THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.ALBERTO CHUA ALIAS “BERT”, ACCUSED-APPELLANT.

G.R. No. 137841. October 01, 2001

Ponente: PUNO, J.

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PUNO, J.:

This is an automatic review of the decision of the Regional Trial Court, Third Judicial Region, Malolos, Bulacan, Branch 78[1] in Criminal Case No. 514-M-98 imposing on accused-appellant Alberto Chua alias "Bert" the penalty of death.

In a criminal complaint dated April 13, 1998, accused-appellant was charged with the crime of rape as follows:

> "The undersigned complainant, assisted by her mother, Esterlita A. Chua, hereby accuses Alberto Chua alias Bert of the crime of rape, penalized under the provisions of Art. 335 of the Revised Penal Code, as amended by RA 7659, committed as follows:
>
> That on or about the 28[th] day of March 1998, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, father of the offended party, did then and there wilfully, unlawfully and feloniously, by means of force, threats and intimidation and with lewd designs, have carnal knowledge of the said offended party, Chenny A. Chua, a minor, against her will
>
> Contrary to law.
>
> Malolos, Bulacan, April 13, 1998.
>
> (SGD.)CHENNY CHUA
> Complainant.
>
> Assisted by:
>
> (SGD.)ESTERLITA CHUA
> (Mother)
>
> SUBSCRIBED AND SWORN to before me this 13[th] day of April 1998 at Malolos, Bulacan.
>
> (SGD.) RENATO T. SANTIAGO
> 3[rd] Asst. Prov'l. Prosecutor
>
> I hereby certify that I have conducted proceedings in this case pursuant to the provisions of Sec. 7, Rule 112 of the 1985 Rules on Criminal Procedure, considering that the herein accused, who is under custody of the law without warrant of arrest has refused to sign a written waiver of his rights under Art. 125 of the Revised Penal Code, and finding a prima facie against the accused , the undersigned is filing this information with the approval of the Provincial Prosecutor.
>
> (SGD.)RENATO T. SANTIAGO

3[rd] Asst. Prov'l. Prosecutor

x x x x x x x x x."[2]

On April 20, 1998, appellant was arraigned and he pleaded "not guilty."[3] At the pretrial conference on May 8, 1998, however, appellant, through counsel, manifested that he was withdrawing his plea and changing it to "guilty" as charged. As prayed for by counsel for appellant, the trial court reset the pretrial to May 13, 1998.

On May 13, 1998, the trial court propounded several questions on appellant inquiring into the voluntariness of his change of plea and his comprehension of its consequences. Satisfied with appellant's response, the court ordered his rearraignment. Appellant, with the assistance of counsel, withdrew his plea of "not guilty" and entered a plea of "guilty" as charged.[4] Thereafter, the court ordered the prosecution to present its evidence.

The prosecution presented the testimony of private complainant, Chenny Chua. It also presented Chenny's sworn statement before the Malolos police investigators[5] and the medico-legal report of the Philippine National Police Crime Laboratory on the girl's physical condition.[6] From these evidence, the following facts were established: On March 28, 1998, at around 2:00 in the afternoon in Canalate, Malolos, Bulacan, Chenny Chua, thirteen (13) years of age, and her father, herein accused-appellant, were watching television in the house of her aunt, Salvacion Ardenio Niegas. At about 2:15, Chenny stood up and went to her family's rented room adjacent to her aunt's house. Chenny entered the room and laid down on the floor to sleep. Beside her slept two of her younger sisters. Some fifteen (15) minutes later, Chenny woke up and saw her father, herein appellant, shaking her and calling her name. Then, she saw him remove her short pants. Chenny stared at him. She knew what her father was going to do but did not resist him because he had been sexually molesting her since July 1996. She resisted the very first time it happened, but he forced himself on her and told her not to say anything about the incident. He said that if her mother would find out, her mother would surely kill him, and she would be imprisoned and no one would take care of Chenny and her seven (7) little brothers and sisters. So Chenny bore everything in silence. And that fateful day, Chenny just closed her eyes as he peeled off her short pants. Appellant went on top of the girl and parted her thighs. He inserted his penis into her vagina and made a push and pull movement for some five minutes. After he was through, appellant told Chenny not to report the incident to her mother. Appellant got up and suddenly sensed that someone was watching them. He turned around and saw the gaping hole in the wall divider. The hole was not covered by the wall calendar as it used to be.

