

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICKY ALFREDO Y NORMAN, ACCUSED-APPELLANT.

G.R. No. 188560. December 15, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal from the September 30, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02135 entitled *People of the Philippines v. Ricky Alfredo y Norman*, which affirmed an earlier decision[2] in Criminal Case Nos. 01-CR-4213 and 01-CR-4214 of the Regional Trial Court (RTC), Branch 62 in La Trinidad, Benguet. The RTC found accused-appellant Ricky Alfredo y Norman guilty beyond reasonable doubt of two counts of rape.

The Facts

Accused-appellant was charged in two (2) separate Informations, the accusatory portions of which read:

Criminal Case No. 01-CR-4213

That sometime in the period from April 28-29, 2001, at Cadian, Topdac, Municipality of Atok, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA],[3] a thirty six (36) year old woman, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[4]

Criminal Case No. 01-CR-4214

That sometime in the period from April 28-29, 2001, at Cadian, Topdac, Municipality of Atok, Province of Benguet, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously commit an act of sexual assault by inserting a flashlight into the vagina of one [AAA], a thirty six (36) year old woman, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[5]

On June 21, 2001, accused-appellant, with the assistance of counsel, pleaded not guilty to both charges. Thereafter, trial on the merits ensued.

During the trial, the prosecution offered the oral testimonies of the victim, AAA; her 10-year old son, BBB; Ernesto dela Cruz; Police Officer 3 James Ruadap; and Dr. Alma Ged-ang. On the other hand, the defense presented as its witnesses accused-appellant himself; his mother, Remina; his sister, Margaret; Hover Cotdi; Jona Canuto; and Pina Mendoza.[6]

The Prosecution's Version of Facts

In March 2001, AAA, who was six months pregnant, went home to Butiyao, Benguet, along with her family, to harvest the peppers planted in their garden. On April 27, 2001, AAA and her son, BBB, returned to their sayote plantation in Cadian, Topdac, Atok, Benguet to harvest sayote. The following day, or on April 28, 2001, AAA had the harvested sayote transported to Baguio City. Later that night, she and her son stayed at their rented shack and retired early to bed.[7]

In the middle of the night, AAA was awakened by a beam of light coming from the gaps in the walls of the shack directly illuminating her face. She then inquired who the person was, but nobody answered. Instead, the light was switched off. After a few minutes, the light was switched on again.[8] Thereafter, a male voice shouted, "Rumwar kayo ditta no saan kayo nga rumwar paletpeten kayo iti bala!"[9] AAA remained seated. Then, the male voice uttered, "Lukatam daytoy no saan mo nga lukatan bilangan ka, maysa, duwa..."[10] AAA immediately woke BBB up. Just then, the male voice said, "Pabitaken kayo iti bala."[11] AAA cried out of fear.[12]

Anxious that the person outside would kill her and her son, AAA lit the gas lamp placed on top of the table, and opened the door while her son stood beside it. As the door opened, she saw accused-appellant directly in front of her holding a flashlight. AAA did not immediately recognize accused-appellant, as his hair was long and was covering his face. She invited him to come inside the shack, but the latter immediately held her hair and ordered her to walk uphill.[13] Helpless and terrified, AAA obeyed him. All the while, accused-appellant was behind her.[14]

Upon reaching a sloping ground, accused-appellant ordered AAA to stop. Thereafter, accused-appellant placed the lit flashlight in his pocket and ordered AAA to remove her clothes. When she refused, accused-appellant boxed her left eye and removed her clothes. When she also attempted to stop accused-appellant, the latter angrily slapped her face. Completely naked, AAA was again ordered to walk uphill.[15]

Upon reaching a grassy portion and a stump about one foot high, accused-appellant ordered AAA to stop and lie on top of the stump, after accused-appellant boxed her thighs. Accused-appellant then bent down and spread open AAA's legs. After directing the beam of the flashlight on AAA's naked body, accused-appellant removed his pants, lowered his brief to his knees, went on top of her, and inserted his penis into her vagina. Accused-appellant threatened to box her if she moves.[16]

