

PEOPLE OF THE PHILIPPINES, Appellee, VS. ENRIQUE CEBALLOS JR. y CABRALES, Appellant.

G.R. No. 169642. September 14, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Enrique Ceballos Jr. y Cabrales[1] (appellant) was charged with six counts of rape, five on complaint of his minor daughter AAA, and one on complaint of another minor daughter BBB. The Informations were filed on November 23, 1998 and docketed as Criminal Case Nos. C-55119, C-55120, C-55121, C-55122, C-55123 and C-57126 before the Regional Trial Court (RTC) of Caloocan.

The accusatory portion of each of the informations follows:

Criminal Case No. C-55119

That [in] December, 1997 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, and by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously lie and have sexual intercourse with his daughter one [AAA], 14 years old[2], against the latter's will and without her consent, the rape was committed with grave abuse of authority.[3] (Underscoring supplied)

Criminal Case No. C-55120

That [in] January, 1998 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, and by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously lie and have sexual intercourse with his daughter one [AAA], 14 years old, against the latter's will and without her consent, the rape was committed with grave abuse of authority.[4] (Underscoring supplied)

Criminal Case No. C-55121

That [in] February, 1998 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously lie and have sexual intercourse with his daughter one [AAA], 14 years old, against the latter's will and without her consent, the rape was committed with grave abuse of authority.[5] (Underscoring supplied)

Criminal Case No. C-55122

That [in] March, 1998 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously lie and have sexual intercourse with his daughter one [AAA], 14 years old, against the latter's will and without her consent, the rape was committed with grave abuse of authority.[6] (Underscoring supplied)

Criminal Case No. C-55123

That on or about 5th day of November, 1998 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force and intimidation, did then and there wil[l]fully, unlawfully and feloniously lie and have sexual intercourse with his daughter one [AAA], 14 years old, against the latter's will and without her consent, the rape was committed with grave abuse of authority.[7] (Underscoring supplied)

Criminal Case No. C-57126

That on or about during the period from December 25, 1995 until July 16, 1998 in Caloocan City, Metro-Manila [sic] and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of [BBB], a minor of 17 years old,[8] with lewd design, and by means of force and intimidation, did then and there wil[l]fully, [u]nlawfully and feloniously lie and have sexual intercourse with one [BBB] against the latter's will and without her consent.[9] (Underscoring in the original)

AAA's birth certificate shows that she was born on October 13, 1984[10] while BBB's shows that she was born on October 16, 1981.[11] At the times material to the first five cases, CCC, appellant's wife with whom he has six children, was working abroad in Qatar.[12]

Culled from the evidence for the prosecution are the following respective versions in the cases:

Criminal Case No. C-55119:

One nighttime in December 1997, AAA and four of her siblings were sleeping at the second floor of their house in Caloocan City when their father-herein appellant touched AAA's breast and vagina, catching her by surprise. Appellant thereafter removed her short pants and underwear and tried to insert his penis inside her vagina but failed, drawing him to, while AAA was in a lying position, instead insert his finger inside her vagina and mash her breasts. She boxed appellant but she was subdued by him. And she cried, but appellant covered her mouth, rendering it difficult for her to breathe. Appellant thereafter dozed off to sleep.[13]

AAA did not report the incident as appellant had threatened that he would kill the members of the family if she did. She had no opportunity to narrate the incident to her older sisters because every time she was conversing with them, appellant would send her away. And while she had the opportunity to report to her classmates and teacher, she did not do so, apprehensive that they might tease her.[14]

Criminal Case No. C-55120:

Also at nighttime sometime in January 1998, while AAA was sleeping with her five siblings at the upper floor of their house, she was awakened as appellant forcibly undressed her and again succeeded in inserting his penis inside her vagina. She tried to resist appellant's moves by boxing his chest, but to no avail. And while she cried, appellant again covered her mouth.[15]

Again, AAA did not narrate the incident to any of her siblings with whom she often quarrelled in the discharge of household chores.[16]

Criminal Case No. C-55121:

On the night of February 14, 1998, while AAA was sleeping with her siblings, she was again awakened as appellant touched her vagina. He removed her underwear, inserted a finger and then inserted his penis inside her vagina. She resisted by boxing him but appellant held her hands and told her to give in; otherwise, he would harm her. She was frightened, but she did not cry anymore because she did not want appellant to cover her mouth again to render her unable to breathe. [17]

