

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERONIMO BOROMEYO MARCO, APPELLANT.

G.R. No. 150501. June 03, 2004

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PER CURIAM:

Before us on automatic review[1] is the Decision[2] dated 15 August 2001 of the Regional Trial Court of Lipa City, Branch 12 (“trial court”), in Criminal Case No. 0759-99. The trial court convicted appellant Geronimo Boromeo y Marco (“appellant”) of rape and sentenced him to suffer the death penalty.

On 22 October 1999, Second Assistant City Prosecutor Danilo S. Sandoval filed an information charging appellant with rape under Article 266-A, 1(d), and Article 266-B of the Revised Penal Code,[3] committed as follows:

That on or about the 19th day of October, 1999 at about 10:30 o’clock in the evening, at Sitio Paninsingin, Barangay Tambo, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a common law spouse of the mother of herein victim, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Christine Liezel Mendoza y Tiqui[s], a ten (10) year old minor against her will and consent to her damage and prejudice in such amount as may be awarded to her under the provisions of the Civil Code.

Contrary to law.[4]

When arraigned on 10 November 1999, appellant, assisted by counsel, pleaded not guilty.[5] Trial on the merits ensued.

The prosecution presented two witnesses: the victim Christine Liezel Mendoza, and Dr. Aletha Silang, Medico-Legal Officer III of the Lipa City District Hospital.

Born in Lipa City on 23 January 1990, Christine Liezel Mendoza (“Christine”) is one of Luzviminda C. Tiquis’ (“Luzviminda”) eight children with Sevilla R. Mendoza (“Sevilla”). Luzviminda and Sevilla were lawfully married on 16 November 1980[6] but later separated. Sometime in 1997, Luzviminda started living-in with appellant, a sidewalk vendor. Of her eight children with Sevilla, only Christine, four-year old Maria Vena, and two-year old Deo lived with Luzviminda and appellant.[7]

Christine testified that on 19 October 1999, around 10:30 o’clock in the evening, she and appellant were in their house in Paninsingin, Tambo, Lipa City. Deo was also in the house sleeping. Luzviminda was then attending a relative’s wake.

Christine testified that appellant ordered her to go inside their room. She obeyed. Appellant then took off his clothes. Without removing Christine’s T-shirt and shorts, the only garments she was wearing, appellant placed himself on top of Christine. Christine stated that appellant forcibly inserted his organ into hers through the hole in her shorts. She felt pain. Christine further stated that appellant had “partially” penetrated her genitalia when Luzviminda suddenly arrived and caught appellant on top of her.

Luzviminda was furious on seeing what appellant was doing to Christine. Christine recalled Luzviminda warning appellant that she would have him jailed. Christine and Luzviminda then left their house and went to the house of Virginia Tiquis (“Virginia”), Luzviminda’s mother. Christine stated that Luzviminda did not tell Virginia about the rape incident. However, when Virginia learned of the rape, Luzviminda decided to bring Christine to the Lipa City Police Station to file a complaint against appellant.[8] Christine executed a Sinumpaang Salaysay narrating how appellant raped her.[9] She confirmed the contents of her sworn statement during the trial.[10] Luzviminda also executed her sworn statement, as follows:

04. T : Bakit ka nagsasalaysay?

S :

Akin pong inihahabla itong aking kinakasama na si GERONIMO BOROMELO, binata, tubo sa Albay, at naninirahan sa Paninsingin, Brgy Tambo, Lipa City.

T : Ano ang dahilan at iyong inihahabla itong si Geronimo Boromeo?

S :

Dahil po sa mismong nakita na itong si Geronimo ay nakapatong sa ibabaw ng aking anak na noon ay hubo at hubad na ang aking anak na si Christine Liezel Mendoza.

05. T : Ilang taon na itong iyong anak na si Christine Liezel?

S : Sampung (10) taon na po siya.

06. T : Kailan at saan naganap ang pangyayaring ito?

S :

Noon ang oras ay humigit kumulang sa alas 10:30 ng gabi petsa 19 ng Octubre 1999 at ito ay naganap sa loob ng aming bahay sa Sitio Paninsingin, Brgy. Tambo, Lipa City.

