

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSENDO MENDEZ, ACCUSED-APPELLANT.

G.R. No. 132546. July 05, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

ROSENDO MENDEZ (ROSENDO) was found guilty by the Regional Trial Court (Branch 81), Romblon, Romblon, of raping his 16-year-old stepdaughter. The supreme penalty of death was imposed upon him. His case is now before this Court on automatic review.

The Information upon which he was arraigned reads:

"UNDERSIGNED, on the basis of the criminal complaint instituted by the offended party accused ROSENDO MENDEZ of the heinous crime of "Rape" as penalized under Republic Act 7659, committed as follows:

That on or about the 11th day of December, 1996, at around 10:00 o' clock in the evening, in barangay Agbudia, municipality of Romblon, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously had carnal knowledge of his daughter VIRGINITA MENDEZ, a sixteen-year-old girl, against her will.

Contrary to law."[1]

On July 9, 1997, ROSENDO pleaded not guilty to the charge embodied in the above-quoted Information. Trial then ensued wherein the prosecution presented as its witnesses the victim, VIRGINITA MENDEZ (VIRGINITA), an elementary school teacher, Milagros Thornton, and the municipal health physician of Romblon, Romblon, Dr. Victorio Benedicto, and adduced in evidence Exhibits "A" to "C" and their sub-markings. The defense for its part presented another daughter of the accused, Marian Mendez (Marian) and the accused, ROSENDO, as witnesses and offered no documentary evidence.

ROSENDO denied the charge against him and countered that VIRGINITA was not his true daughter having been conceived and born before he married her mother.[2] He testified that on December 11, 1996, he slept in one bed together with his daughter named Marian and VIRGINITA;[3] that their sleeping arrangement is that Marian was in between him and VIRGINITA;[4] and that he did not rape VIRGINITA on December 11, 1996.[5] The testimony of Marian, ROSENDO's other daughter and half-sister of VIRGINITA, supported the claim of ROSENDO that no rape occurred on that fateful night of December 11, 1996. Marian testified that on December 11, 1996, she together with VIRGINITA and ROSENDO slept in one bed;[6] that her sister slept between her and her father;[7] and that she did not notice nor witness any unusual incident throughout the evening of December 11, 1996.[8]

On December 9, 1997, the trial court rendered its decision[9] that disregarded ROSENDO's version and found the facts of this case to be the following:

"On December 11, 1996, in the evening, private complainant Virginita was staying in the house of the elder

sibling of her father, the accused herein Rosendo Mendez, in bgy. Agbudia, Romblon, Romblon. Her companion was her younger sister, Marian Mendez. At around 10:00 o'clock that evening, Marian Mendez and she were already asleep. Her father, the accused, awakened her. He instructed her to buy cigarette. She bought five (5) sticks of Fortune cigarette from the store of Melba Montero. She handed the cigarettes to him. He ate. She went back to her place where she sleeps. She fell asleep. After that, she noticed that she had no panty anymore. Her father inserted his penis into her vagina and made pumping motion. His penis entered her vagina. She was crying. She did not shout because she was afraid because according to him if she would reveal he would kill her and chop her to small pieces. In 1993, he raped her four (4) times but she did not report these acts because she was afraid. That evening of December 11, 1996 was the last that he did it to her. The following day, December 12, she went to town with her auntie Norma Tome. In town, she stayed with Mrs. Milagros Thornton as baby sitter. Her father visited her and he was trying to get her. She trembled because he was trying to get her again. Mrs. Thornton did not allow her to go with her father. She did not go along with him.

Mrs. Thornton, who knew later what happened to her, accompanied her to the police and then to Dr. Benedicto who examined her (Exh. C),

Her parents Jocelyn Miñeque and Antonio Montero later separated but they begot three (3) children, namely, Ruel, Lian and private complainant. Her natural father was still alive. The accused nurtured her. He is not her natural father. Her late mother lived with Rosendo Mendez. She was used first by Rosendo Mendez in 1993. She was not schooling then. She was not allowed to go to school. They were still small when their mother left them. She was about two (2) years old then. In 1993, her companions in the house were her younger sister Marian Mendez, a natural child of her father Rosendo Mendez, and the latter. So also in December 11, 1996 when she was raped, they were only three (3) of them in the house.

