

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BENITO LACHICA Y LLAMAS, APPELLANT.

G.R. No. 143677. May 09, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The minority of the victim and her specific relationship with the offender must be alleged in the information and proven beyond reasonable doubt during the trial; otherwise the crime would be simple, not qualified, rape; and the proper penalty, reclusion perpetua -- not death. Also, the allegation in the information that the victim was below seven years old must be proven beyond reasonable doubt. Failure to do so cannot justify the imposition of the penalty of death.

The Case

For automatic review before this Court is the April 28, 2000 Decision[1] of the Regional Trial Court (RTC) of Bayombong, Nueva Vizcaya (Branch 27) in Criminal Case No. 3451, finding Benito Lachica y Llamas guilty of qualified rape beyond reasonable doubt and sentencing him to death. The decretal portion of the Decision reads as follows:

“WHEREFORE, finding accused Benito Lachica y Llamas GUILTY of the commission of the felony of rape, he is hereby sentenced to suffer the penalty of death by lethal injection. Costs against the accused.”[2]

The September 30, 1998 Information[3] against appellant was worded as follows:[4]

“That on or about July 1, 1998, in Barangay Quezon, Municipality of Solano, Province of Nueva Vizcaya, Philippines and within the jurisdiction of this Honorable Court, the above-named accused taking advantage of his relationship with the victim as the uncle of the latter and taking advantage of his superior strength, with lewd designs, by means of force, did then and there wil[1]fully, unlawfully and feloniously have carnal knowledge of private complainant SHARMAINE LACHICA, 5 years old, niece of the accused, against the victim’s will and consent, to her own damage and prejudice.”[5]

When arraigned on November 27, 1998, appellant, with the assistance of his counsel de oficio,[6] pleaded not guilty.[7] Pretrial was held, and trial ensued thereafter. Appellant was subsequently found guilty of qualified rape.

The Facts

Version of the Prosecution

In its Brief,[8] the Office of the Solicitor General (OSG) summarized the facts in the following manner:

“On July 1, 1998 at between 3:00 to 4:00 p.m., while Sharmaine Lachica, 5 years old, was playing near the house of the accused, he called her to go inside his house. The accused then unzipped his pants and placed his niece on his lap. Then he inserted something hard into her vagina. She felt pain but the accused placed his hand on her mouth. Later, she went down the house and approached her grandmother, Anita Lachica, the mother of

the accused. Sharmaine complained to her of pain [in] her private part. The old woman and her daughter, Virginia, examined her granddaughter's genital and she saw it reddish and swollen. When she asked her what happened, Sharmaine, told her that she came from her uncle, the accused, and that he made her sit on his lap while he was seated on a chair. As she thought that she encountered bad spirits, Anita offered water, and the following day she doused the private part and the entire body of Sharmaine with the water to make her well. But her vagina continued to swell so she brought the young Sharmaine to the clinic of Dr. Cadiente (Dr. Ester Cadiente-Remigio) to know what was happening to her granddaughter and to know the cause of the swelling of her vagina. Dr. Cadiente-Remigio after observing that pus was coming out of Sharmaine's private part, asked for a urinalysis to be conducted and the test showed the existence of urinary tract infection (UTI). As she also noted that there was a swelling and slight hematoma on both labia and that Anita complained of discharge on Sharmaine's panty, the physician advised Anita to go to Dr. Bella Gagarte-Rodriguez whose clinic was just beside her office, Dr. Rodriguez being an Obstetrician-Gynecologist. As Dr. Rodriguez was not around, Anita was told to go to the Veteran's Regional Hospital, but the old woman said she could not go because she was very weak. She gave medication to Sharmaine and told them to go back to her clinic after a week. When Anita and Sharmaine came back and still complained of discharge on the girl's panty, she referred them to Dr. Rodriguez. Dr. Rodriguez examined the victim and discovered a laceration at between 3:00-4:00 o'clock. Dr. Rodriguez then referred Anita and Sharmaine to the Veteran's Regional Hospital. In the said hospital, Sharmaine's entire body was meticulously examined by Dr. Josephine Guiang and Dr. Vangie Malapo. They also minutely examined the entire genitalia of Sharmaine. The girl suffered two lacerations in her hymen at 3:00 o'clock and 8 o'clock, the latter being deep. They also ordered the testing of the greenish discharge with foul smell coming from the genitalia of Sharmaine. The laboratory examination showed that Sharmaine was suffering from gonorrhea, which could only be transmitted by means of sexual intercourse." [9] (Citations omitted)