07. T : Maaari mo bang ipaliwanag ang tunay na pangyayari?

S :

Galing po ako sa lamayan noon at noong ako ay dumating sa aming bahay, napansin ko na walang ilaw sa loob ng bahay at noong bigla kong itinulak ang pinto ng cuarto at nakita ko itong si Geronimo ay nakapatong sa aking anak at siya ay tumayo na hubo at hubad. Na nakita ko rin na itong aking anak na si Christine ay hubo at hubad din. Na, kaagad na aking pinapagdamit si Christine at kami ay umalis ng aming bahay.

08. T : Ano ang ginawa mo o sinabi sa iyong kinakasamang si Geronimo?

S :

Hindi ko na po siya kinausap dahil lasing po siya at kami ay nagpunta sa bahay ng aking ina. Na kami ay nagsumbong dito sa Lipa City Police Station at matapos na aking masabi ang naganap sa aking anak, kami ay sinamahan ng pulis at itong si Geronimo at nahuli dito sa Bus Stop sa Mataas na Lupa.

09. T : Sino pa ang nadatnan mo sa iyong bahay noong makauwi ka galing sa lamayan?

S : Ito nga pong aking anak na si Christine at Geronimo at isa ko pang anak na dalawang taong gulang.

10. T : Ito bang si Geronimo na sinasabi mong kinakasama mo ay kapisan ninyo sa bahay?

S :

Opo, magdadalawang taon na po akong kapisan siya sa akin at siyang kinikilalang ama ng aking anak.

11. T : Sino ba ang ama ng iyong anak na si Liezel?

S : Sevilla Ramos Mendoza po na kasalukuyan na kami ay hiwalay.

12. T : Pansamantala ay wala na akong nais pang itanong sa iyo, ikaw ba ay mayroon pang ibig na baguhin o idagdag sa salaysay mong ito?

S : Wala na po muna sa ngayon, kung mayroon man ay sa paglilitis na ng kaso.

13. T : Laan mo bang lagdaan at panumpaan ang salaysay mong ito?

S : Opo.[11]

On 21 October 1999, Luzviminda brought Christine to the Lipa City District Hospital[12] where Dr. Aletha Silang (“Dr. Silang”) examined her. Dr. Silang issued a medico-legal report with the following findings:

This is to certify that I have attended CHRISTINE LIEZEL MENDOZA, 10 years of age, female, child, Filipino, of Paninsingin, Tambo, Lipa City at about 7:55 a.m., October 21, 1999 with the following injuries sustained:

- No external signs of physical injury.

- Genitalia – hymen intact.[13]

For its part, the defense presented two witnesses: appellant himself and Luzviminda Tiquis.

Appellant denied the accusation against him. Appellant recounted that after selling his merchandise that afternoon of 19 October 1999, his friends invited him to a drinking spree. They started to drink at 6 o’clock in the evening. On reaching home at 8 o’clock that night, appellant immediately went to their bedroom and slept, as he was drunk. He woke up when Luzviminda arrived at 11 o’clock in the evening, without her children whom she left at a nearby store. Earlier that evening, Luzviminda and her children had left the house to attend a relative’s wake.

Luzviminda was furious and became shrill because she saw her Kumareng Elena sleeping beside appellant. Luzviminda had accommodated Elena in their house because of Elena’s marital problems. Realizing Luzviminda was jealous, appellant explained to her that he “happened to sleep beside Elena” because he was drunk when he came home. Appellant asserted that he and Elena were not doing anything wrong. Elena also tried to explain the matter to Luzviminda, but Luzviminda would not listen. As Luzviminda would not stop nagging him, appellant boxed and kicked her. When Luzviminda retaliated, appellant slapped her.

Appellant then left the house and spent the whole evening at the bus stop in Mataas na Lupa, Lipa City. He was about to sell his goods at the bus stop the next day when a police officer arrived and arrested him. The police officer brought appellant to the Lipa City Police Station where the police investigated him for allegedly raping Christine.[14]

To corroborate his testimony, appellant presented Luzviminda who testified that when she, Christine and Maria Vena left their house at 6 o’clock in the evening of 19 October 1999 to attend a relative’s wake, appellant was left alone resting in their living room. Appellant could not go with them to the wake because he was drunk. When she and her children returned home at 10:30 o’clock in the evening, Luzviminda was surprised to see appellant sleeping beside Elena in their bedroom. She was so angry that she kicked appellant. Appellant kicked and slapped her in retaliation. Appellant then left the house.

