

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE DELEVERIO, ACCUSED-APPELLANT.

G.R. Nos. 118937-38. April 24, 1998

Ponente: VITUG, J.

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VITUG, J.:

Before the Court for automatic review is the decision of the Regional Trial Court (“RTC”) of Basilan, 9[th] Judicial Region, Branch 2, in the consolidated Criminal Case No. 2125-414 and Criminal Case No. 2136-418 for rape. The accused, Jose Deleverio, is a 58-year old farmer respected and revered by the complainant, Roxan Benarao, an eight-year old child. Indeed, the complainant is the step-granddaughter of the accused, he being married to the girl's natural grandmother (Maria Sarah). Accused Jose Deleverio is the second husband of Maria Sarah.

The accused was charged with two counts of rape, in two separate complaints, one in Criminal Case No. 2125-414 and the other in Criminal Case No. 2136-418, viz:

Criminal Case No. 2125-414

“COMPLAINT

“The undersigned complainant, an 8-year old minor, under oath, accuses Jose Deleverio of the crime of Rape, committed as follows:

“That on or about the 7[th] day of April, 1994, and within the jurisdiction of this Honorable court, viz., at Maloong Legion, Municipality of Lamitan, Province of Basilan, Philippines, the above-named accused, by the use of force, threat and intimidation, and with lewd designs, did then and there willfully, unlawfully and feloniously point a knife on her stomach, remove her dress and short pant, and by the use of force and lewd designs, succeeded to have carnal knowledge with the undersigned complainant, against her will.

“Contrary to law.

"Isabela, Basilan Province, May 30, 1994.

(SGD.) ROXAN BENARAO

Complainant"[1]

Criminal Case No. 2136-418

“COMPLAINT

“The undersigned complainant, an 8-year old minor, under oath, accuses Jose Deleverio of the crime of Rape, committed as follows:

“That on or about the 13[th] day of May, 1994, and within the jurisdiction of this Honorable Court, viz., at

Maloong Legion, Municipality of Lamitan, Province of Basilan, Philippines, the above-named accused, by the use of force, threat and intimidation, and with lewd designs, did then and there willfully, unlawfully and feloniously point a knife on her stomach, remove her dress and short pant, and by the use of force and lewd designs, succeeded to have carnal knowledge with the undersigned complainant against her will.

“Contrary to law.

“Isabela, Basilan Province, May 30, 1994.

(SGD.) ROXAN A. BENARAO

Complainant”[2]

Provincial Prosecutor Domingo B. Kinazo confirmed, in his resolution of 30 May 1994, that the results of the preliminary investigation, after considering particularly the accusatory affidavit and fitting it against the evidence for the defense, would sufficiently show that the complainant had been a victim of rape on two occasions.[3]

Following the filing of the informations in the two separate criminal cases, an Order of Arrest was issued on 06 June 1994 by Executive Judge Salvador Memoracion. The order of arrest was duly served and effected on 05 July 1994.[4]

When arraigned on 13 June 1994 in Criminal Case No. 2125-414 and on 05 July 1994 in Criminal Case No. 2136-418, the accused pleaded not guilty. The parties agreed to have the cases jointly tried.[5]

The evidence for the prosecution, in main consisting of the testimony of Roxan given in the Visayan dialect, was culled by the Solicitor General; his brief narration -

"Roxan Benarao, an 8-year old child, and her brother Ramon lived with her grandfather, herein appellant Jose Deleverio, in Legion Maloong, Lamitan, Basilan, wherein they shared the same room.

"On April 7, 1994 at 8:00 o'clock in the evening, while they were already resting, the appellant poked a knife at the stomach of his 8-year granddaughter Roxan Benarao after which he loosened her short pants (TSN, July 5, 1994, p. 7).

"Notwithstanding the cries of Roxan, the appellant managed to insert his penis into Roxan's vagina as a result of which she felt dizzy (TSN, July 5, 1994, p. 8). Afterwards, Roxan reported the incident to her older brother Ramon and to her grandmother Maria Deleverio who did not believe her (TSN, July 6, 1994, p. 17).