Version of the Defense

On the other hand, appellant's statement of facts is as follows:[10]

"Benito Lachica testified that prior to his detention at the Provincial Jail of Nueva Vizcaya, he was then a tricycle driver. The owner of the tricycle he was driving is his cousin. He drove the tricycle five (5) days a week from Monday to Friday. He plied his route from 6:00 o'clock in the morning up to 6:00 o'clock in the afternoon. He would take his lunch in their house usually at 11:00 o'clock in the morning. After lunch, he would take a rest up to 1:00 o'clock in the afternoon.

"On July 1, 1998, he took his lunch in their house together with his family and Montano Desiar. After taking his lunch, he rested for fifteen (15) minutes. At 12:30 in the afternoon, he continued ferrying passengers up to 6:00 o'clock in the afternoon. When he left their house after his lunch, Montano stayed in their house. He claimed that he never inflicted physical punishment upon his niece Sharmaine Lachica. He admitted that he and Montano Desiar were investigated in connection with the complain[t] filed by Sharmaine Lachica.

"He denied that he was inflicted with gonorrhea prior to his detention nor have been treated with a disease contracted thru sexual intercourse." [11] (Citations omitted)

Ruling of the Trial Court

The RTC gave full credence to the testimony of complainant and gave little weight to appellant's denial. It found that appellant had, indeed, carnal knowledge of the victim.

The court a quo also ruled that when the crime was committed, the victim was a child below seven (7) years old, and the offender a relative by consanguinity within the third civil degree. Thus, it sentenced him to death by lethal injection.

Hence this automatic review before us.[12]

Issues

In his Brief, appellant faults the trial court with this lone assignment of error:

“The trial court gravely erred in imposing the death penalty upon accused-appellant despite failure of the prosecution (1) to prove the real age of the victim and (2) to allege in the information that accused-appellant is a relative of the victim by consanguinity within the third civil degree.”[13]

The Court’s Ruling

The appeal is partly meritorious; the penalty should be reduced to reclusion perpetua.

Preliminary Matter:

Guilt Beyond Reasonable Doubt

Appellant did not raise the sufficiency of the prosecution’s evidence as an issue. This Court, however, looked into it *motu proprio*, consistent with the principle that an appeal in a criminal action opens the whole case. Any review of a rape case begins with the settled reality that accusing a person of this crime can be done with facility.[14] While it may not be easy for the complainant to prove its commission, it is even more difficult for the accused, although innocent, to disprove his guilt. In view of the intrinsic nature of this crime where only two persons are normally involved, the testimony of the complainant must always be scrutinized with great caution. Thus, in a prosecution for rape, credibility becomes the single most important issue.[15] Also, the evidence for the prosecution must stand or fall on its own merits; it cannot draw strength from the weakness of that for the defense.[16]

Given the foregoing principles, the Court carefully considered the testimony of Sharmaine Lachica. After careful scrutiny, it has no reason to attribute error to the trial court’s assessment that her testimony was positive, clear and convincing. Indeed, the narration could have been made only by someone subjected to an excoriating sexual assault. The victim herein testified thus:

“Q

Do you have an uncle by the name of Benito Lachica?

A

Yes, sir.

Q

If you will see your uncle Benito Lachica, can you point at him?

A

There, sir. (witness pointing to a man seated at the first bench of the court room and when asked his name he identified himself as Benito Lachica y Llamas)

Q

Do you know if your uncle Benito Lachica did something to you?

A

There was, sir.

Q

What was that?

A

He removed his zipper, sir.

Q

Zipper of what?

A

Zipper of his pants, sir.

Q

And after Benito Lachica removed the zipper of his pants, what did he do if any?

A

He pierced wood, sir.

