

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO RODRIGUEZ, ACCUSED-APPELLANT.

G.R. No. 138987. February 06, 2002

Ponente: PUNO, J.

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PUNO, J.:

Not only did the victim, Mary Ann Rodriguez, traumatically and painfully lose her virginity and psychological well-being when her father, the accused, ravaged her. She also lost her family when her mother refused to believe her harrowing tale and, along with her siblings, testified against her. But all is not lost, for at least, the arms of the law will rightfully coddle her and the blind lady of justice will dispense justice due her.

A complaint was filed against the accused Rodolfo Rodriguez on January 23, 1998, viz:

"The undersigned, in behalf of MARY ANN B. RODRIGUEZ, who is a minor, 16 years of age (,) accuses RODOLFO RODRIGUEZ, whose maternal surname, date and place of birth cannot be ascertained (,) of the crime of RAPE (Art. 335, RPC), committed as follows:

That on or about the 13th day of June, 1997, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of MARY ANN RODRIGUEZ against her will.

CONTRARY TO LAW."[1]

Mary Ann Rodriguez, the private complainant, is the daughter of the accused Rodolfo Rodriguez. She lived with him, her mother Irene, her siblings PJ, Monyeen, Josie, Paul and Andrew, and her seventeen year-old cousin, Edlin Taonera, in Barangay Salvacion, Habog-Habog, Molo, Iloilo City. The Rodriguez family lived in a two-story house with one bedroom on the second floor and two bedrooms on the ground floor, one near the kitchen and the other near the main door. These two bedrooms are five meters apart and separated by the sala. Mary Ann occupied one of the bedrooms downstairs, while her two younger sisters occupied the other one. Nobody occupied the bedroom upstairs, but when her cousin Edlin was with them, she stayed there. Mary Ann's parents and siblings slept in the sala.

While living with her father, the latter beat up Mary Ann with fist blows in the abdomen and ears because he did not approve of young men visiting her. She cried whenever he beat her up and her mother also cried and just kept quiet. On June 12, 1997, her father got mad at her for being their barangay's Reyna Elena with Lloyd Talabac as consort.

On June 13, 1997, Mary Ann was home with her parents and siblings. That night, she went to bed at about 8:00 p.m. in her room. Her mother and father were still awake watching television in the sala, but her siblings were already asleep. The light in her bedroom and in the living room were on. She slept on a wooden bed, about one meter wide and six feet long, wearing garterized shorts and a sleeveless blouse. At about midnight, she tried to turn to her left, but could not do so. She woke up and saw the accused tying her right hand to the bedpost using

her bra which he removed from her body, with the left strap still on her shoulder. She did not notice him remove her bra as there were many insects in her room and she thought it was just an insect biting her. Having come to her senses, she managed to say only "Tay". The accused immediately stuffed her mouth with an unused panty which he got from the table beside her bed before she could even ask why he was doing that to her, then covered her mouth with his right hand. She also noticed that the accused had tied her right leg to the bedpost. With the room well lit, Mary Ann saw her father perspiring. He was wearing only his brief. Mary Ann tried to scratch him with her left hand and was able to touch the mole on his nose. He covered her eyes with a pillow, then put out the lights. Mary Ann struggled to raise her left leg, but the accused, using his left hand, delivered two fist blows on her left thigh near the vagina and told her not to move, otherwise he would kill her. He also hit her in the abdomen. It was painful, so she just kept still. With his left hand, the accused removed Mary Ann's shorts and panty from her left leg and left them on her right knee. He let his penis out of his brief through an opening on the leg of the brief and inserted it into her vagina. Mary Ann tried to resist it by moving her thighs, but to no avail as the accused used his knee to pin down her left leg. After a long time of trying to penetrate her, the accused succeeded in doing so. It was painful for her; she bled and cried on her first sexual congress. It was pleasurable for him; he ejaculated. After the accused grew tired, he removed his penis from her vagina.[2] He warned her not to tell her mother or friends about the incident and told her that she was already impure and dirty and not fit to live with them. Mary Ann's bra was torn and her blanket was stained with blood.