Luzviminda asserted that it was not true that appellant raped Christine. Luzviminda stated that she was just

jealous and wanted to get back at appellant. Hence, she reported the rape incident to the police and filed a complaint against appellant. Luzviminda accompanied the police in their search for appellant. On 20 October 1999, around 8 o'clock in the morning, they found and arrested appellant at the bus stop in Mataas na Lupa.[15]

After trial on the merits, the trial court found that appellant raped Christine. The trial court gave full credence to Christine's testimony "which was positive and given in a straightforward, clear and convincing manner." The trial court noted that "during the cross-examination, she was unwavering and her answers were consistent; she never changed her account of what transpired." [16] The dispositive part [17] of the trial court's decision reads:

WHEREFORE, the Court finds the accused, GERONIMO BOROMELO, guilty beyond reasonable doubt, as principal by direct participation of the crime of Rape, as defined and penalized under Article 266-A 1(d) and Article 266-B of the Revised Penal Code, as amended by Republic Act Nos. 7659 and 8353, sentences him to suffer the supreme penalty of DEATH, to indemnify [Christine] Liezel Mendoza in the amount of P75,000.00, to pay her moral damages in the amount of P50,000.00 and to pay the cost.

IT IS SO ORDERED.

Hence, this automatic review.

Appellant assigns the following errors:

- The trial court erred in finding appellant guilty beyond reasonable doubt of the crime of rape.
- Assuming arguendo that appellant is guilty of the crime charged, nonetheless, the trial court erred in imposing on him the death penalty.[18]

On 13 February 2003, the Office of the Solicitor General filed its Appellee's Brief praying that this Court affirm in toto the trial court's decision.[19]

On 14 March 2003, appellant filed his Reply Brief reiterating the same arguments he pleaded to seek an acquittal.[20]

We affirm the judgment of conviction.

In criminal cases, an appeal throws the whole case wide open for review. The reviewing tribunal can correct errors or even reverse the trial court's decision on grounds other than those that the parties raise as errors.[21]

Appellant points to the results of the medical examination on Christine showing the absence of hymenal laceration on her genitals. Appellant claims that the medical report shows that Christine's hymen remained intact. Appellant asserts that these findings are incompatible with Christine's claim that appellant forced his organ into hers, much less, that appellant raped her in the evening of 19 October 1999. Appellant also submits that the medical findings show no visible signs of physical injury even though Christine was of tender age at the time of the alleged rape. Appellant argues that if it were true that he raped Christine, "it is unbelievable that no external physical injuries or unusual findings could be noted on her body."

Appellant's arguments do not persuade us.

In a rape case, what is most important is the credible testimony of the victim. A medical examination and a medical certificate are merely corroborative and are not indispensable to a prosecution for rape. The court may convict the accused based solely on the victim's credible, natural, and convincing testimony.[22]

Proof of hymenal laceration is not an element of rape.[23] An intact hymen does not negate a finding that the victim was raped.[24] To sustain a conviction for rape, full penetration of the female genital organ is not necessary. It is enough that there is proof of entry of the male organ into the labia of the pudendum of the female

organ. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape,[25] and even the briefest of contact is deemed rape.[26] As long as the attempt to insert the penis results in contact with the lips of the vagina, even without rupture or laceration of the hymen, the rape is consummated.[27] In *People v. Tamos*,[28] this Court held that rape is committed on the victim's testimony that she felt pain.

In the present case, Christine testified that appellant was able "to partially insert his private organ into hers," because of which she felt pain. Christine further testified that appellant failed to "fully insert his private organ into hers because Luzviminda arrived." [29] Christine's hymen remained intact because there was no full penetration due to Luzviminda's sudden arrival at the house.

Rape is committed when the accused has carnal knowledge of the victim by force, threat or intimidation, or when the victim is deprived of reason or is unconscious, or when the victim is under 12 years of age.[30] Based on the records, the prosecution proved that appellant had carnal knowledge of Christine.

If the victim's testimony meets the test of credibility, that is enough to convict the accused.[31] We entertain no doubt that Christine told the truth. Her testimony was clear, candid and consistent. She positively identified appellant as her rapist.[32] On the witness stand, Christine testified thus:

Q On October 19, 1999, around 10:30 o'clock in the evening, where were you if you can still remember?