Q

Where did he pierce wood?

COURT:

Q

What did he pierce?

A

(Pepet ko) Into my vagina, sir.

Q

Where were you in relation to your uncle Benito Lachica when he pierced your vagina with a piece of wood?

A

He was in their house, sir.

Q

At that time Benito Lachica pierced your vagina with a piece of wood, were you in the lap of Benito Lachica like what you are doing now?

ATTY. BAYUBAY:

The good prosecutor is leading the witness, your Honor.

PROS. CASTILLO:

But she is a minor, your Honor.

ATTY. BAYUBAY:

But the previous questions are not leading, your Honor.

COURT:

Alright, let her answer.

PROS. CASTILLO:

After all, the witness can be cross examined, your Honor.

ATTY. BAYUBAY:

The problem is the witness could comprehend questions and there is no need for the Prosec[u]tor to lead him.

COURT:

Alright, let her answer.

ATTY. BAYUBAY:

We submit, your Honor.

A

In the chair, sir.

PROS. CASTILLO:

Q

And at that time Benito Lachica pierced your vagina with a piece of wood, were you seated on the lap of your uncle?

ATTY. BAYUBAY:

She was sitting on the chair, your Honor.

COURT:

You can not expect this witness to be articulating as an adult, let her answer.

ATTY. BAYUBAY:

But the x x x

COURT:

The Court has already made a ruling.

ATTY. BAYUBAY:

Yes, your Honor.

A

Yes, sir.

PROS. CASTILLO:

Q

When Benito Lachica pierced with a piece of wood, what did you feel?

A

Painful, sir.

Q

And did you cry when you felt pain?

A

Yes, sir.

Q

And at that time when Benito Lachica pierced your vagina with a piece of wood in which you felt pain and you cried, did your uncle say something to you?

ATTY. BAYUBAY:

We will again manifest our objection, your Honor.

COURT:

Okay, let her answer.

A

He placed his hand over my mouth, sir.

ATTY. BAYUBAY:

May we pray that it be stricken off the record, your Honor.

COURT:

Let it remain, go ahead.

PROS. CASTILLO:

Q

When your uncle Benito Lachica placed his hand over your mouth, did you hear him say something during that time?

A

Yes, sir.

Q

What particular house did Benito Lachica pierce your vagina, whose house was it?

A

My uncle Benito, sir.

Q

What particular part of the house of your uncle Benito Lachica was this piercing of your vagina done?

A

Inside the house, sir.

Q

Now before you were brought ... by your uncle Benito Lachica inside his house x x x

COURT:

But there was no statement that she was brought inside.

PROS. CASTILLO:

Q

How come that you went inside the house of your uncle Benito Lachica when your vagina was pierced?

COURT:

I think you should ask where were you because she does not know where she was?

PROS. CASTILLO:

Q

Where were you before you went inside the house of Benito Lachi[c]a?

A

In their house, sir.

Q

What were you doing at that time?

A

He let me seated, sir.

Q

On that date, did you ever go to school during that day?

A

Yes, sir.

Q

And did you go to school in the morning or in the afternoon of that day?

A

In the morning, sir.

Q

And from the school, who fetched you?

A

My grandmother, sir.

Q

Are you referring to your lola Anita Lachica?

A

Yes, sir.

Q

And when you arrived in the house coming from school, what did you do then?

A

I play, sir.

Q

Where did you play?

A

In our house, sir.

Q

When you say ‘balay mi’, whose house is that where you were playing?

A

We, sir.

Q

And while you were playing it was at that time when your uncle Benito Lachica brought you inside his house?

A

Yes, sir.

Q

And as you have already said he brought you inside the house and then you sat on his lap and then he removed his zipper. . .

COURT:

You will do it step by step.

PROS. CASTILLO:

Q.

And while you were playing it was at that moment when your uncle Benito Lachica brought you inside his house?

ATTY. BAYUBAY:

We object to that because the witness already said while they were playing she was called by the uncle to the

house, your Honor.

COURT:

Why don't you clarify that.

PROS. CASTILLO:

Q

While you were playing you were called to the house of your uncle Benito Lachica, is that correct?

