

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO ALIMON, ACCUSED-APPELLANT.

G.R. No. 87758. June 28, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Rape is a crime repulsive to conscience.[1] Committed by a father against his own eleven-year old daughter, rape evokes outrage, disgust and the sickening feeling that morality has gone awry.

We are called upon here to review the judgment rendered by the Regional Trial Court, Fourth Judicial Region, Branch 29, San Pablo City,[2] on December 29, 1988, convicting the accused-appellant of defiling his own flesh and blood with the use of force and intimidation.

The Facts

At the time of the incident subject of this case, appellant Antonio Alimon and his family were residing in Barangay Sta. Maria Magdalena, San Pablo City, in the house of his mother-in-law who was abroad. Appellant worked as a welder-contractor at an iron-works shop "three electric posts" from his house; his wife stayed at home making baby dresses.

The Alimon family had access to the house next door, which was unoccupied and which had been entrusted to their care while its owners were staying in Davao. In said house was a windowless bathroom where Marivic, appellant's 11-year old daughter, used to take her bath, as she felt uncomfortable using the bathroom of her grandmother's place, the walls of which had many holes.[3]

At around 3:30 in the afternoon of August 13, 1984, Marivic was taking a bath alone in said bathroom. Except for a piece of wood, the bathroom had no locks. There was no one else inside said house. Her father (appellant) unexpectedly entered the bathroom ("pinasok niya ako sa banyo"). At first he rubbed her back for about a minute. Then he started massaging ("nilamas") her breasts and touching her private parts. This went on for around half an hour. She was warned not to shout, and in any case nobody would be able to hear her anyway. Frightened and helpless, the child could do nothing except yield to her father's lascivious advances.[4] When her father left the bathroom, Marivic immediately dressed and went to the bedroom of her maternal grandmother's house to change clothes.

While she was dressing up, her father again entered the room, and forced her to remove her panty. He removed his clothes and forced her onto the bed. He placed himself on top of her, then tried but did not succeed in "fully inserting" his genital organ into hers. She felt pain and must have protested because her father shouted, "Putang ina mo, huwag kang maingay! Papatayin kita." He repeated these words at the same time that he was pointing a knife at Marivic's neck.[5] After awhile, Marivic felt something watery and sticky coming out of her father's genital organ.[6] Then he "stopped on that day."

That evening, Marivic, together with her eldest sister, Maribel, slept in their room next to that of her father. In the

middle of the night she awoke to find her father mashing her sister's "delicate parts." Realizing that Marivic was watching, her father left hurriedly.[7]

The next day, Marivic disclosed to her aunt, Susan Briones, her mother's sister, what had taken place. She could not tell her mother because her father was always keeping watch on them, but it was her aunt who related the incidents to her mother. Because she did not want a repetition of what had happened, her mother dispatched Marivic and her sister to the house of her paternal grandparents, where they stayed for about one or two years. It was only when their mother became ill, with nobody to help her, that Marivic and her sister moved back to their maternal grandmother's house.

It was there that, on the night of December 24, 1987, Marivic awoke to find her sister being molested again by her father. Marivic saw her father fondling Maribel's "delicate parts" and pulling down her panty.[8] In the evening of December 28, 1987, Marivic was herself roused from sleep by her father touching her delicate parts. The following morning, she told her mother what had happened, and that afternoon, her mother accompanied her to the police station where Marivic executed a sworn statement.[9]

Dr. Marisol Cerda, OB Gynecologist of the San Pablo City District Hospital, examined Marivic on January 4, 1988. She found two healed lacerations in Marivic's hymen at the 2: 00 o'clock and 5:00 o'clock positions. There was no sign of pregnancy but her hymen could admit two (2) fingers.[10]

Appellant was thereafter charged with acts of lasciviousness under Criminal Cases Nos. 5367-SP and 5369-SP.[11] Upon agreement of the parties and pursuant to Sec. 14 of Rule 119 of the Rules of Court, Cases Nos. 5368-SP and 5369-SP were consolidated, the private offended party and the accused being the "same persons" in said cases, and "the incidents complained of having occurred in the same place and on the same date." [12] The information for rape filed against appellant in Criminal Case No. 5368-SP with the Regional Trial Court of San Pablo City reads:

"That on or about August 13, 1984, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with lewd design, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously rape and have sexual relations with his daughter, undersigned complainant MARIVIC ALIMON against the latter's will, by forcing her to lay down and placing himself on top of complainant and had sexual intercourse with her.

