

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LAMBERTO RAFON, APPELLANT.

G.R. No. 169059. September 05, 2007

Ponente: TINGA, J.

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TINGA, J.:

This treats of the appeal from the Decision[1] dated 5 May 2005 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00115 affirming the Decision[2] dated 8 July 2002 of the Regional Trial Court (RTC) of Gumaca, Quezon, Branch 61 in Criminal Case Nos. 6204-G and 6694-G where appellant Lamberto Rafon was found guilty of raping his minor daughter and sentenced to suffer the penalty of death.

In two (2) separate Informations[3] filed on 5 March 1999, appellant was charged, the accusatory portions of which read, thus:

Criminal Case No. 6204-G

That sometime in the year 1994, at Barangay x x x,[4] Municipality of x x x,[5] Province of Quezon, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA],[6] his own daughter, a minor, 11 years of age, against her will.

CONTRARY TO LAW.[7]

Criminal Case No. 6694-G

That sometime in the year 1998, at Barangay x x x, Municipality of x x x, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], his own daughter, a minor, 15 years of age, against her will.

CONTRARY TO LAW.[8]

Appellant pleaded not guilty on arraignment. Forthwith, trial ensued which culminated in the guilty verdict. The dispositive portion of the judgment reads, thus:

WHEREFORE, based on the foregoing premises, accused LAMBERTO RAFON is hereby found GUILTY beyond reasonable doubt of two (2) counts of rape defined and penalized under Art. 335 of the Revised Penal Code[,] as amended by R.A. [No.] 7659[,] and is hereby imposed the penalty of DEATH for each crime of rape. He is further ordered to indemnify [AAA] the amount of P75,000.00 for each act or P150,000.00. In addition, accused shall pay her likewise P20,000.00 as moral damages and P10,000.00 as exemplary damages for each count of rape or the total amount of P60,000.00. Costs against the accused.

SO ORDERED.[9]

The case was thereafter elevated to this Court on automatic review and the parties were directed to file their

respective Briefs.[10] The parties complied. However, the Court issued a Resolution[11] on 21 September 2004, transferring the case to the CA for intermediate review conformably with the ruling in *People v. Mateo*. [12]

The appellate court affirmed the judgment of the trial court with the following modification:

WHEREFORE, premises considered, the appeal is DENIED. The assailed Decision dated 8 July 2002 is AFFIRMED with MODIFICATION. Appellant is ordered to pay [AAA] P50,000.00 as moral damages and P25,000.00 as exemplary damages for each count of rape.[13]

The case is again before us for our final disposition.

The evidence for the prosecution consists mainly of the testimonies of private complainant, AAA, and Dr. Cheres Daquilanea, a resident physician of the Doña Marta District Hospital, Atimonan, Quezon.

AAA testified that she was born on 3 November 1983 as evidenced by her birth certificate.[14] She is one of five children born to appellant and BBB.[15] She recounted that appellant first raped her in their house sometime in 1994 when she was in grade five and while her mother was working overseas. Her two younger brothers were at a neighbor's house watching television while her two sisters were studying in the poblacion. Appellant who was drunk allegedly forced her to lie down on the papag and remove her clothes. He then warned her not to make any noise or he would kill her and her siblings. Appellant started kissing her then she felt pain when he inserted his penis inside her vagina and proceeded to have sexual intercourse with her. She tried to cross her legs but was overpowered by her father and she could not do anything but cry silently. She did not report the harrowing experience to anyone for fear that appellant would make good his threats.[16]

Appellant allegedly raped her several more times thereafter until she was in second year high school, the last incident being sometime in 1998. AAA recalled that the last incident was similar to the first, with the appellant forcing her to lie down and to remove her clothes, and successfully having his way with her. Afraid of what appellant might do to her and her family, AAA did not dare tell her mother BBB of her sufferings in the hands of her father. It was at the instance of her boyfriend to whom she first revealed the truth about her father that she eventually had the courage to tell BBB. When BBB arrived home in January 1999, AAA relayed the rape incidents to her and they both went to the police to report the matter.[17]

