

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs. ELMER CEREDON y PAGARAN, Accused-Appellant.

G.R. No. 167179. January 28, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

Sa mga karumal-dumal na krimen, walang higit na nagpapasiklab ng galit, pagkarimarim at pagkapoot kaysa sa panghahalay sa sariling laman. Ito ay kasuklam-suklam at nakapandidiri na marapat lamang na maramdaman ng nagkasala ang ngalit at pagtatakwil sa kanya ng lipunan. Sa pagkaka-repeal ng Death Penalty Law noong June 24, 2006 sa pamamagitan ng Republic Act (R.A.) No. 9346, ang akusadong umaapela ay sampung ulit na hinahatulan ng reclusion perpetua. Sa piitan na lilipas ang kanyang mga araw kasama ang umuusig na gunita ng pagkakasala sa kanyang batang-batang kapatid.

AMONG the heinous crimes, none stirs up so much public outrage, repulsion and hatred than incestuous rape. It is so odious and disgusting that the perpetrator rightfully must feel the anger and spurn of society.[1] With the repeal of the Death Penalty Law[2] on June 24, 2006 through the passage of R.A. No. 9347,[3] accused-appellant is sentenced ten times to reclusion perpetua. He is to live out his days under incarceration with thoughts of his crimes against his sister of tender age to haunt his conscience.

The Case

Appellant Elmer Ceredon y Pagaran was indicted for ten (10) counts of rape, defined and penalized under Article 266(A) and (B) of the Revised Penal Code, as amended by R.A. No. 8353 and R.A. No. 7659, allegedly committed as follows:

- In Criminal Case No. 08-1296:

That sometime in 1995, in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a knife, with lewd design, by use of force or intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the herein offended party, AAA,[4] his youngest sister, a minor, ten (10) years of age, all against her will and consent.CONTRARY TO LAW.[5]

- In Criminal Case No. 08-1297:

That sometime in 1995, in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a knife, with lewd design, by use of force or intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the herein offended party, AAA, his youngest sister, a minor, ten (10) years of age, all against her will and consent.CONTRARY TO LAW.[6]

- In Criminal Case No. 08-1298:

That sometime in 1995, in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of

this Honorable Court, the above-named accused armed with a knife, with lewd design, by use of force or intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the herein offended party, AAA, his youngest sister, a minor, ten (10) years of age, all against her will and consent.CONTRARY TO LAW.[7]

- In Criminal Case No. 08-1299:

That sometime in 1995, in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a knife, with lewd design, by use of force or intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the herein offended party, AAA, his youngest sister, a minor, ten (10) years of age, all against her will and consent.CONTRARY TO LAW.[8]

- In Criminal Case No. 08-1300:

That sometime in 1995, in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a knife, with lewd design, by use of force or intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the herein offended party, AAA, his youngest sister, a minor, ten (10) years of age, all against her will and consent.CONTRARY TO LAW.[9]

- In Criminal Case No. 08-1301:

That sometime in 1996, in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a knife, with lewd design, by use of force or intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the herein offended party, AAA, his youngest sister, a minor, eleven (11) years of age, all against her will and consent.CONTRARY TO LAW.[10]

- In Criminal Case No. 08-1302:

That sometime in 1996, in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a knife, with lewd design, by use of force or intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the herein offended party, AAA, his youngest sister, a minor, eleven (11) years of age, all against her will and consent.CONTRARY TO LAW.[11]

- In Criminal Case No. 08-1303:

That sometime in 1998, in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a knife, with lewd design, by use of force or intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the herein offended party, AAA, his youngest sister, a minor, thirteen (13) years of age, all against her will and consent.CONTRARY TO LAW.[12]

- In Criminal Case No. 08-1304:

That sometime in 1998, in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a knife, with lewd design, by use of force or intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the herein offended party, AAA, his youngest sister, a minor, thirteen (13) years of age, all against her will and consent.CONTRARY TO LAW.[13]

- In Criminal Case No. 08-1305:

That sometime in 2000, in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a knife, with lewd design, by use of force or intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the herein offended party, AAA, his youngest sister, a minor, fifteen (15) years of age, all against her will and consent.CONTRARY TO LAW.[14]

On August 13, 2001, at his arraignment before the Regional Trial Court (RTC), Branch 8, Aparri, Cagayan, appellant pleaded “not guilty” to all ten (10) charges. However, on September 3, 2001, during the pre-trial conference, his counsel manifested before the trial court the desire of appellant to change his plea to “guilty” on all ten (10) counts. Said manifestation was granted and appellant was re-arraigned.14-a

Thereafter, joint trial on the merits ensued. Teresa Andres-Teresa, Grade IV teacher of private complainant AAA, and AAA herself took the witness stand for the prosecution.