Accused-appellant also held AAA's breast, as well as the other parts of her body. He shifted the flashlight from one hand to another while he moved his buttocks up and down. AAA cried as she felt severe pain in her lower abdomen. Accused-appellant stood up and directed the beam of the flashlight on her after he was satisfied.[17]

Ten minutes later, accused-appellant went on top of AAA again and inserted his penis into her vagina and moved his buttocks up and down. After being satisfied, accused-appellant stood up and lit a cigarette.[18]

Afterwards, accused-appellant went on top of AAA again and tried to insert his penis in the latter's vagina. His penis, however, has already softened. Frustrated, accused-appellant knelt and inserted his fingers in her vagina. After removing his fingers, accused-appellant held a twig about 10 inches long and the size of a small finger in diameter which he used to pierce her vagina. Dissatisfied, accused-appellant removed the twig and inserted the flashlight in her vagina.[19]

After accused-appellant removed the flashlight from AAA's vagina, he went on top of her again, pressing his elbows on her upper breasts and boxing her shoulders and thighs. Subsequently, accused-appellant stood up and warned her not to report the incident to the authorities. Immediately after, he left her at the scene.[20]

Since she was too weak to walk, AAA rested for about 15 minutes before she got up and went back to the shack where she immediately woke her son up. Thereafter, they proceeded to the highway and boarded a jeep to Camp 30, Atok, Benguet. She also went to Sayangan, Atok, Benguet the following day to report the incident to the police authorities.[21]

Upon medical examination, Dr. Ged-ang found that AAA had a subconjunctival hemorrhage on the right eye and multiple head injuries, which may have been caused by force such as a blow, a punch, or a hard object hitting the eye. There was also tenderness on the upper part of the back of AAA, as well as on her left infraclavicular area below the left clavicle, left flank area or at the left side of the waist, and medial aspect on the inner part of the thigh. Moreover, there were also multiple linear abrasions, or minor straight open wounds on the skin of her forearms and legs caused by sharp objects with rough surface.[22]

Apart from the external examination, Dr. Ged-ang also conducted an internal examination of the genitalia of AAA. Dr. Ged-ang found that there was confluent abrasion on the left and medial aspects of her labia minora about five centimeters long and a confluent circular abrasion caused by a blunt, rough object that has been forcibly introduced into the genitalia.[23]

Version of the Defense

In the morning of April 28, 2001, accused-appellant was allegedly working in the sayote plantation near his house. At noontime, he went home to eat his lunch. After having lunch, his mother told him to bring the pile of sayote she harvested to the edge of the road. Accused-appellant went to the place where the pile of harvested sayote was placed. However, when he reached that place, he claimed that he saw AAA gathering the sayote harvested by his mother and placing them in a sack.[24]

Upon seeing what AAA was doing, accused-appellant shouted at her, prompting AAA to run away with her son and leave the sack of sayote. When they left, accused-appellant started placing the harvested sayote in the sack. He was able to fill eight sacks. Remembering that his mother told him that he would be able to fill 10 sacks all in all, accused-appellant went to the shack of AAA after bringing the eight sacks near the road. He suspected that she and her son were the ones who took the two missing sacks of sayote.[25]

When he arrived at the place where AAA and her son were staying, accused-appellant allegedly saw them packing sayote, and he also supposedly saw a sack of sayote with the name of his father printed on it. For this reason, accused-appellant got mad and told AAA to go away and leave the place because what they were doing was wrong. AAA replied by saying that she would wait for Hover Cotdi, the owner of the sayote plantation and the shack, to ask for permission to leave. All this time, accused-appellant was allegedly speaking in an angry but non-threatening voice. Nonetheless, while he was confronting AAA, her son ran into the shack and stayed there.[26]

Before leaving the place, accused-appellant told AAA that the sacks of sayote belonged to his family, although he decided not to take them back anymore. He supposedly left after five o'clock in the afternoon and arrived at their house at around seven o'clock in the evening. During this time, all his family members were watching television on Channel 3. Accused-appellant joined them in watching a Tagalog movie. He then allegedly went to bed at 10 o'clock in the evening, while his parents continued to watch television until 11 o'clock in the evening.[27]