Dr. Daquilanea testified that AAA went to see her on 4 January 1999 at the Doña Marta District Hospital to have herself examined because she was raped.[18] Dr. Daquilanea found healed hymenal lacerations in AAA at the 3 o'clock, 6 o'clock, and 9 o'clock positions that according to her could have been caused by sexual intercourse.[19]

As the lone witness for his defense, appellant denied the charges against him. He testified that AAA is his daughter and he is legally married to BBB. From 1994 to 1998, he worked as a laborer so that he sometimes went to Lopez, Quezon to haul coco lumber.[20] Averring that BBB never left their house during the said period, appellant wondered why AAA would file a criminal case against him as he had very cordial relations with her. On cross-examination, however, he testified that BBB had been working as a beautician in Saudi Arabia since 1995 and came home for a vacation every two years.[21] His parents allegedly stayed with them in their house while BBB was away. He claimed that it was his brother-in-law, CCC,[22] who had a grudge against him because the latter wanted a share in the money sent to him by his wife. CCC allegedly initiated the instant case because he owed appellant P10,000.00 and was angry at him.[23]

In finding the appellant guilty, the RTC made the following findings, thus:

Certainly, the innocent but natural and straightforward testimony of [AAA] alone on [sic] the detailed narration of a pretty girl on [sic] her teens on how she was repeatedly violated by her own father from 1994 to 1998 is sufficient to sustain the conviction of her father. No one indeed would want to go through the troubles and

humiliation of a trial for a much debasing offense unless she was really raped and her motive was solely to seek justice. (People v. Gaban, 262 SCRA 598; People v. Campesino, 131 SCRA 56). In fact, it is entitled to greater weight since her accusing words are directed against a close relative, her own father (People v. Lao, 249 SCRA 137). It is indeed extremely difficult to believe that the complainant Arlene, young as she was, could have guile and craft to accuse her father of such heinous crime.

x x x x

Verily, [AAA] is a credible witness. Her testimony deserves the highest credence. She would not have admitted in public that she was deflowered by her own father unless she was telling the truth for in doing so, she was compromising her family. (People v. Esquila, 254 SCRA 140).

The age of [AAA] has been established beyond cavil by her birth certificate (Exh. "B") indicating that she was born on March[24] [sic] 3, 1983 and that her name [AAA] as Exh. "B-1" and the name of Lamberto Rafon as her father was marked as Exh. "B-3." Computing her age based on November 3, 1983, her age in 1994 was 11 years old and in 1998 is 15 years old.

The relation that exists between the complainant and the accused as daughter and father is established beyond cavil not only as shown in the birth certificate (Exh. "B") but by the testimony of both complainant and the accused. x x x x[25]

Like the lower court, the appellate court gave full faith and credence to AAA's positive and straightforward testimony as against appellant's bare denial. It stressed that although there were inconsistencies in her testimony as to who removed her clothes and as regards the whereabouts of her siblings at the time of the rape incidents, these are trivial and do not impair her credibility as "a rape victim is not expected to mechanically keep memory details of the rape incident and then when called to testify automatically give an accurate account of the traumatic experience she suffered." [26] It further held that AAA's testimony is corroborated by physical evidence, she having sustained hymenal lacerations. According great respect to the findings and conclusions of the trial court on the credibility of witnesses, the CA affirmed the RTC's decision, modifying it only to increase the award of moral damages from P20,000.00 to P50,000.00 for each count, and similarly increasing the award of exemplary damages from P10,000.00 to P20,000.00 for each count in accordance with jurisprudence.

In his brief, [27] appellant avers that the court erred: (1) in giving credence to the testimony of AAA, which according to him was unreliable and unbelievable; and (2) in finding him guilty beyond reasonable doubt despite the uncertainty of the commission of the crime charged.

Appellant insists that he cannot be convicted based on AAA's incredible testimony. The absence of a struggle or an outcry during the rape plus the long delay in reporting the incidents defy a woman's natural instinct for self-preservation, he argues. He claims that there was no imminent danger to AAA's life and she had every opportunity to report the incident and to prevent a recurrence but she failed to do so. Questioning the truthfulness of AAA's testimony, he asserted that it reeked of inconsistencies. He maintains that all these cast doubt on the prosecution's evidence which, as a consequence, cannot result in a judgment of guilt.