No evidence was presented for the defense.

The Facts

Criminal Case No. 08-1296

The corruption of AAA’s childhood innocence commenced sometime in 1995 when she was merely ten (10) years of age. It occurred at mid-day in her own home at Baraoidan, Gattaran, Cagayan.[15] She was playing with her brothers BBB and CCC when appellant beckoned to her. She ignored him for fear of getting whipped. His calls unheeded, appellant came out of the house and ordered their two brothers to go down to the river. BBB and CCC did as they were told.[16]

Holding AAA by the arms, appellant then brought her into the house. She cried but appellant told her in Ilocano “Uki ni nam, ta bedbedak ta ngiwat mo” which roughly translates to “Vulva of your mother, I will gag your mouth.” Appellant proceeded to search for a handkerchief.[17]

AAA ran towards her youngest brother’s cradle but appellant pulled her away to another room where he gagged her and whipped her with a belt.[18] After that, appellant tied her hands together behind her back with a rope, pulled her dress down, laid her on a bed and, with more rope, tied each of her legs to separate corners of the bed.[19] Appellant then left the room.[20]

When he returned, he was wielding a pair of scissors. He snipped off AAA’s shorts and underwear then shed his own clothes. Appellant then mounted her and inserted his penis into her vagina. The penetration caused her great pain.[21] Afterwards, appellant wiped her genital region with a handkerchief and showed it to her. It was covered with blood.[22]

Moments later, appellant heard their sister DDD’s voice prompting him to procure a towel with which to cover AAA. Having concealed her nudity in this manner, appellant hastily donned his garments and left laughing.[23]

When DDD and their brothers BBB and CCC entered the room, they found AAA still tied to the bed. One of her brothers pulled off the towel and untied her.[24] AAA did not tell them that appellant had raped her because of her fear of appellant and his threats that he would kill them all.[25]

Criminal Case No. 1297

The second incident of rape also occurred in 1995.[26] AAA was tending to their youngest brother when appellant summoned her to extract his armpit hairs. She turned a deaf ear. Appellant then instructed their brother BBB to take their youngest sibling to the river to bathe him. BBB complied.[27] Left alone now with AAA, appellant

dragged her inside a room and ordered her to remove her clothes.[28] When she refused, he forcibly undressed her at knife-point.[29]

Stripped naked, AAA was then brought to the bed – the same bed on which appellant had previously committed the dastardly deed. While lying on the bed, appellant disrobed and, while poking her with his knife, mounted her. He then penetrated her vagina with his penis. After satisfying himself, he again threatened to kill all of them should she report the matter to anyone.[30]

Criminal Case No. 08-1298

Later that same year, appellant raped AAA for the third time.[31] At the time of the incident, their parents were out of the house.[32] While sleeping on top of their trunk, AAA was awakened when appellant started undressing her. She cried and begged him to stop, but he disregarded her pleas and proceeded to sexually abuse her.[33] Despite her protestations, appellant proceeded to insert his penis into the young girl's vagina.[34] After his lust had been sated, he reiterated his threat to kill them all should she reveal the incident to anyone.[35]

Criminal Case No. 08-1299

A few days after the third rape, AAA was again sexually abused by appellant inside their house, in the same room and upon the same bed. As in the previous incidents, appellant poked a knife at her to compel her to submit to his bestial urges.[36] Out of fear, she did not struggle or resist. Thereafter, appellant, had carnal knowledge of her.[37]

Criminal Case No. 08-1300

The fifth rape happened in the same year.[38] By this time, appellant was already married.[39] His bestial acts towards his own sister nonetheless continued. It was noontime and AAA had just come home from visiting their grandfather.[40] When she entered the bedroom, appellant quickly followed her in, closed the door behind him and locked it.[41]