She was already awake and she knew what her father was doing to her that evening. There was no blood that came out of her vagina; that was at first. There was no pain and injuries. She was afraid to complain because she was afraid to be killed. During the previous sexual intercourse against her by her father she was threatened that if she would reveal, her body would not be enough to be chopped into pieces. This was so because she was not his natural child. He told her not to tell it to anybody because according to him it was only he who had the right to use her body. There was no threat against her that evening from the accused. He used to tell her every time he used her that if she tells it to anybody her body was not enough to be chopped and he would kill her. After he finished, her father returned to the place where he was sleeping. She cried. She did not fall asleep that night anymore."^[10]

The dispositive portion of the decision reads:

"WHEREFORE, this Court finds the accused ROSENDO MENDEZ GUILTY beyond reasonable doubt of the heinous crime of rape and hereby sentences him to suffer the supreme penalty of DEATH. He is ordered to pay his victim, his step-daughter Virginita Mendez, the sum of P50,000.00 as indemnity, without subsidiary imprisonment incase of insolvency, and to pay the costs."^[11]

To stave off the imposition of the death penalty, ROSENDO maintains his innocence, faults the information upon which he was charged as substantially defective and asserts that the evidence was insufficient to warrant his conviction.^[12] ROSENDO also points out that the information does not charge an offense since it does not aver that the rape was committed by means of force and intimidation. He also draws attention to the fact that the information alleges an erroneous qualifying circumstance, that 16-year-old VIRGINITA is his daughter when in truth she is only his stepdaughter. The lone assignment of error in this case claims that:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED AND IN IMPOSING THE DEATH PENALTY DESPITE DEFECTIVE INFORMATION AND INSUFFICIENCY OF EVIDENCE.^[13]

ROSENDO capitalizes on the failure of the information to allege that the rape was committed through "force and intimidation"; he reasons that he "cannot be validly convicted in an indictment which does not charge an offense".[14] Article 335 of the Revised Penal Code enumerates three ways of committing rape, to wit:

- 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.

As correctly pointed out by ROSENDO, the information or complaint for rape should expressly allege the commission of the rape in the manner prescribed in Article 335.[15] Hence, in the case of *People vs. Oso*[16] the allegation in the complaint that the accused had carnal intercourse with the offended woman "against her will" or "without her consent" is insufficient to warrant a conviction for rape, although the evidence proves the commission of the crime.[17] However, in this case, the complaint filed by VIRGINITA expressly alleges that the rape was committed "by means of force", viz:

"The undersigned Complainant after being duly sworn in accordance with law accuses ROSENDO MENDEZ, a resident of Bgy. Agbudia, Romblon, Romblon of the crime of RAPE, ARTICLE 335 REVISED PENAL CODE, committed as follows:

That on or about the 11th day of December, 1996, in Bgy. Agbudia, Romblon, Romblon and within the preliminary jurisdiction of this Honorable Court, said accused ROSENDO MENDEZ, by means of force did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant VIRGINITA MENDEZ, against the latter's (sic) will and without her consent to the damage and prejudice of said victim.

Contrary to law."[18] (Emphasis ours)

What we have here is a complaint specifically accusing ROSENDO of rape committed "by means of force" and an information that failed to allege this essential element. The case of *People vs. Oso*[19] also established the principle that in case of variance between the complaint filed by the offended party and the information in crimes against chastity, the complaint controls.[20] The failure of the information to state that ROSENDO raped VIRGINITA "through force or intimidation" is not a fatal omission in this case because the complaint alleged the ultimate fact that ROSENDO raped VIRGINITA "by means of force". So, at the outset, ROSENDO could have readily ascertained that he was being accused of rape committed through force, a charge that sufficiently complies with Article 335.[21]

As to the crucial issue of whether ROSENDO raped VIRGINITA, a careful evaluation of the evidence points to the conclusion that ROSENDO raped VIRGINITA. The victim in this case is sixteen (16) years old. We have held that when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified is not true.[22] Moreover, VIRGINITA has no evil motive in prosecuting this case, in fact, her regard for ROSENDO as the one who nurtured her, buttresses the belief that she was mainly moved by her quest for justice in charging her stepfather with a crime which he could pay for with his life.