The following morning, on April 29, 2001, accused-appellant woke up between six to seven o'clock in the morning. After having breakfast, he helped his mother clean the sayote farm. At around eight o'clock in the morning, he saw AAA by the road waiting for a ride with a baggage placed in a carton box. His mother then went down the road and talked to AAA, leaving accused-appellant behind. He claimed to pity AAA upon seeing her but

could not do anything.[28]

Ruling of the Trial Court

Between the two conflicting versions of the incident, the trial court gave credence to the version of the prosecution and rendered its Decision dated February 17, 2006, finding accused-appellant guilty of two counts of rape. The decretal portion reads:

WHEREFORE, in view of the foregoing, the Court finds RICKY ALFREDO y NORMAN guilty beyond reasonable doubt of the crime of Rape in Criminal Case No. 01-CR-4213 and sentences him to suffer the penalty of reclusion perpetua including all the accessory penalties imposed by law.

The Court, likewise, finds him guilty beyond reasonable doubt of the crime of Rape in Criminal Case No. 01-CR-4214 and sentences him to suffer the indeterminate penalty of imprisonment of three (3) years, two (2) months and one (1) day of prision correccional, as minimum, and eight (8) years, two (2) months and one (1) day of prision mayor, as maximum.

For each count of rape, he shall pay [AAA] the sum of Fifty Thousand Pesos (Php50,000.00) by way of civil indemnity and the sum of Fifty Thousand Pesos (P50,000.00) by way of moral damages.

Pursuant to Administrative Circular No. 4-92-A of the Court Administrator, the Provincial Jail Warden of Benguet Province is directed to immediately transfer the said accused, Ricky Alfredo y Norman to the custody of the Bureau of Corrections, Muntinlupa City, Metro Manila after the expiration of fifteen (15) days from date of promulgation unless otherwise ordered by the court.

Let a copy of this Judgment be furnished the Provincial Jail Warden of Benguet Province for his information, guidance and compliance.

SO ORDERED.[29]

Pursuant to our pronouncement in *People v. Mateo*,[30] modifying the pertinent provisions of the Revised Rules on Criminal Procedure insofar as they provide for direct appeals from the Regional Trial Court to this Court in cases in which the penalty imposed by the trial court is death, reclusion perpetua, or life imprisonment, the case was transferred, for appropriate action and disposition, to the CA.

On August 17, 2006, accused-appellant filed his Brief for Accused-Appellant,[31] while the People of the Philippines, through the Office of the Solicitor General, filed its Brief for the Plaintiff-Appellee[32] on January 18, 2007.

Ruling of the Appellate Court

As stated above, the CA, in its Decision dated September 30, 2008, affirmed the judgment of conviction by the trial court.[33]

Undaunted, accused-appellant filed a motion for reconsideration, which was denied by the CA in its Resolution dated March 19, 2009.[34]

On April 21, 2009, accused-appellant filed his Notice of Appeal[35] from the CA Decision dated September 30, 2008.

In our Resolution dated September 14, 2009,[36] we notified the parties that they may file their respective supplemental briefs if they so desired. On November 9, 2009, the People of the Philippines manifested that it is no longer filing a supplemental brief, as it believed that all the issues involved in the present controversy have been succinctly discussed in the Brief for the Appellee.[37] On the other hand, on January 26, 2010, accused-appellant

filed his supplemental brief.

The Issues

Accused-appellant contends in his supplemental brief that:

I.

BY THE NATURE OF THE OFFENSE IN THE TWO (2) INFORMATIONS FILED AGAINST ACCUSED-APPELLANT, THE LATTER HAS NO OTHER PLAUSIBLE DEFENSE EXCEPT ALIBI THAT SHOULD NOT JUST BE BRUSHED ASIDE IF THERE ARE MATERIAL INCONSISTENCIES IN THE CLAIMS OF THE WITNESSES FOR THE PROSECUTION;

II.

