

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO NARDO Y ROSALES, ACCUSED-APPELLANT.

G.R. No. 133888. March 01, 2001

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PER CURIAM:

This case is before this Court on automatic review from the Regional Trial Court of Legazpi City, Albay, Branch III, which imposed on accused-appellant the death penalty for rape in Criminal Case No. 7170.

The victim, Lorielyn R. Nardo, is the eldest daughter of accused- appellant. She was born on September 11, 1981 and, at the time of the incident, was fourteen (14) years old.[1]

On February 24, 1996, around noon, Lorielyn was in their house located in Barangay 3, Camalig, Albay, together with her father, accused- appellant Alfredo Nardo, two younger brothers, Leonel and Louie, and maternal grandfather, Vicente Remot. At 1 :30 o'clock in the afternoon, after they had lunch, Vicente left for work. Alfredo told his sons, Leonel and Louie, to go out. He then ordered Lorielyn to get his cigarettes in his bedroom. When Lorielyn went inside the bedroom, her father followed her. He embraced Lorielyn from behind and began mashing her breasts. Lorielyn pleaded, "Papa, please stop it. Have mercy. " Her father ignored her. Instead, he undressed her and pushed her to the bed. Lorielyn started to cry , while Alfredo took off his clothes. Then, he lay on top of her and had sexual intercourse with her. He kissed her from the neck down. She tried to free herself but Alfredo took hold of a knife from a nearby cabinet and pointed it at her right ear. He threatened to kill their whole family if Lorielyn told anyone what he did. When he was finished, Alfredo left the house. During all this time, Lorielyn's mother, Elizabeth Nardo, was washing clothes about five houses away.[2]

Elizabeth returned home at about 3:00 o'clock p.m. She saw Lorielyn crying while washing the dishes. She asked Lorielyn why she was crying, but her daughter said nothing.[3]

On March 19, 1996, Lorielyn was washing clothes when her father approached her and whispered, "We will play tonight near the river. " Lorielyn understood this to mean that her father wanted to have sexual intercourse with her again. She finished the laundry and left the house. She took a passenger jeepney to Barangay Libod, Camalig, Albay and proceeded to the house of her aunt, Carol Navera. She stayed there until her aunt arrived at around 5:00 o'clock in the afternoon. When it became late, Carol told Lorielyn to go home, but she decided to spend the night at her aunt's house because she was afraid to undergo the ordeal from her father again.[4]

The next day, Lorielyn's brother, Leone, was sent by her father to fetch her, but she refused to go with him. Her aunt asked her again why she did not want to go home. She merely said she had a problem. She slept at her aunt's house again that night. The following day, her mother came to fetch her. Lorielyn told her mother she did not want to go home. She said, "Mama, do you want me to become pregnant in that house? " Her mother asked, "Who will impregnate you there? " Lorielyn replied, "Your husband. " Her mother retorted that Alfredo could not do that to her, then left.[5]

Lorielyn stayed at her aunt's house until March 22, 1996. On that date, Carol again asked Lorielyn what her problem was. Finally, she told her aunt that her father raped her. Immediately, Carol went to report the matter to

the police. She later returned home with two policemen, and together they brought Lorielyn to the Camalig Police Station. The rape was entered in the police blotter.[6] The policemen then brought Lorielyn to the Municipal Health Office of Camalig, Albay, where she was examined by Dr. Melvyn F. Orbe, the Municipal Health Officer.[7] From there Lorielyn was brought to the Municipal Trial Court of Camalig-Albay to file a formal complaint for rape against her father, Alfredo Nardo.[8]

On May 29, 1996, an Information for rape was filed against Alfredo Nardo, charging as follows:

That on or about the 24th day of February 1996, at more or less 1:30 o'clock in the afternoon, at Brgy. No.3, Municipality of Camalig, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the herein victim, with lewd and unchaste design, by means of violence, force and intimidation, armed with a knife, did then and there wilfully, unlawfully and feloniously have carnal knowledge with her (sic) own daughter, LORIELYN R. NARDO, a 14 year old girl, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW[9]