CONTRARY TO LAW."

Appellant pleaded not guilty to the charge.[13]. In his own defense, he interposed alibi. According to him, at around 3:30 in the afternoon of August 13, 1984, he was at work at the Proceso Velasco Motor Works. But accused admitted that the said shop is only three (3) electric posts away from his residence, and the distance between these two places could easily be negotiated in about three (3) minutes.[14] At the time of the incident, his wife was allegedly in their house making baby dresses.

It was his own wife who told his parents that she heard that people had been "suspecting" that he raped his own daughter. His parents, brothers and sisters made an inquiry on the matter and found that there was no truth to the rumor. Not even a barangay complaint was filed. In fact, after the investigations, he continued living with his wife and children and supporting his family until 1987.[15]

Alejo Sode, appellant's brother-in-law, corroborated appellant's testimony that the Alimon family convened a family meeting to discuss the rumored molestation. But since they found that nothing really happened, the family decided to forget the whole thing.[16] It was Lina Alimon, appellant's wife, who told him that her daughter had been abused by her father ("sinabi niya sa akin na ang kanyang anak ay ginalaw ng kanyang ama"), but in the

course of the family meeting, the spouses themselves told them that nothing happened.[17] This witness, however, admitted that because of his job he was in Los Baños during weekdays, and would return home to Sta. Maria Magdalena only on weekends, thus, if anything had happened between Monday and Friday, he would not have known about it. Sode also admitted that there was actually no investigation conducted by any of the family members as to the truth of what happened; instead, a family meeting was held where it was concluded that nothing happened, and so they decided to forget the whole thing.[18]

Bernardo Alimon, appellant's brother, heard the rumor in his own household. It was his father who summoned their relatives to talk about the rumor but when he asked appellant and his wife whether it was true, they replied that it was not.[19]

The trial court believed otherwise. In its Decision of December 29, 1988, it discounted appellant's alibi, concluding that "there was no physical impossibility for the accused to have left his place of work, commit the offense, and return thereafter as if nothing happened." As regards the alleged family conference of the Alimons, the trial court observed that "(i)t is not strange, in fact it is only natural for the Alimon clan to adjudge accused, who is a member of significance, not to have committed any transgression" for, after all, "(b)lood is always thicker than water and they have to protect the Alimons' name from any unpleasant taint."

With respect to appellant's reliance on the offended party's testimony that "(a)ng pakiramdam ko po ay hindi naipasok, referring to appellant's sex organ, the trial court opined that while said testimony standing by itself might result in a finding that appellant is guilty of only attempted rape or acts of lasciviousness, nevertheless, the complainant's declaration on cross-examination that she noticed "blood and something thick and watery after the sexual assault" could only mean that "there was ejaculation and penetration no matter how minimal" and that "(t)here would not have been blood unless there were lacerations" and concluded that the rape accounted for the healed lacerations and tear found by the doctor who examined the offended party.

The trial court dismissed appellant's claim that the victim did not put up a determined resistance to the assault, considering the existence of the relationship between the rapist and the victim daughter and the assertion of parental authority in the perpetration of the crime. Thus, the court *a quo* held:

"Against the position of the prosecution, the claimed defenses of the accused pale into insignificance. Marivic Alimon is fifteen (15) years of age. She testified against the very person who brought her into the world. This must have been done by her after much agonizing thought and soul-searching. The delay in the filing of the complaint is quite understandable because of the relationship of the parties where the dishonor of the head of the family will reflect not only on him but all his relatives particularly his immediate kins. Perhaps, were it not for the fact that the tendency of the accused to continue dishonoring his children was made manifest in December of 1987, the August 13, 1984 incident would have been forgiven and forgotten.

The Court has meticulously observed the complainant on the stand. Her testimony deserves total credibility. It was candid, straight-forward, with no tinge of revenge or rancor.

The Court is convinced of the truth of her declaration.