Mary Ann thought of telling her mother about her agonizing experience, but the accused was still home, so she told her only the following day when the accused had left. Her mother at first cried when she learned about it, then went inside her room, and after some time, came out smiling. So Mary Ann just washed the bloodied blanket and threw away her torn bra because her mother would not believe her story. In July, her cousin, Edlin Taonera, started to live with them. After testing the waters and finding out that Edlin could be trusted, Mary Ann told her in August that her father sexually abused her and that her mother refused to believe her. Fed up with her father's beatings, she also confided these to Edlin. She also told her younger sister about her harrowing tale, but the latter advised her to keep it to herself, otherwise their father would beat her up again.

After Mary Ann's father raped her on June 13, 1997, he molested her again three times in her room between 9:00 to 10:00 in the evening. One of those instances was on July 18, 1997, Mary Ann's birthday. He hurt her, touched the different parts of her body like her thigh, private part and breast, and told her not to leave the house. She kicked him and hit his hand, but he strangled her whenever she defended herself. When she washed herself in the evening, he peeped at her. Even prior to June 13, 1997, the accused, on several occasions, removed Mary Ann's clothes, leaving only her panty and bra on. He measured parts of her body, including her breasts and vagina, while she was undressed. Mary Ann did not like this and fought against him. She reported to her mother the perversion of her father, and her mother confronted him about it. The accused neither confirmed nor denied the acts Mary Ann complained of. She even left their home twice when she was still in elementary because of her father's perversion.

On August 25, 1997, Mary Ann ran away from home and sought the help of her best friend, Aileen Agan. She stayed in the house of the latter's first cousin in Mandurriao, Iloilo City for a few days and from there, she transferred to the house of Aileen's sister, Lucy Gonzales, in San Nicolas, Oton, Iloilo City.[3] She stayed at the latter's house for about three weeks, after which Agan told Mary Ann that she wanted her (Mary Ann) to go home because she did not find sufficient reason for her to be away from home. Mary Ann cried. Aileen called her best friend, SPO2 Enteng Silla, and told him that Mary Ann's father beat her up. Silla informed them that his maltreatment was a ground for a complaint against him. But SPO2 Silla suspected that there was some other reason why she would not go home. It was then that she confessed that her father raped her. The next day, Agan and Silla brought her to a doctor in Fort San Pedro for examination and the findings showed that she was no

longer a virgin. Aside from Silla, Mary Ann also reported her tragic story to the barangay captain of Oton and to policeman Orpin at the police station in September 1997.

Thereafter, upon the suggestion of Silla, Mary Ann lived at the Department of Social Welfare and Development (DSWD) because her father was looking for her. She filed a complaint for rape against him. While she felt pity for her father who could be sent to jail if found guilty, she also felt her father had to pay for ravaging her. Her traumatic experience made her hate men, lose trust in everybody around her, including her parents, classmates, roommates, and even herself, and lose interest in her studies because she felt she did not have anybody to offer her studies to as her mother did not believe her. She also felt abandoned and that nobody cared for her. She could not sleep well since that fateful night of June 13, 1997 and felt ashamed.[4]

Lucy Gonzales took the witness stand. She is a resident of San Nicolas, Oton, Iloilo. On August 29, 1997, Gonzales was home. That evening, her sister Aileen Agan and her friend Mary Ann Rodriguez, her cousin Mamerto Camboso and his wife Suzette arrived in her house at around 9:00 p.m. Aileen told her that Mary Ann had a problem. She ran away from home because according to her, her father made an attempt upon her honor. The group then left, leaving Mary Ann behind to live with Gonzales. Mary Ann revealed to her that her father peeped at her, sometimes got her underwear and smelled it, and made passes at her. Gonzales called her lawyer, Atty. Francisco Guiritan, and told him about Mary Ann's situation. Guiritan advised her to go to the police and have the police enter in the blotter Mary Ann's story and to indicate therein that the child sought shelter in her (Gonzales') house to avoid being accused of kidnapping Mary Ann. Lucy heeded Guiritan's advice, went to the police station and looked for policeman Vicente Silla. The latter, however, was not on duty at that time. Later that afternoon, she contacted Silla, and asked him to come over to her house. Silla and policeman Orpin came and Silla talked to Mary Ann. She cried. Later, Silla and another policeman accompanied Mary Ann and Gonzales to the house of Cris Montano of the Commission on Human Rights (CHR). As Montano was not home, Silla told Gonzales to go home and that he would take care of entering Mary Ann's complaint in the police blotter.