At the arraignment on August 8, 1996, accused-appellant pleaded not guilty.[10]

The prosecution presented Dr. Melvyn Orbe, who testified on the following findings as a result of his examination of the victim, Lorielyn Nardo:

Pelvic Examination:

whitish to yellowish discharge

irritation lateral aspect of the posterior vulva at 3 o'clock.

healed laceration hymenal in origin posterior aspect of the fourchet[11]

Dr. Orbe stated that based on these findings, it is possible that Lorielyn had sexual intercourse.[12]

Carolina Navera, testifying for the prosecution, corroborated Lorielyn's statement that the latter went to her house on March 20, 1996. Lorielyn cried and told her that she did not want to go home because she had a problem. Elizabeth, Lorielyn's mother, came to fetch her but she refused to go home, saying that she was raped by her father. Upon hearing this, Elizabeth left and told Carolina not to let Lorielyn leave her house. After Elizabeth was gone, Carolina went to the police station. She returned later with two policemen, who then brought Lorielyn to the police headquarters. [13]

Ma. Francia Aguilar, the social welfare officer of the Department of Social Welfare and Development, also testified that in the evening of March 22, 1996, she responded to a report of a rape incident. She met the victim, Lorielyn Nardo, at the house of Cely Bantog, a social worker, at Camalig, Albay. She interviewed Lorielyn and her mother, Elizabeth, for the purpose of preparing a Social Case Study report.[14] Thereafter, she endorsed Lorielyn to the DSWD Center for Girls in Sorsogon, Sorsogon to undergo therapeutics.[15]

SPO3 Jose Nuylan, a member of the Camalig police force, testified that he investigated the rape incident and took the statement of Lorielyn Nardo.[16]

Elizabeth Nardo, the victim's mother, was called to the witness stand. She testified that she and Alfredo are not married, but they have been living together. They have seven children, the eldest of whom is Lorielyn. She stated that Lorielyn was born on September 11, 1981 at Anei, Claveria, Misamis Oriental; that Lorielyn's birth certificate was burned in the Municipal Building of Misamis Oriental.[17] However, Elizabeth presented and identified Lorielyn's baptismal certificate showing that she was born on September 11, 1981.[18]

The defense, on the other hand, presented lawyer Santer G. Gonzales, the employer of accused-appellant. He testified that accused-appellant worked as a helper at his farm in Quirangay, Camalig, Albay. On February 24, 1996, accused-appellant arrived at his farm before 8:00 o'clock in the morning. He was followed by his father-in-law, Vicente Remot, who lived with him in the same house. It started to rain hard, so they decided not to work that day. Vicente Remot went home at around 8:30 or 9:00 o'clock in the morning. Accused-appellant stayed behind. After a while, Paterno Ramas, a neighbor of Atty. Gonzales, arrived. They started to drink. None of them left the farmhouse since Atty. Gonzales kept bottles of gin and cigarettes in stock. They were joined later in the afternoon by Didjo Mular, another friend of Atty. Gonzales. They drank about five bottles of gin and sang while Atty. Gonzales played the guitar. The rain subsided at around 3:30 o'clock in the afternoon, so they stopped drinking. At 4:00 o'clock in the afternoon, accused-appellant left.[19] The farm is located around 400 to 500 meters away from Barangay 3, where accused-appellant and the victim reside, and can be reached in 15 minutes.[20]

When asked to comment on the victim, Lorielyn Nardo, Atty. Gonzales described her as one capable of telling a lie. He narrated that once, she went to his farm to collect the amount of P50.00 as daily wage of her grandfather, Vicente Remot, but she gave only P35.00 to her mother. Elizabeth thus went to Atty. Gonzales' to ask about the deficiency. They later learned from Lorielyn 's younger sister that she spent the missing P15.00 on snacks.[21]

