

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FEDERICO ORTIZUELA Y EUGENIO, APPELLANT.*G.R. No. 135675. June 23, 2004*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-135675/>**PER CURIAM:**

For automatic review is the Decision[1] dated August 24, 1998 of the Regional Trial Court, Branch 262, Pasig City in Criminal Case No. 111103-H finding Federico Ortizuela, herein appellant, guilty beyond reasonable doubt of the crime of rape and imposing upon him the supreme penalty of death. He was ordered to pay his daughter, Rhea Ortizuela y Obillo, P50,000.00 as civil indemnity.

The Information[2] charging appellant with statutory rape is quoted as follows:

“That on or about April 5, 1996, in Pasig City and within the jurisdiction of this Honorable Court, the accused, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter Rhea Ortizuela y Obillo, a minor, ten (10) years old, against her will and consent.

Contrary to law.”

Upon arraignment, appellant, assisted by counsel, pleaded not guilty to the charge. Thereafter, trial ensued.

The prosecution presented four (4) witnesses: the victim, Rhea Ortizuela, her maternal uncle Roberto Obillo, her maternal grandmother Dominga Obillo, and Dr. Tomas Suguitan. Their testimonies established that Rhea is the second and only daughter, in a brood of three, of appellant and his wife Norberta Obillo. They live at Palatiw Villa Raymundo, Pasig City in a house owned by Norberta’s mother, Dominga. One of the rooms was occupied by spouses Ortizuela, while another was occupied by Dominga.

Rhea, born on November 23, 1985,[3] was only nine (9) when appellant first sexually abused her on September of 1995. From then on, she has been subjected countless times to appellant’s lecherous passion. She could no longer recall, however, the dates when he sexually abused her. The only incident she could vividly remember was his last coitus with her.

It happened on April 5, 1996. Rhea, then ten (10) years old, was sleeping beside her mother, grandmother and two brothers, when appellant carried her into a vacant room. There, he undressed her, placed himself on top of her and forcibly inserted his penis into her vagina. After satisfying his lust, he warned her not to reveal to anyone what transpired, otherwise, he would kill her mother. Then he carried her back to the room where she slept. Fearful of appellant’s threat, she concealed her defloration.[4]

On September 11, 1996, Rhea, accompanied by her grandmother Dominga, went to the house of his uncle Roberto and revealed what she suffered in the hands of her father. Thereupon, they proceeded to the Police Station at Pasig City to report the incident. The following day, they, together with Norberta, went to the Philippine National Police (PNP) Headquarters, Camp Crame, Quezon City where Rhea was physically examined by Dr. Tomas Suguitan, a resident physician of the PNP Crime Laboratory.

In his Medico-Legal Report[5] which he confirmed on the witness stand, Dr. Suguitan stated that Rhea's hymen has healed lacerations at 4:00 and 8:00 o'clock positions which could have been caused by a man's erect organ or any blunt object;[6] and that the lacerations were inflicted months before the examination. He also testified that Rhea is in no longer a virgin and that her external vaginal orifice admits the tip of his smallest finger.

The defense presented three (3) witnesses: appellant, his father Romeo Ortizuela, Sr., and Randy Guimoroy.

Appellant raised the defenses of alibi and denial. He testified that on the day the crime was allegedly committed, he was plying his route as a tricycle driver from 6:00 o'clock in the morning until 6:00 o'clock in the evening. The lacerations found in Rhea's vagina occurred when she rode on a bicycle without a seat. It was the one-inch tube, where the seat was supposed to be attached, which injured her vagina. He further testified that the charge against him was concocted by Dominga, his mother-in-law, and brother-in-law Roberto who detested his spending for alcohol.[7] In fact, his wife Norberta admitted to him that Roberto forced Dominga to testify against him. In the past, Dominga "instigated" Norberta to charge him with rape. But the complaint was withdrawn when he married her.[8]

Romeo Ortizuela, Sr. corroborated the testimony of appellant and testified further that Norberta admitted to him that there is no truth to the charge and that Rhea filed the complaint out of fear to her grandmother Dominga.