A I was in our house sir.

Q

While you were in your house on that date, October 19, 1999, around 10:30 o'clock in the evening, do you know the whereabouts of Geronimo Boromeo or your Kuya Ronnie?

A He was also at home sir.

Q

Do you know whether he did anything unusual to you on October 19, 1999 around 10:30 o'clock in the evening?

A Yes sir.

Q What was it?

A He ordered me to go inside the room sir.

Q After you were ordered to go inside the room, did you follow his instruction?

A Yes sir.

Q After that, after you entered inside the room, what did your Kuya Ronnie do if he did anything?

A Ginalaw po niya ako.

Q What did you mean by ginalaw ka?

A He placed himself on top of me sir.

Q What else did he do when your Kuya went on top of you?

A He placed his private organ inside my private organ sir.

Q Was Geronimo Boromeo or your Kuya Ronnie able to insert his private organ fully to your private organ?

A No sir, because my mother arrived.

Q

When your Kuya Ronnie inserted his private organ into your private organ which he was not able to insert fully, what did you feel in your private organ?

A It was painful sir.

x x x

Q What was the attire of your Kuya Ronnie when he went on top of you, if he has any clothing at all?

A None sir.

Q How about you, when your Kuya Ronnie went on top of you, did you have any lower garments?

A Yes sir. My shorts has a hole sir.

Q What did your Kuya Ronnie do with your shorts?

A He inserted his private organ into my private organ sir.

Prosecutor

I am asking, what did your Kuya Ronnie do with your shorts?

A He forcibly removed it sir.[33] (Emphasis supplied)

On cross-examination, Christine testified, thus:

Q

Christine, when you testified before this Court, you said that you were raped by your stepfather Geronimo Boromeo. Is that true?

A Yes, sir.

Q And it happened on October 19, 1999?

A I cannot remember the date, sir.

Q

But when it happened, your mother then was out of the house because she attended a wake in the neighborhood. Am I correct?

A Yes, sir

Q And when she arrived, she saw you while the accused was on top of you. Am I correct?

A Yes, sir.

Q You were then totally naked?

A There was (sic), sir.

Q You were still wearing your panty and your blouse or t-shirt?

A Shorts and t-shirt, sir.

Q

The accused was also wearing his t-shirt and shorts. Am I correct at the time he was on top of you and your mother arrived?

A None, sir.

Q

Do (sic) we made to understand that he was totally naked while you were still wearing your shorts and your blouse?

A Yes, sir.

Q So the accused did not undress you before he went on top of you. Is that what you mean?

A He undressed me, sir.

Q Including your panty?

A I was not wearing a panty, sir.

Q Your panty was removed and your shorts was removed also?

A No, sir.

Q

So it was the shorts of the accused which was removed when he went on top of you while you were still wearing shorts?

A Yes, sir.

ATTY. BRAVO

That will be all for the witness, Your Honor.

PROSECUTOR

Considering Christine Liezel that you were wearing your shorts when your uncle Geronimo Boromeo went on top of you and on direct examination, you said that he was able to partially insert his private organ to your private organ, how did it happen that he was able to insert his private organ into your private organ when you were wearing shorts?

A My shorts has a hole and I was not wearing a panty during that time, sir.

ATTY. BRAVO

Although you claimed that the penis of your stepfather was partially inserted to your vagina, you did not bleed? Am I correct?

PROSECUTOR

That was not covered by my re-direct, Your Honor.

ATTY. BRAVO

Partially. That is the basis of our question.

A No, sir.[34]

Courts give full weight and credence to testimonies of child-victims of rape.[35] It is highly improbable that a ten-year old girl like Christine would impute to the live-in partner of her own mother a crime as serious as rape and undergo the humiliation of a public trial, if what she asserts is not true.[36] Appellant did not ascribe any credible motive to explain why a girl of tender age like Christine would concoct a story accusing him of rape.[37]