She did not also report the incident because appellant had warned her against doing so.[18]

Criminal Case No. C-55122:

On March 26, 1998, three days before her graduation from grade school, AAA was awakened as appellant took off her clothes and directed her to, as she did, lie down on her side. With appellant at her back, he inserted his penis inside her vagina. She could not offer any resistance, however, on account of her position.[19] While she initially cried, the fear that appellant would again cover her mouth prompted her to stop. After appellant ejaculated, he went to sleep.[20]

Every time appellant had sexual intercourse with AAA, he would be kind to her the following morning; otherwise, she expected appellant to beat her buttocks with a fiber glass object,[21] the same object which he was using to hit her brother's head.[22]

Asked by the defense counsel during cross-examination, on observing her to be "aggressive" in answering the questions he was propounding, whether that was "how [she] [had been] talking within the household," AAA replied in the negative, but explaining that her "aggressive" manner was reflective of her anger at her father for the "ginawang kahayupan" to her and her sister BBB "Ginahasa niya po kaming dalawa." [23]

Criminal Case No. C-55123:

On November 5, 1998, between two and three o'clock in the morning, appellant removed AAA's short pants and had sexual intercourse with her. She offered no resistance as she was afraid that he would beat her again. Besides, it would just be an exercise in futility. Appellant thereafter went to sleep, while AAA put on her short pants and went downstairs to clean the house.[24]

On November 19, 1998, AAA narrated to her classmates in high school what she had been through. On November 21, 1998, SPO4 Bayani Feria of the Northern Police District (NDP) who had in the meantime been informed of AAA's plight, accompanied AAA to the NDP Headquarters where she executed a sworn statement[25] charging appellant, who was soon after arrested, with rape.

At the Philippine General Hospital (PGH) where AAA was subjected to medico-legal examination, AAA informed the resident doctor on duty at the Emergency Room that she was raped several times by appellant.[26]

Dr. Bernadette Madrid of the PGH Child Protection Unit, who conducted on AAA general physical and genital examination with the use of a colposcope, an apparatus that enlarges the view of one's genitalia by 15 times and takes pictures of it,[27] found a deep cleft between 3 o'clock and 4 o'clock positions in AAA's hymen[28] and a healed laceration at her fossa navicularis or "part of the genitalia beside or before the hymen." [29] In the Provisional Medical Certificate[30] which she issued, Dr. Madrid gave her impression as follows:

IMPRESSION

Patient with a statement made at the Caloocan Police Station on Nov. 21, 1998. Physical findings are highly suspicious of sexual abuse.[31] (Emphasis and underscoring supplied)

Criminal Case No. C-57126:

On December 25, 1995, after BBB arrived home from the church together with her aunt, BBB learned that her mother CCC had left the conjugal house and went to her parents' house, after a quarrel with appellant, bringing along her (BBB's) siblings.[32] At about two o'clock in the morning of even date, BBB was awakened to find appellant on top of her. Appellant succeeded in inserting his penis inside her vagina, following which he went to sleep.[33]

BBB did not inform her mother CCC about the incident before she left for Qatar in May 1996 as she was threatened by appellant that he would kill them, and he would create a scandal in the neighborhood. [34]

After the rape on December 25, 1995, BBB's travails continued as appellant raped her on the average of ten times every month and every birthday of his on July 15 except his birthday in 1998, she having allowed her boyfriend to sleep in their house. The following day, July 16, however, appellant raped her.[35]

When BBB eventually learned that appellant had also raped her younger sister AAA who even witnessed[36] appellant having sexual intercourse with her (BBB) to thus prompt her to instruct AAA not to tell anybody what she had witnessed, she broke her silence.[37]

While BBB was brought to a doctor for medical examination, she was no longer examined as she was at that time already cohabiting with her boyfriend.[38]

By the account of CCC, mother of AAA and BBB, she left for Qatar on May 17, 1996 and returned to the Philippines in November 1998; and while her husband was in jail, he sent her and her children letters[39] through his mother DDD asking for forgiveness.[40]

For the defense, appellant testified as did his mother DDD and sister EEE.