On September 1, 1997, Silla arrived in Gonzales' house. He told her to go to the house of barangay captain Nelson Londres. When they arrived there, Cris Montano, Orpin and Londres were present. Montano asked Mary Ann what her problem was and Mary Ann cried and told him that her father made attempts upon her honor. Montano told her to undergo medical examination. Mary Ann cried hard upon hearing this and hugged Gonzales and told her that if she would be examined, it would be discovered that her father had his way with her. Mary Ann then revealed to Montano that her father raped her on June 13, 1997 and attempted to rape her again on July 18, 1997.

The next day, Montano, Silla, Gonzales and Mary Ann went to the DSWD in Oton, Iloilo. Gonzales told Joy Tañada of the DSWD what transpired on that fateful night of June 13, 1997. The group, now joined by Tañada, proceeded to the CHR. Mary Ann narrated to the investigating officer that her father raped her on June 13, 1997 and attempted to rape her again on July 18, 1997. She also narrated her father's beatings and peeping and smelling of her underwear. Forthwith, Montano prepared a document regarding the medical examination on Mary Ann. The group headed to the DSWD office and inquired whether a medico-legal officer was available. They were referred to Camp Delgado. At the camp, a medical examination was conducted upon Mary Ann. Thereafter, they went to the Women's Desk at the police station and Mary Ann again narrated to policewoman Edith Montero the rape incident on June 13, 1997 and the attempt to rape her again on July 18, 1997.[5]

Nina Joy Tañada, Municipal Social Worker and Development Officer of the DSWD of Oton, Iloilo took the witness stand. On September 1, 1997, Tañada met Mary Ann Rodriguez for the first time as the latter was referred to her office by police officer Vicente Silla. Mary Ann told her that her father sexually abused her on June 13, 1997. She cried and was depressed. Afterwards, she, along with Cris Montano and Silla, brought Mary Ann to the CHR where she gave her statement to Atty. Villarete. In the afternoon of that day, the group brought her to Camp

Delgado where Dr. Owen Lebaquin conducted a medical examination on Mary Ann and issued a medical certificate. The group then went back to the CHR where the certificate was attached to Mary Ann's statement. The next day, they went to the Women's Desk and reported to SPO4 Erna Foerster the June 13, 1997 rape incident and the latter recorded it in the police blotter. On September 4, 1997, Tañada turned Mary Ann over to the DSWD Regional Office and she was sheltered at the Lingap Center.[6]

Dr. Owen Lebaquin testified that in September 1997, he was assigned as regional medico-legal officer in Iloilo City. He examined Mary Ann Rodriguez on September 1, 1997 and found deep healed lacerations of the hymen at 3 and 9 o'clock positions. The lacerations could be more than one month old. The lacerations could have been caused by the insertion of a hard, blunt object. In the course of the examination, Mary Ann told him that her father raped her on June 13, 1997.[7]

Irene Fe Rodriguez, wife of the accused, testified for the defense. She denied talking to Mary Ann, her eldest child, about the alleged rape incident of June 13, 1997. That night, Irene was home watching television. She was with her husband and all her children and nieces who were staying in their house for the night. At about 11:00 p.m., she went to bed in the sala with her husband and two sons. Mary Ann slept in her room upstairs along with her sister Monyeen and cousins Julie Ann Balcuba and Margie Torretores. Another daughter, PJ Rodriguez, and Edlin Taonera slept in the other room upstairs. There were two bedrooms downstairs which nobody occupied. These rooms were just about an arm's length away from the sala. Irene woke up at about 3:00 the next morning.