What further convinced the Court of the guilt of the accused was his plea of guilty to the two offenses of acts of lasciviousness committed by him against his daughter Maribel Alimon in August, 1987 and against complainant Marivic Alimon in December, 1987 for which he has been sentenced to suffer the penalty of imprisonment ranging from two (2) months of arresto mayor to two (2) years and four (4) months of prison correccional in each case. When he admitted having committed the offenses against his very own daughters, one of whom is the complainant in the case at bar, the Court could not help but conclude that there must be truth to the accusation of rape. For if the accused has committed these malicious acts, then the design to commit similar acts must have been there in his mind and it is not farfetched nor illogical for one to conclude

that he did commit the act imputed to him in the case at bar.

Then, the accused cannot offer any reason why he was charged with this heinous crime. He chose to hide his alleged reasons that it will only expose the unsavory character of his wife. This is vague and evasive."

Consequently, the trial court disposed of the case as follows:

"WHEREFORE, finding the accused ANTONIO ALIMON guilty beyond reasonable doubt of the crime of rape, defined and penalized under Article 335 of the Revised Penal Code, attended by the aggravating circumstance of relationship, with no mitigating circumstance, he is hereby sentenced to suffer the penalty of reclusion perpetua and to pay the offended party, Marivic Alimon, the sum of TWENTY THOUSAND (P20,000.00) PESOS as damages. Exemplary damages in the amount of TWENTY THOUSAND (P20,000.00) PESOS is also awarded to deter ascendants from committing sexual abuses against their descendants."

Errors Assigned

Appellant insists that the trial court failed to prove his guilt beyond reasonable doubt contending that the trial court did not consider the following: (a) the testimony of the examining gynecologist; (b) the fact that his family continued to live together after the alleged rape; (c) the behavior of the offended party during and after the commission of the crime; (d) the fact that his wife was at home when the crime transpired; (e) the delay of more than three years before the offended party reported the crime, and (f) his declaration, and that of his wife, during the family council that no rape was committed against Marivic. Appellant also assails the trial court's taking into account his guilty plea to the charges of acts of lasciviousness in the determination of his culpability for the crime of rape.

This Court's Ruling

We affirm the judgment of the trial court.

We are guided by certain well-established principles in reviewing rape cases: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent to disprove; (b) due to the 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 (c) 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.[20] In this particular instance, as in so many other rape cases, the credibility of the offended party's testimony is determinative of the outcome of this case.[21] It is, however, axiomatic in rape cases that the lone testimony of the offended party, if credible, is sufficient to declare a conviction.[22]

As a general rule, when the question is raised as to whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand, and the manner in which they gave their testimonies, and therefore could better discern if such witnesses were telling the truth; the trial court is thus in the best position to weigh conflicting testimonies.[23] Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.[24] In the instant case, a thorough review of the records uncovers no justification for making a finding contrary to that of the trial court on the issue of credibility.

The trial court, after having "meticulously observed" the complainant on the stand, declared that she testified in a "candid, straight-forward-- manner, "with no tinge of revenge or rancor," and thus proclaimed her testimony to be deserving of total credibility. Our own review of her testimony supports the trial judge's conclusions.

Moreover, the defense has failed to come up with a plausible explanation why the victim and her mother should impute such a heinous crime upon appellant. It has been consistently held that where there is no evidence and no indication that the witness for the prosecution was actuated by improper motive to testify falsely against an accused, the presumption is that the witness was not so actuated and the testimony thus given is entitled to full faith and credit.[25] And as correctly appraised by the trial court, appellant's purported reluctance to expose the allegedly unsavory character of his wife can hardly be a reason for not disclosing the possible motives of his daughter and his wife in filing the case against him,[26] considering the gravity of the offense charged.

On the other hand, no mother would even consider subjecting her own daughter to the shame, humiliation, disgrace, exposure, anxiety and tribulation attendant to a public trial for rape which in all likelihood would result in the incarceration of the father of her children for the rest of his life if she was not motivated solely by the desire to have the person responsible for the defloration of her daughter apprehended and punished. We reiterate that it is wholly unnatural for a parent to use her offspring as an engine of malice, especially if it will subject her daughter to embarrassment and even life-long stigma.[27] Hence, although we are not persuaded by the appellant's contentions on the errors assigned in this appeal, we shall discuss them in the interest of justice.

