

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CAMILO VILLANUEVA, ACCUSED-APPELLANT.

G.R. No. 135330. August 31, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

For automatic review[1] by this Court is the judgment[2] of 12 May 1998, of the Regional Trial Court, Branch 15, Cebu City, in Criminal Case No. CBU-46026-A, finding accused-appellant Camilo Villanueva (hereafter CAMILO) guilty of the crime of rape committed on the victim, Nia Gabuya (hereafter NIA), and sentencing him to suffer the extreme penalty of death and to pay NIA moral damages in the amount of P50,000.

In an amended Information[3] dated 16 January 1998, CAMILO was charged with rape as defined and penalized in R.A. No. 8353.[4] The accusatory portion of the indictment states:

That at midnight of December 4, 1997, in Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the accused, with deliberate intent, with force and intimidation upon person, did then and there willfully, feloniously and unlawfully have carnal knowledge with Nia Gabuya, a minor of only 11 years of age and step-daughter of the said accused, against the latter's will. CONTRARY TO LAW.

Upon arraignment on 25 February 1998, with the assistance of counsel, CAMILO entered a plea of not guilty.[5] Trial on the merits followed.

The prosecution's version of the incident as summarized by the Solicitor General in the Appellee's Brief[6] is as follows:

On December 5, 1997, Reynaldo Gabuya received word that a kissmark was on the neck of his younger sister, 11 year old Nia Gabuya. He confronted and asked her who planted said kissmark. He was told that it was their stepfather. He immediately brought his sister to the Pardo Police Station and had the incident blotted. Upon the advice of the police officer, Nia was brought to the hospital. He further testified that Nia told her that she was allegedly raped for the first time by Camilo Villanueva in May 1997 and the last time was on December 4, 1997 at around 12:00 midnight. From May 1997 up to December 4, 1997 she has been sexually abused by the appellant for seven times already (TSN dated January 29, 1998, pp.4-6).

Private complainant Nia Gabuya was born on February 15, 1986 as evidenced by her Birth Certificate. She was in her fourth grade. She only knew her father by name for she had been living with her mother and her stepfather, herein appellant, since she came to the age of reason. She claimed that on the night of December 4, 1997 at 12:00 midnight, her stepfather, Camilo Villanueva pointed a knife at the right portion of her neck and warned her not to tell anybody or else he would kill her. The appellant took off her short pants and her panty, then he also took off his short pants. Appellant who still had his T-shirt on but was naked from his waist down, placed himself on top of her and made a push and pull movement, but his organ did not penetrate her because it was big. He spat on her vagina and licked it, then he made a push and pull movement again. While this was happening, she was crying because of pain. After the act, the appellant went to sleep soundly while she kept crying. She did not awaken her brother, Roque who was sleeping beside her, because she was afraid of

appellant. Her brother Roque did not notice that she was raped by appellant. When she woke up the following day, her mother was still not home because she was at Norma's Mahjong Place the whole night until the following morning (TSN dated February 25, 1998, pp.5,7-8).

On cross-examination, she mentioned that one Candido Cellan, a neighbor, also raped her (TSN dated March 18, 1998, pp.5). On re-direct, she clarified that she did not initially implicate Candido Cellan upon the request of his daughter who said that her father was already sickly. Nonetheless, on the witness stand, the victim testified that before she was raped by appellant at midnight of December 4, 1997, she was also fingered by Candido Cellan at about 7:00 P.M. of the same night. She did not tell appellant what Candido did to her because she was afraid that appellant would also rape her which he actually did (TSN dated April 1, 1998, pp.2-5). On this score, the trial court, in the subject decision recommended that an indictment for rape be likewise filed against Candido Cellan (Decision dated May 12, 1998, p.14).

Dr. Jovy Alvarado, a doctor connected with the O.B. Department of Cebu City Medical Center, testified that sometime on December 5, 1997, she conducted an examination on the victim and made the following findings:

Introitus –intact hymen, no eryhema, no bleeding; was able to insert cotton-tipped applicator through the hymenal orifice with slight difficulty.

Gram staining on vaginal smear

1. Gram negative coco bacili-plenty
2. Puss cells-few (T-3) etc.
3. Epithelial cells-moderate

Smear for spermatozoa- positive (0-2 hpf).