Vicente Remot, accused-appellant's father-in-law, corroborated Atty. Gonzales' testimony that he reported for work at the latter's farm in the morning of February 24, 1996, but he was unable to work because of the rain, so he went home instead, leaving accused-appellant in the farm. At 1 :00 o ' clock in the afternoon of that day, he was at home watching television with Elizabeth and his grandchildren, including Lorielyn. He refuted Lorielyn's claim that he left after lunch to work, saying that he stayed in the house the whole afternoon since it was raining.[22]

Elizabeth also testified that on February 24, 1996, she was at home watching television with her father and children, namely, Lorielyn, Lewcherd, Lailani, Leonel, Louie Boy and Leo Boy. All her children were at home because it was a Saturday. She claimed that Lorielyn filed the complaint for rape against her father because he was very strict with her. She learned from Lorielyn's best friend that she had a problem with her boyfriend, a certain Erwin Loreno. At one time, Lorielyn asked permission to attend a holy retreat, but Elizabeth found out from the school that there was no such retreat. Lorielyn lied on another occasion, when she told Mrs. Bonifacia "Paz" Nieva that her grandfather was sick so she can borrow money.[23]

Mrs. Bonifacia Nieva testified that her daughter was a classmate of Lorielyn. Once, Lorielyn visited her saying that she was sent by Elizabeth to borrow money because her grandfather was sick. Mrs. Nieva gave Lorielyn P200.00. Later, when she went to see Elizabeth to collect payment, she found out that Lorielyn ' s grandfather did not get sick. Lorielyn admitted to her that she lied about it to be able to borrow money.[24]

The prosecution recalled Lorielyn to the witness stand by way of rebuttal evidence. She refuted Atty. Gonzales' statement that she did not turn over in full the salary of her grandfather in the amount of P50.00. She denied that she lied to her mother about a holy retreat held by her school. Anent the amount of P200.00 she borrowed from Mrs. Nieva, she asserted that it was her father who ordered her to do that, and that she gave the whole sum of P200.00 to him.[25]

On clarificatory questioning by the presiding judge, Lorielyn maintained that her grandfather, Vicente Remot, indeed came home in the morning of February 24, 1996, but he left again to go to Atty. Gonzales' farm after lunch. That afternoon, her mother was at the public faucet located far away from their house washing clothes. The judge wondered aloud why she was doing the laundry in the afternoon when this is usually done in the morning. Lorielyn replied that her mother had started doing the laundry in the morning but that she was not able to finish it,

so she returned in the afternoon to continue her chore. She denied having any male friends, saying all her friends are girls. When asked once more by the judge, Lorielyn reiterated that her father had sexual intercourse with her.[26]

Carolina Nieva and Elizabeth Nardo were presented as sur-rebuttal witnesses. They testified in sum that Lorielyn had a boyfriend.[27]

Accused-appellant was presented as the last witness. He denied that he raped his daughter on February 24, 1997, saying that he was at the farm of Atty. Gonzales. He scolded Lorielyn when he learned from her sister and brother that she was always going around with a boy. He also stated that

Lorielyn got mad at him because he did not permit her to leave the house whenever she wanted to.[28]

On March 3, 1998, the trial court rendered judgment as follows:

WHEREFORE, IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, this court finds the accused ALFREDO NARDO Y ROSALES GUILTY BEYOND REASONABLE DOUBT of the crime of RAPE and sentences him to suffer the penalty of DEATH. The said accused in likewise ordered to pay Lorielyn Nardo the amount of Fifty Thousand Pesos (P50,000.00) for moral damages.

For humanitarian reasons, however, it is recommended that the DEATH penalty be commuted to RECLUSION PERPETUA.

SO ORDERED.[29]

Accused-appellant raises the following assignment of errors:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE VICTIM LORIELYN AND DISREGARDING THE EVIDENCE FOR THE DEFENSE.

II

THE TRIAL COURT ERRED IN REFUSING TO RECITE THE REASONS WHY IT WAS RECOMMENDING EXECUTIVE CLEMENCY FOR THE ACCUSED.[30]

Accused-appellant assails the trial court's finding that Atty. Gonzales was his employer and therefore was likely to testify in his favor; and that he could not have noticed accused-appellant leave the farm in the afternoon of February 24, 1996 because he had one drink too many. Accused-appellant contends that the court should not have been too quick to condemn him when his witness was a lawyer. Furthermore, he argues that Lorielyn's conduct after the alleged rape, specifically from February 25 to March 19, 1996, during which she stayed in the house with her father and continued to do her daily chores, creates a doubt on the veracity of the charge.