Appellant declared that it was impossible for him to commit the acts complained of as the family of his sister EEE was also living with them[41] and there were many other people in the house.

With respect to the alleged rape of BBB on December 25, 1995, appellant declared that he could not have committed it as he followed his wife and children who earlier left that day for Pangulo, Malabon.[42]

Appellant also denied having asked his wife and children for forgiveness bearing on the acts complained of. If he had asked for forgiveness, it had to do with his being strict with them and it was in fact on that account that AAA filed the charges against him.[43] As for BBB, he could not think of any reason why she filed a case against him.[44]

Appellant's mother DDD found it impossible too for appellant to rape his daughters because of the presence of people in the house.[45] She surmised that CCC could have instigated her daughters to file the charges against him in view of his objection to her (CCC's) going abroad.

DDD claimed that AAA and BBB in fact usually went out of the house to avoid being scolded by appellant, adding that she herself usually got mad at the two since they could no longer help in the discharge of household chores.[46]

Appellant's sister EEE affirmed that her family used to live with appellant and family during which she usually saw AAA and BBB being scolded by appellant. She claimed that before CCC left for Qatar, she witnessed a quarrel between CCC and appellant because of the hardheadedness of their children. She tried to convince both AAA and BBB to withdraw the charges against appellant but the two were adamant, apprehensive that the withdrawal would infuriate their mother CCC and some of their relatives.[47]

By Decision[48] of October 14, 2002, the RTC of Caloocan City, Branch 128, found the testimonies of AAA and BBB "straightforward, categorical and convincing" and accordingly convicted appellant of rape in all the charges except that in Criminal Case No. C-55119 where it convicted appellant only of acts of lasciviousness. The decretal portion of the trial court's decision reads:

WHEREFORE, in view of all the foregoing, this Court hereby finds accused Enrique Ceballos GUILTY beyond reasonable doubt for Acts of Lasciviousness in Criminal Case No. C-55119, hereby sentencing him to

suffer imprisonment of four (4) years, two (2) months and one (1) day to six (6) years of prison correc[t]ional and for Criminal Cases Nos. C-55120, C-55121, C-55122, C-55123 and C-57126, the Court finds the accused GUILTY beyond reasonable doubt, for five (5) counts of consummated rape, hereby sentences Enrique Ceballos to five (5) death by lethal injection. He is further adjudged to indemnify [AAA] in the amount of [P]50,000.00 as moral damages and [P]50,000 as exemplary damages for count[s] of four (4) consummated rape. Further, Enrique Ceballos is adjudged to indemnify [BBB] [P]50,000.00 as moral damage[s] and [P]50,000.00 as exemplary damage[s].]

The City Jail Warden of Caloocan City is hereby ordered to bring the accused to the National Penitentiary in Muntinlupa City, to serve his sentence.

Let the entire record of th[ese] case[s] be forwarded to the Supreme Court for automatic review as mandated by law.[49] (*Italics supplied*)

The records of the cases were forwarded to this Court for automatic review where they were docketed as G.R. Nos. 155493-155498. Per this Court's ruling in *People v. Mateo*,[50] however, the cases were referred to the Court of Appeals for appropriate action and disposition.[51]

By the assailed Decision[52] of July 20, 2005, the appellate court affirmed with modification the decision of the trial court. It modified the duration of the penalty imposed in Criminal Case No. C-55119, for acts of lasciviousness, the amount of moral damages awarded in each rape case which it increased to P75,000 from P50,000, and the amount of exemplary damages in each rape case which it reduced to P25,000 from P50,000. Additionally, the appellate court awarded the amount of P75,000 in each rape case as civil indemnity.

In modifying the penalty for acts of lasciviousness, the appellate court explained:

The penalty for acts of lasciviousness is prison correccional. There being no aggravating or mitigating circumstance alleged and proven in this case, the penalty prescribed shall be imposed in its medium period, i.e., from 2 years, 4 months and 1 day to 4 years and 2 months. Applying the Indeterminate Sentence Law, said penalty shall constitute the maximum term, while the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense, i.e., *arresto mayor* or 1 month and 1 day to 6 months. Appellant should, therefore, be sentenced to suffer the penalty of 6 months of *arresto mayor*, as minimum, to 4 years and 2 months of prison correccional, as maximum.[53] (*Italics in the original; underscoring supplied*)

