

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON MARIÑO Y MINA, ACCUSED-APPELLANT.

G.R. No. 132550. February 19, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

It has been consistently held that when a woman, especially one who is the daughter of the accused, cries rape, she has, in effect, said all that is necessary to establish that rape was committed against her.[1] However, does this principle still hold true if the victim cannot recall how the alleged rape was committed as she was asleep and never woke up throughout the incident? We answer in the negative.

On April 28, 1997, accused-appellant Ramon Mariño y Mina was charged with the crime of rape before the Regional Trial Court of Romblon, Branch 81. The information reads:

That on or about the 6th day of March, 1997, at around 12:00 midnight, in [B]arangay Agtongo, [M]unicipality of Romblon, [P]rovince 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 EMILY MARIÑO, a fourteen year old girl, against her will.

Contrary to law.[2]

Upon his arraignment, on July 8, 1997, accused-appellant, assisted by counsel, pleaded not guilty to the offense charged.

The version of the prosecution is primarily anchored on the testimonies of Emily Mariño, the victim, and Ramil Mariño, the victim's brother.

Emily is the eldest child among the six children of accused-appellant and Edita Mariño.[3] She was fourteen (14) years old and a Grade V or Grade VI student when she was allegedly sexually ravished. At around 10:00 p.m. of May 6, 1997, she was in their house and was about to go to sleep beside her younger siblings when accused-appellant approached her and asked if he could sleep beside her.[4] She refused. Angered by her refusal, accused-appellant kicked her.[5] Accused-appellant then returned to his bed while Emily went to sleep beside her siblings[6] on the floor of their house.[7] Accused-appellant's wife was not then around because she was staying in the Municipality of Romblon during weekdays as a helper in the house of a certain Rene Fajilagutan.[8]

When Emily awoke at around 3:00 a.m., she was surprised to see that she was no longer on the floor but already lying on her parents' bed.[9] She felt her whole body ache and her vagina was painful, wet and sticky.[10] Dumbfounded, she looked around and saw accused-appellant wrapped in a blanket and lying on the floor.[11] Thereupon, accused-appellant told her: "Madasok lang da gapaindi pa." (It already entered but still you refused or It is just being inserted but still you refuse).[12] Realizing that she was violated during her sleep, Emily cried.[13] She recalled that it was already the third time that her father raped her; once when she was in grade III and again when she was in grade V.[14]

Emily went back to sleep and got out of bed at around 5 a.m. to prepare breakfast.[15] Accused-appellant was no longer around at that time since he went to work.[16] After finishing breakfast, she and three of her siblings, including Ramil, then eleven years old, proceeded to school.[17] On their way to school, Ramil told Emily of what he witnessed the previous night.[18] He recounted that at around midnight, he woke up to urinate.[19] After relieving himself, he tried to sleep again but could not.[20] It was at this point when he saw accused-appellant lift Emily from the floor and lay her on the bed.[21] Accused-appellant next opened the skirt of Emily and took off her dress and her panty.[22] Thereafter, accused-appellant took off his brief, held his penis and inserted it into the vagina of Emily, making pumping motions.[23] Accused-appellant then stood up, put back the clothes of Emily as well as his own clothes.[24]

After lunch break, Emily decided to skip her afternoon classes to report the incident to her mother.[25] At around 3 p.m., she left for the town of Romblon to see her mother.[26] Emily told her of the reprehensible act committed by her father.[27] Her mother got angry and commented that accused-appellant is stupid and mindless.[28] Her mother instructed her to stay in Romblon while she proceeded to their house to confront accused-appellant.[29] Emily spent the night at her grandaunt's house in Bagtasan.[30] The following day, she was brought by her mother to the police station where she filed a complaint for rape against accused-appellant.[31] Thereafter, they proceeded to the hospital where Dr. Victorio Benedicto, the Rural Health Physician, examined her.[32]