On August 25, 1997, Mary Ann refused to go to school because she had her monthly period. But her sister, PJ, told their father that Mary Ann did not want to attend school because her name was posted at the school guard house. Irene went to Mary Ann's school to find out why her name was posted, and learned that it was because Mary Ann did not have a report card as she had not been going to school. She talked to Mary Ann's class adviser and found out that since school started, Mary Ann had attended school for only a week. When Irene got home, she scolded Mary Ann because the latter had been getting her allowance and leaving for school everyday, but had not been attending her classes. Her father warned her to take her studies seriously as they had to go through the trouble of asking a certain Atty. Tungala to make a Certificate of Good Manners and Right Conduct for Mary Ann to be admitted back to school after failing her first year in high school. Mary Ann did not take his warnings to heart and left home. Two days after she left, Irene started looking for her. She and her husband contacted all their relatives but did not find her. At the end of August, Irene and the accused were summoned to the Molo police station regarding the whereabouts of Mary Ann. It was then that they learned that Mary Ann had been there to report that her father raped her. The couple was then referred to another police station where a policewoman asked Irene whether Mary Ann told her that her father raped her, and Irene replied in the negative. She was then told that Mary Ann was in the custody of the DSWD. She contacted Joy Tañada of the DSWD, but she was told that Mary Ann had been referred to the main office of the DSWD in the city. When she went there, she was not allowed to talk to Mary Ann as she had been raped by her father. She was taken aback and confronted her husband about it. The accused denied the accusation. Irene admitted that her husband beat up Mary Ann for being a wayward. Mary Ann had the habit of leaving the house without asking permission from her parents.

When the accused learned of the rape charge against him, he did not get mad as he knew he did not do anything wrong. He continued to go to work as chief security guard of Tinsay Security Agency until he was arrested. With his arrest, the Rodriguez family suffered financial problems and was forced to leave the house they rented and lived with their neighbor.[8]

PJ Rodriguez, Mary Ann's fifteen year-old sister, took the witness stand. In June 1997, she lived with her father, mother, and siblings in their house in Barangay Salvacion, Habog-Habog, Molo, Iloilo City. Their house consists of two stories, with two bedrooms on the first floor. On June 13, 1997, she went to bed at about 11:30 p.m. and

occupied a room in the first floor with her cousins, Edwin and Edlin Taonera who lived with them from around March to August 1997. PJ's parents and siblings slept in the sala. Nobody occupied the other room where their clothes and other things were kept. Upstairs, there was one bedroom occupied by Mary Ann and her other sister, Monyeen, and their cousins Julie Ann Balcuba and Margie Toreflores. The latter two lived with them from June 12, 1997 to July 18, 1997.

PJ testified that Mary Ann never confided to her that their father raped her on June 13, 1997. On July 18, 1997, Mary Ann's birthday, Mary Ann again slept in her bedroom upstairs while PJ slept downstairs. Their father left home at 4:30 that afternoon for Guimaras to attend the inauguration of a beach resort and came back on July 20, 1997. On August 25, 1997, her father scolded Mary Ann for not having a report card. By September 1997, Mary Ann had run away from home.[9]

Monyeen Rodriguez, Mary Ann's youngest sister, also took the witness stand. In June 1997, she was living with the accused, her mother, and her sisters Mary Ann and PJ in their house in Barangay Salvacion, Habog-Habog, Molo, Iloilo City. Their abode is a two-story house with three rooms, two on the ground floor and one in the upper floor. In the evening of June 13, 1997, PJ and a second cousin, Edlin Taonera, occupied one of the rooms on the ground floor. Nobody occupied the other room. Her parents slept in the sala. She, Mary Ann, her cousins Julie Ann Balcuba and Margie Toreflores occupied the upper room. The latter two had been staying with them for two weeks prior to June 13, 1997. The previous day was Barangay Salvacion's fiesta. June 12 was coronation night for the fiesta celebration and Margie and Julie Ann helped Mary Ann dress up as Reyna Elena. It rained that night and Mary Ann got wet. The following day or on June 13, 1997, Mary Ann was not feeling well. Later that evening, Monyeen went to bed at about 10:00 p.m. She slept beside Mary Ann on a foam on the floor while Margie slept beside the two, and Julie Ann slept beside Margie. That whole night, she was not awakened by the sound of any struggling. She woke up only in the morning. According to her, she distinctly remembered that she slept with Mary Ann on June 13, 1997 because they always slept together.

On August 25, 1997, Mary Ann left their house because she could not give her report card to their parents as she had stopped going to school. Between June 13, 1997 and August 25, 1997, Mary Ann did not mention to her that their father raped her. On the year after their father was charged with rape and went to jail, Monyeen stopped going to school because their family's financial resources were not sufficient without her father working. Monyeen blames Mary Ann for her situation.[10]

The accused took the witness stand. He denied Mary Ann's allegation that he raped her on June 13, 1997. That night, he was at home with his wife, his sons Joseph, Paul and Andrew, his daughters PJ, Mary Ann and Monyeen, and his nieces. He slept with his wife and two sons in the sala of their house. Mary Ann, his nieces Margie Toreflores and Julie Ann Balcuba slept in the room on the second floor of the house. In the room downstairs, PJ and her second cousin Edlin Taonera slept. That night, he went to bed between eight to nine o'clock in the evening and woke up at 4:00 the following morning.