Thus the appellate court disposed as follows:

WHEREFORE, the assailed decision of the Regional Trial Court of Caloocan City, Branch 128, convicting accused-appellant Enrique Ceballos of acts of lasciviousness in Criminal Case No. C-55119 and of five (5) counts of rape in Criminal Cases Nos. C-55120, C-55121, C-55122, C-55123 and C-57126 is AFFIRMED with MODIFICATION in that in Criminal Case No. C-55119 for acts of lasciviousness, appellant is sentenced to suffer the indeterminate prison term of 6 months of *arresto mayor*, as minimum, to 4 years and 2 months of prison correccional, as maximum. In addition to the moral damages awarded by the trial court which is increased to [P]75,000.00 and exemplary damages which is hereby reduced to [P]25,000.00, civil indemnity in the amount of [P]75,000.00 is awarded to the victims, in each of the five (5) counts of rape.[54] (*Emphasis and italics in the original*)

The cases are now before this Court for final review and have been given one docket number.

By Resolution of November 8, 2005,[55] this Court required the parties to simultaneously submit Supplemental Briefs if they so desired. Both parties filed their respective Manifestations[56] that they were no longer filing supplemental briefs.

In rape cases, the credibility of the victim is almost always the single most important issue.[57] If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing, and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis.[58]

In its Decision, the trial court observed:

. . . Though inherently shy, [AAA and BBB] displayed an air of confidence and sincerity in their narration. Their testimony was straightforward, categorical and convincing. Showing no signs of remorse, they braved the embarrassment and stigma of a public trial, came forward and courageously revealed the dastardly acts of their own father. At some points during the taking of their testimony, when they were narrating the rape committed on their person by their own father, both cried. This emotional condition displayed by the sisters is evidence of the veracity of their claim. The Court sees no reason at all to doubt their narration of what happened during the instances they were defiled by the accused, and no reason at all why these two young sisters would impute so grave a crime as rape against their own father, if the same were not true.

Indeed, it would be the height of depravity for the two sisters who have no experience of sexual perversity to concoct a scenario that would lead their father on the death row and in the process, drag themselves and the rest of the their family to a lifetime of ridicule and shame.[59] (Emphasis and underscoring supplied)

The observations of the trial court, which are substantiated by the records of the cases, deserve the respect of appellate courts. Apropos is the following observation of this Court in *People v. Briones*:[60]

. . . [A] daughter would not accuse her own father of a serious offense like rape, had she really not been aggrieved. Her testimony against him is entitled to greater weight, since reverence and respect for elders is too deeply ingrained in Filipino children and is even recognized by law. . . . That she would accuse her own father of this heinous crime had she not been aggrieved would be absurd.[61] (Underscoring supplied)

Appellant's argument that the acts complained of could not have been committed due to the presence of other people fails. As repeatedly held by this Court, lust is no respecter to time and place. The nearby presence of the relatives of the victim,[62] the cramped condition of the room, the presence of other people therein, or the high risk of being caught, have been held as not sufficient and effective to deter the commission of rape.[63]

As for appellant's allegation that AAA and BBB falsely charged him as he was strict and had had quarrels with his wife CCC, the same was correctly brushed aside by the appellate court as "puerile and . . . too flimsy to merit even scant consideration." Indeed, *People v. Bidoc*[64] teaches:

. . . [P]arental punishment or disciplinary chastisement is not enough for a daughter in a Filipino family to falsely accuse her father of rape. She would not subject herself to an examination of her private parts, undergo the trauma and humiliation of public trial, and embarrass herself with the need to narrate in detail how she was raped if she was not in fact raped. It takes depravity for a young girl to concoct a tale of defloration, which would put her own father on death row, drag herself and the rest of her family to a lifetime of shame, and make them the object of gossip among their classmates and friends.[65] (Underscoring supplied)

One of appellant's letters, Exhibit "L," dated July 13, 1999, sent to CCC and children, which reads in part:

. . . Nalulungkot ako sa mga pangyayari sa ating buhay. Sana matanggap niyo na ito sa sarili ninyo at mapatawad na ninyo ako sa aking kasalanang nagawa. Siguro naman alam naman niyo na hindi naman ako likas na masama. Kung nagawa ko man iyong mga bagay na iyon dala na rin ng naging kahinaan ko. Lahat naman tayo ay nagkakamali at ang nangyari sa akin ay kinamuhian ko rin ang aking sarili sapagkat hindi ko alam matagal akong nabilanggo sa bisig ng diyablo na siyang tunay na may kagagawan sa pagwasak sa buhay natin. Alam niyo lahat ng kasalanan ng nagagawa ng tao ay simbuyo ng damdamin na inutos ng diyablo na di natin napaglalabanan sapagkat wala sa puso natin si Cristo. Alam mo siguro na nangarap din ako sa buhay natin. Lahat ay ginawa ko para sa inyo naging mabuti rin akong ama. Inaamin ko na ako'y nalulolong sa bawal

na gamut at ito rin ang naging dahilan kaya ako nakagawa ng di ko gusto. Patawarin niyo ako kung di ko kayang aminin sa korte ang kasalanan ko . . .[66] (Emphasis supplied)

in fact strongly reflects his admission of guilt to thus negate his professed innocence.

The offenses of rape subject of Criminal Case Nos. C-55120, C-55121, C-55122 and C-55123 having been committed in 1998, appellant should have been charged under Article 266-A of the Revised Penal Code.[67] Republic Act (R.A.) No. 8353[68] (“Anti-Rape Law of 1997”) introduced Articles 266-A, 266-B, 266-C and 266-D on Rape, and effective October 22, 1997, rape was reclassified as a crime against persons.

Since, as the Office of the Solicitor General observes, “the acts constituting the crime of rape and its qualifying circumstances as averred in the information in each of said cases, which were all filed under the then Article 335[69] of the Revised Penal Code, as amended by R.A. No. 7659, are substantially the same as those required to be stated under Articles 266-A, paragraph 1, and 266-B[70] of the said Code,” appellant’s right to be informed of the charges against him was not violated.[71]

Appellant’s conviction in Criminal Case No. C-55119, for acts of lasciviousness,[72] is in order. While under R.A. No. 8353, which was, as reflected above, already in effect when the criminal act was committed in December 1997, the act of inserting a finger into another’s genital is penalized as rape by sexual assault under paragraph 2 of Article 266-A of the Revised Penal Code, the Information charged appellant with rape still under Article 335 of the Revised Penal Code.

Thus, appellant cannot be convicted of rape by means of sexual assault even if it was established that he inserted his finger into the vagina of AAA. To do so would violate his constitutional right to be informed of the nature of the charge against him. It bears noting, however, that the crime of acts of lasciviousness is necessarily included in the crime of rape.[73]

The appellate court, however, erred in finding that no aggravating circumstance was alleged and proven in the case for acts of lasciviousness. Relationship, which was alleged in the information and admitted by appellant,[74] is under Article 15[75] of the Revised Penal Code (alternative circumstances) aggravating in acts of lasciviousness.[76]

Under Article 336 of the Revised Penal Code, the penalty for acts of lasciviousness is prision correccional. Appreciating relationship as an aggravating circumstance and applying the Indeterminate Sentence Law, appellant should suffer an indeterminate prison term of six (6) months of arresto mayor as minimum, to six (6) years of prision correccional as maximum.[77] Further, the amount of P30,000 as moral damages may be awarded to the victim.[78]

The award of exemplary damages in acts of lasciviousness is also justified under Article 2230 of the Civil Code,[79] there being an aggravating circumstance. This Court finds the amount of P2,000 reasonable for the purpose.[80]

Going back to the charges for rape in Criminal Cases Nos. C-55120, C-55121, C-55122, C-55123 and C-57126 in which appellant’s guilt beyond reasonable doubt is affirmed, in view of the enactment of R.A. No. 9346, “AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES,” the death penalty can no longer be imposed. Appellant must thus be sentenced to suffer the penalty of reclusion perpetua, without eligibility for parole.[81]

WHEREFORE, the assailed July 20, 2005 Decision of the Court of Appeals is AFFIRMED with MODIFICATION.