Poking his knife at her, he told her to strip. When she refused, appellant forcibly undressed her. He then removed his own clothes and laid her on the bed.[42] While pointing a knife at her, he mounted her and inserted his penis into her vagina.[43]

She pleaded with appellant to stop doing it to her by saying, “Manong kaasiandak kadin, husto na kadin,” which means “Brother, have pity on me, please stop it.” Appellant, however, just slapped her mouth and proceeded to rape her. Afterwards, he issued his threat not to divulge the matter to anyone lest he would kill them all.[44]

Criminal Case No. 08-1301

In 1996, appellant, for the sixth time, raped AAA[45] who had turned eleven (11) years old. She was playing alone in front of their house when she saw appellant approaching her. As she was afraid of him, she tried to run away. She stumbled, however, and he was able to catch up with her. Appellant then dragged her inside where he laid her on the living room floor. They were alone at home as the rest of the family had gone to harvest rice at their kaingin.[46]

Appellant proceeded to remove AAA's dress and underwear. Then, he removed his own clothes. Subsequently, he mounted her and inserted his penis into her vagina against her will.[47] Afterwards, he uttered the same threats to kill everyone should she expose her defloration to anyone.[48]

Criminal Case No. 08-1302

The seventh occurrence of rape was also in 1996. The family had just transferred to a new house situated at the

foot of a mountain in Baraoidan, Gattaran, Cagayan. They were forced to relocate to a new house after their old home was swept away in a flood.[49]

When probed by the prosecutor as to the details of the seventh incident of rape, AAA disclosed that she could no longer remember the exact manner how appellant perpetrated the rape. She was, however, certain that she was twice raped in 1996 by the same.[50]

Criminal Case No. 08-1303

The eighth incident of rape took place in 1998[51] when AAA was thirteen (13) years of age. She was then lying alone inside their house. Her parents, along with her other siblings, were out working in their kaingin.[52]

Suddenly, appellant appeared and moved closer to her. She tried to rise but he pushed her back down. Appellant then forcibly removed the young girl's clothes, her shorts and panty. He then proceeded to unbutton his pants. [53]

According to her, she could not have escaped while appellant was undressing because she feared what he might do to her. After removing his own clothes, appellant went on top of her and commenced raping her.[54]

Just as she did countless times before, AAA pleaded with appellant "Manong, kuston kaasiannak kadin" ("Brother, enough, have pity on me"). Instead of desisting, appellant slapped her in the mouth. After the sexual abuse, he issued the same threatening statements to her.[55]

Criminal Case No. 08-1304

Also in 1998, the ninth rape happened. It occurred under similar circumstances. The rest of their family had gone to their kaingin and private complainant AAA was left alone in their house at the foot of the mountain.[56]

Seeing that she was left alone to tend the house, appellant again pounced on the opportunity to impose his bestial urges on his young sister. At that time, AAA was still thirteen (13) years old.

As in the previous offenses, appellant forced AAA to undress. After ridding himself of his clothing, appellant mounted her fragile frame and penetrated the young girl's vagina.[57]

Criminal Case No. 08-1305

The tenth and last incident of rape transpired on May 8, 2000[58] during the wake of their father who had passed away. AAA was then fifteen (15) years old. It was committed in a new house, also in Baraoidan, Gattaran, Cagayan, where they transferred.[59] Appellant had his own house by then situated about five hundred (500) meters away.[60] Their father was lying in state at appellant's house.[61]

On said date at noontime, their mother sent AAA home to feed the chickens.[62] She obeyed and went inside their house to fetch rice with which to feed them when appellant followed and grabbed her. She resisted and kicked him in the abdomen. He fell down and she tried to run but he was able to grab her foot causing her to stumble and fall.[63]

Thereafter, appellant removed all her clothes. He kissed her lips and breasts several times, mounted her, then sexually violated her.[64] All the while, he was flaunting his perversion by telling his sister, "Nagimas gayam ti kabagis ko" ("I derived so much satisfaction from my sister"). Afterwards, he issued the same previous threats to her.[65]