"On May 13, 1994 at about 9:00 o'clock in the evening, the appellant again inserted his penis into the vagina of Roxan for which she cried (TSN, July 1994, p. 18). When Roxan reported the molestation to her grandmother, the latter refused to believe her (TSN, July 16, 1994, p. 18). Roxan then reported the matter to her mother who brought her to the police.”[6]

Susan Benarao, the mother of Roxan, was also put to the witness stand. She identified in open court her stepfather, the accused Jose Deleverio, as being the second husband of her mother Maria Sarah Deleverio. During school days, her 8-year old daughter Roxan and 13-year old son Ramon would stay with the accused and Maria Sarah at the latter's residence in Maloong Legion, Lamitan, Basilan. It was in the couple's house in Maloong where the two incidents of rape were perpetrated. Some time in May 1994, Susan Benarao took back her two children. Later that same month, or on or about 26 May 1994, Roxan disclosed, in between sobs, to her mother the fact of her having been "molested" twice, the first on 07 April 1994 and the second on 13 May 1994, by the accused. Susan lost no time in reporting the matter to the police and bringing her daughter to the Lamitan Emergency Hospital for physical examination.[7]

Dr. Joel Absin, the physician who examined Roxan, issued on 27 May 1994 a medical certificate, viz:

“Date of Incidence: April 7, 1994

May 13, 1994

“Time of Incidence: April 7, 1994 - 8:00 p.m.

May 13, 1994 - 8:00 p.m.

“Place of Incidence: Maloong Legion at complainant residence.

“FINDINGS

“A fairly developed female child well nourished secondary sex organ not developed.

“Genital Findings:

“- old hymenal laceration at 5:00, 2:00 & 11:00 o'clock on the face of the watch

“- Admits one small finger without resistance.

“Conclusion:

“- physical virginity recently lost on a child of Roxan Binarao.”[8]

The defense, in refutation of the testimony of Roxan, presented accused Jose Deleverio himself and his wife Maria Sarah.

Jose Deleverio vehemently denied having raped Roxan. He stated that on 07 April 1994, the first time she allegedly had been raped, Roxan was no longer in fact staying with the couple, her mother having fetched her and her brother shortly at the close of the schoolyear in Maloong Elementary School. The accused testified that on the night of 13 May 1994, the date of the supposed second rape, he was all the time with his wife, Maria Sarah, in their house at Maloong Legion. He said that he had always treated Roxan and her brother Ramon like they were his own children but he would, of course, discipline them so long as he had to. He believed that the two counts of rape lodged against him had been merely fabricated by Susan Benarao who did not like the idea of her children being sent home to her by Maria Sarah.[9]

Maria Sarah Deleverio declared that she was once the common-law wife of Donatilo Agustin before marrying the accused. She had four children with Donatilo among whom being Jesusa (Susan). She said that on 07 April 1994, when her husband supposedly had sexual intercourse with Roxan, the latter was already in Lamitan proper with her mother. On 13 May 1994, Maria Sarah was at their house in Maloong Legion. Roxan never told her about the alleged rape, and she learned for the first time that Roxan and Susan had a complaint for rape against her husband only on 28 or 29 May 1994 when the police arrested the accused and brought him to the police station at Lamitan. She would conjecture that the only possible reason why Susan falsely charged him was because the couple had stopped caring for the children.[10]

After trial, the court a quo, presided over by Judge Salvador Memoracion, rendered its decision, dated 07 December 1994, finding the accused guilty on two counts of rape. The trial court adjudged:

“WHEREFORE, premises considered, this Court finds the accused, JOSE DELEVERIO, 58 years old, GUILTY beyond any shadows of doubts of committing two (2) counts of Rape[s], one committed on April 7, 1994 and the other committed on May 13, 1994, against his own eight (8) years old grand-step-daughter, Roxan Binarao which two (2) crimes are defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 of 1993 and hereby sentences him to suffer two (2) extreme and supreme

penalties of DEATH.

“And to pay the total amount of P60,000.00 for both cases as moral damages and the costs of these proceedings.