In the Reply Brief for accused-appellant,[31] defense counsel reveals that Lorielyn wrote her the following letter:

7-13-99

Dear Atty. De Guzman:

Ako nga po pala si Lorielyn Nardo na anak ni Alfredo Nardo na nakabinbin pa sa ngayon sa Maximum Security Compound NBP I-D Muntinlupa City. Sumulat po ako sa inyo upang humingi ng tulong na gawin po sana ang lahat, wala po talagang kasalanan ang aking ama ako na po mismong nag-akusa ang nagsasabi na walang katotohanan ang lahat ng mga sinabi ko na pinagsamantalahan niya ako. Nagawa ko lang po yon dahil masyado po kasi siyang mahigpit sa aming magkakapatid. Atty. tulungan ninyo sana ako, nalaman ko nga po

pala ang inyong address dahil dumalaw po ang mama ko noon sa papa ko at hiningi ko naman po para masulatan ko po kayo.

Umaasa po akong lubos na ako'y inyong matutulungan.

Lubos na umaasa

LORIELYN NARDO[32]

On May 4, 2000, counsel for accused-appellant filed a Supplemental Reply Brief,[33] alleging that she received another letter from Lorielyn Nardo which states:

04-17-2000

Dear Atty. Teresita de Guzman,

Unang-una po sa lahat ay nagpapasalamat po ako sa pag-response mo sa letter, Ako nga po pala si Lorielyn Nardo na anak ni Mr. Alfredo Nardo na nakapiit ngayon sa DORM I-D ng Muntinlupa ako po yung nagpadala ng liham sa inyo. Attorney, lagi ko pong ipinagdarasal na nawa' y matapos na ang paghihirap at pagdurusa ng aking ama sa loob ng piitan, nawa'y matapos na ang lahat ng problema upang manumbalik muli ang sigla ng aming pamilya. Nagpapasalamat nga rin po pala ako sa ginagawa mong pagtulong sa amin, attorney nawa po ay makamit nyo ang tagumpay.

Hanggang na lamang po ang aking liham, umaasa po ako sa inyong pang-unawa at tagumpay.

Nagpapasalamat at umaasa,

Lorielyn Nardo[34]

In compliance with the Court's Resolution dated November 14, 2000,[35] the Office of the Solicitor General filed its comment on the letters of Lorielyn Nardo,[36] contending that there is no mention of her father's innocence in her letter dated April 17, 2000. Rather, she merely expressed therein her deep sympathy for her father's situation in prison. The Solicitor General argues that a recantation is not sufficient to warrant the exoneration of accused-appellant after he has been proven guilty beyond reasonable doubt based on Lorielyn's candid, categorical and straightforwarrrd testimony before the trial court.

In the meantime, counsel for accused-appellant, by way of a Manifestation and Motion,[37] submitted two more letters from Lorielyn Nardo which are hereunder reproduced, viz:

August 10, 2000

Dear Attorney,

Unang-una po sa lahat ay ang taos-puso kong pasasalamat, sa dahilang pagpapaunlak niyo sa kahilingan kong maipasa sa korte ang isang liham ng katotohanan, at kahit wala pa po ang isang desisyon mula sa korte ay lubos po akong umaasa at nagtitiwala sa inyong kakayahan. Attorney, kung alam niyo lang po ng matanggap at mabasa ang isang letter na nagmula sa' yo ay punung-puno po ng kaligayahan ang aking puso dahil kahit papaano ay nabawasan na ang pag-aalinlangan sa aking isipan. Sa ngayon po ay patuloy na lang akong umaasa na sana isang araw ay makita kong muling masaya ang aking pamilya. Attorney, isang pabor po ang nais kong hilingin, na sana bago magpasko ay muli ko ng makasama ang aking ama, at gusto ko pong maging ninyo 'to sa akin sa darating na pasko.