Randy Guimoroy, cellmate of the appellant at the Pasig City Jail, testified that he was able to talk to Rhea and that she gave him a letter[9] stating that the rape charge against her father is not true.[10]

On August 24, 1998, the trial court promulgated its Decision convicting appellant of rape and sentencing him to suffer the penalty of death, thus:

"WHEREFORE, judgment is hereby rendered finding accused FEDERICO ORTIZUELA y Eugenio GUILTY beyond reasonable doubt of the crime of rape, sentencing said accused to: a) suffer the death penalty; b) suffer the accessory penalties consequent thereto; c) pay the offended party the sum of Fifty Thousand Pesos (P50,000.00) by way of civil indemnity; and d) pay the costs.

SO ORDERED."

Hence, this automatic review.

Appellant, in his brief,[11] raised this lone assignment of error:

"THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT."

The Solicitor General, in the appellee's brief, controverted appellant's contention and prayed that the impugned Decision be affirmed.

As alleged in the Information, the crime was committed "on or about April 5, 1996." Thus, the law applicable to this case is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,[12] the pertinent provisions of which provide:

"Sec. 11. Article 335 of the same [Revised Penal] Code is hereby amended to read as follows:

'Article 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.

x x x

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.

x x x.” (Underscoring ours)

The amendatory provisions introduced in R.A. 7659 classify rape as either simple or qualified. It is qualified when any of the qualifying/aggravating circumstances enumerated therein which attended the commission of the crime – as for instance the victim is below 18 years of age and the offender is a parent – is alleged in the Information and proven during trial.[13] The prescribed penalty for qualified rape is death.

For the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under 12 years of age or is demented.[14]

By its very nature, rape is normally committed without other people around save the perpetrator and the victim themselves. Thus, the sole important issue in rape cases is the credibility of the victim’s testimony. When her testimony is convincingly credible, untainted with any material inconsistencies, the accused may be convicted solely on the basis thereof.[15]

We have scrupulously scrutinized Rhea’s testimony, fully aware of the jurisprudential caveat that an accusation of rape can be made with facility, but difficult for the accused to disprove it.[16] We find credible her account that on April 5, 1996, appellant, her very own father, had carnal knowledge of her through force and intimidation. The pertinent portions of her testimony are quoted hereunder:

“Q: Do you recall if your father (appellant) did anything to you on the night of April 5, 1996?

A: Yes, sir.

Q: What was that?

A: On the evening of April 5 when we were sleeping, my father carried me and transferred me to another room, sir.

x x x

Q: You said that you were carried by your father, where did he bring you?

A: He brought me to another room, sir.

Q: While inside that room, what did he do?

A: He undressed me and laid on top of me, sir.

x x x

Q: When you said that your father laid on top of you, what exactly do you mean?

A: He forcibly inserted his penis inside my vagina, sir.

Q: What happened after that?

A: He again put on my clothes and threatened me, sir.

Q: How did he threaten you?

A: He told me not to tell these things to others and if not he will kill my mother, sir.

Q: What did you tell him?

A: None, sir.

Q: After that, what happened?

A: He put me back on the bed where I was sleeping, sir.

x x x

Q: When your father inserted his penis into your vagina, how did you feel?

A: It was very painful, sir.

Q: Was it the first time that your father inserted his penis into your vagina?

A: That was the last time, sir.

Q: When were the other occasions when your father inserted his penis into your vagina?

A: Many times, sir.

Q: Since when?

A: Since I was in Grade 3, sir.

Q: How old were you then?

A: 9 years old, sir.

COURT:

Q: How often did he do that to you?

A: I cannot remember, your Honor.

Q: Do you remember how many times did he do that to you since you were 9 years old?

A: I cannot remember, your Honor.

COURT:

Please continue.

Prosecutor Paz:

Q: He did it many times?

A: Yes, sir.

Q:

You were threatened by your father not to tell anybody of what happened on April 5, 1996, did you tell anybody what happened to you?

A: I just told it to my grandmother and uncle, sir.”[17]

Rhea never wavered in her assertion that appellant ravished her many times which started when she was nine (9) years of age, and that the last time occurred on April 5, 1996, the subject of the instant case. Her testimony is brief but distinctively clear, frank, and definite, without any pretension or hint of a concocted story. Such is a manifestation of a victim’s simple and innocent mind. Hence, the fact of rape and the identity of appellant as the malefactor were sufficiently proved.