(Exhibit "A").

For its part, the defense presented the accused CAMILO and Dr. Joseph Tumala. The trial court summarized their testimonies as follows:

For the defense, accused Camilo Villanueva denied having raped his step-daughter, Nia Gabuya. He claimed that at about 7:00 P.M. of December 4, 1997, he went to the mahjong place in order to sell the eggs which he cooked earlier in the afternoon. At 10:00 in the evening, he and Felipa Gabuya, his live-in partner and mother of the victim went home and they arrived in the house in ten minutes. He and Felipa had been living together as husband and wife since 1991 and they have no issue because he had a vasectomy operation in 1976. When they arrived home, he then spread a mat on the floor and while he was spreading the mat, Felipa asked permission from him to fetch her children, Nia and Roque who watched Betamax. When Felipa and her children arrived, he was still inside the house listening to the radio. Felipa then asked Nia to buy kerosene. After buying kerosene, Nia who was still on the road did not bother to get inside the house and gave the kerosene to his brother Roque, who was also on the road. Roque brought the kerosene inside the house and Nia went out again to watch Betamax. While Felipa defecated, Nia was still outside the house. After she defecated, Felipa told Nia to go to sleep. Felipa instructed Nia to sleep by the door followed by Roque, Felipa and then himself. That was the usual arrangement every time they slept. He fell asleep and woke up the next morning.

Camilo insisted that he did not rape Nia and claimed that the spermatozoa found in the victim's organ was not his since he could not produce any after he underwent vasectomy in 1976. However, he could not present any record of his vasectomy operation because the records of the Sacred Heart Hospital were discarded five years after the records were entered. He further claimed that he came to know of the charge on December 5, 1997 at 3:30 P.M. He was recently examined by a doctor who made him ejaculate in the comfort room to determine if he could still produce spermatozoa. The Medical Examination Report was marked as Exhibit "3".

On cross-examination, he claimed that he was examined by the doctor at the Cebu City Medical Center on

April 2, 1998. He was made to ejaculate inside the comfort room all by himself. He placed the semen in the bottle that was provided to him and no other person had seen him place his fluid in the bottle.

He claimed that Felipa Gabuya worked as a tong collector at the mahjong place. He admitted that there were times that mahjong sessions would last up to dawn and there were also times that Felipa would go home at dawn because of the tong that she had to collect at the mahjong place. He also admitted that most of the times, Felipa would go home early in the morning but he claimed that he and Felipa always go home together.

He further claimed that on the night of December 4, 1997, he slept at 11:00 P.M. because they were at the mahjong place. Nia and his younger brother Roque went to sleep together with them at the same time. Although Nia and Roque did not go to the mahjong place with him and Felipa, they also slept late because they watched betamax. When they slept, Nia was about 2 to 3 meters away from him. From 11:00 o'clock in the evening until the morning of the following day, he could not recall anymore what happened during this period of time because he slept. When he woke up at 6:00 A.M., Nia, Roque and Felipa were no longer at his side. They were already outside since he was the last to rise because he had no work.

He further claimed that he came to know of this charge for the first time on December 5, 1997 at about 3:00 P.M. through Reynaldo Gabuya, the elder brother of the victim. Rey informed him that he would be included in the charge of raping Nia because he was allegedly the one who caused the kiss mark on the neck of Nia. He declared that Reynaldo Gabuya, the brother of the victim had a grudge against him because he always caught Rey sniffing marijuana and whenever he admonished him he got mad. He had known the victim Nia Gabuya since she was one year old and Nia does not have a personal grudge against him. The only possible reason why Nia had the courage to include him in the charge is because of her brother, Reynaldo Gabuya.