Hanggang dito na lamang po ang aking liham, at lubos po akong nagtitiwala sa inyong kakayahan na mapapawalang sala ang aking ama.

Truly yours,

Lorielyn Nardo[38]

January 17, 2001

Dear Atty. Teresita De Guzman,

Ako po muli si Lorielyn Nardo na anak ni Alfredo Nardo na nakabinbin sa NBP Dorm-I-D Muntinlupa. Kahit hindi po natupad ang hinihiling kong sana'y makalaya ang aking ama noong nakaraang Disyembre ay patuloy ko pa rin pong inaasahan at hinihiling ang inyong tulong na sana po ay makalaya na ang aking ama. Patuloy pong nangingibabaw ang aking konsensiya dahil sa aking ginawa, umaasa po ako na sana ay lalo pang mapadali ang paglabas niya sa loob ng kulungan, maniwala po kayo wala siyang kasalanan. Attorney, alam ko po na ginagawa niyo (po) ang lahat kaya't ngayon pa lang po ay nagpapasalamat ako sa inyo at patuloy na umaasa ng inyong tulong at sana'y maunawaan niyo ako.

Patuloy na umaasa,

Lorielyn Nardo

(anak)[39]

Accused-appellant relies on these letters to obtain a reversal of the trial court's judgment of his conviction. However, the said letters were not subscribed and sworn to by Lorielyn.

Be that as it may, recantations are frowned upon by the courts. A recantation of a testimony is exceedingly unreliable, for there is always the probability that such recantation may later on be itself repudiated. Courts look with disfavor upon retractions, because they can easily be obtained from witnesses through intimidation or for monetary consideration. A retraction does not necessarily negate an earlier declaration.[40] Especially, recantations made after the conviction of the accused deserve only scant consideration.[41]

Moreover, any recantation or affidavit of desistance, by itself, even when construed as a pardon in the so-called "private crimes," is not a ground for the dismissal of the criminal case once the action has been instituted.[42] The pardon to justify the dismissal of the complaint should be made prior to the institution of the criminal action.[43] Parenthetically, the crime in the case at bar was committed in 1996, i.e., prior to the passage of the R.A. 8353, The Anti-Rape Law of 1997, which reclassified rape as a crime against persons.

Even if it were sworn, Lorielyn's recantation could hardly suffice to overturn the finding of guilt by the trial court which was based on her own clear and convincing testimony, given during a full-blown trial. An affidavit of recantation, being usually taken ex parte, would be considered inferior to the testimony given in open court. It would be a dangerous rule to reject the testimony taken before a court of justice simply because the witness who gave it later on changed his/her mind for one reason or another. Such a rule would make a solemn trial a mockery, and place the proceedings at the mercy of unscrupulous witnesses.[44]

As stated, the trial court arrived at its finding of guilt after a careful assessment of the evidence presented, foremost of which was the testimony of the victim in open court, where the trial judge was able to personally evaluate her manner of testifying, and from there reach a studied opinion as to her credibility. As a rule, we do not disturb the findings by the trial court on the credibility of witnesses, for the trial court is in a better position to pass upon the same.[45]

"The trial judge is in a better position to decide the question of credibility, since he personally heard the witnesses and observed their deportment and manner of testifying. He had before him the essential aids to determine whether a witness was telling the truth or lying. Truth does not always stalk boldly forth naked; she often hides in nooks and crannies visible only to the mind's eye of the judge who tried the case. To him appears the furtive glance, the blush of conscious shame, the hesitation, the sincere or flippant or sneering tone,

the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien."[46]

We find nothing in the records which would indicate that the findings of fact of the trial court are not supported by the evidence or were arrived at in manifest or palpable error, such as to warrant a departure from the foregoing rule. The trial court was correct in lending credibility to the testimony of Lorieilyn. The sole testimony of Lorieilyn was sufficient to establish the guilt of accused-appellant. It is settled that a person accused of rape can be convicted solely on the testimony of the victim if the trial court finds said testimony to be credible, natural, convincing, and consistent with human nature and the course of things.[47]