In claiming that the trial court should have considered the testimony of Dr. Cerda as being favorable to him, appellant highlights portions of her testimony as follows:

"Q.

Based on your examination, will you be in a position to make any findings as to whether the offended party has been subjected to any sexual molestation?

A.

By my findings I cannot really say because there was already the rape case. There are cases, but this kind of findings even though the hymen admits two fingers and with laceration it is still normal and still virgin that is why I cannot really say if it is due to penetration of the fingers. There are also other causes that can produce this kind of laceration-like for example running, jumping, bicycling, etc." (sic)[28]

which suggest that the lacerations could be attributed to causes other than rape. However, while Dr. Cerda cited other factors which could also cause laceration or loosening of the victim's hymen, she did not rule out the possibility of rape. Her testimony continues as follows:

"Q.

And that is where the possibility that she was raped?

A.

There was always the possibility."(TSN, August 4,1988, p. 4)

In *People vs. Palicte*,[29] where the victim was also eleven years old and the appellant likewise claimed that no rape was committed because there was no deep penetration of the victim's vagina as her hymen was still intact this Court held:

"The fact that there was no deep penetration of the victim's vagina and that her hymen was still intact does not negate the commission of rape. According to Dr. Jose Ladrado, Jr., who has been in medico-legal cases since 1963 and has examined many rape victims, if the victim is a child, as in the case of *Edievien*, rape can be done without penetration. Without penetration the male organ is only within the lips of the female organ, and there is interlabia or sexual intercourse with little, none, or full penetration, although he admitted that it was also possible that there was no rape since the hymen was intact.

In the case before us, Edievien repeatedly, testified that the accused inserted his penis into her vagina for half an hour, as a consequence of which she suffered pain. This, at least, could be nothing but the result of penile penetration sufficient to constitute rape. Being a virgin, as found by the examining physician, her hymenal resistance could be strong as to prevent full penetration. But just the same, penetration there was, which caused the pain. For, rape is committed even with the slightest penetration of the woman's sex organ. Mere entry of the labia or lips of the female organ without rupture of the hymen or laceration of the vagina, as in this case of Edievien, is sufficient to warrant conviction for consummated rape." (footnotes omitted)

In any case, it should be noted that the medical findings of Dr. Cerda are not incompatible with the victim's claim of rape in the instant case; on the contrary, the old healed laceration on the hymen jibes with the victim's averment that she was raped by appellant about three (3) years prior to the filing of the complaint. Be that as it may, this Court has time and again held that the absence of any external signs or physical injuries does not negate the commission of the crime of rape, and that a medical finding which would confirm that the victim was raped is not an indispensable requisite in proving a crime of rape.[30]

Appellant's contention that the rape could not have happened because his family continued living together under the same roof after the incident does not hold water. This is of course contradicted by Marivic's testimony that after the 1984 incident, her mother sent her and Maribel to live with her paternal grandparents, where they stayed for one to two years. But granting that appellant's claim is true, it must be stressed that when the crime transpired, Marivic was only eleven years old, a mere child wholly dependent upon her parents for support, who could not have been expected to do otherwise than to follow whatever decisions her parents would impose upon her. Besides, the repeated threats made by appellant as he was doing the dastardly act may have instilled in her an overwhelming fear for her own safety strong enough to cow her into submitting to her parent's decision.

That Lina Alimon, the victim's mother, tolerated the first assault on her daughter's honor is understandable considering the fact that the crime happened in a city where provincial values still prevail. A mother like her would undoubtedly have wanted to preserve whatever family honor and reputation was left. She could not be blamed if she tried to close her eyes to the truth, pretending that everything was normal to save her marriage and her family from disintegration, hoping against hope that the horrible incident would not be repeated. But the nightmare returned to haunt them. Hence, she cast aside her reservations and reported the matter to the police.