In ruling that ROSENDO is guilty of rape, the trial court relied mainly on the testimony of VIRGINITA. We find no reason to disagree with the finding of the trial court that the version of VIRGINITA is believable and credible. When it comes to the issue of credibility, the trial court is in a better position than the appellate court to properly evaluate testimonial evidence having the full opportunity to observe directly the witnesses' deportment and manner of testifying.[23] Hence, in the absence of a palpable error or grave abuse of discretion on the part of the

trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[24]

The testimony of VIRGINITA is far from being perfect in all details; nevertheless, she gave a straightforward and faithful account of the rape that occurred on December 11, 1996, as can be seen from the following:

PROS. MORTEL:

Q:

Now Virginita, on the December 11, 1996 in the evening of that date, where do (sic) you stay?

A:

In Bgy. Agbudia, Romblon, Romblon.

Q:

In whose house?

A:

Our house.

Q:

When you say your house, is that the house of your father and mother?

A:

.No sir, but we were residing there.

Q:

Whose house was that?

A:

To the elder sibling of my father.

Q:

Now that evening of December 11, 1996, who were your companions in the house?

A:

My younger sister Marian Mendez.

Q:

How about your Auntie, was she there that night?

A:

No, sir.

Q:

Now at around 10:00 o'clock that night, what were you doing?

A:

We were already asleep.

Q:

When you said you were already asleep together, with whom were you asleep (sic)?

A:

My younger sister.

Q:

What is her name?

A:

Marian Mendez.

Q:

Now at around that time, do you remember having been awakened?

A:

Yes, sir.

Q:

Why were you awakened?

A:

My father awakened me (sic).

Q:

When you said your father, what is the name of your father?

A:

Rosendo Mendez.

Q:

And look around please and tell us if your father is inside this courtroom?

A:

Yes, sir.

Q:

Will you please point to (sic) him?

A:

There, sir.

INTERPRETER:

Witness is pointing to the man who when asked his name answered Rosendo Mendez.

PROS. MORTEL

continuing:

Q:

And because your father awakened (sic) you that night, did you wake up?

A:

Yes, sir.

Q:

How about your younger sister Marian, did you wake her up?

A:

No, sir.

Q:

And when you have already awaken (sic), what did your father do?

A:

He instructed me to buy cigarette.

Q:

By the way, do you know how to observe a person whether he is drank (sic), or in his physical appearance, his movements and in speaking?

A:

Yes, sir.

Q:

When your father arrived that night, how did you observe him?

A:

He just awakened (sic) me.

Q:

.No my question is, did you observe him whether he was drank (sic) or not?

A:.

Yes, sir.

Q:

When you said yes sir, what do you mean?

COURT:

Please avoid leading questions.

PROS. MORTEL:

Yes, Your Honor.

A:

He awakened (sic) me and instructed me to buy cigarette.

Q:

Now, going to my previous question, did you observe a person if he has taken drinks through his physical appearance, mannerism, movements and in speaking. When your father arrived, did you observe him whether he had taken intoxicating drinks?

ATTY. MADRONA:

No basis, Your Honor.

COURT:

Leading.

PROS. MORTEL

continuing:

Q:

Now, when he told you to buy for him to buy (sic) cigarette, did you obey him?

A:

Yes, sir.

Q:

And did you go out to buy cigarette?

A:

Yes, sir.

Q:

And to whose store did you buy cigarette?

A:

Melba Montero.

Q:

What kind of cigarette did your father tell you to buy for him?

A:

Fortune.

Q:

How many sticks of cigarette of fortune?

A:

Five (5), sir.

Q:

And after buying cigarette, where did you go?

A:

I returned to our house.

Q:

And when you returned to your house, what did you do with your cigarette?