“IT IS SO ORDERED.”[11]

In this automatic review, appellant assigned a lone error; i.e., that -

“THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT JOSE DELEVERIO GUILTY BEYOND REASONABLE DOUBT OF HAVING COMMITTED RAPE ON TWO COUNTS”[12]

and reminded that -

“The Court has stressed time and again that in view of the severity of the penalties for the offense of rape, justified by the `traumatic consequences for the unfortunate victim and grievous injury to the peace and good order of the community, there is need `for extreme care on the part of the judiciary to avoid an injustice done to an accused. For it is equally true that this is an offense to which, as is often the case, only two people can testify, thus requiring the most conscientious effort on the part of the arbiter to weigh and appraised the conflicting testimony. If a reasonable doubt exists, the verdict must be one of acquittal. It must be borne in mind that it is an accusation easy to be made, hard to be proved but harder to be defended by the accused, though innocent. The evidence for conviction must be clear and convincing to overcome the constitutional presumption of innocence.”[13]

Appellant would consider it rather strange that the complainant did not even attempt to wake up his brother Ramon, to whom she later confided the incidents and said to be sleeping all the while in the same room with her, when she was being sexually assaulted by the accused.[14]

As usual, in a prosecution for rape, the credibility of the victim is almost always the single and most important issue to hurdle. If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof;[15] otherwise, he should be acquitted of the crime. Corroborative testimony, frequently unavailable in rape cases, is not essential to warrant a conviction for the crime.

In the instant case, the trial court gave its own assessment on the credibility of Roxan; it said:

“This Court also found that this Roxan Binarao, an eight-year-old-second grade pupil, to be a very competent witness, because her testimonies, in open Court were not punctured with serious inconsistencies as to lead this Court to believe that she [had] been coached to make known her perception of the traumatic incident x x x.

“While it is true that she sometimes commits inconsistencies in her declaration, but this Court finds that such honest lapses did not impair her intrinsic credibility as a witness x x x.

“This Court could not find any cogent reasons for this eight (8) years old girl to accuse her grand-step-father of having raped her. Because of the facts that when she and her two (2) brothers, Ramon and Rodolfo were staying with the couple in Maloong Legion, Lamitan, for three (3) years where in fact they attended primary schooling there, the accused, Jose Deleverio and his wife Maria Sarah Deleverio, the grandmother of these three (3) children were treating them well and even considered them as their own children, never punished them, except to discipline which is very normal attitude between parent and children relationship. Neither could this Court [find] any dubious motive on the part of Susan Binarao to induce her small daughter to file serious charges of rape against her step father who [has] been very kind to take care of her children while she work[s] or go[es] to Sabah, Malaysia to look for work.”[16]

This Court itself has gone over the testimony of Roxan. Like the trial court, we find the child's narration of the incident to be as forthright and straightforward as a young girl of eight years of age can possibly make it. Here is

how her testimony goes:

“Q Before April 7, 1994 where were you residing?

“A I was already staying in Legion.

“Q Whose house are you staying?

“A Their house.

“Q You are referring to the house of the accused and Maria Deleverio, the wife?

“A Yes, sir.

“Q On April 7, 1994, at about 8:00 o’clock in the evening where were you?

“A I was at their house.

“Q Who was your companion in the house during that time about the same hour?

“A We were only three.

“Q Who are the other two companions?

“A Deleverio and Ramon.

“Q This Deleverio you are referring to the accused in this case?

“A Yes, sir.

“Q What about your grandmother, the wife of the accused, where was she during that time?

“A She was left in Lamitan.

“Q Tell the Court, what happened to you on April 7, 1994 at eight o’clock in the evening while you were in the house of the accused together with the accused and your elder brother Ramon?

“A My short pants was loosened.

“Q What other things did the accused do?

“A He poked a knife.

“Q At what part of your body?

“A (Witness pointing [her] left stomach)

“Q When you felt that the accused was taking off your pants and poked a bladed weapon at your side what did you do?

“A I cried.

“Q What happened when you cried? What did the accused do?

“A He told me not to tell anybody.

“Q After that when he told you not to tell anybody what else did he do to you?

“A No, more, sir.

“COURT:

Considering the mentality of the witness, ask leading question.

“PROS. LEGASPI (continuing his direct):

“Q Did the accused [rape] you and [force] you?

“A Yes, sir.

“Q You said that the accused attacked you and raped you. How did he do it?

“A He inserted his penis.

“Q What part of your body did he insert his penis?

“A He inserted his penis inside my vagina.

“Q Did the accused succeed in inserting his penis inside your vagina?

“A Yes, sir.

“Q What did you feel when he inserted his penis?

“A I felt dizzy.

“Q Then after that what else did the accused do to you?

“A No more.