But that is not all. Rhea’s account of defloration is reinforced by the physical evidence. The Medico-Legal Report of Dr. Tomas Suguitan, who physically examined her on September 12, 1996, shows that her genital has healed hymenal lacerations at 4:00 and 8:00 o’clock positions, and that her external vaginal orifice admits the tip of his finger. The lacerations and pain Rhea suffered in her genital were likely the result of penile penetration showing that appellant had carnal knowledge of her.

Appellant, however, disputes Rhea’s version, claiming that it is not credible due to some inconsistencies and improbabilities in her testimony. Firstly, he contends that while in her sworn statement she declared that the last time he raped her was on September 5, 1996, however, in her direct testimony, she clarified that he raped her the first time in September of 1995 and that the last time was on April 5, 1996. Suffice it to say that with her clarification on the witness stand that the last date of the commission of the crime was April 5, 1996, the date alleged in the Information, there is no more inconsistency to talk about. What is important is that she proved the allegation in the Information that appellant raped her on April 5, 1996.

Secondly, appellant claims that he could not have raped Rhea because she was then sleeping beside her mother, grandmother and two brothers in one room. If indeed he carried her from that room to another room and raped her, they could have awakened. It is not really impossible to commit rape under such a situation. In our judicial experience, we observed that lust is no respecter of time and place.[18] Rape incidents are not always committed in seclusion as the rapists are not deterred from committing their odious act even in unlikely places, such as in a nearby room, as in this case, or in a cramped room where other family members also slept.[19]

Thirdly, appellant contends that the failure of Norberta, Rhea’s mother, to testify in court against him suggests that the rape story is of doubtful veracity. We disagree. A person accused of rape may be convicted, not on the basis of the number of witnesses against him, but on the testimony of even a single witness who is credible,[20] such as Rhea. Moreover, if appellant really believed that Norberta’s testimony would bolster his innocence, the defense could have presented her as its witness.

Fourthly, appellant’s allegation that Rhea’s vagina was injured by the one-inch tube of a bicycle is a mere speculation. Dr. Suguitan’s testimony that the lacerations were probably caused by the insertion of an adult erect penis[21] is credible and truly convincing.

Fifthly, assuming that Rhea gave Randy Guimoroy, appellant’s cellmate at the Pasig City Jail, a letter stating that the charge is not true, the same does not vitiate her testimony. The rationale for this rule is obvious. The offender is her father who has moral ascendancy over her. We have held that when conflicting family interests are involved, it is “not uncommon” for any of the family members, like the victim here, to “vacillate.”[22]

To buttress his defense, appellant also imputes ill-motive on the part of Dominga, his mother-in-law, and his brother-in-law Roberto, suggesting that they resented his wasteful spending for alcohol. Such contrived defense is

not new. Family resentment, revenge, or feud has never swayed us from giving full credence to the testimony of a rape victim, especially a minor like Rhea, who remained steadfast in her testimony that she was sexually abused repeatedly by appellant.[23] It bears stressing that the determination of Rhea, Dominga and Roberto in testifying against appellant in a public trial, unmindful of the resulting humiliation and shame, obviously demonstrates their genuine desire to condemn an injustice and to have the offender apprehended and punished.

We likewise reject appellant's defense of alibi. For alibi to succeed as a defense, the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime.[24] Appellant failed to do so. He testified that he was then plying his route as a tricycle driver. Obviously, it was not physically impossible for him to return home to perpetrate the crime for his route is only within the vicinity of his residence, the scene of the crime, in Pasig City.

We thus sustain the trial court's finding that appellant is guilty beyond reasonable doubt of qualified rape, as charged, and the imposition of the death penalty upon him. As required by the law quoted earlier, the victim's minority (10 years of age) and her relationship (daughter) to the appellant, being special qualifying circumstances, were alleged in the Information and proved during trial. Her Certificate of Live Birth shows that Rhea was born on November 23, 1985 to Norberta Obillo Ortizuela and Federico Ortizuela, herein appellant, who were married on September 18, 1983 in Pasig, Metro Manila.