A

Yes, sir.

Q

And when he called you to his house, what happened?

A

He let me sit, sir.

Q

Seated on?

A

On a chair, sir.

Q

And after that, what did he do next?

A

He removed his zipper, sir.

Q

The zipper of his pants?

A

Yes, sir.

Q

And when he removed the zipper of his pants, what happened next?

A

Painful, sir.

ATTY. BAYUBAY:

That would be repeating the previous questions, your Honor.

PROS. CASTILLO:

Q

Did you report the piercing of your vagina by your uncle Benito Lachica to any person?

A

Yes, sir.

Q

To whom did you tell about?

A

To Inang (my grandmother), sir.

Q

When you say Inang, are you referring again to Anita Lachica?

A

Yes, sir.

Q

Did you report to your Lola Inang Anita Lachica on that same day when your uncle Benito Lachica pierced your vagina with a piece of wood?

A

Yes, sir she whipped me.

Q

Do you know why your Lola whipped you?

A

Because I went to the house of my uncle Benito, sir.

Q

When you said to the house of uncle Benit[o], are you referring to the accused Benito Lachica?

A

Yes, sir.

Q

Do you still remember the month when your uncle Benito Lachica pierced your vagina with a piece of wood?

COURT:

If she knows?

PROS. CASTILLO:

Q

Do you know the month or year?

A

I do not know, sir.

Q

How about the date when your uncle Benito Lachica pierced your vagina with a piece of wood, was it Monday, Tuesday, Wednesday, Thursday, Friday, Saturday or Sunday?

COURT:

Ask her if it was daytime or what?

PROS. CASTILLO:

Q

But it was still day when your uncle Benito Lachica pierced your vagina with a piece of wood, is it not?

A

Yes, sir.”[17]

We have on many occasions ruled that testimonies of child-victims of rape are to be given full weight and credence.[18] Here, the victim vividly recalled details that a child could not have possibly concocted. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape, if what she claims is not true.[19]

Courts usually give greater weight to the testimony of the victim of a sexual assault, especially a minor.[20] No woman, especially one so young, would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, the trouble and the inconvenience -- not to mention the trauma of a public trial -- if she is not motivated solely by the desire to have the culprit apprehended and punished.[21] The embarrassment or stigma she suffers in allowing an examination of her private parts and testifying in open court on the painfully intimate details of her ravishment effectively rules out the possibility of a false accusation of rape.[22] The Court has consistently applied the well-settled rule that when a woman -- more so if she is a minor -- says she has been raped, she says in effect all that is necessary to prove that rape was committed.[23]

In fact, Sharmaine’s account of her horrible ordeal evinced sincerity and truthfulness and showed the innocence and naivete of a child. Youth and immaturity can indeed be badges of truth.[24]

Further, complainant never wavered in her story, consistently pointing to appellant as the one who had violated her. She was even subjected to an exhausting cross-examination by the defense counsel, yet she remained unrelenting all throughout her testimony.

Besides, it is well-entrenched in our jurisdiction that the conclusions of trial courts on the credibility of witnesses and their testimonies are generally not disturbed by appellate courts. Having heard the witnesses themselves and observed their deportment and manner of testifying, the trial courts are in a better position to decide the issue.[25]

Finally, appellant relies on denial and alibi. Settled is the rule that such lines of defense in a criminal trial cannot take precedence over the positive testimony of the offended party.[26] Further, alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove. For it to prosper, proving that the defendant was somewhere else when the crime was committed will not be enough; the physical impossibility for the accused to have been at the scene of the crime at the time must likewise be demonstrated.[27] In the instant case, it was not impossible for appellant to have been at the locus criminis at the time the rape was committed. In fact, having taken his lunch there, he even admitted that he was in that place at the time.[28] He merely posits the defense that he did not stay

long in that house, but went on to transport passengers in his tricycle.[29] However, this alibi was neither proven nor substantiated. His defense must perforce fail.

Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over appellant's defense of denial and alibi. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.[30] Since there was no showing of any improper motive on the part of the victim to testify falsely against the accused or to implicate him falsely in the commission of the crime, the logical conclusion is that no such improper motive existed, and that the testimony is worthy of full faith and credence.[31] As this Court has reiterated time and time again, it is most unlikely for a young girl like complainant, or even her family, to impute the crime of rape to no less than a relative and to face social humiliation therefor, if not to vindicate her honor.[32]

Main Error Assigned:

Proper Penalty

However, as appellant contends, the trial court erred in imposing the death penalty.

It must be pointed out that the circumstances of minority and relationship, as provided under paragraph 1 of Article 266-B of the Revised Penal Code as amended,[33] must both be alleged in the information; otherwise, the penalty of death cannot be imposed.[34] Under paragraph 5 of the same article, the same is true with the single circumstance of the victim's age being below seven (7) years.[35] Because these attendant circumstances alter the nature of the crime of rape and thus increase the degree of the penalty, they are in the nature of qualifying circumstances. They must be specifically pleaded or alleged with certainty in the information and proven during the trial; otherwise, the death penalty cannot be imposed.[36]

Under paragraph 5 of Article 266-B of the Revised Penal Code, death shall be imposed when the victim is a child below seven (7) years old. In the instant case, the Information alleged the circumstance that the victim, Sharmaine Lachica, was five (5) years of age. However, it is significant to note that the prosecution failed to present her birth certificate or other authentic document or evidence showing this fact. Proof of age is critical, considering that the victim, at the time of the rape, was alleged to have been just two (2) years less than seven (7) years.[37] Given the similarities in physical features and attributes between a five-year-old and a seven-year-old child, courts cannot take judicial notice of this circumstance. Independent proof of age is necessary to convince this Tribunal that the victim was indeed below seven (7) years of age when she was raped and that, therefore, the imposition of the death penalty was justified.[38]

The Court here "emphasizes that the severity, as well as the irreversible and final nature, of the penalty of death once carried out makes the decision-making process in capital offenses aptly subject to the most exacting rules of procedure and evidence." [39] We have consistently ruled that the age of the victim must not only be specifically alleged in the information, but must likewise be established beyond reasonable doubt during trial.[40] Neither her obvious minority, nor the absence of any contrary assertion from the defense[41] can exonerate the prosecution from these twin requirements. Judicial notice of age, without the requisite hearing conducted under Section 3, Rule 129 of the Rules of Court, would not be considered enough compliance with the law.[42] To establish the age of the victim, the prosecution should have presented credible testimonial evidence or her Birth Certificate; or, in lieu thereof, any other documentary evidence like a baptismal certificate, school records or documents of a similar nature.[43]

The evidence on record shows that no independent proof was presented to show that Sharmaine was below seven (7) years of age when raped, and nothing else could be elicited from the records to ascertain her correct age.

Neither was the circumstance of relationship under paragraph 1 of Article 266-B of the Revised Penal Code properly alleged in the Information.

The allegation that appellant is the “uncle” of the victim and that the latter is his “niece” is not specific enough to satisfy this special qualifying circumstance. “If the offender is merely a relation -- not a parent, ascendant, step-parent, or guardian or common law spouse of the mother of the victim -- it must be alleged in the Information that he is ‘a relative by consanguinity or affinity [as the case may be] within the third civil degree.’”[44] Moreover, even if the relationship by consanguinity or affinity is alleged in the Information, it is still necessary to allege further that such relationship is within the third civil degree.[45] Neither of these was alleged in the case at bar.

Consequently, due to the defect in the Information and the failure to prove the qualifying circumstance provided for by law, the penalty of death cannot be meted out to appellant under either the first or the fifth paragraph of Article 266-B of the Revised Penal Code. He can only be held liable for simple rape, the penalty for which is reclusion perpetua.