That Christine bore no physical evidence of any force against her person is of no moment. Contrary to appellant's contention, the absence of external signs of physical violence on Christine does not prove that he did not rape her. Proof of physical injury is not an essential element of rape.[38] Admittedly, appellant did not use force or violence in raping Christine. Christine merely obeyed when appellant ordered her to enter their bedroom. Christine did not offer any resistance when appellant raped her. This explains the absence of any external sign of injury on Christine's body. Besides, where the victim is below 12 years old, the only subject of inquiry is whether "carnal knowledge" took place. Proof of force, threat or intimidation is unnecessary since none of these is an element of statutory rape. There is statutory rape where, as in this case, the offended party is below 12 years of age.[39] Here, the Information alleged, and the prosecution proved during trial, that Christine was below 12 years old when appellant raped her. Under Article 266-A(d)[40] of the Revised Penal Code, when the victim is under twelve (12) years of age, there is rape even in the absence of force, threat or intimidation.[41]

Appellant assails the inconsistencies in Christine's statements on whether appellant totally undressed her or inserted his penis through a hole in her shorts. These inconsistencies cannot exculpate appellant. Whether appellant raped Christine after undressing her or inserted his penis through a hole in her shorts is immaterial. Rape could take place under either situation. Besides, it is natural for inconsistencies to creep into the testimony of a rape victim who is of tender age like Christine. Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape.[42] Inconsistencies in a rape victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape.[43] A rape victim is not expected to mechanically keep in memory details of the rape incident and then when called to testify automatically give an accurate account of the traumatic experience she suffered.[44]

Appellant capitalizes on Luzviminda's turning into a defense witness as convincing proof of his innocence. Appellant argues that no sane mother would testify against her own daughter if the latter were telling the truth. That Luzviminda turned her back on Christine and testified for appellant does not militate against Christine's credibility. Appellant insists that the charge arose out of Luzviminda's desire to exact revenge on him because Luzviminda caught appellant and Elena "sleeping side by side" that night.

Appellant argues that Luzviminda's moral ascendancy over Christine made it easy for Luzviminda to manipulate her daughter to tell an "orchestrated story." Appellant points out that when Luzviminda's conscience bothered her, Luzviminda recanted and corroborated his testimony that he did not rape Christine.

Appellant's assertions are futile. Luzviminda's actuations after the rape incident convince this Court of the truthfulness of Christine's testimony. Luzviminda brought Christine, a ten-year old girl, to the Lipa City Police Station to report the rape incident. Luzviminda filed the criminal complaint against appellant. Luzviminda led the police to the place where appellant was arrested at 8 o'clock in the morning of 20 October 1999. On 21 October 1999, Luzviminda executed a sworn statement before the police narrating her eyewitness account of the rape incident and pointing to appellant as the culprit. On that same day, Luzviminda brought Christine to the Lipa City District Hospital for medical examination.[45]

All these circumstances belie appellant's claim that Christine merely concocted the rape incident so that

Luzviminda could get back at appellant. We quote Luzviminda's testimony on cross-examination:

Q

Mrs. Witness, when you went to the police for your complaint and you were the one who accompanied the police in arresting Geronimo Boromeo, isn't it?

A

Yes sir.

Q

You saw Geronimo Boromeo in the early morning of October 19, 1999 (sic) at the Bus Station, isn't it?

A

Yes sir.

Q

You were together with your daughter Christine Liezel when you accompanied the policeman in arresting Geronimo Boromeo, isn't it?

A

Yes sir.

Q

Around what time did you cause the arrest of Geronimo Boromeo?

A

Around 8:00 o'clock sir.

Q

Your anger has already subsided by that time because of the lapse of more than 10 hours from the date you surprised your husband sleeping side by side with your kumareng Elena, isn't it?

A

Yes sir.

Q

But just the same, despite the fact that your anger to your common law husband Geronimo Boromeo already subsided, you still caused his arrest and incarceration, isn't it?

A

Yes sir.

Q

Three (3) days after you allegedly caught your husband sleeping side by side with your kumareng Elena, you gave your statement to the police, that was October 21, 1999, isn't it and this is your sworn statement that you gave to the police previously marked as an evidence for the prosecution as Exh. "C", will you look at this and confirm if this is your statement?

A

Yes sir.

Q

There is a signature appearing above the typewritten name Luzviminda Tiquis, is this your signature?

A

Yes sir.

Q

After you have executed this statement, you went to the Office of the City Prosecutor and you were made to take an oath?

A

Yes sir.

Q

You were asked by the Prosecutor Wilfredo Castillo who administered your oath whether you understand the contents of your statement?