Dr. Benedicto testified that after examining Emily, he issued a medico-legal certificate where he noted that the victim's vagina easily admitted a thumb; that it had scars at 2, 5 and 7 o'clock positions; and that the victim suffered no external physical injuries.[33] She opined that a hard object could have previously penetrated Emily's vagina and that she was no longer a virgin.[34]

The prosecution also presented Teodino Martinez, the Provincial Warden of Romblon, who declared that accused-appellant was incarcerated in the provincial jail during the pendency of this case.[35] He was, however, able to escape on April 26, 1997. On that day, a group of Seventh Day Adventists conducted a bible study at the provincial jail.[36] As the group was leaving the premises of the provincial jail, accused-appellant surreptitiously mingled with them pretending to be one of them and, thus, was able to evade the prison guards.[37] For three days, the jail authorities searched for accused-appellant. On April 29, 1997, he was surrendered to the authorities by his two (2) brothers, Editho and Raymundo Mariño.[38] Martinez conducted an investigation surrounding accused-appellant's escape. Accused-appellant told him that the reason why he left the jail was to look for his wife to ask for forgiveness.[39]

On the other hand, the defense had a totally different account of what transpired.

On March 6, 1997, accused-appellant went home from work.[40] He found his children at home except his eldest, Emily, who had already gone out of their house.[41] Emily was used to going out to watch betamax movies in other people's houses or attend overnight dances and parties,[42] sometimes sleeping in her friend's house and would return the following day.[43] Knowing that Emily would not come home that evening, accused-appellant, after checking on his other children who were already sleeping, retired to bed at around 8:30 p.m.[44] He woke up at 6:00 a.m. the following day, prepared breakfast for his children and proceeded to work.[45] Later on, he was informed by his neighbor, Ben Mindoro, that Emily returned to their house at around 8:00 a.m. that day and did not go to school.[46]

To refute the testimony of Ramil Mariño, the defense put to the witness stand Raymundo Mariño (accused-appellant's brother), Noemi Selosa (the wife of Raymundo Mariño), and Valentina Mindoro (accused-appellant's aunt).

Noemi Selosa testified that on March 10, 1997, she accompanied Edita Mariño and Ramil Mariño to the police

station.[47] Ramil Mariño gave his statement before the police investigator with regard to what he witnessed on the night of March 6, 1997.[48] When Ramil finished giving his statement, the investigator noted that his story did not tally with the account previously given by Emily to the police that she was raped by accused-appellant.[49] Instead, Ramil told the police that he did not see his father rape Emily. Because of this, Edita Mariño instructed Ramil Mariño to tell the police that he saw accused-appellant take off the shorts of Emily and rape her. She was able to convince her son that if he would do what he was told, "his father could be released from jail."[50] She also warned him that if he did not follow what she told him, she would not let him eat.[51] Ramil Mariño complied with her mother's instructions.[52]

Raymundo Mariño testified that in the afternoon of March 10, 1997, Ramil Mariño, his nephew, went to his house after giving his statement at the police station.[53] When Ramil saw his uncle, he cried and hugged him.[54] Raymundo Mariño asked what was wrong[55] and Ramil Mariño said that his mother forced him to tell the police that his father raped Emily. She also assured him that if he made that story to the police, his father would be released from jail.[56]

Valentina Mindoro told the court that she lives in the house of Raymundo Mariño and Noemi Selosa.[57] In the afternoon of March 10, 1997, Ramil Mariño arrived in their house crying.[58] He approached his uncle, Raymundo Mariño, and asked him why his father had not yet been released from jail as he (the father) was not at fault.[59] It was then that Ramil Mariño admitted that he was coached by his mother to testify against his father.[60]

In its Decision, dated December 12, 1997, the trial court found accused-appellant guilty of raping his daughter and sentenced him to suffer the supreme penalty of death. The dispositive portion of the decision reads:

WHEREFORE, this Court finds the accused RAMON MARIÑO Y MINA GUILTY beyond reasonable doubt of the heinous crime of Rape under the aforequoted Information, dated April 14, 1997, and hereby sentences him to suffer the supreme penalty of DEATH. He is ordered to pay the victim, his daughter Emily Mariño, the sum of P50,000.00 as civil indemnity without subsidiary imprisonment in case of insolvency, and to pay the costs.[61]

Hence, this appeal where accused-appellant raises the following as his lone assignment of error:

THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED IN THE INFORMATION DESPITE INSUFFICIENCY OF EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[62]

In finding accused-appellant guilty, the trial court considered the alleged statement made by accused-appellant: "Madasok lang da gapaindi ka pa" (It already entered but still you refused or It is just being inserted but still you refuse), as an admission that he raped his daughter. We do not agree.

An admission under Section 26, Rule 130 of the Rules of Court[63] applies to statements made by an accused which directly or impliedly point towards an acknowledgement of guilt for the crime charged.[64]

In order that an admission may be appreciated against the accused, the statement must have been clear and unequivocal such that a reasonable construction of the same would lead to an acknowledgement of the fact sought to be proven.[65] Being merely an inference, an admission, standing alone, is insufficient to authorize a conviction unless backed up by some other proof which would show the culpability of the accused.[66]

We agree with the finding of the trial court that accused-appellant's statement: "Madasok lang da gapaindi a pa" (It already entered but still you refused or It is just being inserted, but still you refused),[67] is an admission under Section 26 of Rule 130. However, would this admission, standing alone, create an inference that

accused-appellant raped his daughter[68] in that he was able to actually penetrate her vagina with his sex organ? For one thing, there was no mention at all that what was inserted was accused-appellant's sex organ. Neither was there an indication that the insertion was made into her sex organ.

While the victim claims that she was raped, she admittedly did not awake during the entire length of the episode when she was being undressed and her panty removed, when her legs were spread, when his body was pressed against hers, when his penis entered into her private parts and when accused-appellant was doing pumping motions into her vagina. In recalling the events that transpired on March 6, 1997, Emily testified:

Q Now, at about 10:00 o'clock in the evening, do you recall what happened to you?

A Yes, sir.

Q What happened?

A My father said, can I sleep beside you?

Q When he said those words, where were you?

A At the side, beside my younger siblings.

Q Now, what happened after that?

A I said, I don't want to sleep with you.

Q Because you did not want to sleep with your father, what happened?

A My father got angry.

Q When he became angry with you, when he got angry, what happened?

A He counted one (1) up to three (3)

Q Up to three (3)?

A Yes, sir.

Q When he counted, what did you do?

A I remained in the place where I was sleeping and I kept quiet.

Q When you remained in the place where you were lying and you kept quiet, what happened?

A He approached me and kicked me on my feet.

Q Will you please demonstrate before this Honorable Court what part of your body was hit?

A Here, sir (Witness is pointing to her right lower leg).

Q When you were hit by this kick of your father, what did you do?

A

I still kept quiet and he returned to his bed and when he returned again I ran towards the center where my siblings were lying.

Q When he returned again, what did he do, what happened?

A He said, why would you not let me sleep beside you, there's nothing wrong with it, you are my child.

Q When he told you that, what happened?

A I kept quiet on my place and I did not answer him.

Q What did you do after that?

A There I felt asleep beside my siblings.

Q And what time did you wake that evening?

A When I woke up it was already 3:00 o'clock in the morning.

Q Where were you lying when you woke up at about 3:00 o'clock that early morning?

A I was already on bed.

Q When you woke up on bed, what did you feel if you felt any?

A My whole body was aching and my vagina was also aching and wet and sticky.

Q At 3:00 o'clock, did you see where your father was?

A Yes, sir.

Q Where?

A On his bed.

PROS. ROCERO:

Your Honor, the witness did not say bed, she said sa kanyang higa-an.

COURT:

Answer.

A I saw father where he was sleeping.

x x x

Q

Miss Mariño, aside from asking you for him to sleep with you the night of March 6, 1997 you do not know any other things that your father did to you?