Since we are reducing the penalty to reclusion perpetua, the damages awarded by the RTC to the victim should be modified accordingly, as follows: the civil indemnity should be reduced to P50,000. However, pursuant to current jurisprudence, additional awards of P50,000 as moral damages and P25,000 as exemplary damages in her favor are in order. Moral damages are automatically granted in rape cases without need of further proof other than the commission of the crime, because it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.[46]

In the instant case, the circumstance of relationship between appellant and the victim had not been properly alleged, but was subsequently proven during trial by virtue of the testimonies of appellant’s sister[47] and mother[48] and his own admission.[49] Hence, even if it cannot be appreciated as a qualifying circumstance, relationship can nonetheless be the basis of a civil award of exemplary damages. To emphasize, a court is precluded from considering the attendance of qualifying or aggravating circumstances if the complaint or information did not allege such facts, because the Revised Rules on Criminal Procedure[50] (made effective on December 1, 2000) requires aggravating circumstances, whether ordinary or qualifying, to be so stated in the complaint or information.

However, “the retroactive application of procedural rules cannot adversely affect the rights of the private offended party that have become vested prior to the effectivity of said rules. Thus, in the case at bar, although relationship has not been alleged in the Information, the offense having been committed, however, prior to the effectivity of the new rules, the civil liability already incurred by appellant remains unaffected thereby.”[51]

WHEREFORE, the appeal is PARTLY GRANTED and the appealed Decision hereby AFFIRMED with the MODIFICATION that appellant is found guilty of simple, not qualified, rape; and is sentenced to reclusion perpetua, not death. He is further ordered to pay Sharmaine Lachica P50,000 as indemnity ex delicto, another P50,000 as moral damages and P25,000 as exemplary damages. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

De Leon, Jr., J., abroad on official business.

- [1] Penned by Judge Jose B. Rosales, rollo, pp. 42-48; records, pp. 157-163.
- [2] RTC Decision, pp. 6-7; rollo, pp. 47-48; records, pp. 162-163.
- [3] Rollo, pp. 6-7; records, pp. 1-2.
- [4] Signed by Prosecutor Edilberto H. Calip, with the approval of Provincial Prosecutor Celerino V. Jandoc.
- [5] Rollo, p. 6; records, p. 1.
- [6] Atty. Ernesto Salunat.
- [7] Order dated November 27, 1998; records, p. 20.
- [8] Appellee's Brief was signed by Assistant Solicitor General Carlos N. Ortega, Assistant Solicitor General Rodolfo G. Urbiztondo and Associate Solicitor Alberto R. Tuazon.
- [9] Appellee's Brief, pp. 3-5; rollo, pp. 96-98.
- [10] Appellant's Brief was signed by Attys. Bartolome P. Reus, Amelia C. Garchitorena and Elpidio C. Bacuyag of the Public Attorney's Office.
- [11] Appellant's Brief, p. 8; rollo, p. 68.
- [12] This case was deemed submitted for resolution on September 28, 2001, upon receipt by this Court of Appellant's Reply Brief signed by the Public Attorney's Office. Earlier, appellant's Brief was received by the Court on February 27, 2001 while appellee's Brief was received on June 20, 2001.
- [13] Appellant's Brief, p. 1; rollo, p. 61. Original in upper case.
- [14] *People v. Galvez*, GR Nos. 136867-68, September 25, 2001; *People v. Navarette*, GR Nos. 136840-42, September 13, 2001; *People v. Babera*, 332 SCRA 257, May 30, 2000; *People v. Mijano*, 311 SCRA 81, July 23, 1999; *People v. Manggasin*, 306 SCRA 228, April 21, 1999.
- [15] *People v. Manayan*, GR Nos. 142741-43, October 25, 2001.
- [16] *Ibid.*
- [17] TSN, May 6, 1999, pp. 6-17.
- [18] *People v. Deacosta*, GR No. 110131, May 28, 2001; *People v. Apostol*, 320 SCRA 327, December 9, 1999; *People v. Saban*, 319 SCRA 36, November 24, 1999.
- [19] *People v. Manayan*, *supra*.
- [20] *People v. Galvez*, *supra*; *People v. Makilang*, GR No. 139329, October 23, 2001.
- [21] *People v. Galvez*, *supra*; *People v. Segui*, 346 SCRA 178, November 28, 2000; *People v. Adora*, 275 SCRA 441, July 14, 1997; *People v. Junio*, 237 SCRA 826, October 28, 1994; *People v. Lagrosa Jr.*, 230 SCRA 298, February 23, 1994.
- [22] *People v. Pontilar Jr.*, 275 SCRA 338, July 11, 1997; *People v. Ramirez*, 266 SCRA 335, January 20, 1997.
- [23] *People v. Marino*, GR No. 132550, February 19, 2001; *People v. Balmoria*, 287 SCRA 687, March 20, 1998.
- [24] *People v. Lahingjaman*, GR No. 132714, September 6, 2001; *People v. Nardo*, GR No. 133888, March 1, 2001.