Indeed, a daughter, especially one in her minority, would not accuse her own father of such an unspeakable crime as incestuous rape had she really not been aggrieved.[48] More importantly, Lorieilyn withstood all the rigors of the case, starting from the initial police interrogation, the medical examination, the formal charge, the public trial, to the cross-examination. She went through the court hearings, where she came face to face with her father. If it was true that she merely made up the charge, she should have been bothered by her conscience at the sight of her father in prison garb and upon the realization of his sorry state while in detention. The fact that she maintained her story during her testimony-in-chief all the way up to her rebuttal testimony only serves to substantiate the veracity of her claim.

Well settled is the rule that no woman would concoct a story of defloration, allow an examination of her private parts and submit herself to public humiliation and scrutiny via an open trial, if her sordid tale was not true and her sole motivation was not to have the culprit apprehended and punished.[49] A young girl's revelation that she has been raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity by, as in this case, her own father, cannot be so easily dismissed as a mere concoction.[50] Courts usually give credence to the testimony of a girl who is a victim of sexual assault, particularly if it constitutes incestuous rape because, normally, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice. Needless to say, it is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.[51]

During the trial, the defense endeavored to portray Lorieilyn as an incorrigible liar. Occasions were cited wherein Lorieilyn supposedly lied in order to obtain money or her parents' permission to leave the house. However, Rule 130, Section 34, of the Rules of Court provides that: "Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did nor did not do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like. "While lying may constitute a habit, we believe that the falsehoods committed by Lorieilyn, assuming them for the moment to be true, are petty and inconsequential. They are not as serious as charging one's own father of the sordid crime of rape, with all of its serious repercussions.

Accused-appellant argues that the trial court should have given credence to his witness, Atty. Santer G. Gonzales, because he is a member of the bar. Atty. Gonzales, however, took the witness stand not as a lawyer but as an ordinary person. He testified in his capacity as accused-appellant's employer. As such, no special privilege should be accorded him by the trial court by reason only of his being a member of the bar. He did not appear in that case as an officer of the court but as a mere witness, and hence should be treated as one.

Likewise, accused-appellant insists that Lorieilyn's conduct after the rape, during which she continued to perform her tasks and lived with her father in their house, negates the commission of rape. Accused-appellant's proposition

is derived from Lorielyn's perfunctory yes-or-no answers to the leading questions propounded to her on cross-examination. Rather than sustain this argument, we rely instead on the observations of the Social Welfare Officer, whom we find to be an impartial witness, in this wise:

Per observation, Lorielyn is a shy and silent type person. She talked in a very small voice and during the interview she only talks when being asked. She also appears to be very sad and have been staring blankly (sic).[52]

Accused-appellant assigns as error the trial court's failure to give the reasons for recommending the commutation of his sentence from death to reclusion perpetua. As correctly observed by the Solicitor General, the trial court was impelled by humanitarian reason.[53] Moreover, the commutation of sentence is a prerogative of the Chief Executive.

As against the positive and categorical testimony of Lorielyn, accused-appellant can only proffer the defense of alibi. However, in order to overcome the evidence of the prosecution with the defense of alibi, he must establish not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[54] In the instant case, the testimonies for the defense sought to establish that accused-appellant was 400 to 500 meters, or 15 minutes, away from the scene of the crime. This hardly qualifies as proof that it was physically impossible for him to be at the scene of the crime when it was committed. Accused-appellant's defense of alibi must, therefore, necessarily fail.