Appellant also challenges the two Informations filed against him for being ambiguous as they did not specify the date or at the very least the month as to when the rape incidents allegedly took place. This, so he stresses, is a denial of due process as no less than the Constitution guarantees that the accused must be informed of the nature and cause of the accusation against him. The allegations that he committed two counts of rape, one in 1994 and another in 1998, deprived him of the chance to interpose the defense of alibi, he concludes.

In its brief, [28] the Office of the Solicitor General (OSG) maintains that appellant's guilt has been proven beyond reasonable doubt by the positive and credible testimony of AAA. The OSG points out that AAA resisted her

father's bestial acts but to no avail and that his moral ascendancy also cowed her to submission. Addressing the inconsistencies in her testimony, the OSG notes that the same are minor and inconsequential and seem more apparent than real. As regards AAA's failure to recall the exact time and date of the commission of the offenses, it observes that the time of commission is not a material ingredient of rape. The OSG adds that appellant did not object to the sufficiency of the Informations before he entered his plea and it is now too late for him to complain.

A careful examination of the records as well as the transcripts of stenographic notes of the instant case lead us to affirm appellant's guilt.

We shall first address the issue of the insufficiency of the Informations.

Appellant argues that the statement only of the year of commission of the offense is too vague so that he was deprived of his constitutional right to be informed of the accusation against him and to fully prepare for his defense. We disagree.

It is unnecessary to state in the information the precise date that the offense was committed, except when it is an essential element of the offense.[29] The date of commission is not an element of the offense of rape.[30] The gravamen of rape is carnal knowledge of a woman under any of the circumstances provided by law.

In *People v. Bugayong*,[31] we held that "when the time given in the complaint is not of the essence of the offense, it need not be proven as alleged and x x x the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action." [32] In said case, accused therein was charged with raping his stepdaughter several times before and until 15 October 1994 but was convicted of his dastardly acts committed in 1993. The Court therein held that the victim's Sworn Statement which categorically stated that she had been raped by the accused in 1993 when she was in grade three substantially cured the vagueness in the information and considered accused to have been sufficiently informed thereby. Thus, a statement of the year of the commission of the offense, as in the instant case, would suffice.

Furthermore, it is too late in the day for appellant to raise this issue. He should have made his objection before he was arraigned. Section 9, Rule 117 of the Rules of Criminal Procedure provides, to wit:

The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

As was held in *Bugayong*, appellant herein cannot be said to have been deprived of his right to be informed. He did not timely object to the alleged defects in the Informations and he actively participated in the trial, defending himself and confronting the witnesses against him. Hence, there was no denial of due process.

We now go into the crux of the controversy.

We note that appellant was charged with two counts of rape. The first which was committed in 1994 is governed by Art. 335 of the Revised Penal Code (RPC) before the enactment of R.A. No. 8353 or the Anti- Rape Law of 1997.[33] As regards the rape incident in 1998, the applicable provisions are Arts. 266-A and 266-B of the RPC,[34] as introduced by the Anti-Rape Law of 1997.

As to the 1994 rape incident, it was alleged that AAA was only 11 years old at that time. The applicable law then already considered carnal knowledge with a woman under 12 years of age as rape. The offense being statutory rape, what essentially had to be established was simply the fact of having sexual intercourse with AAA. Proof of

the use of force in committing the sexual act was unnecessary and superfluous.

As regards the rape that occurred in 1998, AAA was already 15 years old at that time. Thus, the offense falls under paragraph 1 (a) of Art. 266-A of the RPC, as amended. This time, the prosecution must prove beyond reasonable doubt that the carnal knowledge occurred through the use of force, threat, or intimidation.

In both cases, the offense of rape is qualified 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. Under the new rape law the imposable penalty in that instance is death.

As to the 1994 rape incident, AAA categorically testified that appellant had sexual intercourse with her, thus:

Q: When was the first time that you were raped by your father [sic], what year?

A: 1994, Ma'am.

x x x x

Q: Now, you said it was nighttime when you were first raped in 1994 by your father. How did you[r] father rape you?

A: He laid me down in our papag and there he raped me, Ma'am.

Q: After he laid you in the papag, what else did he do if he did any?