“x x x x x x x x

“PROS. LEGASPI (continuing his direct):

“Q On May 13, 1994 at about nine o’clock in the evening do you recall where were you?

“A Yes, sir.

“Q Where were you?

“A I was at Legion.

“Q In whose house were you then?

“A Residence of Maria.

“Q This Maria Deleverio that you referred to as your grandmother is the wife of the accused Jose Deleverio?

“COURT:

You do not have to repeat and repeat. You only prolong the trial.

“COURT:

Q On May 13, 1994, did the accused do something to you, if he did something?

A Yes.

Q What did he do to you?

A He molested me.

Q When you say ‘molest’ what kind of molestation?

A He inserted his penis.

“COURT:

Proceed.

“PROS. LEGASPI (continuing his direct):

“Q What happened when he inserted his penis to you, what did you feel?

“A I cried.

“Q What happened afterwards?

“A No more.

“Q Did you report this matter to your grandmother who is the wife of the accused?

“A Yes, sir.

“Q Then what did she do to you?

“A She did not believe me.

“Q Since she did not believe you did you report this matter to any other person?

“A None.

“Q What about your mother?

“A I reported to my mother.

“Q What did your mother do after you reported this incident?

“A She brought me to the police.

“Q You were investigated by the police?

“A Yes, sir.

“Q Did you execute an affidavit before the police relative to this case?

“A Yes, sir.

“Q If that affidavit is presented to you will you be able to identify it?

“A Yes, sir.

“Q Here is an affidavit signed by Roxan Benarao, two pages, please go over this affidavit and tell me if that is the very one?

“A Yes, sir (Witness pointed to her signature above her name)

“Q Whose signature is this you are pointing to in the same affidavit?

“A That is my signature.”[17]

On cross-examination, she has remained steadfast in her testimony; thus:

“ATTY. BANICO (continuing his cross):

“Q When did you report the allege rape to Ramon?

“A April 7.

“Q Are you sure you reported the incident to Ramon on April 7?

“A Yes, sir.

“Q You reported it to Ramon. If you can remember, daytime or nighttime?

“A Daytime.

“Q How many hours after the incident of rape did you remember having reported that incident to your brother Ramon?

“A Five Hours.

“Q What did you tell Ramon?

“A I told Ramon like this, ‘Ramon, I was molested by Lolo.’

“Q When you reported the incident to your brother Ramon, your grandmother Maria Deleverio was there?

“A No, she is not around.

“Q Why was she not around?

“A My grandmother was in Lamitan sleeping with my mother.

“Q Did you tell Ramon, ‘Ramon, my brother, you go to Lamitan and report the incident to our mother Susan.’?

“A None, sir.

“Q Did you ever know, if you know, whether Ramon reported this incident to your mother?

“A I do not know.

“Q On April, after the allege incident of rape, did your mother Susan Agustin visit you at Maloong, Legion?

“A No, sir.

“Q The whole month of April your mother did not visit you in Legion?

“A No, sir.

“Q Your mother Susan Agustin [does] not visit you in Maloong, Legion?

“A Yes, sir.

“Q On April 7, 1994 your grandmother Maria was not in your house in Legion?

“PROS. LEGASPI:

Already answered, your Honor.

“COURT:

She was not there.

“ATTY. BANICO (still on cross):

“Q However, your brother Ramon was with you in Legion?

“A Yes, sir.

“Q So, in other words, [on] the [n]ight of April 7, 1994 in your house in Legion was your brother Ramon, 13 years old, and the accused Jose Deleverio?

“A Yes, sir.

“Q Wherein, according to you, the accused Deleverio allegedly raped you you did not shout to wake up your brother Ramon who was in the house?

“A None, sir.

“Q Where was Ramon at the time during, according to you, the allege rape?

“A He was there but a little bit side of the house.

“Q Inside the house?

“A Inside the house.

“Q And Ramon, your brother, at that time was still awake?

“A He was already sleeping, sir.

“Q How big is the inside of the house?

“A Small house.

“Q And where Ramon was sleeping and where the incident happened it was not divided by a wall, correct?

“A Yes, sir.

“Q Where Ramon was sleeping and where the incident of allege rape occurred how far was Ramon?

“A More or less about one meter (witness pointing the distance).

“Q Are you sure of that, because you are telling the court the truth and you know the meaning of the truth?