Dr. Joseph Marlon Tumala, 30 years old, medical Officer III and a Senior Resident Physician and presently connected with the Cebu City Medical Center testified that he examined Camilo Villanueva on April 2, 1998 and he issued a Medical Report, Exhibit "3". He found the seminal fluid of Camilo Villanueva to be negative for the presence of spermatozoa, Exhibit "3-B". He explained that the vasectomy is a male sterilization procedure wherein the vas deferens of the male person is cut off. The life span of a sperm is from 42 to 72 hours.[7]

The trial court, in its judgment[8] of 12 May 1998, found CAMILO guilty beyond reasonable doubt of the crime of rape and decreed as follows:

WHEREFORE, premises all considered, the court finds accused Camilo Villanueva GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized by Article 266-A of the Revised Penal Code in relation to R.A. 7610 and R.A. 8353 and he is hereby sentenced to suffer the extreme and maximum penalty of DEATH. The accused is further ordered to pay the victim Nia Gabuya the sum of P50,000.00 as moral damages and to pay the costs of this suit.

The prosecution is hereby prodded to institute the filing of a separate case against Candido Cellan who may be found guilty of the crime of rape as revealed in the mounting evidence against him.

The death penalty having been imposed on CAMILO, the records of the case were elevated to this Court for automatic review. In his Appellant's Brief, CAMILO raised the following issues for resolution:

1. WHETHER THE PRIVATE COMPLAINANT NIA GABUYA WAS REALLY RAPED BY THE ACCUSED CAMILO VILLANUEVA ON THE FATEFUL NIGHT OF DECEMBER 4, 1997 AT AROUND MIDNIGHT.
2. WHETHER THE TESTIMONY OF THE PRIVATE COMPLAINANT NIA GABUYA IS NOT TAINTED WITH MATERIAL INCONSISTENCIES AND GRIEVOUS FALSITY.
3. WHETHER THE TESTIMONY OF THE PRIVATE COMPLAINANT NIA GABUYA IS ENOUGH

BASES TO CONVICT THE ACCUSED CAMILO VILLANUEVA OF A CRIME PUNISHABLE BY DEATH.

4. WHETHER THE TRIAL COURT WAS CORRECT IN DENYING THE ACCUSED MOTION FOR NEW TRIAL, WHICH WAS INTENDED TO RECEIVE THE TESTIMONY OF THE THIRD WITNESS OF THE ACCUSED IN THE PERSON OF THE MOTHER OF THE PRIVATE COMPLAINANT FELIPA GABUYA.

5. WHETHER THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CONSIDERING THE FACT OF COMMON LAW RELATIONSHIP BETWEEN THE ACCUSED AND THE MOTHER OF THE PRIVATE COMPLAINANT WHEN THE INFORMATION THAT WAS READ TO THE ACCUSED ONLY ACCUSES THE ACCUSED CAMILO VILLANUEVA OF RAPE OF ONE NIA GABUYA WHO WAS THE STEP DAUGHTER OF THE ACCUSED.[9]

At the core of the first three assigned errors is the issue of credibility of NIA.

We shall first address the issue on the denial of the motion for new trial. That motion was solely for the purpose of allowing the defense to present as its third witness the mother of NIA, Felipa Gabuya. We rule that the trial court did not err in denying the motion for new trial. As aptly stated by the trial court, the testimony of the witness sought to be presented serves only as impeaching and corroborative evidence.[10] It has been ruled that a new trial is justifiably denied where only impeaching evidence is sought to be introduced as the court had already passed upon the issue of credibility at the trial,[11] and where only corroborative evidence is to be offered, as it would not change the result of the case.[12] Moreover, the failure of the defense to present NIA's mother by reason of the alleged inexperience of his lawyer is not a sufficient ground for a new trial. The error of the defense counsel in the conduct of the trial is neither an error of law nor an irregularity upon which a motion for new trial may be presented. Generally, the client is bound by the action of his counsel in the conduct of his case and cannot be heard to complain that the result of the litigation might have been different had his counsel proceeded differently. In criminal cases, as well as in civil cases, it has frequently been held that the fact that blunders and mistakes may have been made in the conduct of the proceedings in the trial court, as a result of the ignorance, inexperience or incompetence of counsel, do not furnish a ground for new trial, for if such grounds were to be admitted as reasons for re-opening cases, there would never be an end to suits so long as new counsel could be employed who could allege and show that the prior counsel had not been sufficiently diligent, or experienced, or learned. To do so would be to put a premium on the willful and intentional commission of errors by accused persons and their counsel, with a view to securing new trials in the event of conviction.[13]

The issue of credibility raised in the first three assigned errors should also be resolved against CAMILO.