Earlier, when appellant was on top of Chenny, the girl saw someone peeping through the hole in the divider. It was her aunt, Salvacion Ardenio Niegas, and Chenny heard her exclaim "Nakita ko! Nakita ko!" Chenny did not cry out for help because she was afraid. She then saw another person peering through the hole. It was her little cousin. When appellant realized that someone was watching them, he got up and said "O, Gene!" and pretended to fix something at the door. Softly, appellant again warned Chenny not to tell her mother about what he did to her.

Five days later, on April 2, 1998, Chenny's mother, Esterlita, arrived. She had just come from work in Taytay, Rizal. Chenny's aunt lost no time in reporting to Esterlita what she witnessed. Fuming mad, Esterlita roused her daughter from sleep and asked her about the incident. Chenny denied it. By Esterlita's persistent questioning, however, Chenny finally admitted her father's dastardly act. Forthwith, Esterlita brought her daughter to the police station where Chenny executed a sworn statement and submitted herself to a physical and medical examination.

Dr. Manuel C. Aves, the medico-legal officer at the Philippine National Police (PNP) Regional Crime Laboratory Office found the following:

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MENTAL STATUS: coherent female
BREAST: conical
ABDOMEN: flat
PHYSICAL INJURIES: No sign of physical injury

GENITAL

PUBIC HAIR: scanty
LABIA MAJORA: coaptated
LABIA MINORA: light pink
HYMEN: Multiple healed lacerations at 12, 2, 4, 5, 7, 9, 11 o'clock
EXTERNAL VAGINAL ORIFICE: With moderate resistance upon inserting examining finger.
VAGINAL CANAL: prominent rugosities
CERVIX: smooth
PERI-URETHRAL AND VAGINAL SMEARS:

REMARKS: Multiple healed lacerations at 12, 2, 4, 5, 7, 9, 11 o'clock.

x x x x x x x x x."[7]

On May 22, 1998, the trial court found appellant guilty of the offense and sentenced him to death. The court held:

"WHEREFORE, the foregoing considered, this Court hereby finds accused ALBERTO CHUA alias Bert GUILTY beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and sentences him to suffer the penalty of Death and to pay private complainant Chenny Chua the amount of Fifty Thousand Pesos (P50,000.00) as moral damages and Twenty Thousand Pesos (P20,000.00) as exemplary damages. With costs.

SO ORDERED."[8]

Hence this recourse. Appellant assigns the following errors:

"I THE TRIAL COURT ERRED IN METING OUT THE DEATH PENALTY ON THE ACCUSED DESPITE THE FACT THAT THE QUALIFYING CIRCUMSTANCE OF MINORITY WAS NOT PROPERLY ALLEGED IN THE INFORMATION. THE FACT THAT COMPLAINANT DAUGHTER WAS DESCRIBED AS A "MINOR" IN THE INFORMATION IS A CONCLUSION OF LAW AND NOT A STATEMENT OF FACT.

II THE TRIAL COURT ERRED IN ACCEPTING WITH ALACRITY ACCUSED'S PLEA OF GUILTY TO THE OFFENSE CHARGED."[9]

When the accused pleads guilty to a capital offense, Rule 116, Section 3 of the Rules on Criminal Procedure provides the following procedure:

"Sec. 3. Plea of guilty to capital offense; reception of evidence.--When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability.

The accused may also present evidence in his behalf."[10]

When the accused enters a plea of guilty to a capital offense, the trial court must do the following: (1) conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (2) require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires.[11] This procedure is mandatory and a judge who fails to observe it commits grave abuse of

discretion.[12]

The essence of a plea of guilty is that the accused admits his guilt freely, voluntarily and with full knowledge of the consequences and meaning of his act and with a clear understanding of the precise nature of the crime charged in the complaint or information.[13] Thus, when the accused enters a plea of guilt, the trial court must, first of all, determine the voluntariness of the said plea and accused's comprehension of its consequences. In making such determination, the court must conduct a searching inquiry. The inquiry is not a simple question and answer exercise; it must be searching. To "search" means "to look into or over carefully or thoroughly in an effort to find something."[14] This looking into carefully and thoroughly, in the matter under consideration, must be focused on: (1) the voluntariness of the plea; and (2) the full comprehension of the consequences of said plea.[15]