A:

I handed the cigarette to him.

Q:

And after you have handed the cigarette to him, what did your father do?

A:

He ate.

Q:

And you, what did you do?

A:

.I went back to my place where I sleep.

Q:

Now while you were already in your place where you were sleeping, what happened?

A:

.I fall (sic) asleep.

Q:

And were you awoken?

A:

Yes, sir.

Q:

When you awoke, what did you observe?

A:

I fall (sic) asleep.

Q:

When you fell asleep, what happened after that?

A:

.I noticed that I had no panty anymore.

Q:

And when you had already no more panty, what happened?

A:

He inserted his penis into my vagina and make (sic) pumping motion.

Q:

Who was that?

A:

My father Rosendo Mendez.

Q:

Did his penis enter your private organ when he inserted it?

A:

Yes, sir.

Q:

And how did you feel?

A:

I was crying.

Q:

Did you not shout?

A:

No sir, because I was afraid.

Q:

Why were you afraid?

A:

Because according to him if I would reveal he would kill me and chopped (sic) to small pieces.

Q:

Now you said that the penis of your father when he inserted it in your vagina entered (sic), was that the first time that your father did this to you in the past?

A:

That was the last.

Q:

When you said that was the last, were there other occasions in the past that he did this to you?

A:

No more.

Q:

In 1993, do you remember if anything had happen (sic) to you and which was done by your father?

ATTY. MADRONA:

That is leading, Your Honor.

COURT:

Answer.

A:

Yes, sir.

PROS. MORTEL

continuing:

Q:

What did your father do to you in 1993?

A:

He raped me.

Q:

How many times in 1993 did he did (sic) this to you?

A:

Four (4) times.

Q:

Did you not report this (sic) acts which your father did in 1993 to anyone?

A:

No, sir.

Q:

Why?

A:

Because I was afraid.

Q:

According to you, the last time that he did this act to you was in 1996 December 11. On December 12, 1996, do you remember (sic) did you go anywhere?

A:

I went (sic) home here in town.

Q:

Who was your companion in going to town?

A:

Auntie Norma Tome.

Q:

Now when you were going to town you were with your Auntie Norma, did you tell her what happened to you the night before?

ATTY. MADRONA:

Leading.

COURT:

Leading. Please avoid leading question. This is a very serious case.

PROS. MORTEL

continuing:

Q:

.Now, when you were together with your Auntie Norma in going to town, what was the conversation or whether you have (sic) any conversation with her?

A:

None, sir.

Q:

And when you were already in town, where did you stay?

A:

With Mrs. Thornton."[25]

xxx

COURT CONDUCTING CLARIFICATORY QUESTIONS:

Q:

Virginita, that evening you said that he inserted his penis to your vagina, right?

A:

Yes, sir.

Q:

You were awake at that moment?

A:

Already awake.

Q:

So you know (sic) what your father was doing to you?

A:

Yes, sir.

Q:

So he was doing it then he finished it, right?

A:

Yes, sir.

Q:

What did he do next after he finished?

A:

He left and returned to the place where he was sleeping.

Q:

He left and returned to the place where he was sleeping?

A:

Yes, sir.

Q:

How about you, what did you do?

A:

I cried.

Q:

You cried, what else did you do?

A:

.I was afraid.

Q:

What else?

A:

I did not fall asleep that night anymore.

Q:

So your (sic) still awake?

A:

Yes, sir.

Q:

So, where is the threat you are talking about?

According to you he went back to the place where he was sleeping, where is that threat you are talking (sic)?

A:

While he was using me.

Q:

While he was using you, what?

A:

That if I reveal it to anybody he would kill me.

Q:

Tell us that in the Romblomanon, Rosendo was talking in English?

A

Vernacular.

Q:

.Tell us in Bisaya?

A:

He told me that if I tell it to anybody my body is not enough to be chopped and he would kill me.

Q:

When he was (sic) saying that you?

A:

Everytime (sic) he used me he tells (sic) me that.

Q:

.No, we are talking only of that evening 10:00 o'clock in the evening of December 11, 1996, you mean to say Rosendo told you that?