Long settled is the rule that the assessment of the credibility of the complainant in a rape case falls primarily within the province of the trial judge. He is in a better position to determine if the complainant is telling the truth or merely narrating a concocted tale, and to weigh conflicting testimonies because he heard the witnesses themselves, observed their deportment and manner of testifying, and had full access to vital aids: e.g., the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sight, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. Therefore, unless therefore the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.[14]

In the case at bar, we find no compelling reason to depart from the established rule. NIA clearly testified that CAMILO raped her. She recounted the details of her harrowing experience in a credible, convincing and straightforward manner. In her direct examination, NIA testified as follows:

Q The last time you testified before this Hon. Court that you mentioned that the accused was holding a knife?

A Yes sir.

Q Could you tell to this Hon. Court where was this knife pointed at?

A Yes, here.

INTERPRETER:

The witness your honor is pointing to the right portion of her neck.

Q While he was pointing the knife in your neck what did he say if there was any?

A Yes Sir.

Q What did he tell you?

A He told me not to tell anybody because if I will tell he would kill me.

Q Right after that he told you that not to tell anybody otherwise he would kill you, what did he do next?

A He removed my panty and shorts.

Q After he removed your panty and your shorts, what did he do next?

A He removed his short Sir.

Q After he removed his short, was his organ exposed?

A I did not see it.

Q After he removed his short, what did he do next?

A He placed himself on top of me.

Q When he placed himself on top of you, was he still wearing anything?

A Yes Sir, T-shirt.

Q What about his brief? Was he still wearing his brief?

A No more, Sir.

Q While he was on top of you what was he doing?

A He was making a push and pull movement.

Q Was his organ penetrated to your vagina?

A No.

Q Aside from making his push action, what else did he do, if there was any?

A He spat on my vagina ("giluwaan").

Q What else aside from spitting your vagina?

A He licked it.

Q Aside from licking your vagina what did he do next?

A He sleep.

Q While he was sleeping what were you doing?

A I cried.[15]

NIA's previous statement that there was no penetration was adequately explained and clarified during the continuation of her direct examination, viz.:

COURT:

Could you give an account if you know why the accused was not able to insert his organ to your vagina?

A. Because his organ is big.

x x x

Q. You were asked by the judge why the organ of Camilo Villanueva did not penetrate to your organ and you answered his organ is big. Can you tell this Hon. Court in relation to your organ what part of the organ of Camilo touch to your organ?

A At the center.

Q Are you trying to tell this Hon. Court that the organ of Camilo Villanueva had already placed in your vagina but did not initially penetrate or did not push through?

COURT:

Sustain, the witness said "did not enter".

ATTY. CARILLO:

The witness your Honor said it did not penetrate through but it touches the organ at the center.

COURT:

Okay proceed.

Q You mentioned at the center, are you trying to say center of your vagina?

A Yes.

Q Are you now trying to say that Camilo Villanueva tried his best to insert his organ to your vagina but inspite of the fact it was not inserted?

A Yes.[16]

x x x

Cont. of direct exam. of witness Nia Gabuya.

Q The last question was: Are you trying to say that Camilo Villanueva tried to insert his organ to your vagina, but inspite of the fact that he inserted the whole organ to your vagina, it did not penetrate? you said, yes. And that it was interpreted this way: "And buot ipasabot nimo nga naninguha kini si Camilo Villanueva sa pagpasulod sa iyang kinatawo diha sa sentro sa imong kinatawo ug ang tibook niyang kinatawo wala masulod sa imong kinatawo? Your answer: Yes, sir. Now my question is: You said that it was not fully penetrated. How deep the penetration was?

WITNESS:

A Only a small portion.

Q And how did you feel when the small portion of his organ was inserted to your vagina?

A Pain.

Q You also mentioned about a kiss mark. Could you tell this Honorable Court who did that kiss mark?

A Camilo Villanueva.

Q Are you referring to the same Camilo Villanueva, the accused in this case?

A. Yes, sir.

Q And when did Camilo Villanueva make his kiss mark?

A On the night of December 4.