Carefully sifting through the entire body of evidence presented in this case, we find nothing which would destroy the moral certainty of accused-appellant's guilt. While there may be some inconsistencies in the testimony of Lorielyn, these to our mind are minor inconsistencies which serve to strengthen her credibility as they are badges of truth rather than indicia of falsehood.[55] Minor inconsistencies do not affect the credibility of witnesses, as they may even tend to strengthen rather than weaken their credibility. Inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony. Such minor flaws may even enhance the worth of a testimony, for they guard against memorized falsities.[56] Besides, a rape victim can not be expected to recall vividly all the sordid details of the violation committed against her virtue.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, provides:

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, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim. xxx.[57]

The concurrence of the two special qualifying circumstances, namely the victim's minority and the relationship between the victim and the culprit, increases the penalty of rape to one (1) degree, thus resulting in the imposition of the death penalty. In order to be appreciated as qualifying circumstances, however, these must be properly pleaded in the indictment.[58] In addition, the qualifying circumstances should be duly proved during the trial.[59]

These requirements are met in this case. The Information sufficiently alleges that accused-appellant is the father of the victim, and that the latter was fourteen (14) years old at the time of commission of the rape. These elements, furthermore, were categorically affirmed by Elizabeth Nardo, the victim's mother and the most competent witness. She testified that accused-appellant is Lorielyn's father, and that Lorielyn was born on

September 11, 1981,[60] thus placing her age at the time of the rape at fourteen (14) years. Moreover, the Lorielyn's birth date and her relationship to accused-appellant are shown by her Certificate of Baptism.[61] This was presented by her mother, Elizabeth, in lieu of her Certificate of Live Birth, which was destroyed by fire.[62] The baptismal certificate, coupled by her mother's testimony, is sufficient to establish Lorielyn's age.[63]

We therefore affirm the trial court's imposition of the death penalty.

Four justices of the Court have continued to maintain the unconstitutionality of Republic Act No. 7659 insofar as it prescribes the death penalty; nevertheless they submit to the ruling of the majority to the effect that this law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

We likewise affirm the award of P50,000.00 for moral damages which is consistent with prevailing jurisprudence.[64] No proof is required to substantiate the award of moral damages in rape cases. In *People vs. Prades*,[65] we held:

xxx. The Court has also resolved that in crimes of rape, such as that under consideration, moral damages may additionally be awarded to the victim in the criminal proceeding, in such amount as the Court deems just, without the need for pleading or proof of the basis thereof as has heretofore been the practice. Indeed, the conventional requirement of *allegata et probata* in civil procedure and for essentially civil cases should be dispensed with in criminal prosecutions for rape with the civil aspect included therein, since no appropriate pleadings are filed wherein such allegations can be made.

Corollarily, the fact that complainant has suffered the trauma of mental, physical and psychological sufferings which constitute the bases for moral damages are too obvious to still require the recital thereof at the trial by the victim, since the Court itself even assumes and acknowledges such agony on her part as a gauge of her credibility. What exists by necessary implication as being ineludibly present in the case need not go through the superfluity of still being proved through a testimonial charade.

In addition to moral damages, the amount of P75,000.00 is awarded to the victim as indemnity.

xxx. Indictments for rape continue unabated and the legislative response has been in the form of higher penalties. The Court believes that, on like considerations, the jurisprudential path on the civil aspect should follow the same direction. Hence, starting with the case at bar, if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the present amended law, the indemnity for the victim shall be in the increased amount of not less than P75,000.00. This is not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time, but also an expression of the displeasure of the Court over the incidence of heinous crimes against chastity.[66]

WHEREFORE, the judgment of the Regional Trial Court of Legaspi City, Albay, Branch III, convicting accused-appellant Alfredo Nardo y Rosales of the crime of rape, sentencing him to death, and ordering him to pay the victim, Lorielyn Nardo moral damages in the amount of P50,000.00, is **AFFIRMED** with the **MODIFICATION** that accused-appellant is, further, ordered to pay the victim civil indemnity in the amount of P75,000.00.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let certified true copies thereof, as well as the records of this case, be forwarded without delay to the office of the President for possible exercise of the clemency or 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] Certificate of Baptism, Exhibit "D".
- [2] TSN, April 2, 1997, pp. 5-9; p. 28.
- [3] Ibid., p. 11.
- [4] Id., pp. 14-16.
- [5] Id., pp. 17-19.
- [6] Exh. "C".
- [7] Exh. "A".
- [8] Exh. "E".
- [9] Record, p. 2.
- [10] Ibid., p. 47.
- [11] Exh. "A".
- [12] TSN, November 5, 1996, p. 8.
- [13] TSN, November 6, 1996, pp. 5-10.
- [14] Exh. "B".
- [15] TSN, November 6, 1996, pp. 13-16.
- [16] TSN, December 16, 1996, p. 6.
- [17] TSN, February 11, 1997, pp. 3-4.
- [18] Exh. "D".
- [19] TSN, June 9, 1997, pp. 3-7, 12; Exh. "5".
- [20] Ibid., p. 8.
- [21] Id., p. 7.
- [22] Id., pp. 14-16.
- [23] TSN, July 10, 1997, pp. 4-10.
- [24] TSN, August 11, 1997, pp. 3-5.
- [25] TSN, October 7, 1997, pp. 3-6.
- [26] Ibid., pp. 9-13.
- [27] TSN, November 24, 1997, pp. 3-11.