A:

.He told me not to tell it to anybody because according to him it is only he who has the right to use my body.

Q:

That is another one you also said that something about your body not being enough to be chopped into pieces and he would kill me (sic), right?

A:

Yes, sir.

Q:

When did he tell you that?

A:

When he was using me.

Q:

When was that?

A:

I can no longer remember.

Q:

How about December 11, 1996 evening around 10:00 o'clock he did not tell you that?

A:

No, sir.

Q:

So while he was raping you he was not talking, is that it?

A:

No, sir.

Q:

He was not saying anything?

A:

None, sir.

Q:

So, there was no threat on (sic) him?

A:

The first time he used me he threatened me.

Q:

But we are talking of December 11, 1996 at around 10:00 o'clock?

A:

He just told me that the following morning I would come (sic) along with him in going to Auntie Norma.

Q:

That is all?

A:

Yes, sir.

Q:

The evening before while he was raping you he was not talking anything he was not saying anything?

A:

None, sir.

Q:

You are sure?

A:

Yes, sir.

Q:

So, where is that threat you are telling us that your body will be chopped into pieces that he will kill us (sic), tell us you only invented these things?

A:

No, sir.

Q:

What do you mean by no, sir?

A.:

That was not invented by me it came from his mouth.

Q:

Whose mouth?

A:

Of Rosendo Mendez.

Q:

Not from Mrs. Thornton?

A:

From Rosendo Mendez.

Q:.

When did it come from the mouth Rosendo?

A:

.I can no longer remember because of (sic) many times that he used me.

Q:

How many times that (sic) he used (sic) you?

A:

Many times already.

Q:

How many times?

A:

I can no longer remember but many times.

Q:

1, 2, 3, 4, 5, 6, 7, 8, 9, 10 times. Court showing extended two (2) hands? (sic)

A:

I can no longer remember.

Q:

More than ten (10) times?

A:

But many times.

Q:

You cannot estimate?

A:

No, Your Honor.

Q:

About five (5) times?

A:

I can no longer remember because many times (sic).

Q:

So there was no threat on the evening of December 11, 1996 against you by Rosendo there was no threat?

A:

None, sir.

COURT:

Thank you, Virginita."[26]

The fact that VIRGINITA was raped is supported by the medico-legal certificate prepared by Dr. Victorio F. Benedicto (Dr. Benedicto), Municipal Health Officer of Romblon, Romblon. Based on the certificate, VIRGINITA's "vagina easily admits thumb" and has "old lacerations, multiple".[27] Dr. Benedicto explained in his testimony that the laceration in the labia menora may have been inflicted by a hard object, or an erect penis.[28]

VIRGINITA positively identified ROSENDO as her assailant and she even recounted that the rape that took place on December 11, 1996 was only the last of the many rapes perpetrated by ROSENDO against her. To support his claim that no rape happened on December 11, 1996, ROSENDO presented Marian, the half-sister of VIRGINITA. Marian testified that she did not witness anything unusual that fateful night. However, the positive declaration of VIRGINITA that she was raped by ROSENDO prevails over the negative testimony of Marian. It is an established rule that an affirmative testimony is far stronger than negative testimony, especially so when it comes from the mouth of a credible witness.[29] Marian testified that the sleeping position was that VIRGINITA was in between her and her father, ROSENDO, which notably runs counter to the testimony of ROSENDO that it was Marian who slept in between him and VIRGINITA. It is thus possible that Marian could not have witnessed the rape of VIRGINITA because Marian was sleeping at the time that the crime was being committed. It is also not farfetched for the rape to have been perpetrated despite the presence of Marian considering the doctrine that the nearby presence of people in a certain place is no guarantee that rape will not and cannot be committed.[30] Up to now, there is no rule that rape can be committed only in seclusion.[31]

ROSENDO calls attention to the testimony of VIRGINITA wherein she declared that force and intimidation was employed on the previous incidents of rape allegedly committed by him. VIRGINITA allegedly failed to categorically state that force and intimidation attended the rape that occurred in the evening of December 11, 1996, the rape for which ROSENDO is charged.[32] The following testimony of VIRGINITA allegedly proves his point:

"Q

So while he was raping you he was not talking, is that it?