A No more.

Q

That your father raped you that evening of March 6 or in the night of March 6, 1997, you only got that information from your brother?

A

And I also came to know about it because at 3:00 early in the morning, he said, "madasok lang da gapaindi pa" meaning, it already entered but still you refused".

Q

This was stated by your father at 3:00 o'clock in the morning?

A Yes, sir.

Q And so, if not for the statement of your father, you do not know about it?

A Yes, sir.

Q And so, the actual incident that happened you do not know because you were asleep?

A Yes, sir.

Q And what do you understand by rape? Do you understand what is rape?

A Yes, sir.

Q What is rape?

A Raping the girls.

Q What do you mean by ginagahasa?

A Used.

Q What is ginagamit?

A Had sexual intercourse.

Q And you only came to know that you were raped by your father, from whom?

A

From Ramil, and I also came to know about it because he was the only one there and he had raped me before.

Q You are talking of the time when you were Grade III?

A Yes, sir.

Q When did Ramil tell you that you were raped by your father?

A The following morning.

Q What time?

A In my estimate it was already 6:30 o'clock.

Q 6:30 o'clock in the morning of March 7?

A

Yes, sir, it was March 7 because the incident happened March 6 and if it is already 12:00 o'clock past it was already March 7.

Q And that was the only time that you came to know about it?

A What?

Q That you were raped by your father?

A

Because before when I was studying in Grade III he raped me and when I was studying in Grade V he raped me again.

Q

But we were talking of raped on March 6, 1997, without the information given to you by Ramil Mariño at 6:30 o'clock in the morning of March 7, 1997 you really do not know what happened to you?

A No, sir.

Q What do you mean by saying "no, yes sir"?

A Yes, sir.

Q And you are sure about that?

A Yes, sir.[69]

It is clear from her testimony that she was not aware of what happened between the time she fell asleep until she woke up in the bed of her parents. Her conclusion that she was raped by accused-appellant was only deduced from the latter's statement "Madasok lang da gapaindi ka pa."

Be that as it may, her testimony adequately establishes the fact that on that fateful night, her father did something to her which made her whole body ache and her most private part feel wet and sticky. Possibly, it was rape, if his penis penetrated her vagina. Possibly it could only be acts of lasciviousness if the penetration or insertion was caused by another object like accused-appellant's fingers. The probing fingers could have involuntarily produced a wet and sticky feeling on the part of the victim by the stimulation of her private parts. Whether victim's body ached, it cannot be reasonably ascertained if she was telling the truth or simply exaggerating. The facts at hand would more persuasively support the theory that the offense committed by accused-appellant was acts of lasciviousness.[70] Foremost is that Emily was not awakened by the molestation of his father. Unlike in rape where the perpetrator would normally place his weight atop his victim, penetrate his organ into her vagina and make thrusting motions which would readily awaken the victim if sleeping, where only the finger of the assailant or some other object is inserted into the victim's private parts, which is less obtrusive, there is the possibility of the victim not awaking throughout the act.

Indeed, it is perplexing that the victim would remain asleep as she was being undressed, intruded into and subjected to a push and pull movement made on her private parts. There is no pretense that she was drugged or otherwise rendered unconscious to facilitate the alleged rape. The case of *People vs. Corcina*[71] cited by the Solicitor General to support his claim that carnal knowledge is possible with a woman without her knowledge due to deep slumber, is not on all fours with the factual circumstances of the present case. In *Corcina*, the victim was a married woman who already had a daughter and, as such, accustomed to sexual intercourse.[72] The victim in the said case awoke in the middle of the rape since she felt the weight of a man on top of her.[73] In the present case, Emily was totally unaware of her being raped.