Appellant maintains that his daughter's behavior during and after the assault were inconsistent with the occurrence of the crime and contrary to ordinary human behavior: (a) after the first mashing incident, Marivic simply turned her back, went to her grandmother's house and put on clothing without locking the bedroom or taking precautions, as if nothing happened; (b) after the incident, Marivic still slept in the bedroom next to his own, and (c) she did not make any outcry or resist during the sexual assault notwithstanding her opportunity to do so.

Again, considering her age, innocence and lack of experience or basis for apprehension, Marivic's actions were nothing unusual or abnormal. When appellant was done mashing her in the bathroom, she thought - albeit mistakenly - that the matter was at an end and that he would not return. And if she did not lock the bedroom door while changing clothes, it was only because there was no lock.[31] On the other hand, the absence of a struggle or an outcry from the victim was held by this Court in "People vs. Bacani[32] to be immaterial in the rape of a child below twelve years of age "because the law presumes that the victim, on account of her tender age, does not and cannot have a will of her own." In any case, she could not have resisted since appellant held a knife to her neck. Neither was it unusual for her to sleep in her room which was beside that of her father that same evening after the rape. She was but a child who must reside in her parents' abode.

Marivic's failure to divulge the bestial deed and denounce her attacker immediately after it took place is not contrary to normal human behavior either. In many instances, rape victims simply suffer in silence. With more

reason would Marivic keep mum about what befell her - she was ravished by her own father. Furthermore, it is not proper to judge the action of children who have undergone traumatic experiences by the norms of behavior expected of mature individuals under the same circumstances.[33] Their reactions to harrowing incidents may not be uniform. Behavioral psychology teaches us that different people react to similar situations dissimilarly.[34]

Appellant's contention that his daughter delayed reporting the rape for three years is only half the truth. While Marivic did not report the matter to the police, she did tell her aunt, Susan Briones, who in turn told the mother, and that report eventually reached the members of his clan and brought about a family meeting. Nevertheless, long silence and delay in reporting the crime of rape has not always been construed as an indication of a false accusation.[35] In fact, delay in reporting a rape due to death threats cannot detract from the victim's credibility, and this rule applies with greater force in the present case, where the offended party was barely eleven years old at the time, and would easily have been intimidated into silence by threats of bodily harm. "A young girl, unlike a mature woman, cannot be expected to have the courage and intelligence to immediately report a sexual assault committed against her especially when a death threat hangs over her head." [36] Appellant's holding a knife to the victim's neck to coerce her into yielding to him [37] certainly helped to make his threats very real in her frightened mind.

At this juncture, we should comment that the prosecution of this case could have been simplified had the Information filed in the Regional Trial Court charged the commission of the crime of statutory rape, under paragraph 3 of Art. 335, Revised Penal Code, [38] instead of rape through the use of force and intimidation under paragraph 1, it being undisputed that the victim was below the age of twelve at the time the felony was committed. As it is, the prosecution made an almost heroic effort in proving appellant's threats and acts of intimidation. But we must add that such effort is not entirely wasted, even if statutory rape were alleged, as we can look upon such threats, particularly appellant's brandishing a knife at his daughter even as he asserted his parental authority and ascendancy over her, as explaining the girl's state of mind during and after the attack on her, and the apparent lack of a struggle or resistance on her part, thus justifying her delay and reluctance in reporting her unspeakable tragedy to the authorities.

Appellant contends that his wife was at home at the time of the incident and therefore he could not have raped his daughter. Apart from being self-serving and uncorroborated, his claim is contradicted by the offended party who testified that her mother and the other members of the family were not home at the time but were at the house of her paternal grandmother. [39] That appellant's wife, a baby-dress maker, usually worked at home did not necessarily mean that she was home at the time of the incident nor that her presence would have deterred appellant from committing the crime. The Court has consistently held that rape may be committed even when rapist and victim are not alone. Rape is no respecter of time or place. In fact, rape was held to have been committed in the same room while the rapist's spouse was asleep, or in a small room where other family members also slept. [40]

The trial court's refusal to give any weight to the declaration of appellant and his wife at the family council that he did not commit the wrong charged is correct. With respect to appellant, his declaration was simply self-serving. As for his wife, she may not be expected to tell the truth at that meeting considering that the persons trying to ferret it out were relatives of her husband who were naturally expecting to hear only comments favorable to appellant. We must not forget the natural reticence and reluctance of the victim's mother to publicize such an ugly misfortune, and her natural inclination to protect her family's honor, along with the fear of possible reprisal, which is not far-fetched considering that her husband did not have any qualms about holding a knife to his own 11-year old daughter in order to have his way with her. In any case, defense witness Sode admitted that he had been told by appellant's wife that her daughter had been abused by appellant. The proceedings at the family council meeting

does not merit attention to begin with, since there was actually no investigation conducted into the truth of the rumored assault, and it is not clear whether Marivic, who ought to have been asked about the incident, was even present thereat.