In Criminal Case Nos. C-55120, C-55121, C-55122, C-55123 and C-57126, in lieu of the death penalty, appellant, ENRIQUE CEBALLOS, JR. y CABRALES, is sentenced to suffer the penalty of reclusion perpetua, without eligibility for parole, and to pay the victim AAA in each of the first four cases and the victim BBB in the last case P75,000 as moral damages, P25,000 as exemplary damages, and another P75,000 as civil indemnity.

In Criminal Case No. C-55119, appellant is sentenced to suffer the penalty of Six (6) Months of arresto mayor as minimum, to Six (6) Years of prision correccional as maximum, and to pay the victim AAA P30,000 as moral damages and P2,000 as exemplary damages.

No pronouncement as to costs.

SO ORDERED.

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

[1] Also known as Alfredo Ceballos, Jr. y Cabrales; Junior; Rick; Ricky.

[2] Since, as reflected in the birth certificate, AAA was born on October 13, 1984, she was only 13 years old when the rapes were committed in Criminal Cases No. C-55119, C-55120, C-55121 and C-55122. She was 14 years old when the rape was committed in Crim. Case No. C-55123.

[3] Records, Vol. I, p. 1.

[4] Id. at 5.

[5] Id. at 6.

[6] Id. at 7.

[7] Id. at 8.

[8] Since, as the birth certificate shows, BBB was born on October 16, 1981, she was only 14 years old in December 1995. She was already 17 years old at the time of the filing of the information for rape.

[9] Records, Vol. II, p. 27.

[10] Exhibit "K," Certificate of Birth, records, Vol. I, p. 127.

[11] Exhibit "C," Birth Certificate, records, Vol. I, p. 115.

[12] In her direct testimony, CCC stated that she went to Qatar in May 1996 and returned home on November 27 or 28, 1998. (TSN, December 14, 1999, pp. 7-8, 7. There was a mistake in the numbering of pages of the TSN, two pages having been numbered page 7 and another two numbered 8).

[13] TSN, March 8, 1999, pp. 10-17.

[14] Q [Atty. Yap]: You have all the chance to tell to [sic] your teacher and to [sic] your classmates what happened to you of the abuse committed on January or December, prior to that?

A [AAA] : There was an opportunity to report to them but I did not report the matter to my teacher and to my classmates, sir.

Court- Why?

A: Because I was afraid, [Y]our Honor, and I was ashamed that if my teacher and classmates will know what happened to me, of course, they might tease (tukso) me. (TSN, October 12, 1999, pp. 6-7)

[15] TSN, March 8, 1999, pp. 17-21.

[16]Q [Atty. Yap] But it is admitted that immediately after the abuse on January, 1998, you never complained to the members of the family living with you, is that correct?

A: We seldom understand each other because whenever we talk, we are always in disagreement, sir. (HINDI PO KAMI NAG-UUSAP USAP SA BAHAY KASI PO HINDI PO KAMI NAGKAKAINTINDIHAN NG MGA KAPATID KO. LAGI-LAGI PO KAMING MAY AWAY. MAHIRAP PO KAMING MAGKAKAINTINDIHAN DAHIL PO KADA MAG-UUSAP KAMI, MAY SINGHALAN PO. MINSAN NGA LANG PO KADA MAG-UUSAP KAMI, KONTING ANO LANG PO, AWAY PO KAAGAD ANG NAPUPUNTAHAN NG PAG-UUSAP NAMIN.)

Court – Why were you always “[n]agsisinghalan”?

A: Because we do not know what we are going to do in the household chores, [Y]our Honor. (DAHIL PO SA HINDI PO KAMI NAGKAKAINTINDIHAN KUNG ANO PO IYONG GAWAIN SA BAHAY LAGI PO KAMING NAG-AAWAY DAHIL KONTING TRABAHO LANG PO NAG-AAWAYAN KAMI.)

(Uppercasing in the original.) x x x x
(TSN, October 12, 1999, p. 9-10.)

[17] TSN, March 8, 1999, pp. 21-25.

[18] TSN, October 12, 1999, p.11. AAA testified as follows:

Q: And immediately after February, 1998, you said you were abused and you never complain also to your teacher and to your classmates?