Subsequent Events

However, on September 18, 2000, AAA reached the end of her rope. Notwithstanding appellant's threats, she

revealed to her sister DDD, friend Giselle and teacher Teresa that she was raped by appellant, her brother.[66] Teresa, upon hearing AAA's revelation, accompanied her to their head teacher Felix Salvador. Then, together, they went to the barangay captain who told them to report the matter to the police. This they did.[67]

On September 20, 2000, policemen were dispatched to bring appellant to the police station. There, a confrontation arose between AAA and appellant. Upon seeing appellant, AAA punched him and said "Hayop ka, baboy, nirape mo ako" ("You animal, pig, you raped me").[68]

On September 21, 2000, there was a second confrontation.[69] Present were their mother, their sister DDD, their uncle Raymundo Bumanglag, appellant's wife Josephine, and AAA's teachers Charito Elesterio, Jerry Roque and Elpidio Salvatierra. In said confrontation, AAA accused her brother, appellant, of raping her ten (10) times, while he admitted to having raped her thrice only. Josephine, appellant's wife, told him to admit so that AAA could forgive him.[70] He then admitted that he had raped her ten (10) times and asked for forgiveness, beseeching her to take pity on his family. AAA replied that she could no longer forgive him because her heart had "already hardened like stone." Appellant cried.[71]

RTC and CA Dispositions

On January 8, 2002, the trial court rendered its decision[72] convicting appellant on all ten counts of rape, with the following disposition:

WHEREFORE, the Court finds accused Elmer Ceredon y Pagaran "GUILTY" beyond reasonable doubt in all the ten (10) Criminal Informations for "RAPE" and is hereby sentence (sic) to suffer the supreme penalty of "DEATH" in each of the ten (10) criminal informations.

SO ORDERED.[73] (Underscoring supplied)

Hence, the automatic appeal to the Supreme Court. However, on the strength of *People v. Mateo*,[74] the case was forwarded to the Court of Appeals (CA) for intermediate review.

In its Decision[75] dated January 28, 2005, the CA affirmed the judgment of the trial court but with modification providing for damages, thus:

WHEREFORE, the judgment of conviction is AFFIRMED with the MODIFICATION that for each count of rape the accused should pay private complainant the amount of (1) P75,000.00 as civil indemnity; (2) P50,000.00 as moral damages; and (3) P25,000.00 as exemplary damages.

Let the entire records of this case be elevated to the Supreme Court for review pursuant to A.M. No. 00-5-03-SC (Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases), which took effect on October 15, 2004.

SO ORDERED.[76] (Underscoring supplied)

Issues

Since the Office of the Solicitor General, on behalf of the People, and the Public Attorney's Office, as defense counsel to appellant, had both submitted Manifestations in lieu of Supplemental Briefs, the Court is now faced in this review with the same assignment of errors appellant presented before the CA, to wit:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED BASED ON AN IMPROVIDENT PLEA OF

GUILTY.

II

ASSUMING ARGUENDO THAT THERE WAS NO IMPROVIDENT PLEA OF GUILTY, THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT IN CRIMINAL CASES NOS. 08-1296; 08-1297; 08-1298; 08-1299; 08-1300; 08-1301; 08-1302; 08-1303 AND 08-1304; CONSIDERING THAT THE SAID INFORMATIONS FAILED TO SUFFICIENTLY ESTABLISH WITH PARTICULARITY THE DATES OF THE COMMISSION OF THE OFFENSE.

III

ASSUMING AGAIN THAT THERE WAS NO IMPROVIDENT PLEA OF GUILTY, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY UPON THE ACCUSED-APPELLANT IN CRIMINAL CASE NO. 08-1305.

IV

ASSUMING FURTHER THAT THE PROSECUTION HAS SUFFICIENTLY ESTABLISH (SIC) WITH PARTICULARITY THE DATE OF THE COMMISSION OF THE OFFENSE, THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY ON THE ACCUSED AS THE QUALIFYING CIRCUMSTANCE THAT THE ACCUSED IS THE BROTHER OF THE VICTIM AND, HENCE, A RELATIVE WITHIN THE SECOND DEGREE OF CONSANGUINITY WAS NOT PROPERLY ALLEGED.[77] (Underscoring supplied)

Our Ruling

No Improvident Plea of Guilt

Appellant claims that the trial court based its ruling of conviction on his “improvident plea of guilt,” relying on Section 3, Rule 116 of the Rules of Court, to wit:

Section 3. Plea of guilty to capital offense; reception of evidence. – When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.[78]

He argues that when he was re-arraigned and he pleaded “guilty” to all ten charges of rape levelled against him, he was not fully apprised of the consequences of his change of plea from “not guilty” to “guilty.” According to him, the trial court did not inquire as to the voluntariness of his plea and that it failed to explain fully to him that once convicted, he would be meted the death penalty under R.A. No. 7659. Hence, he contends, his conviction should be set aside.