The trial court cannot be faulted for taking into account appellant's guilty plea in the two cases of lascivious acts, in the course of determining his guilt in this case. As pointed out by the Solicitor General, the court a quo took into consideration appellant's plea of guilt, not as proof that he raped his daughter at another time, since the same had been duly established by the prosecution's evidence, but rather as evidence of the specific intent or habit or frame of mind of the appellant; the trial court refers to the pleas as indications "that the design to commit similar (or related) acts must have been there in his mind," which then further convinced the trial court that the accused did commit the crime imputed to him.

Appellant's defenses of alibi and denial do not inspire the slightest belief and consideration. The doctrine constantly upheld by this Court is that alibi and denial cannot prevail over the positive identification of the accused as the perpetrator of the crime.[41] In addition thereto, appellant has failed to establish that it was physically impossible for him to have been at the crime scene when it happened.

The trial court correctly imposed the penalty of reclusion perpetua upon the appellant. Rape under Art. 335 of the revised Penal Code is punishable by reclusion perpetua to death when committed with the use of a deadly weapon. The un rebutted prosecution evidence is that appellant poked a knife at Marivic's neck as he satisfied his bestial lust on her.

Because the alternative circumstance of relationship under Art. 15 of the Revised Penal Code was duly proven and appreciated as aggravating by the trial court, the death penalty should have been imposed,[42] considering that appellant took advantage of his moral ascendancy as father when he raped his daughter. However, although at the time of its commission the crime was punishable by such penalty, appellant was meted the lesser penalty of reclusion perpetua because, at the time of sentencing by the trial court, the imposition of the death penalty was still constitutionally prohibited. Here, appellant shall be accorded the benefit of the principle that all doubts shall be resolved in favor of the accused[43] and therefore, we affirm the penalty of reclusion perpetua imposed on him.

The trial court likewise correctly awarded damages to the victim. An award of moral damages for rape is mandated by Art. 2219 of the Civil Code.[44] It is proper in the case at bench for the following reasons:

"x x x this case involves the crime of rape committed against a very young girl who has been further denied thereby of her right to grow up and discover the wonders of womanhood in the normal way. As we have heretofore declared, uncompromising judicial sanctions should stem the growing tide of paraphilia that seeks the youth for its victims, leaving inevitable traumatic and psychological scars on their young and innocent lives." [45]

However, the amount of P20,000.00 as moral damages by way of indemnity shall be increased to P50,000.00 pursuant to current jurisprudence.[46] Since the alternative or aggravating circumstance of relationship was present, the trial court correctly imposed exemplary damages in the amount of P20,000.00.[47]

WHEREFORE, the herein questioned Decision of the trial court finding appellant Antonio Alimon guilty beyond reasonable doubt of the crime of rape committed against his own daughter and imposing on him the penalty of reclusion perpetua is hereby AFFIRMED subject to the modification that he shall indemnify Marivic Alimon in the amount of fifty thousand pesos (P50,000.00), aside from paying her exemplary damages in the amount of twenty thousand pesos (P20,000.00).

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] *People vs. Baculi*, 246 SCRA 756 (July 26, 1995).

[2] Judge Bienvenido V. Reyes presiding.

[3] TSN, April 28, 1988, pp. 8-12.

[4] TSN, April 28, 1988, pp. 6-7.

[5] TSN, April 7, 1988, pp. 7-8.

[6] *Ibid.*, p. 8.

[7] TSN, April 7, 1988, pp. 10-11.

[8] *Ibid.*, p. 14.

[9] TSN, April 26, 1988, pp. 2-3. Marivic's sworn statement which was marked as Exh. "A" is nowhere to be found in the records.