The accused also denied touching Mary Ann's private parts and peeping at her when she was dressing up prior to June 13, 1997. He admitted beating her up when she refused to go to school or cut classes, and when she went to places she was prohibited from going to, but denied that Mary Ann ran away from home after those beatings. He also denied attempting to rape her on her birthday on July 18, 1997. Before he left home in the morning of that day, he gave his daughter PJ, who had just celebrated her birthday, a wristwatch. He also gave one to Mary Ann. He then made several deliveries. Later that night, he delivered some construction materials in a beach resort in Guimaras. He was finished by 11:00 in the evening, but he could not go home because the outrigger of the pump boat he used was destroyed by the waves.

On August 25, 1997, he asked Mary Ann if she was going to school. She replied that she was not because she had her menstruation and had fever. He reminded her to take her studies seriously as she had already previously executed a document stating that she would do so and that if she did not, she would no longer be admitted to school. When the accused came home at about 6:00 p.m. that day, he learned that Mary Ann left home. She did not come home that night and had been gone since then. The couple reported her disappearance to the police and had it entered in the police blotter at the Molo police station.

The accused learned that Mary Ann filed the instant case against him in September 1997. He continued his employment as Chief Security Guard at Tinsay Security Agency until he was arrested.[11]

The trial court gave credence to the version of the prosecution and convicted the accused, viz:

"WHEREFORE, premises considered, the court, finding the accused, Rodolfo Rodriguez, guilty of raping his minor daughter Mary Ann Rodriguez beyond the shadow of doubt, hereby sentences him to suffer the extreme penalty of death in accord with the provisions of Art. 335 of the Revised Penal Code, as amended by Republic Act No. 7659. He is also directed to indemnify his daughter the amount of P50,000.00 and to pay the cost." [12]

Hence this automatic review with the following assignment of errors:

"I. The honorable lower court erred in convicting the accused-appellant under the provisions of R.A. (No.) 7659 notwithstanding that paternity is not alleged in the information.

II. The honorable lower court erred in finding the complainant honest, frank, clear and convincing as to give no reason to doubt her honesty and sincerity.

III. The honorable lower court erred in finding the accused-appellant guilty beyond the shadow of doubt for the crime charged." [13]

The appeal is partially meritorious.

In assailing the decision of the lower court, the accused attempts to puncture the credibility of private complainant Mary Ann Rodriguez. He cites several inconsistencies in the latter's testimony which, according to him, casts doubt on its veracity. First, Mary Ann stated in her direct examination that when she woke up, she saw her father tying her right leg. On cross-examination, however, she said that she woke up with her father still tying her right hand, and not her leg.[14] Second, she testified that she was awakened when her father took off her bra and she even asked him, "Why are you doing that to me?" [15] On cross-examination, she testified that she felt some sort of pain when her father was taking off her bra, but she did not mind it because she thought she was just being bitten by insects.[16] Third, she testified on direct examination that when her father was taking off her bra, she asked him, "Why are you doing that to me?"; while on cross-examination, she stated that having been suddenly awakened while her father was tying her right hand to the bed post, she was not able to come to her senses immediately and managed only to say, "Tay", and nothing more.[17]

Apart from these inconsistencies in Mary Ann's testimony, the accused also cites inconsistencies in her conduct. For one, Mary Ann continued to live with the accused after the alleged June 13, 1997 rape incident and July 18, 1997 attempted rape, i.e., from June 14, 1997 to August 25, 1997.[18] She also threw away her torn bra and the bloodied blanket which, according to the accused, she could have shown to her mother as proof that her father raped her.[19] Considering the above inconsistencies, among others, the accused concludes that the presumption of his innocence has not been overthrown and he should thus be acquitted.