A: Yes, sir, I did not report the incident to my teacher and classmates because my father told me not to do so. (OPO, HINDI PO AKO NAKAKAPAG-COMPLAIN DAHIL PO, HALIMBAWA NA LANG PO NAGKAROON AKO NG KASALANAN PO SA KANYA, HINDI NIYA PO AKO PAPASUKIN – ANG DAHILAN NIYA, HUWAG KANG PAPASOK, PAG PUMASOK KA SIGE, HUWAG KA NG UUWI DITO – IYAN ANG SINASABI PO NIYA SA AKIN.)

Court – Let her answer also in Tagalog be retained. x x x

(Uppercasing in the original) x x x x[19] AAA was asked by the court to demonstrate how appellant was able to insert his penis while she was lying sideways. AAA answered:

[AAA] Like this sir, he was at my back and then he pulled my thighs [sic] and put [it] on top of his legs. (TSN, March 8, 1999) [20] TSN, March 8, 1999, pp. 26-29.

[21] The fiber glass object was marked as Exhibit “A,” TSN, March 8, 1999, p. 31.

[22] TSN, March 8, 1999, pp. 30-31.[23] TSN, October 12, 1999, pp. 12-13.

[24] TSN, March 8, 1999, pp. 33-36.[25] Exhibit “B” and submarkings, Records, Vol. I, pp. 112-113. In her Sworn Statement, AAA stated that she was raped only four times: (1) January 1998; (2) February 1998; (3) March 1998, and (4) November 5, 1998. However, she narrated the events as follows:

X X X X

0.7 T: Isalaysay mo nga ang pangyayari[.]

S: Nung November at December 1997, sinimulan na akong pag-hihipuan sa maseselang parte ng aking katawan ng aking Papa. Ipinapasok niya ang kanyang kamay sa aking sa suot kong damit at short. Nuong nga pong December 1997, ay ipinasok niya ang kanyang finger sa aking ari. Tapos, December 1997 din pon ng purwersahan niyang ipinapasok ang kanyang ari sa aking ari pero hindi naman po niya naipasok. January 1998 po ng una niya akong magahasa. Hinubaran niya ako ng suot kong short at saka niya pinuwersang ipasok ang kanyang ari sa aking ari. Yung pangalawa, nuong Feb. 1998, mag-ba-valentine nuon, matapos kaming nag-tungo sa Tito ko sa construction na kanyang pinapasukan at matapos lang kaming kumain at ng ako ay natutulog na ay nagising na lang akong kinukurot ng aking tatay, tapos, ginalaw na uli ako nga king tatay. Nuong Marso, 1998, yung pangatlo, mag-ga-graduation nuon. Gabi nuon, tapos, nagising akong katabi ko na ang aking Papa. At tulad pa rin ng una, pangalawa ay hinubaran niya ako nga king suot na short. [T]apos, ginamit na naman niya ako. At nitong huling-huli, November 5, 1998, mga alas 2:00-3:00 ng madaling araw, habang natutulog ako ay nagising na lang akong hinuhubaran ako ng Papa ko ng suot kong short, tapos, ginalaw niya uli ako.[26] Exhibits “F,” “F-1,” “F-1-A” and “F-1-B,” records, Vol. I, pp. 121-123.[27] Exhibit “G,” records, Vol. I, p. 124.[28] Exhibit “G-1,” *ibid*; Exhibit “H,” *id.* at 125.[29] Exhibit “G-2,” *ibid*; Exhibit “H,” *ibid*.[30] Exhibit “H,” *id.* at 125.[31] Exhibit “H-2,” *ibid*.[32] TSN, November 8, 1999, pp. 3-4. According to appellant, CCC and their children left for Pangulo, Malabon in the afternoon of December 25, 1995 (TSN, October 10, 2000, p. 8).[33] *Id.* at 2-5.[34] *Id.* at 6.[35] *Ibid*.[36] *Id.* at 6-7.[37] *Id.* at 7.[38] *Id.* at 12.[39] Exhibits “L,” “M,” “N,” “O,” “P,” “Q,” “R,” records, Vol. I, pp. 128-141. [40] TSN, December 14, 1999, pp. 3-12; January 25, 2000, pp. 3-25.[41] At the ground level, according to AAA, lived her grandmother DDD and her uncles. (TSN, March 8, 1999, p. 9)[42] TSN, October 10, 2000, pp. 8-10.[43] TSN, June 18, 2001, p. 9.[44] TSN, October 10, 2000, pp. 4-14; TSN, June 18, 2001, pp. 8-10.[45] TSN, June 19, 2001, p. 8.[46] *Id.* at 4-11.[47] TSN, June 25, 2001, pp. 6-18.[48] Records, Vol. II, pp. 91-98.[49] *Id.* at 98.[50] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.[51] Resolution dated January 18, 2005, CA rollo, p.143.[52] CA rollo, pp. 145-172. Penned by Justice Rebecca De Guia-Salvador with the concurrence of Justices Conrado M. Vasquez, Jr. and Aurora Santiago-Lagman.[53] CA rollo, p. 170.[54] *Id.* at 171.[55] Rollo, p. 29.[56] *Id.* at 30-32, 34-36.[57] *People v. Fernandez*, G.R. No. 172118, April 24, 2007; *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 448.[58] *People v. Fernandez*, *supra*; *People v. Corpuz*, *supra*; *People v. Guambor*, 465 Phil. 671, 678 (2004).[59] Records, Vol. II, p. 97.[60] *People v. Briones*, 439 Phil. 675 (2002).[61] *People v. Briones*, *supra* at 685. Vide *People v. Pangilinan*, G.R. No. 171020, March 14, 2007; *People v. Calderon*, 441 Phil. 634, 643-644 (2002).[62] *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 555.[63] *People v. Pangilinan*, *supra* note 61.[64] G.R. No. 169430, October 31, 2006, 506 SCRA 481.[65] *Id.* at 499.[66] Records, Vol. I, p. 128.[67] ART. 266-A. Rape, When and How Committed. – Rape is committed –