The testimony of prosecution witness, Ramil Mariño, on what transpired between the time that the victim slept on the floor until she woke up on the bed of her parents, leaves much to be desired. The trial court did not give much credence to it, being incoherent. This was shown when Ramil Mariño was recalled to the witness stand as the prosecution's rebuttal witness in view of his uncle Raymundo Mariño's earlier testimony that Ramil was coached by his mother to testify against his father. Judge Placido Marquez had to conduct a very lengthy clarificatory examination of this witness in order to determine if he really understood the statements he was making. Towards the end of the Judge's examination, he made the following observations:

COURT:

The truth to this Court I will be frank with you there is a ring of truth to your statement that your mother told

you to say to the police station that you saw your father doing this things like pumping motion on Emily telling you so that your father will be released from jail it is the Court's perception. You may not understand this because you are too young but we have to tell you this but maybe after your college graduation you can read the transcript and this Court told you this that you see Ramil the mother your mother might be using your love for your father see so that you would be manipulated to tell the police what he did so that your father will be released because you love your father. That is all Ramil, I am not sure if you understand. Most likely you must understand. For the record at least.[74]

Furthermore, the defense counsel's cross-examination of Ramil Mariño during rebuttal reveals why the testimony of this eyewitness was discounted by the trial court. Although already 11 years old, he did not know what the word "year" means. He did not know that his birthday, or Christmas day comes once in a year. When asked what are the months and the year, he could only give eight (8), mentioning December ahead of October. Thus:

ATTY. MADRONA ON

ADDITIONAL CROSS

EXAMINATION:

x x x

ATTY. MADRONA continuing:

Q You are now 11 years old Mr. Mariño?

PROS. SY:

10.

COURT:

11.

A Yes, sir.

ATTY. MADRONA continuing:

Q And what is your birthday?

A January 6, 1986.

Q So that you were 1 year old on January 6, 1987, correct?

PROS. SY:

No. Is not as simple as it seem. We don't know whether he knows how to compute.

ATTY. MADRONA:

That is the question.

PROS. SY:

Why don't we asked him on January 6, 1987, what is your age?

COURT:

Clarify. You satisfy.

ATTY. MADRONA :

Yes, we will satisfy.

ATTY. MADRONA continuing:

Q On January 6, 1987, how old were you?

A I was 10.

PROS. SY:

That is what I said before and I am saying it now that this little boy from Alad does not know what is a year.

ATTY. MADRONA:

No. The question was only a span of one (1) year. And yet the ... he must have heard 1987, Your Honor.

COURT:

Let us asked him, clarify.

ATTY. MADRONA continuing:

Q Do you know the difference between 86 and 87?

A No, sir.

PROS. SY:

Your Honor please, why don't we asked the witness directly how many months a year and what are the month in the year. What does he understand by a year.

ATTY. MADRONA continuing:

Q You have gone to school. Have you finished Grade 3?

A No, sir.

COURT:

Q You are still going to school?

A Still going to school.

Q What school?

A In Alad.

Q Alad Elementary school?

A Lamao Elementary school.

Q Grade 3?

A Yes, Your Honor.

Q So, you are now absent?

A Yes, Your Honor.

ATTY. MADRONA continuing:

Q Now, do you know what is a month from January to December?

A Yes, sir.

Q Please tell us?

A Enero, February, March, May, July, August, December, October, no more.

PROS. SY:

It is now very obvious, Your Honor, as we have said earlier he does not know.

ATTY. MADRONA:

Now, Your Honor, we will asked one question and we will leave the matter to the Court.

Q Do you know your birthday only comes once a year?

PROS. SY:

He only blew his candle once a year. It does not prove, Your Honor that this witness does not know what year and month by asking him whether his birthday happens once a year he might relate that his birthday happens blowing candle over a cake once a year.

COURT:

Answer.

A I don't know.

ATTY. MADRONA continuing:

Q How about Christmas, do you know that christmas comes once a year also.

PROS. SY:

What is the point? Does he understand what is a year and how many months a year when he cannot mention a month and a year he could only count 8 months and it is not in the order...

COURT:

Answer.

A No, sir.

ATTY. MADRONA continuing:

Q How about the birthdays of your brothers and sisters, you also know that it comes once a year also?