COURT:

Q Was it in 1997, last year?

A Yes, Your Honor.

ATTY. CARILLO:

Q Was it on the same night when you said that Camilo Villanueva tried to rape you, or raped you rather?

WITNESS:

A Yes, sir.[17]

Thus, contrary to the claim of the defense, the prosecution was able to establish with moral certainty the fact of penetration, although incomplete. In order that the crime of rape may be said to be consummated, the successful penetration by the rapist of the female's genital organ is not indispensable. Penile invasion, it has often been held, necessarily entails contact with the labia and even the briefest of contacts under circumstances of force, intimidation or unconsciousness, even without laceration of the hymen, is deemed to be rape in our jurisprudence. It would, in fine, be enough in a conviction for rape that there is an entrance of the male organ within the labia of the pudendum of the female organ. Neither the penetration of the penis beyond the lips of the vagina nor the rupture of the hymen is indispensable to justify conviction.[18]

Consequently, the finding that NIA's hymen is intact does not disprove that rape was committed. Even the fact that there was no reddening or hematoma in the external genitalia does not render the occurrence of rape improbable. The doctrine is well settled that the absence of external injuries does not negate rape.[19] Even CAMILO's claim that the sperm found in the vagina of NIA was not his because he has undergone vasectomy, is inconsequential. The absence of spermatozoa is not an essential element of rape.[20] This is because in rape, the important consideration is not the emission of semen but the penetration of the female genitalia by the male organ.[21]

The alleged inconsistencies in the testimony of NIA, pointed out by CAMILO, namely: the place of residence of her parents; the presence of her brother at the time of the commission of the act; the culpability of somebody other than CAMILO, i.e., a certain Candido Cellan, and the reason for the dropping of charges against the latter, are not, even if true, sufficient to impeach the credibility of NIA and destroy the truthfulness of her entire testimony. These inconsistencies refer only to minor matters and do not refer to the elements of rape or to the identification of CAMILO indubitably proven by the testimony of NIA. What is important is that in her statement given to the Police and when she testified, NIA has been firm and consistent with her identification of CAMILO as the person

who sexually abused her on the night of 4 December 1997, as well as in her narration of the material occurrence of the criminal incident.

Settled is the rule that discrepancies and inconsistencies on minor matters neither impair the essential integrity of the prosecution's evidence as a whole nor reflect on the witness' honesty. Such inconsistencies, which may be caused by the natural fickleness of the memory, even tend to strengthen rather than weaken the credibility of the witness because they erase any suspicion of rehearsed testimony.[22]

We cannot also sustain the argument of CAMILO that rape could not have happened because the mother and brother of NIA were sleeping beside them when the alleged crime was committed. Firstly, per testimony of NIA her mother was not at home at the time of the incident but was at Norma's mahjong place. Secondly, it is common judicial experience that rapists are not deterred from committing their odious act by the presence of people nearby. We have held that rape is not impossible even if committed in the same room while the rapist's spouse was sleeping, or in a small room where other family members also slept.[23] We have accepted the fact that it is neither impossible nor incredible for complainant's family members to be in deep slumber and not to be awakened while the sexual assault was being committed.[24]

Even NIA's silence and lack of struggle cannot be taken against her. CAMILO has moral ascendancy over NIA, being the common-law spouse of her mother and the man who acted as her father since she reached the age of reason. NIA's tender age and CAMILO's custodial control and domination over her had rendered her so meek and subservient to his needs and desires, thus, becoming an easy prey to CAMILO's lecherous advances.[25] Moreover, CAMILO threatened her with a knife. For rape to exist it is not necessary that the force or intimidation employed be so great or of such character as could not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. And it has been held that intimidation must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard and fast rule. It is therefore enough that it produces fear-fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. It is this form of intimidation which explains why there are no traces of struggle which would indicate that the victim fought off her attacker.[26]

It may be stressed in this connection that under the Anti-Rape Law of 1997, any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished in the new Article 266-A of the Revised Penal Code.[27]

Besides, the Information alleges and the evidence for the prosecution established beyond reasonable doubt that NIA was only eleven (11) years old at the time she was raped by CAMILO on 4 December 1997. She was born on 15 February 1986. Under Article 266-A of the Revised Penal Code carnal knowledge by a man of an offended party who is under twelve (12) years of age is rape even if no force, threat or intimidation is used.