A

Yes sir.

Q

You also affirmed before Pros. Wilfredo Castillo that the contents of your statement marked as Exh. "C" are the truth and nothing but the truth, isn't it?

A

Yes sir.

Q

And you voluntarily signed this statement in front of Prosecutor Castillo after you were made to swear an oath, isn't it?

A

Yes sir.

Q

When you executed your statement, three (3) days after you allegedly surprised your husband sleeping side by side with your kumareng Elena, your anger to your husband Geronimo Boromeo had vanished already from your heart because of the lapse of three (3) days already?

A

Yes sir.

Q

But despite the fact that no anger whatsoever remained in your heart you pursued with the execution of this statement and that of your daughter Christine Liezel Mendoza who also gave her statement on that date, that was three (3) days after the incident in question, isn't it?

A

Yes sir.

Q

You even accompanied your daughter Christine Liezel on October 21, 1999 three (3) days after the incident to the police, so that Christine Liezel could be investigated by the police and she could give her statement, isn't it?

A

Yes sir.

Q

Both of you gave?

A

Yes sir.

Q

Both of you gave your statement on October 21, 1999 as shown by the record?

A

Yes sir.

Q

That was three (3) days after the incident in question?

A

Yes sir.

Q

You did not tell Christine Liezel Mendoza what she would tell the police investigator when she gave her statement, isn't it? You were just an onlooker when Christine Liezel Mendoza was being investigated by the police?

A

Because I have already taught her sir.

Q

When did you tell Christine Liezel Mendoza what she would give to the police investigator?

A

The night before we gave the statement sir.

Q

But the night before you gave this statement, you have no anger anymore with your husband, isn't it, because even before you caused his arrest, the anger in your heart against your husband had already vanished?

A

My anger returned sir whenever I remember what he has done to me.[46]

Luzviminda testified that after the lapse of ten hours since she surprised appellant sleeping side by side with Elena on the night of 19 October 1999, "no anger remained in her heart." Luzviminda should have then desisted from executing her sworn statement to the police two days later on 21 October 1999 because by her own admission she was no longer angry with appellant. Still, Luzviminda pursued the criminal complaint against appellant. This belies appellant's claim that Christine merely concocted the rape incident to satisfy Luzviminda's desire for revenge against appellant. If Christine merely wanted to accommodate Luzviminda, Christine should have also changed her own story when Luzviminda changed hers. Christine, however, remained steadfast that appellant raped her even after her mother recanted.

Motives such as resentment, hatred, or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.[47] Besides, the transcript of stenographic notes fails to show that Christine's testimony was elicited by intimidation or undue influence. Far from being an "orchestrated story," as appellant claims, Christine's testimony clearly appears candid, spontaneous and clear.

It is lamentable that Luzviminda's concern for appellant was more intense than her desire to right a grievous wrong done to her own child. In *People v. Dizon*,[48] this Court stated:

Truly, some wives are overwhelmed by emotional attachments to their husbands to such an extent that the welfare of their own offsprings takes back seat. *Le coeur a ses raisons que la raison ne connait point.* Knowingly or otherwise, they suppress the truth and act as medium for injustice to preponderate. Though heavens fall, they would stand by their man. Teresa exemplifies this breed of women.

There being proof beyond reasonable doubt that appellant committed the crime as charged, we affirm his conviction.

Articles 266-A and 266-B of the Revised Penal Code partly provide:

Article 266-A. Rape; When and How Committed. – Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) x x x

x x x

d)

When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x

Article 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

x x x

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

1)

when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x. (Emphasis supplied)

To justify the imposition of the death penalty, the information must specifically allege the qualifying circumstances of minority and relationship. Moreover, the prosecution must prove during the trial the presence of these qualifying circumstances with the same certainty as the crime itself.[49]

In the present case, the Information alleged that appellant is the common-law spouse of Luzviminda who is Christine's mother. The Information also alleged that Christine was only 10 years old when appellant raped her.

During the trial, the prosecution proved Christine's minority by presenting in evidence her birth certificate. The document clearly states that Christine was born on 23 January 1990.[50] Christine was thus 9 years and 8 months old when appellant raped her on 19 October 1999, although the Information stated that she is a "10-year old minor."