We cannot agree.

The rule is where the accused desires to plead guilty to a capital offense, the court is enjoined to observe the following:

- It must conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea;
- The court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and
- The court must ask the accused if he desires to present evidence in his behalf and allow him to do so if he

desires.[79]

There is no definite and concrete rule on how a trial judge may go about the matter of a proper “searching inquiry” as required by the aforecited rule. It is incumbent upon a trial judge to ascertain and be fully convinced that the plea of guilty was voluntarily made and its consequences fully comprehended by the accused.[80]

Records reveal that appellant was duly assisted by his counsel, both in his first arraignment and re-arraignment. In fact, it was his counsel who manifested before the trial court that appellant desired to change his plea from “not guilty” to “guilty” on all ten charges of rape filed against him by his younger sister.

Besides being assisted by counsel all throughout the proceedings, when appellant was re-arraigned, the charges were read and explained to him in Ilocano, his native tongue.[81] He cannot now claim that he was unaware of the consequences of his change of plea.

More than that, appellant admitted raping private complainant AAA. When confronted by AAA, their mother, sister DDD, and their uncle Raymundo Bumanglag, appellant readily admitted to violating his sister AAA on at least three occasions. Sensing that AAA was only angered by his fractional admission, and through the prodding of his wife Josephine for him to admit the whole truth, appellant confessed to the ten counts of rape.

At any rate, contrary to appellant’s assertion, he was convicted by the trial court, not on the basis of his plea of guilty, but on the strength of the evidence adduced by the prosecution. As consistently held by the Court,[82] while convictions based on pleas of guilt to capital offenses have been set aside because of the improvidence of the plea, the same holds true only when such plea is the sole basis of the judgment.

When, as in this case, the trial court relied on sufficient and credible evidence to convict the accused beyond reasonable doubt, the same must be sustained for the simple reason that the conviction is predicated not on the guilty plea of accused but on the convincing evidence proving his commission of the offenses charged.

Indeed, there were instances, such as in *People v. Lakindanum*,[83] where even when the court found that the judge was remiss in his duty to conduct a searching inquiry, the conviction was sustained in the interest of justice:

The Court observes that, indeed, the manner by which the trial court judge conducted the inquiry into the voluntariness and full comprehension of the accused-appellant’s plea of guilty leaves much to be desired.

x x x x

From the records of the proceedings in the court below, it can be gleaned that the trial judge’s manner of apprising Lakindanum of the consequences of his plea was at best, cursory, to wit:

x x x x

From the foregoing, it is clear that the judge can hardly be said to have satisfied the requirement of conducting a searching inquiry into the voluntariness and full comprehension by the accused of entering a guilty plea. Worse, the judge erroneously informed Lakindanum that by pleading guilty, the latter forfeited his right to testify and to adduce evidence in his defense. x x x.

x x x x

From the foregoing positive identification by the child victim of her rapist and her candid narration of the circumstances surrounding the rape, it is clear that accused-appellant was properly convicted for robbing Catherine of her innocence and childhood. This Court cannot, on mere procedural grounds, allow the revolting perversion of the accused-appellant to go unpunished.[84] (Emphasis supplied)

Appellant’s conviction must be upheld as there was no such error of accepting an improvident plea committed by

the trial court.

There can only be an improvident plea of guilt under Section 3, Rule 116 where there is a possibility of an accused being meted out the supreme penalty of death. In the words of said section, "When accused pleads guilty to a capital offense, the court shall conduct a searching inquiry x x x, etc." The obvious rationale for this is to ascertain that accused truly understands the dire consequences of his plea. Considering that R.A. No. 9346 has prohibited the imposition of the death penalty, the *raison d'être* behind said rule is absent in the case at bar.