THE DECISION CONVICTING ACCUSED-APPELLANT HEAVILY RELIED ON THE Demeanor OF THE WITNESSES FOR THE PROSECUTION DURING THE TRIAL WHEN THE Ponente OF THE DECISION DID NOT HAVE ANY OPPORTUNITY TO HEAR THE WITNESSES;

III.

THE THEN AND THERE CONDUCT OF ACCUSED-APPELLANT IS UNLIKELY TO YIELD A GUILTY VERDICT.[38]

The Court's Ruling

We sustain accused-appellant's conviction.

Alibi is an inherently weak defense

In his supplemental brief, accused-appellant contends that he could not offer any other defense except denial and alibi, as he could not distort the truth that he was in his house at the time of the alleged rape in the evening of April 28, 2001 up to the wee hours of April 29, 2001. He contends that although denial and alibi are the weakest defenses in criminal cases, consideration should also be given to the fact that denial becomes the most plausible line of defense considering the nature of the crime of rape where normally only two persons are involved.[39]

It should be noted that for alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[40]

A review of the records in the instant case would reveal that accused-appellant failed to present convincing evidence that he did not leave his house, which is only about 150 meters away from the shack of AAA, in the evening of April 28, 2001. Significantly, it was also not physically impossible for accused-appellant to be present on the mountain where he allegedly raped AAA at the time it was said to have been committed.

Moreover, it has been held, time and again, that alibi, as a defense, is inherently weak and crumbles in light of positive identification by truthful witnesses.[41] It is evidence negative in nature and self-serving and cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence.[42] Thus, there being no strong and credible evidence adduced to overcome the testimony of AAA, no weight can be given to the alibi of accused-appellant.

In addition, even if the alibi of accused-appellant appears to have been corroborated by his mother, Remina, and his sister, Margaret, said defense is unworthy of belief not only because accused-appellant was positively identified by AAA, but also because it has been held that alibi becomes more unworthy of merit where it is

established mainly by the accused himself and his or her relatives, friends, and comrades-in-arms,[43] and not by credible persons.[44]

As between the statement made in an affidavit and that given in open court, the latter is superior

Accused-appellant contends also that there were material inconsistencies in the testimonies of the prosecution witnesses and in the latter's respective affidavits, to wit: (1) whether accused-appellant's penis was erect or not; and (2) whether AAA indeed recognized accused-appellant when they were already on the mountain or while they were still in the shack.[45]

AAA testified in open court that accused-appellant tried to insert his penis into her vagina several times but was unable to do so since his penis has already softened.[46] On the other hand, AAA stated in her affidavit that "the suspect ordered me to lay [sic] flatly on the ground and there he started to light and view my whole naked body while removing his pant [sic] and tried to insert his pennis [sic] on [sic] my vagina but I wonder it does not erect [sic]."[47] There is no inconsistency between AAA's testimony and her affidavit. The only difference is that she failed to state in her affidavit that before accused-appellant unsuccessfully tried to insert his penis into AAA's vagina, he had already succeeded twice in penetrating her private organ.

There is likewise no incompatibility between AAA's affidavit stating that she came to know of accused-appellant as the culprit when they were on the mountain and his flashlight illuminated his face as he lay on top of her, and her testimony that while they were still in the shack, AAA was "not then sure" but already suspected that her rapist was accused-appellant "because of his hair." [48] In other words, AAA was not yet sure whether accused-appellant was the culprit while they were still in the shack, as she only became positively certain that it was him when the flashlight illuminated his face while they were on the mountain.[49]

Nevertheless, discrepancies do not necessarily impair the credibility of a witness, for affidavits, being taken ex parte, are almost always incomplete and often inaccurate for lack of searching inquiries by the investigating officer or due to partial suggestions, and are, thus, generally considered to be inferior to the testimony given in open court.[50]

The validity of conviction is not adversely affected by the fact that the judge who rendered judgment was not the one who heard the witnesses

Accused-appellant contends further that the judge who penned the appealed decision is different from the judge who heard the testimonies of the witnesses and was, thus, in no position to render a judgment, as he did not observe firsthand their demeanor during trial.