Appellant and Luzviminda categorically admitted in their testimonies that they are live-in partners.[51] The Information correctly alleged that the appellant is the "common-law spouse of the mother of herein victim."

Thus, the trial court did not err in sentencing appellant to death.[52]

We have ruled that if rape is qualified by any of the circumstances warranting the death penalty, the civil indemnity for the victim is P75,000.[53] The trial court's award of P75,000 as civil indemnity is thus proper.

We also award the victim moral damages of P75,000, as the anguish and the pain she endured are evident.[54] Also, we award the victim exemplary damages of P25,000 to deter other individuals with aberrant sexual behavior.[55]

WHEREFORE, the Decision dated 15 August 2001 of the Regional Trial Court of Lipa City, Branch 12, in Criminal Case No. 0759-99, finding appellant Geronimo Boromeo y Marco GUILTY beyond reasonable doubt of qualified rape and sentencing him to suffer the DEATH penalty, is AFFIRMED. In addition to the P75,000 civil indemnity and P75,000 moral damages, appellant is ordered to pay P25,000 exemplary damages to the victim. Costs de oficio.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this Decision, let certified true copies of the records of this case be forwarded forthwith to the President of the Philippines for the possible exercise of the pardoning power.

SO ORDERED.

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

[1] Pursuant to Article 47 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659.

- [2] Penned by Judge Vicente F. Landicho.
- [3] As amended by Republic Act Nos. 7659 and 8353.
- [4] Records, p. 1.
- [5] Ibid., p. 11.
- [6] Exhibit "D," Records, p. 134.
- [7] TSN, 12 April 2000, p. 4; TSN, 21 February 2001, pp. 2, 5-7; TSN, 14 March 2001, p. 2; TSN, 2 May 2001, pp. 3 & 16.
- [8] TSN, 12 April 2000, pp. 2, 4-8; TSN, 7 June 2000, pp. 2-3; TSN, 2 May 2001, p. 2.
- [9] Exhibit "B," Records, p. 131.
- [10] TSN, 12 April 2000, p. 8.
- [11] Exhibit "C," Records, p. 132.
- [12] TSN, 2 May 2001, p. 7.
- [13] Exhibit "A," Records, p. 130.
- [14] TSN, 21 February 2001, pp. 3-4, 7-17; TSN, 14 March 2001, pp. 2-6, 8; Exhibit "C," Records, p. 132.
- [15] TSN, 2 May 2001, pp. 2-8, 15-18.
- [16] Records, p. 170.
- [17] Ibid., p. 172.
- [18] Rollo, p. 38.
- [19] Ibid., pp. 73-95.
- [20] Ibid., pp. 98-102.
- [21] People v. Lucero, G.R. Nos. 102407-08, 26 March 2001, 355 SCRA 93; People v. Mataro, G.R. No. 130378, 8 March 2001, 354 SCRA 27; People v. Balacano, 391 Phil. 509 (2000).
- [22] People v. Cea, G.R. Nos. 146462-63, 14 January 2004; People v. Pillas, G.R. Nos. 138716-19, 23 September 2003; People v. Tamsi, G.R. Nos. 142928-29, 11 September 2002, 388 SCRA 604.
- [23] People v. Lou, G.R. No. 146803, 14 January 2004; People v. De Taza, G.R. Nos. 136286-89, 11 September 2003; People v. Zabala, G.R. Nos. 140034-35, 14 August 2003.
- [24] People v. Balas, G.R. No. 138838, 11 December 2001, 372 SCRA 80; People v. Almaden, 364 Phil. 634 (1999).
- [25] People v. Serado, G.R. No. 138664, 6 August 2002, 386 SCRA 291; People v. Bali-Balita, G.R. No. 134266, 15 September 2000, 340 SCRA 450; People v. Cura, 310 Phil. 237 (1995).
- [26] People v. Aguiluz, G.R. No. 133480, 15 March 2001, 354 SCRA 465; People v. Dimapilis, 360 Phil. 495 (1998).
- [27] People v. Calma, 356 Phil. 945 (1998); People v. Clopino, 352 Phil. 1040 (1998).

[28] G.R. No. 142740, 6 August 2003; see also *People v. Libeta*, G.R. No. 139231, 12 April 2002, 381 SCRA 21 (2002); *People v. Ombreso*, G. R. No. 142861, 19 December 2001, 372 SCRA 675.