Well-entrenched is the rule that the testimony of a rape victim must be taken to be credible where no ill-motive has been attributed to the complainant for making the accusation.[28] In the case at bar, the imputation by CAMILO of ill-motive on NIA's brother hardly merits consideration. We find it difficult to accept CAMILO's claim that the brother manipulated NIA into filing the present case because he caught him sniffing marijuana. No member of a rape victim's family would dare encourage the victim to publicly expose the dishonor to the family unless the crime was in fact committed.[29]

In light of the positive testimony of NIA proving CAMILO'S criminal accountability, his bare denial must fail. As between a categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is

generally held to prevail. A mere denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[30]

Nevertheless, all is not lost for CAMILO. While his guilt was proved beyond reasonable doubt, the death penalty cannot be imposed upon him. The trial court imposed the penalty of death after taking into consideration the age of NIA who was then eleven years old at the time of the incident and the fact that CAMILO is the common-law spouse of NIA's mother. To justify the imposition of the death penalty these two qualifying circumstances must be alleged in the Information. A reading of the accusatory portion of the information reveals that the relationship between CAMILO and NIA is that the latter is the daughter of CAMILO's common-law spouse by the latter's previous relationship with another man, is not alleged in the information. The information instead simply referred to NIA as the stepdaughter of CAMILO. NIA is not the stepdaughter of CAMILO because her mother is not married to CAMILO.[31] 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.[32] The relationship of stepfather –stepdaughter presupposes a legitimate relationship. A stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring.[33]

This Court has consistently ruled that the circumstances under the amendatory provisions of Section 11 of Republic Act 7659, the attendance of which mandates the imposition of the single indivisible penalty of death, are in the nature of qualifying circumstances which cannot be proved as such unless alleged in the information, and even if proved, the death penalty cannot be imposed.[34] Unlike a generic aggravating circumstance which may be proved even if not alleged, a qualifying aggravating cannot be proved as such unless alleged in the information although it may be proved as a generic aggravating circumstance if so included among those enumerated in the Code. The requirement for complete allegations on the particulars of the indictment is based on the right of the accused to be fully informed of the nature of the charge against him, so that he may adequately prepare for this defense pursuant to the due process clause of the Constitution.

Since one of the twin qualifying circumstances aforementioned, namely, relationship, specifically that NIA is the daughter of CAMILO's common-law wife, was not alleged in the information, CAMILO cannot be convicted of qualified rape and the death penalty cannot be imposed upon him, for to do so would be to deprive him of his constitutional right to be informed of the nature and cause of the accusation. He can be convicted of simple rape only under Article 266-D of the Revised Penal Code pursuant to the Anti-Rape Law of 1997. The penalty therefore is reclusion perpetua.

This notwithstanding, the fact that CAMILO is the common-law spouse of NIA's mother and live with NIA may constitute the generic aggravating circumstance of abuse of confidence[35] there being a relation of trust and confidence between her and CAMILO, whom she grew up with and whom she even called "papa." [36] However, this aggravating circumstance cannot be appreciated in determining the appropriate penalty in view of the fact that the penalty prescribed for the offense of simple rape is reclusion perpetua, an indivisible penalty. Under Article 63 of the Revised Penal Code in all cases in which the law prescribes a single indivisible penalty, that penalty shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.[37] Nevertheless, this aggravating circumstance could provide legal basis for the award of exemplary damages. Under Article 2230 of the Civil Code, exemplary damages may be awarded in criminal offenses as part of the civil liability when the crime was committed with one or more aggravating circumstances.