A:

No, sir.

Q:

He was not saying anything?

A:

No, sir.

Q:

So, there was no threat to (sic) him?

A:

The first time he used me he threatened me.

Q:

But we are talking of December 11, 1996 at around 10:00 o'clock?

A:

He just told me that the following morning I would come (sic) along with him in going to Auntie Norma.

Q:

That is all?

A:

Yes, sir.

Q:

The evening before while he was raping you he was not talking (sic) anything he was not saying anything?

A:

None, sir.

Q:

You are sure?

A:

Yes, sir."[33]

Contrary to the contention of ROSENDO, a rape victim might be compelled to submit herself, against her will, to the rapist's demands simply because of fear for life and personal safety.[34] In her testimony, VIRGINITA

mentioned that every time ROSENDO would ravish her, he would threaten her not to tell anyone or else he would kill her and that her body "would not be enough to be chopped".[35] The fact that VIRGINITA failed to unequivocally declare that she was threatened or forced by ROSENDO on December 11, 1996 to have sexual congress with him does not negate the fact that the repeated and menacing threats of ROSENDO instilled fear in the mind of VIRGINITA. Furthermore, the moral ascendancy and influence of ROSENDO over VIRGINITA, his stepdaughter, can substitute for violence or intimidation.[36] The use of actual force or intimidation for the rape that ROSENDO committed on December 11, 1996 is therefore not indispensable in sustaining his conviction.

ROSENDO further argues that the inaccuracy of the information in alleging the relationship between him and VIRGINITA precluded the trial court from imposing the penalty of death. He invokes the case of *People vs. Perez*[37] wherein we declared that the minority of the victim and the relationship of the accused and the victim must be alleged in the information so as not to violate the right of the accused to be fully informed of the nature of the charge against him.

The contention has merit. In this case, the information indeed falls short of satisfying the constitutional mandate to duly inform the accused of the gravity of the nature of the accusation against him.

Republic Act 7659 introduced seven modes of committing rape,[38] including the twin special qualifying circumstances of the victim's age and the relationship between the victim and the culprit, which would warrant the automatic imposition of the death penalty. The seven modes of committing rape partake of the nature of a qualifying circumstance under the Revised Penal Code since their presence increases the penalty of rape to one (1) degree.[39] The long-standing rule is 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.[40] For rape to be qualified as heinous, warranting the imposition of the death penalty, the circumstances of the minority of the victim and her relationship with the offender must be both alleged in the information for rape.[41]

The importance of duly informing the accused of the accusation against him is a constitutional right that cannot be taken lightly, more so if the penalty to be imposed is grave, such as the forfeiture of his life. The essence of the constitutional right of the accused to be informed of the nature and cause of the accusation against him is that "every element of the offense must be alleged in the complaint or information"[42] so as to "enable the accused to suitably prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense."[43]

In setting out the elements of a crime in the information or complaint, the pertinent provisions of the Rules on Criminal Procedure, specifically, Section 9 of Rule 110, provides the following guideline:

"Section 9. Cause of accusation. -- The acts or omissions complained of as constituting the offense must be stated in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to pronounce a judgment."

The cited provision is one of the many provisions in the Rules of Court that serves to implement the constitutional right of the accused to be informed of the charges against him. Relevant to this case is the phrase "a person of common understanding," which has its origin in this jurisdiction in the phrase "a person of ordinary intelligence".[44]

In one case wherein the informations therein alleged:

"[A]nd taking advantage of his superior strength over the person of his own daughter who is only thirteen years

old..."