[10] TSN, August 4, 1988, pp. 2-3. No copy of the medical report is attached to the record.

[11] TSN, April 7, 1988, p. 2.

[12] Record, p. 26.

[13] *Ibid.*, p. 19. There appears to have been a move to change appellant's plea from "not guilty" to "guilty" (TSN, April 7, 1988, p. 2) but it was not pursued.

[14] TSN, October 27, 1988, pp. 14-16.

[15] *Ibid.*, pp. 4-10.

[16] TSN, October 4 1988, p. 4.

[17] *Ibid.*, pp. 608.

[18] TSN, October 4, 1988, p. 7.

[19] TSN, November 24, 1988, pp. 2-3.

[20] *People vs. Casinillo*, 213 SCRA 777, 788-789 (September 11, 1992); *People vs. Matrimonio*, 215 SCRA 613, 627 (November 13, 1992); *People vs. Lucas*, 232 SCRA 537, 546 (May 25, 1994).

[21] *People vs. Jaca*, 229 SCRA 332 (January 18, 1994).

[22] *People vs. Vallena*, 244 SCRA 685, 691 (June 1, 1995).

[23] *People vs. Vallena*, *supra*; also *People vs. Jaca*, *supra*.

[24] *People vs. Tismo*, 204 SCRA 535, 552 (December 4, 1991); see also *People vs. Uycoque*, 246 SCRA 769, 779 (July 31, 1995).

[25] *People vs. Simon*, 209 SCRA 148, 159 (May 21, 1992); *People vs. Rostata*, 218 SCRA 657, 673-674 (February 9, 1993); and *People vs. Alib*, 222 SCRA 517, 527-528 (May 24, 1993).

[26] TSN, October 27, 1988, p. 24.

[27] *People vs. Ching*, 240 SCRA 267 (January 19, 1995).

[28] TSN, August 4, 1988, p. 4, quoted in page 8 of Appellant's Brief.

[29] 229 SCRA 543, 547-548 (January 27, 1994).

[30] *People vs. Florendo*, 230 SCRA 599 (March 2, 1994); *People vs. Balsacao*, 241 SCRA 309 (February 13, 1995).

[31] TSN, April 28, 1988, pp. 13-15.

[32] 181 SCRA 393, 399-400 (1990).

[33] *People vs. Remoto*, 244 SCRA 506, 519-520 (May 29, 1995).

[34] *People vs. Ibay*, 233 SCRA 15, 25 (June 8, 1994).

[35] *People vs. Plaza*, 242 SCRA 724, 729-730 (March 27, 1995).

[36] *People vs. Ibay*, supra, citing *People vs. Olivar*, 215 SCRA 759, 764-765 (November 13, 1992).

[37] TSN, April 7, 1988, pp. 7-8; TSN, April 28, 1988, p. 13.

[38] "Art. 335. When and how rape is committed." Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

xxx xxx xxx."

[39] TSN, April 28, 1988, p. 9.

[40] *People vs. Manuel*, 236 SCRA 545, 554 (September 19, 1994), citing *People vs. Ignacio*, 233 SCRA 1, 7 (June 7, 1994) and *People vs. Cervantes*, 222 SCRA 365, 368 (May 21, 1993).

[41] *People vs. Rosario*, 246 SCRA 658 (July 18, 1995).

[42] Art. 63(2), Revised Penal Code.

[43] Vide *People vs. Pandiano*, 232 SCRA 619 (May 30, 1994), and *People vs. Parica*, 243 SCRA 557 (April 21, 1995).

[44] *People vs. Miranda*, 235 SCRA 202, 215 (August 10, 1994).

[45] *People vs. Guibao*, 217 SCRA 64, 75 (January 15, 1993), cited in *People vs. Escoto*, 229 SCRA 430, 438 (January 21, 1994).

[46] *People vs. Escoto*, supra, citing *People vs. Dio y Botabara*, 226 SCRA 176, 183-184 (September 8, 1993), and *People vs. Alegado*, 201 SCRA 37, 50 (August 21, 1991); *People vs. Ibay*, supra.

[47] Art. 2230 of the Civil Code states: "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."

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