We do not agree. The fact that the trial judge who rendered judgment was not the one who had the occasion to observe the demeanor of the witnesses during trial, but merely relied on the records of the case, does not render the judgment erroneous, especially where the evidence on record is sufficient to support its conclusion.[51] As this Court held in *People v. Competente*:

The circumstance that the Judge who rendered the judgment was not the one who heard the witnesses, does not detract from the validity of the verdict of conviction. Even a cursory perusal of the Decision would show that it was based on the evidence presented during trial and that it was carefully studied, with testimonies on direct and cross examination as well as questions from the Court carefully passed upon.[52] (Emphasis supplied.)

Further, the transcripts of stenographic notes taken during the trial were extant and complete. Hence, there was no impediment for the judge to decide the case.

The guilt of accused-appellant has been established beyond reasonable doubt

After a careful examination of the records of this case, this Court is satisfied that the prosecution's evidence established the guilt of accused-appellant beyond reasonable doubt.

In reviewing the evidence in rape cases, the following considerations should be made: (1) an accusation for rape can be made with facility, it is difficult to prove but more difficult for the person, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[53] Nonetheless, it is also worth noting that rape is essentially committed in relative isolation or secrecy; thus, it is most often only the victim who can testify with regard to the fact of forced coitus.[54]

In the instant case, accused-appellant is charged with two counts of rape³⁴one under paragraph 1(a) of Article 266-A of the Revised Penal Code and the other under par. 2 of Art. 266-A.

Pertinently, the elements of rape under par. 1(a) of Art. 266-A of the Code are the following: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force or intimidation.[55]

On the other hand, the elements of rape under par. 2 of Art. 266-A of the Code are as follows: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others.[56]

Notably, the prosecution has sufficiently established the existence of the foregoing elements. When AAA was called to the witness stand, she gave a detailed narration of the incident that transpired in the evening of April 28, 2001 and early morning of April 29, 2001. AAA categorically asserted that accused-appellant had carnal knowledge of her and even sexually assaulted her against her will with the use of force, threat, or intimidation.

Particularly, AAA testified that accused-appellant threatened to riddle her and her son with bullets if they do not open the door of their shack. Accused-appellant thereafter forcibly pulled her hair and dragged her to the mountains. AAA pleaded for her life. Nonetheless, accused-appellant boxed her every time she did not yield to his demands. He boxed her thighs forcing AAA to sit, and he threatened to box her if she moves while he carried out his bestial desires.[57]

AAA testified further that after accused-appellant satisfied his lust, he sexually assaulted her. He inserted his fingers into her vagina and then he tried to pierce the same with a twig. Subsequently, he inserted his flashlight into her vagina.[58] AAA was too weak to stop him. She had struggled to free herself from accused-appellant from the moment she was dragged from the shack until they reached the mountains. However, accused-appellant still prevailed over her. Notably, AAA was six months pregnant at that time. She was frightened and hopeless.[59]

Also, it should be noted that the findings in the medical examination of Dr. Ged-ang corroborated the testimony of AAA. While a medical examination of the victim is not indispensable in the prosecution of a rape case, and no law requires a medical examination for the successful prosecution of the case, the medical examination conducted and the medical certificate issued are veritable corroborative pieces of evidence, which strongly bolster AAA's testimony.[60]

Moreover, the police found the red t-shirt and blue shorts of AAA in the place where accused-appellant was said to have removed her clothes. In addition, AAA's son, BBB, testified as to how accused-appellant threatened them in the evening of April 28, 2001, how he was able to identify accused-appellant as the perpetrator, and what his mother looked like when she returned home in the early morning of April 29, 2001. According to BBB, his

mother was naked except for a dirty white jacket she was wearing. He also noticed that his mother had wounds and blood all over her body. All these are consistent with the testimony of AAA.[61]

All told, we accordingly sustain accused-appellant's conviction.