“A Yes, sir.

“Q And when Ramon was sleeping at the time and when the accused allegedly committed rape on your person and there was still light inside the house because that was still very early, eight o'clock?

“A It was off.

“Q And you told the Court that you informed Ramon about the allege rape, [how many] hours after did you tell Ramon your brother?

“A The following day.

“Q So immediately after the allege rape you did not waken up your brother Ramon Benarao?

“A No, sir, the following day already.

“Q When you told your brother Ramon the following day did you show to Ramon the wound on your private part when you told Ramon about what happened last night? You did not show to Ramon the wound on your private part with bleeding?

“A No, sir.

“Q You did not also show to Ramon your short pants which according to you was pulled down by the accused with blood stain, you did not show that to Ramon?

“A Yes, I did not show it to Ramon.

“Q Because the truth of the matter is that there was no wound on your private part and there was no blood stain on your short pants?

“A There is a wound.

“Q Where is that short pants now?

“A In Legion.

“Q That short pants of your now did not contain any blood stain, correct?

“COURT:

There was no evidence that after being used by the grandfather she used the short pants.”[18]

Appellant voices strong concern over complainant's failure to shout or raise an outcry during the sexual assault. There is, unfortunately for appellant, no typical reaction or norm of behavior that ensue forthwith or later from victims of rape. It should be true, most certainly, when dealing with an innocent and immature child still of tender age. Not yet a woman but only a child who has been raised in the remote province of Basilan, the victim could not have been all that accustomed to worldly ways. Just as this Court has observed in one case,[19] the -

“x x x moral ascendancy and influence by appellant who is the stepfather of the 12 year-old victim and threat of bodily harm rendered her subservient to appellant's lustful desires. (People vs. Robles, 170 SCRA 557 [1989]; People vs. Alcid, 135 SCRA 280 [1985].) These factors are enough to explain the absence of an outcry on the part of Josephine immediately before and during the two occasions when appellant had carnal knowledge of her.

“Besides, only feeble resistance to sexual ravages of this nature can be expected from a girl of such a tender age. This is precisely the reason why sexual intercourse with a girl twelve years or under is considered rape without proving force or intimidation. And, what is the difference in mental fitness and attitude between a twelve-year-old girl and one who is twelve years and six months old?

“The victim's failure to immediately report to her aunt who resided nearby or to her uncle who passed by the victim's residence before the commission of the second rape by appellant in the evening of April 3, 1989 cannot be construed as an implied consent and condonation of what appellant had done to her. As testified to by the victim, after appellant raped her, he threatened her that he would kill her and her mother if she divulged to anyone what he did to her. This threat sowed fear on the part of the victim for which reason she failed to report the incident to her aunt and uncle. Nevertheless, when her mother returned from Sitio Talabaan, Josephine reported to her about the two rapes.”[20]

It is axiomatic to point out, furthermore, that in an appeal, where the culpability or innocence of an accused would hinge on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are entitled to and given the highest degree of respect. These findings will not ordinarily be disturbed by an appellate court absent any clear showing that the trial court has overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could very well affect the outcome of the case. The reason for this rule, as the Court has so repeatedly explained, is an excellent chance on the part of the trial court, an opportunity that is not equally open to an appellate court, of being able to personally observe the expression of declarants on the witness stand and their demeanor under questioning.[21]

Appellant finds it hard to fathom why Roxan would risk the possibility of a second rape by not reporting the matter promptly to her mother or at least sending her brother Ramon to their mother to report at once the dastardly act perpetrated on her. Appellant concludes that the rape story bears evident signs of having been merely implanted in the child's mind by her mother Susan Agustin who, being a woman of alleged unchaste character, must have been actuated by some ulterior motive against appellant.

Appellant forgets that Roxan is just a child, an innocent 8-year old girl, when ravished. As so aptly explained by the trial court:

"The tender age and immaturity of Roxan Binarao was to say the least, a victim of unfavorable circumstances not of her own making. And the equanimity or the wisdom of more mature people cannot be expected from a young and immature little girl like Roxan Binarao. The delay therefore of Roxan Binarao in reporting the sexual assaults to her mother Susan Binarao is understandable and does not affect her credibility as a witness. And this Court could not believe that she would fabricate a story of sexual molestation against her own step grandfather." [22]

Far from being unnatural and highly suspect, Roxan's temporary silence or delay in reporting the incident to her mother is most understandable. Given her tender age and near isolation from her mother, coupled with the ascendancy and influence of appellant, she likely has had a vague idea of what to do. But, typical of a girl her age, she, as soon as the opportunity presented itself, did reveal to her mother the two incidents.