"[T]aking advantage of his superior strength over the person of his thirteen (13) year old (sic) daughter..."

this Court spared the life of the accused, despite the mention of the age of the victim and the word "daughter" in said informations, on the ground that the quoted informations failed to duly allege the special qualifying circumstances of the victim's minority and the relationship between the victim and the accused because as phrased, they unduly lay stress on the generic aggravating circumstance of "taking advantage of superior strength".[45] We further explained that:

"Be it in terms of syntax or composition, the wording of the informations is unable to sufficiently notify the accused, a person of common understanding or ordinary intelligence, of the gravity or nature of the crime he had been charged with, especially considering that the generic aggravating circumstance of taking advantage of superior strength is not even an element of the attendant circumstances treated under number 1 of the last paragraph of Article 335. The aforequoted clauses in the informations can thus not be read nor understood as constituting a specific allegation of the special circumstances of relationship of father and daughter and that the daughter was less than 18 years of age at the time the crime of rape was committed."[46]

In *People vs. Dimapilis*[47], the accused escaped the imposition of the death penalty when the information failed to properly allege the actual relationship of the minor victim with the accused. The information stated that the accused was the stepfather of the victim when in reality, the accused was the common-law spouse of the victim's mother. We stressed that a stepdaughter is a daughter of one's spouse by a previous marriage or the daughter of one of the spouses by a former marriage.[48] The inaccurate designation in the information of the relationship between the victim and the accused in said case was considered a technical flaw committed by the prosecution that cannot be ignored.[49] Furthermore, the incorrect allegation that the accused is the stepfather of the victim when the accused is the common-law spouse of the victim's mother precludes a finding of qualified rape since the relationship alleged in the information against the accused is different from that actually proven.[50] Similarly, in the more recent case of *People vs. Poñado*[51], the information also failed to correctly allege that the accused was the common-law spouse of the victim, instead, the information erroneously alleged that the accused was the stepfather of the victim. On this basis, the accused was not convicted of qualified rape and was merely meted out the penalty of reclusion perpetua, this Court thus emphasized that:

"Taking into account the growing number of cases where qualified rape under Section 11 of RA 7659, although proven during trial, could still not be properly penalized because of defects in the Information, We urge the prosecuting fiscals who are charged with the responsibility of preparing Informations to state with particularity the attendant circumstances provided for under Section 11 of RA 7659. More specifically, in qualified rape, both the fact of minority of the victim and the actual relationship between the parties, as worded in RA 7659, must be alleged in the Information. Otherwise, we shall continue to fail both the law and the victims whom the law sought to protect".[52] (Emphasis ours)

Here, to deem that the information against ROSENDO duly alleged the special circumstances of relationship of stepfather and stepdaughter would be to deprive him of his constitutional right to be correctly informed of the nature and the cause of the accusation against him. What the information in this case specifically designated was that the said accused "did then and there willfully, unlawfully and feloniously had carnal knowledge of his daughter, VIRGINITA MENDEZ"[53] when in truth, the actual relationship of ROSENDO with the victim is that of stepfather and stepdaughter. The fact that VIRGINITA is merely the stepdaughter of ROSENDO was duly proven in the trial and admitted by the parties.

The recent pronouncements of this Court in *People vs. Teves*[54] and *People vs. Poñado*[55] decidedly indicate this Court's insistence on no less than an accurate description in the information of the inculpatory relationship

that would aggravate the offense to one of qualified rape, in order to satisfy the constitutional requirement that an accused should be properly informed of the nature and cause of the accusation against him.[56] We therefore cannot sanction the imposition of the death penalty on ROSENDO for raping his stepdaughter when the information fatally failed to designate the actual or correct relationship of ROSENDO and VIRGINITA. The penalty should thus only be for simple rape, which is punishable by reclusion perpetua.

With respect to the civil liability, in line with current rulings, if in the crime of rape, the death penalty is imposed, the indemnity ex delicto for the victim should be in the amount of P75,000.00; if the death penalty is not decreed by the court, the victim would instead be entitled to P50,000.00.[57] An additional award of P50,000.00 by way of moral damages is automatically granted in rape cases, separate and distinct from the indemnity.[58]

WHEREFORE, the appealed decision of the Regional Trial Court (RTC), Branch 81, Romblon, Romblon, in Criminal Case No. 2061 finding accused-appellant Rosendo Mendez guilty beyond reasonable doubt of rape, is **AFFIRMED**, with the **MODIFICATION** that the sentence is reduced from **DEATH** to **Reclusion Perpetua** and accused-appellant is ordered to pay P50,000.00 as civil indemnity, and P50,000.00 as moral damages to the offended party, Virginita Mendez.