We disagree. The inconsistencies pointed out by the accused are all but minor and tend to bolster rather than weaken the credibility of the victim and her testimony.[20] It is understandable that Mary Ann would not remember the minor details of her forced initial sexual congress considering how traumatic and harrowing it was.

No woman would wish to retain in her memory such tragedy which had befallen her.[21] What is important is that she remembers the material details of her father's sexual assault upon her.

The accused also points out that considering the size of Mary Ann's house, the proximity of Mary Ann's room to the sala where her mother was sleeping, and that the walls between the rooms were made of sawali, it was improbable that Mary Ann's mother who was sleeping at the sala just outside Mary Ann's room was not awakened by the scuffle inside Mary Ann's room at the time she was allegedly raped.[22] We have ruled, however, that "for rape to be committed, it is not necessary for the place to be ideal or the weather to be fine for rapists bear no respect for locale and time when they carry out their evil deed." [23] "Rape may be committed even when the rapist and the victim are not alone, or while the rapist's wife was asleep or even in a small room where other family members also slept." [24] Worthy of notice is Mary Ann's testimony that her right hand and leg were tied to the bedposts, her left leg was pinned down by the accused's knee, and her mouth was stuffed with an unused panty and held by the accused. Mary Ann's movements were therefore restrained. Added to this, the accused threatened to kill her if she did not keep still.

Finally, the accused makes much of the fact that it took Mary Ann all of 77 days before she reported the rape to the authorities and avers that there is no justification for such delay as her father did not threaten her during that period.[25] Time and again, we have ruled that delay in reporting the rape is not necessarily an indication of a fabricated charge.[26] Fear of reprisal, social humiliation, familial considerations and economic reasons may get in the way of the victim's report of the crime.[27] At any rate, Mary Ann did not altogether fail to report her agonizing experience as she in fact told her mother about it the next day, but the latter did not believe her. She also confided it to her younger sister who, however, advised her to keep it to herself.

All told, Mary Ann's testimony, corroborated by the results of the medical examination conducted upon her, is clear and credible. We find no sufficient reason to disturb the findings of the lower court and adhere to the well-settled rule that findings of the trial court are generally considered final and accorded great weight, given their advantage of observing the manner and demeanor of the witnesses as they testified in court.[28] The denial of the accused deserves scant consideration as it is inherently a weak defense which cannot prevail over the positive identification of the accused by the victim.[29] We find the accused guilty beyond reasonable doubt of the crime of rape.

With respect to the penalty imposed by the trial court, the accused argues that assuming *arguendo* that the Court finds him guilty as charged, he cannot be convicted of qualified rape under R.A. No. 7659 as paternity was not alleged in the information. He faults the decision of the lower court as contrary to prevailing jurisprudence when it stated that, "the relationship of the accused with the victim is not an essential ingredient of the offense, neither is it a qualifying circumstance that failure to state in the information would prevent the court from appreciating or taking it into consideration. Such circumstance is simply generic which, when proved or shown during the hearing, may be taken into consideration in determining the appropriate penalty provided by law." [30] We uphold the accused's position. The Court has not just once ruled that the failure to allege the relationship of the accused to the victim constitutes a fatal defect.

Not only the relationship, but also Mary Ann's age, was not properly alleged. The complaint reads, viz:

"The undersigned, in behalf of MARY ANN B. RODRIGUEZ, who is a minor, 16 years of age (.) accuses RODOLFO RODRIGUEZ, whose maternal surname, date and place of birth cannot be ascertained (.) of the crime of RAPE (Art. 335, RPC), committed as follows:

That on or about the 13th day of June, 1997, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, by means of violence and intimidation, did then and there wilfully, unlawfully and

feloniously have carnal knowledge of MARY ANN RODRIGUEZ against her will.