A: He removed his clothes, Ma'am.

Q: And after he removed his clothes, what else did he do?

A: He told me not to make noise, Ma'am.

Q: Were you wearing clothes at that time or no clothes at all?

A: I still have clothes, Ma'am.

Q: And after he warned you not to make noise, what else did he do?

A: Then he told me to remove my clothes, Ma'am.

Q: What did you do when he ordered you to remove your clothes?

A: I was forced to remove my clothes, Ma'am.

Q: Why were you fo[r]ced to remove your clothes?

A: Because he told me that if I would not do that, he will kill all of us, Ma'am.

Q: And where were your brothers at that time?

A: Watching TV in the house of our neighbor, Ma'am.

Q: And after he [sic] removed your clothes as ordered by your father, what did he do next?

A: He raped me, Ma'am.

Q: You said you were hinalay. How did he do that? Can you explain to us? You were both naked. What else did he do?

A: He placed himself on top of me. Ma'am.

Q: When he was on top of you, what did he do? By the way, when your father laid on top of you, where were you?

A: In [sic] the papag, Ma'am.

Q: And while on top of you, what did your father do? (No answer) You said that you were raped, what did you feel when you were raped as you said?

A: I got afraid and I felt that my vagina was painful, Ma'am.

Q: Why was your vagina painful[,] Miss Witness?A: Because the penis of my father was inserted, Ma'am.Q: Where was it inserted?A: To [sic] my vagina, Ma'am.Q: And when he inserted his penis to [sic] your vagina, what did you feel, if any?A: It was painful, Ma'am.Q: What [sic] that your first experience?A: Yes, Ma'am.Q: And after his penis was inserted on [sic] your vagina, was he moving or not?A: He was moving, Ma'am.Q: He was moving. How long did he stay on top of you?A: I do not know how long he was on top of me but he stayed long, Ma'am.Q: And after he left you, what did you do, if any?A: I cried, Ma'am.[35] [Emphasis supplied]

As regards the rape episode in 1998, AAA testified in a clear-cut manner on the coercion or intimidation exerted by appellant that forced her into sexual intercourse with him. Thus:

Q: And how did your father rape you in 1998 — last raped you in 1998?

A: The same thing was done to me, Ma'am.

Q: What is that same thing? What did he do?

A: He laid me down and I was told to lay [sic] down and I was ordered to remove my clothes, Ma'am.

Q: When you were ordered to lay [sic] down, was he wearing clothes or none?

A: No more, Ma'am.

Q: And after you removed your clothes, what did he do next?

A: He laid on top of me, Ma'am.

Q: Then?

A: He was touching my breast, Ma'am.

Q: Aside from touching your breast, what else did he do?A: He again inserted his penis to [sic] my vagina, Ma'am.Q: And what did you feel while your father was doing that to you?A: I was angry and afraid, Ma'am.Q: Why galit at takot?A: I was angry at myself because I could not defend myself, Ma'am.Q: And why were you afraid?A: Because he might do what he was telling me that he will kill us, Ma'am.

x x x x

Q: When your mother left for abroad, did your father engage in drinking liquor?

A: Yes, sir.

x x x x

Q: Can you tell this Court in what place does your father used to drink?

A: In our house, sir.

x x x x

Q: Now, on what time of the day do they have drinking session[s] in your house?

A: Sometimes in the afternoon, sir.

Q: Do they drink in the evening?

A: Yes, sir.

x x x x

Q: Was he under the influence of liquor during that time?A: Yes, sir.

x x x x

Q: And when your father placed himself on your top, what did you do?A: I was just crying, sir.

x x x x

Q: You did not box him?

A: No, sir.

Q: You did not push him away?A: I pinched him, sir.

Q: You did not bite him?

A: No, sir.

Q: Did you not cross your two legs?A: I was trying to do that, sir.

Q: What did your father do when you were trying to close your two legs?A: He was trying to separate my legs, sir.

x x x x

Q: But you did not shout?