PROS. SY:

If he cannot understand his own birthday much more the birthdays of his brother and sister.

COURT:

Answer.

A No, sir.

ATTY. MADRONA:

We are through with the witness, Your Honor.[75]

Based on the foregoing, it is evident why the trial court doubted the testimony of the prosecution's sole eyewitness. Due to his inability to comprehend simple questions, Judge Marquez correctly entertained the thought that Ramil Mariño might not have witnessed the alleged rape committed on March 6, 1997 but was only coaxed by his mother into testifying against his father. Thus, the trial court's appreciation of this witness' testimony is reflected in its decision:

xxx. The testimony of Ramil Mariño is no longer needed because "(t)ruth is established not by the number of witnesses but by the quality of their testimonies" and "the lone testimony of the victim in the crime of rape if credible is sufficient to sustain a conviction." It is axiomatic that "witnesses are to be weighed, not numbered." For "after all, there is no law which requires that the testimony of a single witness needs corroboration except when the law so expressly requires." [76]

On the other hand, Dr. Victorio Benedicto testified that Emily was no longer a virgin at the time he conducted the medico-legal examination since her vagina easily admitted the introduction of a thumb. There were no fresh lacerations on the victim's vagina but only scars at 2, 5 and 7 o'clock positions. The absence of fresh lacerations renders doubtful the prosecution's assertion that Emily was raped on March 6, 1997. The medico-legal findings indicating old scars in her vagina tend to buttress the claim of Emily that she was raped by her father when she was 8 years old. Unfortunately, this incident is not included in the information.

What has been established is that an object was inserted into her vagina which resulted in her having felt pain and that she noticed to be wet and sticky after she found herself on his parents' bed alongside accused-appellant who blurted out "(M)adasok lang da gapaindi a pa." [77] What was inserted into her vagina could be accused-appellant's finger or another object not necessarily his penis; hence, what was committed was the crime of acts of lasciviousness.

This crime was not alleged in the information against accused-appellant. Nevertheless, an accused may be convicted of a lesser crime than that with which he is charged if such lesser offense is necessarily included in the one charged. [78]

Considering that the crime of acts of lasciviousness or abusos dishonestos is necessarily included in rape, the accused who is charged with latter crime may be convicted with the former. [79]

The alternative circumstance of relationship under Article 15 [80] of the Revised Penal Code should be appreciated against accused-appellant. In crimes of chastity such as rape and acts of lasciviousness, relationship is considered as aggravating. [81] It was expressly alleged in the information and duly proven during trial that the offended party is the daughter of accused-appellant; hence, relationship aggravates the offense committed by accused-appellant.

The felony of acts of lasciviousness is punishable by prision correccional. [82] There being one aggravating circumstance (relationship), the penalty of prision correccional in its maximum period shall be imposed upon appellant. [83]

Under Section 1 of Art. No. 1403, the Court shall sentence the accused to an indeterminate sentence, the minimum of which shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense, arresto mayor in this case. The maximum term of the indeterminate sentence shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Code, which we have previously determined to be prision correccional in its maximum period.

WHEREFORE, in view of the foregoing, the appealed decision is MODIFIED in that accused-appellant RAMON

MARIÑO Y MINA is found GUILTY of the crime of ACTS OF LASCIVIOUSNESS and sentenced to suffer the indeterminate sentence of 6 months of arresto mayor as minimum to 6 years of prision correccional as maximum and the amount of P10,000.00 as moral damages.

SO ORDERED.

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

[1] People vs. Balmoria, 287 SCRA 687, 707-708 (1998); People vs. Tabugoca, 285 SCRA 312, 329 (1998); People vs. Tumala, Jr., 284 SCRA 436, 439 (1998).

[2] Rollo, p. 5.

[3] TSN, 14 August 1997, p. 8.

[4] Id., at 9.

[5] Id., at 10.

[6] Id.

[7] TSN, 14 August 1997, p. 10, 21.

[8] TSN, 17 September 1997, pp. 5-6.