[29] TSN, 12 April 2000, p. 6; TSN, 7 June 2000, p. 3.

[30] *People v. Lozano*, G.R. No. 126149, 7 December 2001, 371 SCRA 546; *People v. Salonga*, 385 Phil. 1124 (2000).

[31] *People v. Arriola*, G.R. Nos. 140779-80, 3 December 2002, 393 SCRA 318; *People v. Bali-Balita*, G.R. No. 134266, 15 September 2000, 340 SCRA 450.

[32] TSN, 12 April 2000, p. 4.

[33] TSN, 12 April 2000, pp. 5-7.

[34] TSN, 7 June 2000, pp. 2-3.

[35] *People v. Servano*, G.R. Nos. 143002-03, 17 July 2003; *People v. Pascua*, G.R. No. 128159-62, 14 July 2003.

[36] *People v. Cana*, G.R. No. 139229, 22 April 2002, 381 SCRA 435; *People v. Caratay*, 374 Phil. 590 (1999); *People v. Ayo*, 365 Phil. 88 (1999).

[37] *People v. Daño*, G.R. Nos. 146786-88, 23 September 2003; *People v. Balleno*, G.R. No. 149075, 7 August 2003.

[38] *People v. Opeliña*, G.R. No. 142751, 30 September 2003; *People v. Dizon*, G.R. No. 133237, 11 July 2003; *People v. Flores*, G.R. No. 141782, 14 December 2001, 372 SCRA 44.

[39] *People v. Negosa*, G.R. Nos. 142856-57, 25 August 2003; *People v. Aguiluz*, G.R. No. 133480, 15 March 2001, 354 SCRA 465.

[40] Article 266A-(d) of the Revised Penal Code provides that rape is committed “[W]hen the offended party is under twelve (12) years of age x x x, even though none of the circumstances mentioned above be present,” referring to force, threat or intimidation.

[41] *People v. Rote*, G.R. No. 146188, 11 December 2003.

[42] *People v. Velasco*, G.R. Nos. 135231-33, 28 February 2001, 353 SCRA 138.

[43] *People v. Siao*, 383 Phil. 988 (2000); *People v. Gaorana*, G.R. Nos. 109138-39, 27 April 1998, 289 SCRA 652.

[44] *People v. Hivela*, 373 Phil. 600 (1999); *People v. Juntilla*, 373 Phil. 351 (1999).

[45] TSN, 12 April 2000, p. 8; TSN, 2 May 2001, pp. 7-10.

[46] TSN, 2 May 2001, pp. 8-11.

[47] *People v. Alejo*, G.R. No. 149370, 23 September 2003; *People v. Fabian*, G.R. Nos. 148368-70, 8 July 2003; *People v. Villaroya*, 101 Phil. 1061 (1957).

[48] G.R. Nos. 134522-24 & 139508-09, 3 April 2001, 356 SCRA 69; see also *People v. Fontanilla*, G.R. Nos. 147662-63, 15 August 2003.

[49] *People v. Rata*, G.R. Nos. 145523-24, 11 December 2003; *People v. Alfaro*, G.R. Nos. 136742-43, 30 September 2003; *People v. Rabago*, G.R. No. 149893, 2 April 2003.

[50] Exhibit “D,” Records, p. 134.

[51] TSN, 21 February 2001, p. 5; TSN, 14 March 2001, p. 2; TSN, 2 May 2001, pp. 2-3.

[52] Three members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional. However, they submit to the ruling of the Court, by majority vote, that the law is constitutional.

[53] *People v. Ocumen*, G.R. No. 135559, 18 September 2003; *People v. Reyes*, G.R. Nos. 140642-46, 7 August 2002, 386 SCRA 559; *People v. Rodavia*, G.R. Nos. 133008-24, 6 February 2002, 376 SCRA 320.

[54] *People v. Soriano*, G.R. Nos. 142779-95, 29 August 2002, 388 SCRA 140; *People v. Sambrano*, G.R. No. 143708, 24 February 2003, 398 SCRA 106.

[55] *People v. Dalisay*, G.R. No. 133926, 6 August 2003; *People v. Ylanan*, G.R. No. 131812, 22 August 2002, 387 SCRA 590.

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