Award of Damages

The decision of the CA as to the damages awarded must be modified. For rape under Art. 266-A, par. 1(d) of the Revised Penal Code, the CA was correct in awarding PhP 50,000 as civil indemnity and PhP 50,000 as moral damages. However, for rape through sexual assault under Art. 266-A, par. 2 of the Code, the award of damages should be PhP 30,000 as civil indemnity and PhP 30,000 as moral damages.[62]

We explained in *People v. Cristobal* that "for sexually assaulting a pregnant married woman, the accused has shown moral corruption, perversity, and wickedness. He has grievously wronged the institution of marriage. The imposition then of exemplary damages by way of example to deter others from committing similar acts or for correction for the public good is warranted." [63] Notably, there were instances wherein exemplary damages were awarded despite the absence of an aggravating circumstance. As we held in *People v. Dalisay*:

Prior to the effectivity of the Revised Rules of Criminal Procedure, courts generally awarded exemplary damages in criminal cases when an aggravating circumstance, whether ordinary or qualifying, had been proven to have attended the commission of the crime, even if the same was not alleged in the information. This is in accordance with the aforesaid Article 2230. However, with the promulgation of the Revised Rules, courts no longer consider the aggravating circumstances not alleged and proven in the determination of the penalty and in the award of damages. Thus, even if an aggravating circumstance has been proven, but was not alleged, courts will not award exemplary damages. x x x

x x x x

Nevertheless, *People v. Catubig* laid down the principle that courts may still award exemplary damages based on the aforementioned Article 2230, even if the aggravating circumstance has not been alleged, so long as it has been proven, in criminal cases instituted before the effectivity of the Revised Rules which remained pending thereafter. *Catubig* reasoned that the retroactive application of the Revised Rules should not adversely affect the vested rights of the private offended party.

Thus, we find, in our body of jurisprudence, criminal cases, especially those involving rape, dichotomized: one awarding exemplary damages, even if an aggravating circumstance attending the commission of the crime had not been sufficiently alleged but was consequently proven in the light of *Catubig*; and another awarding exemplary damages only if an aggravating circumstance has both been alleged and proven following the Revised Rules. Among those in the first set are *People v. Laciste*, *People v. Victor*, *People v. Orilla*, *People v. Calongui*, *People v. Magbanua*, *People of the Philippines v. Heracleo Abello y Fortada*, *People of the Philippines v. Jaime Cadag Jimenez*, and *People of the Philippines v. Julio Manalili*. And in the second set are *People v. Llave*, *People of the Philippines v. Dante Gragasín y Par*, and *People of the Philippines v. Edwin Mejia*. Again, the difference between the two sets rests on when the criminal case was instituted, either before or after the effectivity of the Revised Rules.

x x x x

Nevertheless, by focusing only on Article 2230 as the legal basis for the grant of exemplary damages -- taking into account simply the attendance of an aggravating circumstance in the commission of a crime, courts have lost sight of the very reason why exemplary damages are awarded. *Catubig* is enlightening on this point, thus --

Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of

an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant -- associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud -- that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.

Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*, the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People of the Philippines v. Cristino Cañada*, *People of the Philippines v. Pepito Neverio* and *The People of the Philippines v. Lorenzo Layco, Sr.*, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales' words in her separate opinion in *People of the Philippines v. Dante Gragasin y Par*, "[t]he application of Article 2230 of the Civil Code strictissimi juris in such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages -- to set a public example or correction for the public good." [64] (Emphasis supplied.)

Concomitantly, exemplary damages in the amount of PhP 30,000 should be awarded for each count of rape, in line with prevailing jurisprudence. [65]

WHEREFORE, the appeal is DENIED. The CA Decision dated September 30, 2008 in CA-G.R. CR-H.C. No. 02135 finding accused-appellant Ricky Alfredo guilty of rape is AFFIRMED with MODIFICATIONS. As thus modified, accused-appellant in Criminal Case No. 01-CR-4213 is ordered to pay PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages. In Criminal Case No. 01-CR-4214, accused-appellant is likewise ordered to pay PhP 30,000 as civil indemnity, PhP 30,000 as moral damages, and PhP 30,000 as exemplary damages.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 2-13. Penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro, concurring.

[2] CA rollo, pp. 16-56. Penned by Judge Agapito K. Laoagan, Jr.