- [28] Ibid., pp. 13-16.
- [29] Record, p. 149.
- [30] Appellant's Brief; Rollo, p. 53.
- [31] Rollo, pp. 117-129.
- [32] Ibid., pp. 118-119.
- [33] Id., pp. 134-136.
- [34] Id., p. 137.
- [35] Id., p. 141.
- [36] Id., pp. 154-158.
- [37] Id., pp. 144-148.
- [38] Id., p. 151.
- [39] Id., p. 149.
- [40] *People v. Navarro*, 297 SCRA 331, 348 (1998).
- [41] *Villanueva v. People*, G.R. No. 135098, April 12, 2000.
- [42] *Alonte v. Savellano, Jr.*, 287 SCRA 245, 266 (1998).
- [43] Ibid., citing *People v. Entes*, 103 SCRA 162 (1981).
- [44] *People v. Agbayani*, 284 SCRA 315, 342 (1998).
- [45] *People v. Diasanta*, G.R. No. 128108, July 6, 2000.
- [46] *People v. Mitra*, G.R. No. 130669, March 27, 2000; citing *People v. Agbayani*, 284 SCRA 315 (1998).
- [47] *People v. Bacule*, G.R. No. 127568, January 28, 2000; *People v. Reyes*, 315 SCRA 563, 571-72 (1999).
- [48] *People v. Antonio*, G.R. No. 122473, June 8, 2000; *People v. Magdato*, G.R. No. 134122-27, February 7, 2000.
- [49] *People v. Taño*, G.R. No. 133872, May 5, 2000; *People v. Amigable*, G.R. No. 133857, March 31, 2000; *People v. Sampior*, G.R. No. 117691, March 1, 2000.
- [50] *People v. Antipona*, 274 SCRA 328, 335 (1997).
- [51] *People v. Lusa*, 288 SCRA 296, 303 (1998).
- [52] Social Case Study Report, p. 2; Exh. "B" (emphasis ours.)
- [53] Brief for the Appellee, p. 18; Rollo, p. 109.
- [54] *People v. Dando*, G.R. No. 120646, February 14, 2000; *People v. Paraiso*, 319 SCRA 422, 433 (1999).
- [55] *People v. Dreu*, G.R. No. 126282, June 20, 2000.
- [56] *People v. Flora*, G.R. No. 125909, June 23, 2000.

[57] R.A. 7659, Sec. 11, seventh paragraph.

[58] *People v. Mendez*, G.R. No. 132546, July 5, 2000.

[59] *People v. Alvero*, G.R. No. 134536-38, April 5, 2000; *People v. Llamo*, G.R. No. 132138, January 28, 2000.

[60] TSN, February 11, 1997, pp. 3-4.

[61] EXH. "D".

[62] TSN, February 11, 1997, p. 4.

[63] *People v. Rebancos*, 172 SCRA 425, 429 (1989).

[64] *People v. Mendiola*, G.R. No. 134846, August 8, 2000; *People v. Castillo*, G.R. No. 130205, July 5, 2000.

[65] 293 SCRA 411 (1998).

[66] *People v. Victor*, 292 SCRA 186, 200-201 (1998).

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