CONTRARY TO LAW."[31]

Mary Ann's age at the time of filing of the complaint appears in the caption or preamble of the complaint as a description of the victim. Her age at the time the rape was committed, however, is not specified in the body of the complaint narrating the act or omissions constituting the offense. In *People v. Bali-Balita*,[32] we held that the relationship of the victim with the accused was not sufficiently alleged in the information as it appeared only in the preamble or caption of the information, viz:

"What is controlling is the description of the criminal act and not, as in this case, the description of the identity of the accused. It has been held that 'the real nature of the criminal charge is determined not from the caption or the preamble of the information nor from the specification of the provision of law alleged to have been violated But from the actual recital of the facts as alleged in the body of the information.' (*Buhat v. Court of Appeals*, 265 SCRA 701 at 716-717 [1996]) In this case (,) the information upon which the appellant was arraigned does not state in the specification of the acts constitutive of the offense that he is charged as the live-in partner of the mother of the alleged victim. This insufficiency prevents a judgment of conviction for qualified rape and thus, the death penalty cannot be imposed." (emphasis supplied)

At any rate, Mary Ann's age was not proved beyond reasonable doubt. The prosecution offered two certifications to prove her age. One is a certification from the Office of the Municipal Civil Registrar of the Municipality of Tigbauan, Iloilo dated March 5, 1998 which states that Mary Ann was born on July 18, 1982. The other is a certification from the same Office of the Civil Registrar of the Municipality of Tigbauan, Iloilo dated October 1, 1986 which indicates that Mary Ann was born on July 18, 1981. There is a discrepancy with respect to the victim's year of birth.

To characterize rape as heinous and to justify the imposition of the supreme penalty of death, the concurrence of the minority of the victim and her relationship to the offender as a single special aggravating circumstance must be alleged.[33] The accused would be denied of his right to be informed of the charges against him and thus of due process, if he is charged with simple rape and he is convicted of its qualified form punishable by death, although the attendant circumstances qualifying the offense and resulting in the imposition of the death penalty were not alleged in the information.[34] As the special aggravating circumstances of relationship and minority were not properly alleged in the complaint and Mary Ann's age was not proved beyond reasonable doubt, we reduce the penalty imposed upon the accused Rodriguez to reclusion perpetua.

Anent the damages, current case law fixes civil indemnity in case of simple rape at P50,000.00 and moral damages also at P50,000.00. Prevailing jurisprudence also sets exemplary damages at P25,000.00 to "deter other fathers with perverse tendencies and aberrant sexual behavior from preying upon and sexually abusing their daughters."[35]

IN VIEW OF THE FOREGOING, we AFFIRM the decision of the trial court with the MODIFICATION that the accused-appellant is found guilty of the crime of simple rape and sentenced to suffer the penalty of imprisonment of reclusion perpetua with all its accessory penalties and to pay the victim P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages. Costs against the accused-appellant.

SO ORDERED.

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

Bellosillo, J., please see concurring and dissenting opinion.

Quisumbing, J., abroad, on official leave.

Carpio, J., on official business abroad.

[1] Original Records, p. 1.

[2] TSN, Mary Ann Rodriguez, May 26, 1998, pp. 2-26.

[3] TSN, Mary Ann Rodriguez, May 20, 1998, pp. 3-18; also July 22, 1998, pp. 2-18.

[4] TSN, Mary Ann Rodriguez, April 6, 1998, pp. 4-60.

[5] TSN, Lucy Gonzales, July 29, 1998, pp. 9-31.

[6] TSN, Nina Joy Tañada, August 10, 1998, pp. 2-15.

[7] TSN, Dr. Owen Lebaquin, September 1, 1998, pp. 3-14.

[8] TSN, Irene Fe Rodriguez, December 4, 1998, pp. 2-34.

[9] TSN, PJ Rodriguez, November 25, 1998, pp. 3-34.

[10] TSN, Monyeen Rodriguez, November 3, 1998, pp. 3-35.

[11] TSN, Rodolfo Rodriguez, December 16, 1998, pp. 3-30, 44.

[12] Original Records, p. 273; Decision, p. 30.

[13] Rollo, pp. 83-84; Appellant's Brief, pp. 6-7.

[14] Rollo, pp. 94-95, 97; Appellant's Brief, pp. 17-18, 20.

[15] Rollo, p. 98; Appellant's Brief, p. 21.

[16] Rollo, p. 99; Appellant's Brief, p. 22.

[17] Rollo, pp. 99-101; Appellant's Brief, pp. 22-24.

[18] Rollo, p. 158; Appellant's Brief, p. 82.

[19] Rollo, p. 163; Appellant's Brief, p. 87.

[20] *People v. Nerio*, G.R. No. 142564, September 26, 2001, citing *People v. Talaboc*, 256 SCRA 441 (1996).