A: No, sir, I was just crying.[36] [Emphasis supplied]

At the core of almost all rape cases is the issue of credibility of witnesses,[37] and the trial court is in the best position to resolve the question, having heard the witnesses and observed their demeanor during trial.[38] In assessing the credibility of witnesses, this Court has laid down the following parameters, thus:

First, the appellate court will not disturb the factual findings of the lower court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the result of the case;

Second, the findings of the trial court pertaining to the credibility of witnesses are entitled to great weight and respect since it had the opportunity to examine their demeanor as they testified on the witness stand; and

Third, a witness who testified in a categorical, straightforward, spontaneous and frank manner and remained consistent on cross-examination is a credible witness. [39]

The lower court and the appellate court found appellant guilty of rape on both counts. The courts below similarly gave full faith and credence to AAA's testimony. We find no cogent reason to disturb their findings.

Appellant's attempt to damage the credibility of AAA is futile. He challenged the truthfulness of her testimony given the following inconsistencies: (1) on direct examination, she stated that she removed her clothes but on cross-examination, she testified that it was her father who undressed her; (2) she narrated that her brothers were watching television at their neighbor's house when her father first raped her but when asked again later, she answered that they were sleeping; and (3) she claimed that her mother was abroad when the rape incidents transpired but her mother never left their house in the years 1994 to 1998 according to appellant.

The appellate court correctly held that the adverted inconsistencies are minor and inconsequential. They are plainly insufficient to render complainant's testimony doubtful, more they do not negate the commission of rape. Moreover, the testimony of a witness must be considered and calibrated in its entirety and not in truncated portions or isolated passages.[40] If at all, it is appellant who was inconsistent when he first testified that his wife never left the house from 1994 to 1998 and then later stated on cross-examination that he received money from her while she worked as a beautician in Saudi Arabia during those years. Thus, AAA's clear and categorical narration of the sexual assaults against her, free from material inconsistency, deserves full faith and credence especially when set against appellant's bare denial. That she would falsely accuse her own father of committing so grave a crime as rape only to fuel a grudge harbored by her uncle is hardly believable. There is no other

conclusion than that her declarations bear the ring of truth.

That appellant had sexual intercourse with his daughter in 1994 was sufficiently proven. That he forced her into sexual congress in 1998 was likewise proven. The courts below correctly found that appellant had indeed employed threats and intimidation in order to subject AAA to his evil desires. Threats to kill her and her siblings who lived with a drunkard of a father under one roof coupled with his moral ascendancy and influence over her are sufficient factors to build a climate of psychological terror. It was observed in *People v. Melivo*,^[41] that in incestuous rapes, "[t]he rapist perverts whatever moral ascendancy and influence he has over his victim in order to intimidate and force the latter to submit to repeated acts of rape over a period of time. In many instances, he succeeds and the crime is forever kept on a lid. In a few cases, the victim suddenly finds the will to summon unknown sources of courage to cry out for help and bring her depraved malefactor to justice."^[42] That ascendancy or influence flows from the father's parental authority over his children and from the latter's correlative duty of reverence and respect towards the former.^[43] Although we have subsequently held that the moral ascendancy of the accused in incestuous rapes, alone, does not lead to the conclusion that sufficient intimidation was present,^[44] it may be considered a contributing factor when coupled with other threatening circumstances such as those in this case.

Considering the foregoing, we thus find appellant guilty of rape on both counts. The age of AAA at the time of the rape incidents as well as her relationship with appellant were sufficiently established by the prosecution and admitted by appellant. Thus, the lower court correctly meted out to appellant the penalty of death on both counts. However, R.A. No. 9346, entitled an "An Act Prohibiting the Imposition of Death Penalty in the Philippines," signed into law on 24 June 2006, prohibits the imposition of the death penalty. Appellant thus shall suffer only the penalty of reclusion perpetua.

We sustain the awards of P75,000.00 and P25,000.00 as civil indemnity and exemplary damages, respectively, for each count of rape but increase the award of moral damages from P50,000.00 to P75,000.00 for each count in line with prevailing jurisprudence.^[45]

WHEREFORE, premises considered, the appealed decision is hereby **AFFIRMED** with **MODIFICATION**. Appellant Lamberto Rafon is **GUILTY** beyond reasonable doubt of two counts of qualified rape and is sentenced to suffer the penalty of reclusion perpetua for each count. For each count of rape, he is hereby ordered to pay private complainant P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P25,000.00 as exemplary damages. Costs against appellant.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Chico-Nazario, Garcia, Velasco, Jr., Nachura, and Reyes, JJ., concur.
Quisumbing, J., on leave.