[9] TSN, 14 August 1997, p. 11.

[10] Ibid.

[11] Id., at 22.

[12] Id., at 18.

[13] Id., at 25.

[14] Id., at 20, 26.

[15] Id., at 11.

[16] Id., at 12.

[17] Id.

[18] TSN, 15 August 1997, p. 10.

[19] Id., at 5.

[20] Id.

[21] TSN dated 15 August 1997, p. 8.

[22] Id., at 7.

[23] Id.

[24] Id.; 23 October 1997, p. 28.

[25] TSN dated 14 August 1997, p. 13.

[26] Ibid.

[27] Id., at 13-14.

[28] Id., p. 14.

[29] Id., at 15.

[30] Id.

[31] Id.

[32] TSN dated 14 August 1997, p. 17.

[33] Id., at 29; Exhibit "B."

[34] TSN, 14 August 1997, p. 29.

[35] Id., at 3.

[36] Id., at 6.

[37] Id.

[38] TSN, 14 August 1997, p. 4.

[39] Id., at 5.

[40] TSN, 17 September 1997, p. 11.

[41] Id., at 20.

[42] Id., at 8-9.

[43] Id.

[44] TSN dated 17 September 1997, p. 17.

[45] Id., at 4, 13 .

[46] Id., at 20.

[47] TSN, 30 September 1997, p. 3.

[48] Id., at 4.

[49] Id., at 6.

[50] Id.

[51] TSN, 30 September 1997, p. 17.

[52] Id., at 7.

[53] TSN, 16 October 1997, p. 4.

[54] TSN, 13 November 1997, p. 16.

[55] TSN, 16 October 1997, p. 5.

[56] Ibid.

[57] TSN, 13 November 1997, p. 5.

[58] Ibid.

[59] TSN, 13 November 1997, p. 6.

[60] Id., at 8.

[61] Rollo, pp. 15-19.

[62] Id., at 36.

[63] 26. Admissions of a party.- The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

[64] People vs. Maqueda, 242 SCRA 565, 583 (1995); People vs. Lorenzo, 240 SCRA 624, 639 (1995);

[65] CMS Logging, Inc. vs. Court of Appeals, 211 SCRA 374, 380-381 (1992).

[66] People vs. Maqueda, 242 SCRA 565, 583 (1995); People vs. Lorenzo, 240 SCRA 624, 638-639 (1995).

[67] Rollo, p. 14.

[68] ART. 335. When and how rape is committed. -- Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

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

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

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

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any 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.

- when 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. (As amended by Republic Act No. 7659)

[69] TSN, 14 August 1997, pp. 9-20.

[70] ART. 336. Acts of lasciviousness. -- Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prision correccional.

[71] 53 Phil 234 (1929).

[72] Id., at 238.

[73] Ibid.

[74] [TSN, 16 October 1997, pp. 23-32 (Emphasis supplied).]

[75] [Id][., at 33-39.]

[76] Rollo, p. 16 (Emphasis supplied).

[77] See note 67.

[78] Secs. 4 & 5, Rule 120 of the Rules of Court provides:

SEC. 4. Judgments in case of variance between allegation and proof. - When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included or necessarily includes the offense proved, the accused shall be convicted of the offense charged included in that which is proved.

SEC. 5. When an offense includes or is included in another.- An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter. And an offense is charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter.

[79] Dulla vs. Court of Appeals, G.R. No. 123164, February 18, 2000; People vs. Mariano, 50 Phil. 587 (1927).

[80] ART. 15. Their concept. - Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken when the offended party is the spouse, ascendant, descendant, legitimate, natural or adopted brother or sister, or relative by affinity in the same degrees of the offender.

x x x

[81] People vs. Matrimonio, 215 SCRA 613, 634-635 (1992).

[82] Supra, note 69.

[83] Article 64, Revised Penal Code.

ART. 64. Rules for the application of penalties which contain three periods.--In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

x x x

- When only an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.

x x x

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