There is no hard and fast rule as to the number and type of questions the judge may put to the accused, or as to the earnestness with which he may conduct the inquiry. What is essential is that the judge should, first of all, consider the age, personality, educational background, socio-economic status and other personal circumstances of the accused confessing his guilt.[16] The trial judge should determine whether the accused had been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent or avenging quarters, or by mistaken impressions given, wittingly or unwittingly, by authorities or parties; whether the accused had the assistance of competent counsel during the custodial and preliminary investigations; and whether he understood the charges against him.[17] The court should inquire if the accused knows the crime with which he is charged and explain to him the elements of the crime and the corresponding penalty therefor. The court may require the accused to fully narrate the incident that spawned the charges against him, or make him reenact the manner in which he perpetrated the crime, or cause him to furnish and explain missing details of significance[18] about his personal circumstances, about the commission of the crime and events during the custodial and preliminary investigation. In doing so, all questions posed by the judge to the accused should be in a language known and understood by the latter.[19] Still, the inquiry need not stop with the accused. The court may also propound questions to accused's counsel to determine whether or not said counsel had conferred with, and completely explained to accused the meaning of a plea and its consequences.[20] In all cases, the bottom line is that the judge must fully convince himself that: (1) the accused, in pleading guilty, is doing so voluntarily; and (2) he, in so doing, is truly guilty, and that there exists a rational basis for a finding of guilt, based on his testimony.[21]

In the case at bar, appellant claims that the trial court accepted his plea of guilt without following the procedure laid down in the Rules of Court. He alleges that the court should have placed him on the witness stand to find out if he actually understood the effect of his action and to hear his version of the events.[22]

We agree.

The following transpired at the pretrial:

> "SECOND CALL
>
> PROS. SANTIAGO: Same appearance for the State, your honor.
>
> ATTY. LADERAS: Same appearance for the accused. Your honor, may I request for a five-minute recess to confer with the accused because he is intending to change his plea.
>
> ON THE THIRD CALL
>
> PROS. SANTIAGO: Same appearance, your honor.
>
> ATTY. LADERAS: For the accused, your honor.

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COURT: Is he willing to change his plea?

ATTY. LADERAS: Yes, your honor.

COURT: Do you understand that by withdrawing your former plea and entering a plea of guilty, you will be sentenced by this court to the penalty of death?

ACCUSED: (After having conferred with counsel) Yes, your honor.

COURT: And despite that fact, you will still insist on withdrawing your former plea of NOT GUILTY and change it to one GUILTY as charged?

ACCUSED: Not anymore, your honor.

ATTY. LADERAS: He will accept whatever will be the punishment of the court.

COURT: In other words, you are determined to admit that you are guilty as charged?

ACCUSED: Yes, your honor.

COURT: Despite the fact that the penalty of the charge carries with it the penalty of death?

ACCUSED: I cannot do anything, your honor. If that will be the verdict, your honor.

COURT: You are not being forced to admit the charge. But if you admit and enter the plea of guilty to the charge, the court will impose the penalty of death.

ACCUSED: Yes, your honor.

COURT: You will not change your mind?

ACCUSED: "Mahirap kalabanin ang pamilya ko."

COURT: You are sure of your decision?

ACCUSED: Yes, your honor.

COURT: Rearraign the accused.