Anent the civil liability of CAMILO, the trial court merely ordered the payment of moral damages in the amount of P50,000 but did not award civil indemnity which is mandatory in rape cases upon the finding of guilt. Thus, in accordance with prevailing jurisprudence, CAMILO should be ordered to pay NIA the amount of P50,000 as

indemnity.[38]

In view of the presence of generic aggravating circumstance of abuse of confidence exemplary damages in the amount of P20,000 may be awarded.[39]

WHEREFORE, the assailed decision of 12 May 1998 of the Regional Trial Court of Cebu, Branch 19 finding CAMILO VILLANUEVA guilty of rape pursuant to the Anti-Rape Law of 1997, specifically under the new Article 266-A in relation to the new Article 266-B of the Revised Penal Code, is AFFIRMED with the modification that he is hereby sentenced to suffer the penalty of reclusion perpetua and ordered to pay the victim, NIA GABUYA, the sum of P50,000 as indemnity ex delicto and P20,000 as exemplary damages, in addition to the moral damages of P50,000 awarded by the trial court.

No pronouncement as to costs.

SO ORDERED.

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

[1] Pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659, entitled “An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, other Special Penal Laws, and for Other Purposes, which took effect on 31 December 1993 (People v. Simon, 234 SCRA 555 [1994]).

[2] Per Judge Galicano C. Arriesgado.

[3] Rollo, 10.

[4] Otherwise known as the Anti-Rape Law of 1997. It classifies rape as a crime against person, and introduces the new Articles 266-A to 266-D, inclusive, of to the Revised Penal Code.

[5] Original Record (OR), 53.

[6] Rollo, 166-170.

[7] Rollo, 28-30.

[8] Rollo, 25-38.

[9] Rollo, 91.

[10] OR, 131-132.

[11] U.S. v. Lee Cheng Poe, 39 Phil. 466 [1919] .

[12] 12 People v. Samaniego, 95 Phil. 218 [1954] .

[13] U.S. v. Umali, 15 Phil. 33 [1910] .13

[14] People v. Excija, 258 SCRA 424 [1996] . See also People v. Alvero, G.R. Nos. 134536-38, 5 April 2000; People v. Patriarca, G.R. No. 132748, 24 November 1999.

[15] TSN, 5 March 1998, 3-5.

- [16] TSN, 5 March 1998, 8.
- [17] TSN, 18 March 1998, 2-3.
- [18] *People v. Dimapilis*, 300 SCRA 279, 305 [1999] .
- [19] *People v. Managaytay*, 305 SCRA 316 [1999] .
- [20] *People v. Caballes*, 274 SCRA 83 [1997] .
- [21] *People v. Dones*, 254 SCRA 696 [1996] ; *People v. Juntilla*, G.R. No. 130604, 16 Sept. 1999.
- [22] *People v. Diaz*, 262 SCRA 723, 732 [1996] ; *People v. Leoterio*, 264 SCRA 608, 617 [1996] ; *People v. Teves*, 310 SCRA 788, 803 [1999] .
- [23] *People v. Ramos*, 296 SCRA 559, 571 [1998] , citing *People v. Manuel*, 236 SCRA 545 [1994] .
- [24] *Ibid.*, citing *People v. Tan, Jr.*, 264 SCRA 425 [1996] ; *People v. Quinevista*, 244 SCRA 586 [1995] .
- [25] See *People v. Garcia*, 281 SCRA 463, [1997] .
- [26] *People v. Manggasin*, 306 SCRA 228, 243 [1999] .
- [27] Article 266-D, Revised Penal Code.
- [28] See *People v. Patriarca*, supra note 14.
- [29] *People v. Bersabe*, 298 SCRA 685 [1998] .
- [30] *People v. Alvero*, G.R. Nos. 134536-38, 5 April 2000.
- [31] TSN, 17 February 1998, 3-4.
- [32] *People v. Dimapilis*, 300 SCRA 279, 308 [1998] ; See also *People v. Manggasin*, 306 SCRA 228 [1999] .
- [33] *People v. Torio*, G.R. Nos. 132216 & 133479, 17 November 1999.
- [34] *People v. Bartolome*, G.R. No. 133987, 28 January 2000.
- [35] Par. 4, Article 14 of the Revised Penal Code.
- [36] TSN, 5 March 1998, 7.
- [37] *People v. Ramos*, 296 SCRA 559, 577 [1998] .
- [38] *People v. Rafales*, G.R. No. 133477, 21 January 2000; *People v. Bartolome*, G.R. No. 13387, 28 January 2000.
- [39] *People v. Batoon*, G.R. No. 134194, 26 October 1999.

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