[25] *People v. Plana*, GR No. 128285, November 27, 2001; *People v. Villanos*, 337 SCRA 78, August 1, 2000; *People v. e Guzman*, 333 SCRA 269, June 8, 2000; *People v. Palma*, 308 SCRA 466, June 17, 1999.

[26] *People v. Dacara*, GR No. 135822, October 25, 2001; *People v. Segui*, *supra*.

[27] *People v. Agoncillo*, GR No. 138983, May 23, 2001; *People v. Hofileña*, 334 SCRA 214, June 22, 2000; *People v. Legaspi*, 331 SCRA 95, April 27, 2000; *People v. Llanes*, 324 SCRA 727, February 4, 2000; *People v. Rendoque*, 322 SCRA 622, January 20, 2000; *People v. Pontilar Jr.*, *supra*; *People v. Barera*, 262 SCRA 63, September 19, 1996.

[28] TSN, September 15, 1999, pp. 3-4;

[29] *Ibid.*, p. 4.

[30] *People v. Jose*, 324 SCRA 196, January 31, 2000, citing *People v. Villablanca*, 316 SCRA 13, October 1, 1999.

[31] *People v. Banela*, 301 SCRA 84, January 18, 1999.

[32] *People v. Namayan*, 246 SCRA 646, July 18, 1995.

[33] Art. 266-B. Penalties.

x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1.) 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.

[34] *People v. Villaseñor*, GR No. 137648, March 30, 2001; *People v. Bayya*, 327 SCRA 771, March 10, 2000; *People v. Tundag*, 342 SCRA 704, October 12, 2000; *People v. Lasola*, 318 SCRA 241, November 17, 1999.

[35] Art. 266-B. Penalties.

x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

5.) When the victim is a child below seven (7) years old.

[36] *People v. Maglente*, 306 SCRA 546, April 30, 1999; *People v. Ilao*, 296 SCRA 658, September 29, 1998; *People v. Ramos*, 296 SCRA 559, September 25, 1998.

[37] *People v. Mayorga*, 346 SCRA 458, November 29, 2000.

[38] *Ibid.*

[39] *People v. Liban*, 345 SCRA 453, 465, November 22, 2000, per Vitug, J.

[40] *Ibid.*

[41] *People v. Tundag*, *supra.*; *People v. Javier*, 311 SCRA 122, July 26, 1999.

[42] *People v. Liban*, supra.

[43] *People v. Galvez*, supra.; *People v. Rivera*, GR No. 139180, July 31, 2001; *People v. Liban*, supra.; *People v. Tabanggay*, 334 SCRA 575, June 29, 2000.

[44] *People v. Libo-on*, GR No. 136737, May 23, 2001, per Gonzaga-Reyes, J.; *People v. Banihit*, 339 SCRA 86, 96, August 25, 2000, per Ynares-Santiago, J. -- both citing *People v. Ferolino*, 329 SCRA 719, 735, April 5, 2000, per Davide, CJ.

[45] *Ibid.*

[46] *People v. Agravante*, GR Nos. 137297 & 138547-48, December 11, 2001; *People v. Lor*, GR No. 133190, July 19, 2001; *People v. Prades*, 293 SCRA 411, July 30, 1998.

[47] TSN, June 16, 1999, p. 3.

[48] TSN, May 13, 1999, p. 5.

[49] See Pre-trial Order dated January 22, 1999, p. 2; records, p. 32; signed by appellant and his counsel.

[50] §§8 and 9 of Rule 110 of the Rules of Court now provide:

Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[51] *People v. Catubig*, GR No. 137842, August 23, 2001, per Vitug, J.

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