Exact dates of commission
need not be alleged.

Appellant next contends that the Informations filed against him do not sufficiently charge the offenses committed because the exact dates of commission are not alleged. Hence, his conviction is not warranted.

The contention is without merit.

The date or time of the commission of the rape need not be alleged with precision. It is enough for the information or complaint to state that the crime has been committed at a time as near as possible to the date of its actual commission. Failure to allege the exact date when the crime happened does not render the information defective, much less void.[85]

An information is valid as long as it distinctly states the elements of the offense and the constitutive acts or omissions. The exact date of the commission of a crime is not an essential element of it.[86] Thus, in a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission.[87] The failure to specify the exact date or time when it was committed does not ipso facto make the information defective on its face.[88]

The date or time of the commission of rape is not a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. In fact, the precise time when the rape takes place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.[89]

Besides, as succinctly explained by the trial court:

[Private-complainant] was only ten (10) years old in 1995 and about eleven (11) years old in 1996 she being born on February 18, 1985. It is but natural for her not to remember the dates. More so when it has a very negative, horrifying and traumatic effect and impact on her life.[90]

Further, it is already too late in the day for appellant to question the sufficiency of the information. He had all the time to raise this issue during the course of the trial, particularly during his arraignment. He could have filed for a bill of particulars in order to be properly informed of the dates of the alleged rapes. However, appellant chose to be silent and never lifted a finger to question the information. As a result, he is deemed to have waived whatever objections he had; he cannot now be heard to seek affirmative relief. Furthermore, objections as to matters of form in the information cannot be made for the first time on appeal.[91]

Relationship as qualifying circumstance
may be alleged in layman's terms.

Nor was there any defect in the Informations when they merely averred that the victim was the youngest sister of appellant. We do not agree with the defense that in order for relationship to qualify in this case, it must be mentioned that the victim is a "relative within the second degree of consanguinity."

This is not a novel question. The same issue was addressed by the Court in *People v. Sanchez*.^[92] In the said case, appellant argued that he could not be meted the death penalty for raping his sister for failure of the information to allege that said private complainant was a “relative within the third civil degree of consanguinity.”

The Court struck down appellant’s argument in the following tenor

We have held in *People v. Ferolino*, that:

“If the offender is merely a relation – not a parent, ascendant, stepparent, 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 civil degree. That relationship by consanguinity or affinity was not alleged in the informations in these cases. Even if it was, it was still necessary to further allege that such relationship was within the third civil degree.”

The present case is not within the contemplation of said ruling considering that in the *Ferolino* case, the victim is a niece of the offender while in the present case the victim is a sister of the offender. It was deemed necessary in the *Ferolino* case to require that it must be specifically alleged in the Information that the offender is “a relative by consanguinity or affinity (as the case may be) within the third civil degree” because we acknowledge the fact that there are niece-uncle relationships which are beyond the third civil degree, in which case, death penalty cannot be imposed on an accused found guilty of rape. However, a sister-brother relationship is obviously in the second civil degree and no other sister-brother relationship exists in civil law that falls beyond the third civil degree. Consequently, it is not necessary in this case that the Information should specifically state that the appellant is a relative by consanguinity within the third civil degree of the victim. This is an exception to the requirement enunciated in the *Ferolino* case.^[93]

Further, what is required by the Rules is that “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.”^[94] Perusing the ten (10) Informations for rape, private complainant AAA was categorically identified as appellant’s younger sister. Verily, the requirement of allegation as to relationship was more than satisfied.

Testimony of AAA as to her own age is sufficient evidence.

Appellant argues that in Criminal Case No. 08-1305, no evidence was presented as to the age of the victim, AAA. This is false. On the issue of age of the victim, it is enough that the victim testified on her age vis-a-vis the time she was raped by appellant.

In *People v. Pruna*,^[95] the Court set out guidelines as to the appreciation of age, either as an element of the crime or as a qualifying circumstance. In that case, the rule was laid out, once and for all, that although the best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party, its presentation into evidence is not a sine qua non requirement to prove her age for the appreciation of minority, either as an element of the crime or as a qualifying circumstance. The decision goes on to state that in the absence of (a) certificate of live birth, (b) authentic document, or (c) testimony of the victim’s mother or relatives concerning the victim’s age, complainant’s testimony will suffice provided that it is expressly and clearly admitted by the accused.