As regards the award of civil damages by the trial court, we observed that it only ordered the payment of P50,000.00 as civil indemnity. The indemnity should be P75,000.00. This is mandatory upon a finding of the fact of qualified rape.[25] An additional award of P75,000.00 as moral damages is also proper without need of pleading or proof of the basis thereof since the anguish and pain she endured are evident.[26] Considering the presence of the qualifying circumstances of minority and relationship, she is also entitled to exemplary damages in the amount of P25,000.00. As we held in *People vs. Catubig*,[27] "an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code."

Three members of this Court maintain that R.A. No. 7659 is unconstitutional insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty can be lawfully imposed herein.

WHEREFORE, the appealed Decision dated August 24, 1998 of the Regional Trial Court, Branch 262, Pasig City in Criminal Case No. 111103-H, finding appellant Federico Ortizuela y Eugenio guilty beyond reasonable doubt of QUALIFIED RAPE and sentencing him to suffer the DEATH penalty, is hereby AFFIRMED with MODIFICATION in the sense that he is ordered to pay the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P25,000.00 as exemplary damages.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this decision, let the records of this case be forwarded to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

Vitug, J., on official leave.

Ynares-Santiago, and Austria-Martinez, JJ., on leave.

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- [1] Penned by then Judge Gregory S. Ong, now Justice of the Sandiganbayan.
- [2] Records at 1.
- [3] Exh. "C", Records at 103; Transcript of Stenographic Notes (TSN), July 15, 1997 at 3.
- [4] TSN, July 15, 1997 at 4-7.
- [5] Exh. "A", Records at 101.
- [6] TSN, March 19, 1977 at 6.
- [7] TSN, October 20, 1997 at 7-9.
- [8] Id. at 14.
- [9] Exh. "1", Records at 178.
- [10] TSN, March 3, 1998 at 5.
- [11] Rollo at 45.
- [12] "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." The law took effect on December 31, 1993 (People vs. Simon, G.R. No. 93028, July 29, 1994, 234 SCRA 555, 569; People vs. Derilo, G.R. No. 117818, April 18, 1997, 271 SCRA 633, 661).
- [13] People vs. Jose Santos y Ruiz, G.R. Nos. 137828-33, March 23, 2004, citing People vs. Pancho, G.R. Nos. 136592-93, November 24, 2003.
- [14] People vs. Eduardo Limos y de Vera, G.R. Nos. 122114-17, January 20, 2004; People vs. Pillas, G.R. Nos. 138716-19, September 23, 2003.
- [15] People vs. Antonio, G.R. No. 145726, March 26, 2003, 399 SCRA 585; People vs. Ruben Dalisay, G.R. No. 133926, August 6, 2003.
- [16] People vs. Estomaca, G.R. Nos. 134288-89, January 15, 2002, 373 SCRA 197; People vs. Agustin, G.R. Nos. 132524-25, September 24, 2001, 365 SCRA 667.
- [17] TSN, July 15, 1997 at 4-7.
- [18] People vs. Pepito, G.R. Nos. 147650-52, October 16, 2003.
- [19] People vs. Baybado, G.R. No. 132136, July 14, 2000, 335 SCRA 712, citing People vs. Silvano, 309 SCRA 362 (1999); People vs. Perez, 296 SCRA 17 (1998); People vs. Bayona, 327 SCRA 190 (2000).
- [20] People vs. Pancho, *supra*; People vs. Caliso, G.R. Nos. 131475-76, October 14, 2002, 390 SCRA 624.
- [21] TSN, March 19, 1997 at 11.
- [22] People vs. Santiago Agsaoay, Jr. y Alvendia, G.R. Nos. 132125-26, June 2, 2004, citing People vs. Hivela, G.R. No. 132061, September 21, 1999, 314 SCRA 815.
- [23] People vs. Pepito, *supra*.
- [24] People vs. Del Ayre, G.R. Nos. 139788 & 139 827, October 3, 2002, 390 SCRA 281.

[25] People vs. Alfaro, G.R. Nos. 136742-43, September 30, 2003.

[26] People vs. Sambrano, G.R. No. 143708, February 24, 2003, 398 SCRA 106, 117.

[27] G.R. No. 137842, August 23, 2001, 363 SCRA 621.

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