(After the arraignment)

COURT: When this case was called for pretrial conference, accused Alberto Chua, through counsel, manifested that he is withdrawing his former plea of NOT GUILTY and he is changing it to one of GUILTY as charged. Rearraigned, the accused, assisted by Atty. Ma. Cristine Laderas of the Public Attorney's Office entered a plea of GUILTY as charged. After conducting searching inquiry into the voluntariness and full comprehension of the consequences of his plea, the accused voluntarily manifested to the Court that he understood all the consequences of his change of plea and that he is willing to face the verdict of death. Considering the accused's plea of guilty to a capital offense, the prosecution was required to present evidence to prove the guilt of the accused and the precise degree of his culpability. SO ORDERED.

x x x x x x x x x."[23]

From the foregoing, it is clear that the court a quo did not probe carefully and thoroughly into the reasons for appellant's change of plea and his comprehension of the consequences of said plea. First of all, there was no determination of appellant's age, personality, educational background and socio-economic status. All questions the court propounded were couched in English and yet there is nothing in the records to show that appellant had a good comprehension, or at least, a nodding acquaintance with the English language. As to whether the judge

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translated and explained his questions to appellant in a language or dialect known and understood by the latter is not likewise borne by the records. It is not insignificant that appellant revealed to the trial judge that it was difficult to go against his family. This statement should have led the trial judge to inquire into the family background and the voluntariness of appellant's guilty plea. But no questions were asked. It would have been well for the court to go over appellant's relationship with the victim and the other family members, the specific reason why appellant decided to change his plea, the effect of his guilty plea on his family, and the fact that despite said plea, if his family knew that he was still to be put to death.

Further, the trial court did not bother to explain the essential elements of the crime with which appellant was charged. Appellant was convicted by the court a quo of incestuous rape under the first qualifying circumstance of Article 335 of the Revised Penal Code, as amended by R.A. 7659. The information charged him with "rape penalized under the provisions of Art. 335 of the Revised Penal Code, as amended by R.A. 7659." It did not specify under what particular paragraph of Article 335 the charge was made. Nothing in the record shows that appellant was aware as to what specific paragraph of the law he was being charged. As regards the penalty, the court may have repeatedly informed appellant that his penalty was death, notwithstanding his guilty plea, but it did not disclose the indemnity he was to pay the victim. The decision of the court ordered appellant to pay Chenny the amount of P50,000.00 as moral damages and P20,000.00 as exemplary damages. As a result of the court's failure to fully explain the basis of appellant's indictment, appellant was not accorded his fundamental right to be informed of the precise nature of the accusation against him, and was therefore denied due process.[24]

The trial court did not only neglect to make the searching inquiry, it also failed to inquire from appellant whether he desired to present evidence in his behalf. This is the third requirement under Section 3, Rule 116. The prosecution presented the victim's testimony, her sworn statement and medico-legal report as its evidence. But when cross-examination came, appellant's counsel declined to do so. The court merely accepted this and did not inquire into the reason why they waived cross-examination. Given this disinterest, the court should have, at least, informed appellant that he could present his own evidence and ask him if he desired to do so. Courts must proceed with meticulous care wherever the punishment for the crime is in its severest form. The execution of a death sentence is irrevocable and experience has shown that innocent persons have, at times, pleaded guilty.[25] In capital offenses, the essence of judicial review is anchored on the principle that while society allows violent retribution for heinous crimes committed against it, it always must make certain that the blood of the innocent is not spilled, or that the guilty are not made to suffer more than their just measure of punishment and retribution.[26] The prudent course to follow is to take testimony not only to satisfy the trial judge but also to aid the Supreme Court in determining whether the accused understood the significance and consequences of his plea.[27] This is to preclude any room for reasonable doubt in the mind of the trial court, or this Court on review, as to the possibility that there might have been some misunderstanding by the accused of the nature of the charge to which he pleaded guilty, and to ascertain the circumstances attendant to the commission of the crime which justify or require the exercise of a greater or lesser degree of severity in the imposition of the prescribed penalties.[28]

There is also another element of the crime overlooked by the trial court. Chenny testified that on that day subject of the complaint-information, when appellant started peeling off her short pants, she did not resist him. She just stared at her father knowing what he was going to do to her. She fought back the very first time he molested her, but he forced himself on her. Since then, she did not resist him; and that day was like the rest. Appellant was able to satisfy his lust on the girl without exerting force or intimidation on her.