In the case at bar, private complainant categorically disclosed that she was only ten (10) years old at the time of the first rape in 1995^[96] and fifteen (15) years of age when she was last raped by appellant.^[97] Appellant

Ceredon admitted these in a confrontation between him and private complainant, witnessed by their mother and other relatives.[98]

More than that, not only did the defense fail to object to complainant's claim to minority when it was consistently bared during the trial; the accused, through his plea of guilt, admitted to the victim's age as alleged in the informations against him.[99] Furthermore, appellant cannot claim ignorance of the age of the victim as she is his own sister.[100]

Anent the Pruna requirement that the court make a categorical finding as to age, the RTC had this to say:[101]

True, AAA was not able to tell the exact month and date of the first nine incidents but this is not fatal to her credibility. She is only about ten (10) years old in 1995 and about eleven (11) years old in 1996, she being born on February 18, 1985 and therefore it is but natural for her not to remember the dates more so when it has a very negative, horrifying and traumatic effect and impact on her life. (Underscoring supplied)

Death penalty repeal and damages

In order that the rape be qualified, there need only be one qualifying circumstance present. Here, We have two – relationship and age. Even assuming that the circumstance of age had not been duly proven, it makes no difference as to the final outcome of this case as the circumstance of relationship of appellant to the victim cannot be denied.

As the death penalty has been repealed through R.A. No. 9346,[102] entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," appellant's sentence should be downgraded from death to reclusion perpetua. Section 2 of the said law pertinently provides:

Section 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of the law, which reads:

Section 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Anent the CA award of damages, civil indemnity in the amount of P75,000.00 is correct as each count of rape is qualified by circumstances which warrant the imposition of the death penalty.[103] With respect to moral damages, the awarded amount of P50,000.00 must be increased to P75,000.00, without need of pleading or proof of basis.[104] The additional amount of P25,000.00 as exemplary damages to AAA is likewise justified due to the presence of the qualifying circumstances of minority and relationship.[105]

WHEREFORE, the Court of Appeals judgment of conviction is AFFIRMED with the MODIFICATION that the penalty imposed in each case is hereby changed from death to reclusion perpetua, without eligibility for parole. Further, the award of moral damages to AAA in the amount of P50,000.00 is increased to P75,000.00.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, and Leonardo-De Castro, JJ., concur.

Chico-Nazario, J., no part. on official leave per Special Order No. 484 dated January 11, 2008

Velasco, Jr., J., no part. on official leave.

Nachura, J., no part. participated in the present case as Solicitor General.

[1] *People v. Lima*, G.R. No. 128289, April 23, 2002, 381 SCRA 471.

[2] Republic Act No. 7659.

[3] An Act Prohibiting the Imposition of the Death Penalty in the Philippines.

[4] Rule on Violence Against Women and their Children, Sec. 40; Rules and Regulations Implementing Republic Act No. 9262 (Anti-Violence Against Women and their Children Act of 2004), Rule XI, Sec. 63. The real name of the rape victim will not be disclosed. Her personal circumstances or any other information tending to establish or compromise her identity will likewise be withheld. We will instead use fictitious initials to represent her throughout the decision. (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426)

[5] CA rollo, p. 4.

[6] *Id.* at 5.

[7] *Id.* at 6.

[8] *Id.* at 7.

[9] *Id.* at 8.

[10] *Id.* at 9.

[11] *Id.* at 10.

[12] *Id.* at 11.

[13] *Id.* at 12.

[14] *Id.* at 13.

[14-a] Upon re-arraignment, after all the ten criminal informations were each read in Ilocano, the dialect which the accused speaks and understands, actively assisted by his counsel-de-oficio, Atty. Simplicio Sosa, Jr., accused Elmer Ceredon y Pagaran pleaded "GUILTY" in each of the ten (10) informations. (*Id.* at 21; records, p. 60)

[15] TSN, October 11, 2001, p. 3.

[16] *Id.* at 4.

[17] *Id.* at 5.

[18] *Id.* at 5-6.

[19] *Id.* at 6.

[20] *Id.* at 7.

