or compromised, an offer of

compromise by the accused may be received in evidence as an implied admission of guilt. [29]

Under Article 335 [30] of the Revised Penal Code, as amended, “[w]hen by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.” Being a single indivisible penalty, death is mandatorily imposed in the light of Article 47 of the Revised penal Code regardless of the attendance of any mitigating or aggravating circumstance in the commission of the crime. [31]

Four (4) Justices of the Court however continue to maintain the unconstitutionality of R.A. No. 7659 insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

As to civil indemnity *ex delicto*, the Court ruled in *People v. Robles* [32] that in rape with homicide, in which the penalty imposed is death, the amount should be increased to P100,000.00.

With respect to damages, the general rule is that the alleged pecuniary loss and the moral and mental suffering must be established by factual evidence before actual and moral damages, respectively, may be awarded. [33] As an exception, in *people vs. Prades*, [34] we held that moral damages may be awarded to victims of rape notwithstanding the absence of specific proof of the basis for its award.

In the instant case, however, while the prosecution offered to present the victim’s mother, Melinda Recilla, to testify and prove the damages sustained by the family, the defense opted to simply admit the combined claim of actual and moral damages in the amount of P150,000.00. [35]

WHEREFORE, the decision of the Regional Trial Court (Branch 61) of Gumaca, Quezon, finding appellant Isagani Paraiso guilty of rape with homicide and imposing upon him the death penalty is **AFFIRMED**. However, the award of indemnity *ex-delicto* is increased to P100,000.00 consistent with current jurisprudence, while the trial court’s award of the stipulated moral and actual damages is **AFFIRMED**.

Pursuant to Section 25 of R.A. 7659 amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for the possible exercise of his pardoning power.

SO ORDERED.

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

[1] Rollo, pp. 20-39.

[2] Records, p. 2.

[3] *Ibid.*, p. 8.

[4] Rollo, pp. 2-4.

[5] Brief for the Accused-Appellant, p. 5; rollo, p. 55.

[6] RTC Judgment, pp. 15-20.

[7] Rollo, pp. 51-59.

[8] *People v. Dadles*, 278 SCRA 393.

- [9] *People v. De Guia*, 280 SCRA 141; *People v. Alarcon*, G.R. Nos. 133191-93, July 11, 2000.
- [10] *People v. Antonio*, 273 SCRA 328; *People v. Reyes*, 287 SCRA 229.
- [11] TSN, June 5, 1997, p. 11.
- [12] *Ibid.*, p. 4.
- [13] Appellee's Brief, p. 6, citing *People v. Leoterio*, 264 SCRA 608.
- [14] TSN, April 15, 1997, pp. 3-9.
- [15] *People v. Sta. Ana*, 291 SCRA 188; *People v. Villamor*, 284 SCRA 184; *People v. Quinao*, 269 SCRA 495.
- [16] *People v. Tenorio*, 284 SCRA 420; *People v. Alfeche*, 294 SCRA 352; *People v. Benito*, 303 SCRA 468; *People v. Tabones*, 304 SCRA 781; *People v. Cabana*, G.R. No. 127124, May 9, 2000.
- [17] *People v. Pecayo, Sr.*, G.R. No. 132047, December 14, 2000.
- [18] *People v. Tulop*, 289 SCRA 316.
- [19] *People v. Sanchez*, 302 SCRA 21.
- [20] *Ibid.* See also *People v. Agunias*, 279 SCRA 52.
- [21] TSN, April 29, 1997, p. 10.
- [22] *People v. Salvatiera*, 276 SCRA 55; *People v. Palomar*, 278 SCRA 114.
- [23] TSN, April 15, 1997, p. 3.
- [24] *People v. Bersabe*, 289 SCRA 685.
- [25] *People v. Alarcon*, *supra*; *People v. Tulop*, *supra*; *People v. Sabalones*, 294 SCRA 751.
- [26] *People v. Arlee*, G.R. No. 113518, January 25, 2000; *People vs. Cañete*, 287 SCRA 490; *People v. Andan*, 269 SCRA 95.
- [27] Exh. B.
- [28] TSN, June 5, 1997, p. 5.
- [29] Rule 130, Section 27, Rules of Court. *People v. Mangat*, 310 SCRA 101.
- [30] Now Articles 266-A and 266-B, as amended by R.A. 8353.
- [31] Article 63, RPC; *People v. Salonga*, G.R. No. 128647, March 31, 2000.
- [32] 305 SCRA 273. See also *People v. Tahop*, 315 SCRA 465; *People v. Dizon*, G.R. No. 129893, December 10, 1999.
- [33] *People v. Serzo Jr.*, 274 SCRA 553; *People v. Villamor*, 284 SCRA 184; *People v. Chua*, 297 SCRA 229; *People v. Apelado*, 316 SCRA 422.
- [34] 293 SCRA 411; *People v. Fuertes*, 296 SCRA 602; *People v. Padilla*, 301 SCRA 265; *People v. Arillas*, G.R. No. 130593, June 19, 2000.
- [35] TSN, May 8, 1997, p. 2.

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