SO ORDERED.

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

[1] Rollo, p. 6.

[2] TSN, November 25, 1997, p. 14.

[3] Ibid., p. 16.

[4] Ibid.

[5] Ibid., p. 19.

[6] Ibid., p. 4.

[7] Ibid., pp. 4-5.

[8] Ibid., pp. 3-9.

[9] Penned by Judge Placido Marquez.

[10] Rollo, pp. 12-13.

[11] Ibid., p. 15.

[12] Brief for Accused-Appellant, Rollo, p. 37.

[13] Ibid.

[14] Ibid., p. 39.

[15] THE REVISED PENAL CODE, VOL. III, RAMON C. AQUINO AND CAROLINA C. GRIÑO-AQUINO, (1997), pp. 393.

[16] 62 Phil 271 (1935)

[17] THE REVISED PENAL CODE, *supra*, p. 394.

[18] Records, p.38.

[19] *Supra*.

[20] REMEDIAL LAW COMPENDIUM, VOL. II, FLORENZ D. REGALADO, (1995), p. 231.

[21] At the time that the rape for which ROSENDO was charged took place (December 11, 1996), the crime of rape was still classified as a crime against chastity, the prosecution for which must be commenced by complaint by the offended party or her parents, grandparents, or guardian as mandated by Article 344 of the Revised Penal Code. It was only on October 22, 1997 that the crime of rape was eventually reclassified as a crime against persons, the prosecution of which is made *de officio* by virtue of Republic Act 8353 or the Anti-Rape Law of 1997.

[22] *People vs. Clopino*, 290 SCRA 432 (1998), p. 444-445.

[23] *People vs. Narido*, G.R. No. 132058, October 1, 1999.

[24] *People vs. Bolatete*, 303 SCRA 709 (1999), p. 729.

[25] TSN, September 9, 1997, pp. 4-9.

[26] *Ibid.*, pp. 26-30.

[27] Records, p. 39.

[28] TSN, October 22, 1997, p. 6.

[29] *People vs. Sagun*, 303 SCRA 382 (1999), p. 392.

[30] *People vs. Perez*, 296 SCRA 17 (1998), p. 30.

[31] *Ibid.*

[32] Brief for Accused-Appellant, Rollo, p. 37.

[33] *Ibid.*, pp. 37-38.

[34] *People vs. Ramon*, G.R. No. 130407, December 15, 1999.

[35] TSN, September 19, 1997, p. 27.

[36] *People vs. Ramon*, *supra*.

[37] *Supra*.

[38] Section 11. The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- 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.
- When the victim is under the custody of the police or military authorities.
- When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

- When the victim is a religious or a child below seven (7) years old.
- hen the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
- When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
- When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

[39] People vs. Flores, G.R. No. 123599, December 13, 1999.

[40] People vs. Atienza, G.R. No. 131820, February 29, 2000.

[41] See People vs. Calayca, 301 SCRA 192 (1999); People vs. Bolatete, supra and People vs. Panique, G.R. No. 125763, October 13, 1999.

[42] Balitaan vs. CFI of Batangas, 115 SCRA 729 (1982), p. 739.

[43] Ibid.

[44] People vs. Teves, G.R. No. 128839, July 20, 1999.

[45] Ibid.

[46] Ibid.

[47] 300 SCRA 279 (1998)

[48] Ibid., p. 308.

[49] Ibid., p. 309.

[50] People vs. Manggasin, 306 SCRA 228 (1999), p. 248.

[51] People vs. Poñado, G.R. No. 130334, July 28, 1999.

[52] Ibid.

[53] Rollo, p. 6.

[54] Supra.

[55] Supra.

[56] See also People vs. Dimapilis, supra, and People vs. Manggasin, supra.

[57] People vs. Poñado, supra.

[58] People vs. Garigadi, G.R. No. 110111, October 26, 1999.

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