[1] Rollo, pp. 3-13; Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Portia Aliño-Hormachuelos and Vicente Q. Roxas.

[2] CA rollo, pp. 15-34; Penned by Judge Aurora V. Maqueda- Roman, Regional Trial Court of Naga City, Branch 20.

[3] *Id.* at 8-9.

[4] The name of the barangay is withheld. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

- [5] The name of the municipality is withheld per *People v. Cabalquinto*, *supra*.
- [6] The victim's real name is withheld per *People v. Cabalquinto*, *supra*.
- [7] CA rollo, p. 8.
- [8] *Id.* at 9.
- [9] *Id.* at 34.
- [10] Per Resolution dated 10 June 2003; *id.* at 36.
- [11] *Id.* at 131.
- [12] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [13] Rollo, p. 12.
- [14] Records, Folder of Exhibits, p. 2.
- [15] The real name of the victim's mother is withheld per *People v. Cabalquinto*, *supra*.
- [16] TSN, 26 April 2001, pp. 8-11.
- [17] *Id.* at 11-13.
- [18] *Id.* at 5-6.
- [19] *Id.* at 5; and records, p. 4.
- [20] TSN, 13 June 2001, pp. 3-4.
- [21] *Id.*
- [22] The real name is withheld per *People v. Cabalquinto*, *supra*.
- [23] TSN, 14 June 2001, pp. 8-9.
- [24] There seems to have been a typographical error. AAA's birth certificate indicates 3 November 1983 as her birth date and not 3 March 1983.
- [25] CA rollo, pp. 29-30.
- [26] Rollo, p. 10.
- [27] CA rollo, pp. 48-59.
- [28] *Id.* at 85-123.
- [29] RULES OF CRIMINAL PROCEDURE, Rule 110, Sec. 11.
- [30] *People v. Segovia*, 438 Phil. 156, 163 (2002); *People v. Dimapilis*, 360 Phil. 466, 478 (1998).
- [31] 359 Phil. 870 (1998).
- [32] *Id.* at 878-879.
- [33] Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

x x x x

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

- 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.

x x x x

[34]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. Through force, threat, or intimidation;
 - b. When the offended party is deprived of reason or otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority; and
 - 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 x

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

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.

x x x x

[35] TSN, 26 April 2001, pp. 9-11.

[36] Id. at 12, 15-18, 20-21.

[37] Rollo, p. 12.

[38] Perez v. People, G.R. No. 150443, 20 January 2006, 479 SCRA 209, 220, citing Sim, Jr. v. Court of Appeals, G.R. No. 159280, 18 May 2004, 428 SCRA 459; Magno v. People, G.R. No. 133896, 27 January 2006, 480 SCRA 276, 286, citing People v. Escote, G.R. No. 151834, 431 SCRA 345, 350-351; People v. Manahan, 374 Phil. 77 (1999).

[39] *People v. Baltazar*, 385 Phil. 1023, 1032 (2000); *People v. Manahan*, *supra*.

[40] *People v. Cula*, 385 Phil. 742, 752 (2000), citing *People v. Natan*, 193 SCRA 355 (1991).

[41] 323 Phil. 412 (1996).

[42] *Id.* at 422.

[43] *People v. Maglente*, 366 Phil. 221, 251 (1999).

[44] *People v. Solomon*, 434 Phil. 1, 25 (2002).

[45] *People v. Dimaano*, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 669-670; *People v. Cayabyab*, G.R. No. 167147, 3 August 2005, 465 SCRA 681, 693; *People v. Gonzales*, G.R. No. 141599, 29 June 2004, 433 SCRA 102, 117-118; *People v. Antonio*, G.R. No. 157269, 3 June 2004, 430 SCRA 619, 627; *People v. Galigao*, 443 Phil. 246, 267 (2003); *People v. Catubig*, 416 Phil. 102, 120 (2001); *People v. Balgos*, 380 Phil. 343, 362-363 (2000); *People v. Bugayong*, *supra* note 31 at 890.

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