In incestuous rape cases, the victim's lack of resistance has been explained as a product of the moral ascendancy parents exercise over their children, viz:

> " x x x. A rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies this terror, because the perpetrator is a person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and degree of fear.
>
> x x x x x x x x x
>
> x x x. [T]he rapist perverts whatever moral ascendancy and influence he has over his victim in order to intimidate and force the latter to submit to repeated acts of rape over a period of time. In many instances, he succeeds and the crime is forever kept on a lid. In a few cases, the victim suddenly finds the will to summon unknown sources of courage to cry out for help and bring her depraved malefactor to justice.
>
> x x x. The perpetrator takes full advantage of his blood relationship, ascendancy and influence over his victim, both to commit the sexual assault and to intimidate the victim into silence. Unfortunately for some perpetrators of incestuous rape, their victims manage to break out from the cycle of fear and terror. x x x."[29]

In Philippine society, the father is considered the head of the family, and the children are taught not to defy the father's authority even when this is abused. They are taught to respect the sanctity of marriage and to value the family above everything else. Hence, when the abuse begins, the victim sees no reason or need to question the righteousness of the father whom she had trusted right from the start.[30] The value of respect and obedience to parents instilled among Filipino children is transferred into the very same value that exposes them to risks of exploitation by their own parents.[31] The sexual relationship could begin so subtly that the child does not realize that it is abnormal. Physical force then becomes unnecessary. The perpetrator takes full advantage of this blood relationship. Most daughters cooperate and this is one reason why they suffer tremendous guilt later on. It is almost impossible for a daughter to reject her father's advances, for children seldom question what grown-ups tell them to do.[32]

But incest, no matter how despicable, hateful and revolting it is both to the victim and society, is not a crime in our statute books. There is no law that specifically defines and penalizes incest. The case at bar involves rape. Rape, under Article 335 of the Revised Penal Code, as amended, is committed by having carnal knowledge of a woman: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; or (3) when the woman is under twelve years of age or is demented.[33] In the instant case, the victim was not under twelve years of age or demented when her father abused her. Neither was she deprived of reason or rendered unconscious. No force or violence was used on her, she herself testified. As to whether there was intimidation, this element must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. It is addressed to the mind of the victim and is, therefore, subjective.[34]

There is nothing in Chenny's testimony that shows how appellant intimidated her into giving him her body. Intimidation breaks down the victim's moral resistance and makes her submit to the evil in order to escape what she conceives to be a greater evil.[35] There is no proof of what greater evil Chenny had to escape that made her submit to her father's carnal desires. The mere fact that appellant is her father and therefore exercises moral ascendancy over his daughter cannot ipso facto lead this Court to conclude that there was intimidation. There must be some evidence of the intimidation employed on the victim as to indubitably show how vitiated the victim's consent was to the violation of her womanhood. After all, rape is committed against or without the consent of the victim.[36] The very first time appellant violated Chenny, he did not use any weapon to threaten her into submission. Neither did appellant threaten her with blackmail or words of terror. He warned her not to tell her mother because if she did, her mother will surely kill him and she will land in jail and no one will take care of

Chenny and her younger brothers and sisters. These words of doom may give the reason why Chenny did not report the incident or incidents to her mother, her aunt or other people; but they do not show how they brainwashed her into giving in to appellant's lustful desires. The doomsday scenario is not per se sufficient to establish the psychological terror that made the girl submit to her father. The court cannot rely on presumptions of moral ascendancy,[37] for in this new century where mores change, it could well be that in certain cases, the traditional moral ascendancy of a parent over children is a myth. Presumptions of moral ascendancy cannot and should not prevail over the constitutional presumption of innocence. Force or intimidation is an element of the crime of rape. There must, therefore, be proof beyond reasonable doubt that the victim did not resist her defloration due to the moral ascendancy of the accused.

IN VIEW WHEREOF, the judgment appealed from is set aside. The case is remanded to the trial court for rearraignment and thereafter, should the accused-appellant enter a plea of "guilty," for reception of evidence for the prosecution, and should the accused-appellant so desire, for reception likewise of evidence on his part, all in accord with the guidelines set forth in this Decision.

SO ORDERED.

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

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[1] Presided by Judge Gregorio S. Sampaga.

[2] Records, pp. 1-2.

[3] Records, p. 11.

[4] Order of May 13, 1998, Records, p. 23.

[5] Exhibit "A," Records, pp. 24-25.

[6] Exhibit "B," Records, p. 26.

[7] Exhibit "B," Records, p. 26.