[3] The real names of the victim and her immediate family members are withheld to protect their identity and

privacy pursuant to Section 44 of Republic Act No. 9262 and Section 40 of A.M. No. 04-10-11-SC. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] CA rollo, p. 16.

[5] *Id.*

[6] Rollo, p. 3.

[7] *Id.* at 3-4.

[8] *Id.* at 4.

[9] "You better come out if you will not come out I will riddle you with bullets."

[10] "You better get out or else I will count, one, two..."

[11] "I will explode the bullet."

[12] Rollo, p. 4.

[13] *Id.*

[14] CA rollo, p. 20.

[15] Rollo, p. 4.

[16] *Id.* at 4-5.

[17] *Id.* at 5.

[18] *Id.*

[19] *Id.*

[20] *Id.*

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

[22] CA rollo, p. 31.

[23] *Id.*

[24] Rollo, p. 6.

[25] *Id.*

[26] *Id.* at 6-7.

[27] *Id.* at 7.

[28] *Id.*

[29] CA rollo, p. 56.

[30] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

[31] CA rollo, pp. 62-83.

[32] *Id.* at 139-160.

- [33] Rollo, p. 13.
- [34] Id. at 50-51.
- [35] Id. at 205-208.
- [36] Id. at 19-20.
- [37] Id. at 21-22.
- [38] CA rollo, pp. 68-69.
- [39] Rollo, p. 32.
- [40] *People v. Guerrero*, G.R. No. 170360, March 12, 2009, 580 SCRA 666, 683; *People v. Garte*, G.R. No. 176152, November 25, 2008, 571 SCRA 570, 583.
- [41] *People v. dela Cruz*, G.R. No. 175929, December 16, 2008, 574 SCRA 78, 91; *Velasco v. People*, G.R. No. 166479, February 28, 2006, 483 SCRA 649, 664-665.
- [42] *People v. Ranin, Jr.*, G.R. No. 173023, June 25, 2008, 555 SCRA 297, 309; *Velasco v. People*, supra note 41.
- [43] *People v. Manzano*, G.R. No. 108293, September 15, 1995, 248 SCRA 239, 248.
- [44] *People v. Panganiban*, G.R. No. 97969, February 6, 1995, 241 SCRA 91, 100-101.
- [45] Rollo, pp. 36-38.
- [46] TSN, March 11, 2003, p. 6.
- [47] Rollo, p. 48.
- [48] TSN, June 16, 2003, p. 8.
- [49] Rollo, p. 10.
- [50] *People v. Sara*, G.R. No. 140618, December 10, 2003, 417 SCRA 431, 443.
- [51] *People v. Hatani*, G.R. Nos. 78813-14, November 8, 1993, 227 SCRA 497, 508.
- [52] G.R. No. 96697, March 26, 1992, 207 SCRA 591, 598.
- [53] *People v. San Diego*, G.R. No. 129297, March 17, 2000, 328 SCRA 477, 486-487; citing *People v. Gozano*, G.R. No. 125965, January 21, 2000, 323 SCRA 1, 6.
- [54] *People v. Resurreccion*, G.R. No. 185389, July 7, 2009, 592 SCRA 269, 276; citing *People v. Baylen*, G.R. No. 135242, April 19, 2002, 381 SCRA 395, 404.
- [55] Luis B. Reyes, Revised Penal Code 525 (16[th] ed., 2006).
- [56] Id. at 525-526.
- [57] CA rollo, pp. 44-45.
- [58] Id. at 43.
- [59] Id. at 45.
- [60] See *People v. Ferrer*, G.R. No. 142662, August 14, 2001, 362 SCRA 778, 788.

[61] CA rollo, p. 46.

[62] *People v. Lindo*, G.R. No. 189818, August 9, 2010.

[63] G.R. No. 116279, January 29, 1996, 252 SCRA 507, 517-518.

[64] G.R. No. 188106, November 25, 2009, 605 SCRA 807, 817-821.

[65] *People v. Lindo*, supra note 62; citing *Flordeliz v. People*, G.R. No. 186441, March 1, 2010.

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