It is unfortunate that Roxan's mother, Susan Agustin, has not been spared from having her own character unnecessarily impugned. No mother, virtuous or not, will in no event voluntarily and without compelling reasons put her own daughter to shame and humiliation. [23]

The conclusion is inescapable, and it is that the trial court hardly has erred in finding appellant guilty beyond reasonable doubt of the crimes charged.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, provides:

"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 or is demented.

"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.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

"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.

“2. When the victim is under the custody of the police or military authorities.

“3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

“4. When the victim is a religious or a child below seven (7) years old.

“5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

“6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

“7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation. (As amended by Sec. 11, RA 7659.)”

The mandatory death penalty is imposed under the first case, immediately above, when the victim is under eighteen 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." The trial court has thus held incorrectly in considering appellant, who is legally married to Roxan's natural grandmother, as among those named in the enumeration. Appellant is merely a step-grandparent who obviously is neither an "ascendant" nor a "step-parent" of the victim. In the recent case of *People vs. Atop*,^[24] the Court rejected the application of the mandatory death penalty to the rape of a 12-year old victim by the common-law husband of the girl's grandmother. The Court said:

"It is a basic rule of statutory construction that penal statutes are to be liberally construed in favor of the accused. Court's must not bring cases within the provision of a law which are not clearly embraced by it. No act can be pronounced criminal which is not clearly made so by statute; so, too, no person who is not clearly within the terms of a statute can be brought within them. Any reasonable doubt must be resolved in favor of the accused."

The award to the victim of "the total amount of P60,000.00 for both cases as moral damages" should be deleted, said damages not having been independently established; instead, appellant should be ordered to pay, consistent with prevailing jurisprudence,^[25] an indemnity to the victim of P50,000.00 for each count of rape.

WHEREFORE, the appealed decision finding appellant JOSE DELEVERIO guilty beyond reasonable doubt of two counts of rape is AFFIRMED with the MODIFICATIONS that the two death sentences imposed by the court a quo are both reduced to reclusion perpetua, and appellant is ordered to pay, instead of the P60,000.00 moral damages awarded by the court a quo, an indemnity of P50,000.00 for each count of rape.

Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and Purisima, JJ., concur.

[1] Records, Criminal Case No. 2125-414, P. 1.

[2] Records, Criminal Case No. 2136-418, p. 1.

- [3] Ibid., p. 7.
- [4] Ibid., p. 9.
- [5] Ibid., p. 13.
- [6] Rollo, pp. 126-127.
- [7] TSN, 18 July 1994, pp. 15-38.
- [8] Records of Criminal Case No. 2125-414, p. 5.
- [9] TSN, 20 September 1994, pp. 4-27.
- [10] TSN, 13 October 1994, pp. 4-37.
- [11] Rollo, p. 39.
- [12] Rollo, p. 67.
- [13] Rollo, p. 77.
- [14] TSN, 06 July 1994, p. 18.
- [15] *People vs. Francisco*, 258 SCRA 558.
- [16] Rollo, pp. 33-34.
- [17] TSN, 05 July 1994, pp. 7-18.
- [18] TSN, 06 July 1994, pp. 16-20.
- [19] Where the victim was a minor under 12 years of age and verily even a little older than the victim in the case at bar.; see *People vs. Salazar*, 258 SCRA 55.
- [20] At page 62.
- [21] *People vs. Malagar*, 238 SCRA 512, 521-522; citing *People vs. Manuel*, 234 SCRA 532.
- [22] Rollo, p. 35.
- [23] *People vs. Rosare*, 264 SCRA 398; *People vs. Dones*, 254 SCRA 696; *People vs. dela Cruz*, 251 SCRA 77; *People vs. Sabellina*, 238 SCRA 494; *People vs. Ignacio*, 233 SCRA 1.
- [24] G.R. No. 124303-05, 10 February 1998.
- [25] *People vs. Espinoza*, 247 SCRA 66; *People vs. Malunes*, 247 SCRA 317.

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