- By a man who shall have carnal knowledge of a woman under any of the following circumstances:
- Through force, threat or intimidation;
- When the offended party is deprived of reason or is otherwise unconscious;
- By means of fraudulent machination or grave abuse of authority;
- When the offended party is under twelve (12) years of age or is demented, even though none of the

circumstances mentioned above be present.

- By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

[68] "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES." [69] 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.

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:

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 [70] ART. 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 [71] CA rollo, pp. 126-127. Retired Justice Florenz Regalado, in his book CRIMINAL LAW CONSPECTUS (2003), p. 406, stressed: 4. R.A. 8353, "The Anti-Rape Law of 1997," was subsequently enacted and, after due publication, took effect on October 22, 1997. It expanded the definition of the crime of rape and reclassified the same as a crime against persons as it now appears in this work. Although it amended Art. 335 and all laws, acts or other issuances contrary to or inconsistent with its provisions, it retained virtually all the original provisions of Art. 335 and the amendments introduced by R.A. 2632 and R.A. 4111. (Underscoring supplied) [72] AAA testified as follows:

Q [Prosecutor]: You said that you felt his penis into your vagina. What did he do next when you felt his penis pointed to your vagina?

A [AAA]: When he was not able to insert his penis into my vagina, what he did was "fininger po niya ako."

Q: And when he fingered you as you mentioned, what did you do next?

A : He held my breast, sir.

Q: What did he do when he held your breast?

A : He mashed it, sir.

Q: And then what did he do next when he mashed your breast?

A No more, sir, but after that, he slept.(TSN, March 8, 1999, pp. 14-15)[73] Vide *People v. Mole*, 462 Phil. 209, 222-223 (2003); *People v. Aquino*, 460 Phil. 666, 680-681 (2003); *People v. Esperanza*, 453 Phil. 54, 74 (2003); *People v. Bon*, 444 Phil. 571, 583 (2003).[74] TSN, October 10, 2000, p. 3.[75] Art. 15. Their concept. – Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication, and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

x x x x[76] *People v. Orillosa*, G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 700.[77] Vide *People v. Orillosa*, supra; *People v. Lilo*, G.R. Nos. 140736-39, February 4, 2003, 396 SCRA 674, 685; *People v. Caralipio*, 441 Phil 302, 323 (2002).[78] *People v. Orillosa*, supra; *People v. Lilo*, supra; *People v. Solmoro, Jr.* 441 Phil. 348, 361 (2002).[79] ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.[80] Vide *People v. Alcoreza*, 419 Phil. 105 (2001).[81] Vide *People v. Bidoc*, supra note 64; *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727; *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704; *People v. Salome*, G.R. No. 169077; August 31, 2006, 500 SCRA 659.

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