- [21] Id.
- [22] Id. at 8.
- [23] Id.
- [24] Id.
- [25] Id. at 9.
- [26] Id. at 10.
- [27] Id. at 10-11.
- [28] Id. at 11.
- [29] Id. at 12.
- [30] Id. at 12-13.
- [31] Id. at 13.
- [32] Id. at 15.
- [33] Id. at 14.
- [34] Id.
- [35] Id. at 15.
- [36] Id.
- [37] Id. at 16.
- [38] Id.
- [39] Id. at 17.
- [40] Id. at 16.
- [41] Id. at 17.
- [42] Id.
- [43] Id. at 18.
- [44] Id.
- [45] Id. at 19.
- [46] Id. at 19-20.
- [47] Id. at 20.
- [48] Id. at 21.
- [49] Id. at 21-22.
- [50] Id.
- [51] Id. at 22.

[52] Id. at 23.

[53] Id.

[54] Id.

[55] Id. at 23-24.

[56] Id. at 25.

[57] Id.

[58] Id. at 26.

[59] Id.

[60] Id. at 28.

[61] Id. at 29.

[62] Id. at 26.

[63] Id. at 27.

[64] Id. at 27-28.

[65] Id. at 29.

[66] Id. at 33.

[67] Id. at 34.

[68] Id. at 34-35.

[69] Id. at 35-36.

[70] Id. at 36.

[71] Id. at 37.

[72] Penned by Judge Conrado F. Manauis; CA rollo, pp. 17-40.

[73] Id. at 40.

[74] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[75] Rollo, pp. 3-30. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios and Amelita G. Tolentino, concurring.

[76] Id. at 29.

[77] Id. at 18-19.

[78] RULES OF COURT, Rule 116, Sec. 3.

[79] *People v. Dayot*, G.R. No. 88281, July 20, 1990, 187 SCRA 637.

[80] *People v. Lima*, *supra* note 1, at 478.

[81] Records, p. 58.

[82] *People v. Tahop*, G.R. No. 125330, September 29, 1999, 315 SCRA 465; *People v. Lakindanum*, G.R. No. 127123, March 10, 1999, 304 SCRA 429, 437-438; *People v. Petalcorin*, G.R. No. 65376, December 29, 1989, 180 SCRA 685; *People v. Nismal*, G.R. No. L-51257, June 25, 1982, 114 SCRA 487.

[83] *Supra*.

[84] *People v. Lakindanum*, *supra* note 82, at 433-437.

[85] *People v. Espejon*, G.R. No. 134767, February 20, 2002, 377 SCRA 412, 414.

[86] *People v. Lim*, G.R. Nos. 131861-63, August 17, 1999, 312 SCRA 550; *People v. Malapo*, G.R. No. 127122, August 25, 1998, 294 SCRA 579.

[87] *People v. Losano*, G.R. No. 123115, July 20, 1999, 310 SCRA 707.

[88] *People v. Magbanua*, G.R. No. 128888, December 3, 1999, 319 SCRA 719.

[89] *Id.* at 730.

[90] CA rollo, p. 95.

[91] *People v. Magbanua*, *supra* note 88, at 734.

[92] G.R. No. 135563, September 18, 2003, 411 SCRA 288.

[93] *Id.* at 302.

[94] RULES OF COURT, Rule 110, Sec. 9.

[95] G.R. No. 138471, October 10, 2002, 390 SCRA 577.

[96] TSN, October 11, 2001, p. 3.

[97] *Id.* at 29.

[98] *Id.* at 37.

[99] *People v. Bello*, G.R. Nos. 130411-14, October 13, 1999, 316 SCRA 804, citing *People v. Albert*, G.R. No. 114011, December 11, 1995, 251 SCRA 136.

[100] *People v. Limio*, G.R. Nos. 148804-06, May 27, 2004, 429 SCRA 597.

[101] CA rollo, p. 36.

[102] The amendatory law took effect on June 24, 2006.

[103] *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 561.

[104] *People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531, 553; *People v. Alfaro*, 458 Phil. 942, 963 (2003).

[105] *People v. Arsayo*, G.R. No. 166546, September 26, 2006, 503 SCRA 275; *People v. Bonghanoy*, G.R. No. 124097, June 17, 1999, 308 SCRA 383, 394; New Civil Code, Art. 2230.

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