[8] Decision, p. 4, Rollo, p. 54.

[9] Appellant's Brief, p. 1, Rollo, p. 32.

[10] Also Section 3, Rule 116 of the Revised Rules of Criminal Procedure. Sec. 3 now reads:

> "Sec. 3. Plea of guilty to capital offense; reception of evidence.--When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf."

[11] People v. Bello, 316 SCRA 804, 811 [1999]; People v. Lakindanum, 304 SCRA 429, 433 [1999]; People v. Camay, 152 SCRA 401, 403 [1987].

[12] People v. Bello, supra; People v. Sevilleno, 305 SCRA 519, 528 [1999]; People v. Dayot, 187 SCRA 637, 641 [1990].

[13] People v. de Luna, 174 SCRA 204, 210 [1989].

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[14] "Search," Webster's Third New International Dictionary of the English Language, Unabridged [1993].

[15] People v. Alicando, 251 SCRA 293, 307 [1995].

[16] People v. Alicando, supra at 307; People v. Dayot, 187 SCRA 637, 643 [1990].

[17] People v. Estomaca, 256 SCRA 421, 437 [1996]; People v. Dayot, supra at 642.

[18] People v. Estomaca, supra at 437.

[19] People v. Alicando, supra at 308.

[20] People v. Estomaca, supra at 437, citing several cases.

[21] People v. Dayot, 187 SCRA 637, 643 [1990].

[22] Appellant's Brief, p. 5, Rollo, p. 46.

[23] TSN of May 13, 1998, pp. 2-3, Records, pp. 37- 38; see also Order of May 13, 1998, Records, p. 23.

[24] People v. Bello, supra at 814; People v. Sevilleno, 305 SCRA 519, 528- 529 [1999].

[25] People v. Bello, supra at 811; People v. Alicando, 251 SCRA 293, 309 [1995].

[26] People v. Busa, 51 SCRA 317, 321 [1973].

[27] People v. Camay, 152 SCRA 401, 403- 404 [1987]; People v. Villacores, 97 SCRA 567, 586- 587 [1980].

[28] People v. Dayot, supra at 645; People v. de Luna, supra at 213; Peopale v. Busa, 51 SCRA 317, 320 [1973];

[29] People v. Baltazar, G.R. No. 130610, October 16, 2000, pp. 7-8; People v. de Leon, 319 SCRA 743, 753 [1999]; People v. Melivo, 253 SCRA 347, 356- 358 [1996].

[30] "Brave Little Women, A Study on Incest," by the Research Team Institute of Women's Studies/ Inter-Institutional Consortium of De la Salle University, Philippine Christian University, Philippine Normal University, St. Paul's College and St. Scholastica's College, published by the Institute of Women's Studies, St. Scholastica's College, Manila, p. 36 [1995].

[31] Filomin A. Candaliza, "Patterns of Rape in Metro Manila: A Sociological Analysis," a masteral thesis, Department of Sociology, U.P. Diliman, January 1995; see also Prescilla Tulipat, "An Exploratory Study on Incest Using Feminist Participatory Approach: A Contribution to the Study of Violence Against Women," a graduate thesis, Master of Arts in Women & Development, CSWCD, U.P. Diliman, April 1994.

[32] Op. cit., at 36.

[33] Article 335, Revised Penal Code, as amended by R.A. 7659.

[34] People v. Baltazar, G.R. No. 10610, October 16, 2000, p. 8; People v. Agbayani, 284 SCRA 315, 340 [1998].

[35] Albert, Revised Penal Code, p. 789 [1946].

[36] Guevara, Commentaries on the Revised Penal Code, 5[th] ed., p. 509 [1987]. Article 335 implies the absence of consent of the woman to the sexual act--Francisco, Revised Penal Code, Bk. 3, p. 1314 [1961].

[37] In People v. Nava, 333 SCRA 749, 761 [2000], it was held that in incestuous rape committed by a father against his own daughter, the moral ascendancy of the father over the daughter substitutes for violence or intimidation. See also People v. Taneo, 284 SCRA 251, 264 [1998]; People v. Agbayani, 284 SCRA 315, 341

[1998]; People v. Bartolome, 296 SCRA 615, 624 [1998].

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