[21] *People v. Mitra*, 328 SCRA 774 (2000), citing *People v. Villamor*, 297 SCRA 262 (1998), citing *People v. Zaballero*, 274 SCRA 627 (1997).

[22] Rollo, p. 161; Appellant's Brief, p. 85.

[23] *People v. Lalingjaman*, G.R. No. 132714, September 6, 2001, citing *People v. Ildefonso Bayona*, 327 SCRA 190 (2000).

[24] *People v. Arteche Antonio y Payagan*, 333 SCRA 201 (2000).

[25] Rollo, p. 163; Appellant's Brief, p. 87.

[26] *People v. Supnad*, G.R. Nos. 133791-94, August 8, 2001, citing *People v. Casil*, 241 SCRA 285 (1995).

[27] *People v. Lusa*, 288 SCRA 296 (1998), citing *People v. Fuensalida*, 281 SCRA 452 (1997).

[28] *People v. Gonzaga, et al.*, G.R. Nos. 135402-03, September 7, 2001.

[29] *People v. Carbonell, et al.*, G.R. Nos. 140789-92, September 28, 2001, citing *People v. Sacapaño*, 313 SCRA 650 (1999).

[30] Rollo, p. 86; Appellant's Brief, p. 9.

[31] Original Records, p. 1.

[32] 340 SCRA 450 (2000).

[33] *People v. Ramos*, 296 SCRA 559 (1998).

[34] *People v. Garcia*, 281 SCRA 463 (1997).

[35] *People v. Galvez*, G.R. Nos. 136867-68, September 24, 2001, citing *People v. Reynaldo Freta*, G.R. Nos. 134451-52, March 14, 2001.

CONCURRING AND DISSENTING

BELLOSILLO, J.:

To the extent that the ponencia spares the accused from the death penalty as the relationship of the victim to the accused is not alleged in the Information, I fully concur. However, conformably with my Separate Opinion in *People v. Bali-balita*, [1] I cannot agree that the victim's minority of sixteen (16) years is not duly alleged in the Information. Specifically, the Information states –

The undersigned, in behalf of MARY ANN B. RODRIGUEZ, who is a minor, 16 years of age, accuses RODOLFO RODRIGUEZ, whose maternal surname, date and place of birth cannot be ascertained, of the crime of RAPE (Art. 335, RPC) committed as follows:

That on or about the 13th day of June, 1997, in the City of Iloilo, Philippines and within the jurisdiction of this court, said accused, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of MARY ANN RODRIGUEZ against her will.

CONTRARY TO LAW.

The ponencia posits that since the age of the victim was only alleged in the caption or preamble it merely serves as a description of the victim and does not form part of the narration of the acts or omissions which constitute the offense. As I have previously opined in my Separate Opinion in *People v. Bali-balita*, I maintain the view that such reasoning is flawed. The preamble or caption is an integral part of the Information, thus any circumstance stated therein (i.e. minority, relationship) should be considered as an allegation of such fact. It must be remembered that the essence of the Information is to safeguard the constitutional right of the accused to be informed of the criminal charges against him. Since the preamble or caption, in the case at bar, states that the complainant is "MARY ANN B. RODRIGUEZ, who is a minor, 16 years of age," then it adequately informed the accused that a minor is charging him of the acts contained in the succeeding paragraph.

Section 6, rule 110 of the Rules on Criminal procedure states that –

Sec. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense; and the

place wherein the offense was committed.

When the offense is committed by more than one person, all of them shall be included in the complaint or information.

Nowhere in Sec. 6 is it mandated that material allegations should be stated in the body and not in the preamble or caption of the Information. Instead the aforementioned section states that as long as the pertinent and significant allegations are enumerated in the Information then it would be deemed sufficient in form and substance. The location of each allegation within the Information is immaterial as all the parts thereof comprise one whole document, the purpose of which is to inform the accused of the criminal charge against him.

It is therefore my firm conviction that minority was properly alleged in the Information even if it only appeared in the preamble or caption. Nonetheless, I repeat, I concur with the Majority Opinion that the accused should only be sentenced to reclusion perpetua in view of the failure of the prosecution to allege relationship of the accused to his victim in the Information. Indeed, nowhere is that relationship ever mentioned in the Information.

[1] G.R. No. 134266, 15 September 2000, 340 SCRA 450.

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