

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR REÑOLA Y CORPEN, ACCUSED-APPELLANT.

G.R. Nos. 122909-12. June 10, 1999

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PER CURIAM:

The capital punishment of death was imposed^[1] four (4) times on Victor Reñola y Corpen for committing the crime of rape on four (4) different occasions against his own daughter.

The accused, Victor Reñola, was charged by his 16-year old daughter Marivic Reñola with the commission of rape, not once but repeatedly, in four (4) separate criminal complaints following a preliminary investigation conducted by Assistant Provincial Prosecutor Ella M. Delovino. The information in Criminal Case No. 95-708 read:

"The undersigned complainant MARIVIC REÑOLA y DELOBIAR, a minor, 16 years old, accuses her father VICTOR REÑOLA y CORPEN of the crime of rape, committed as follows:

"That on or about the 23rd day of February 1995 at around 11:00 p.m., in the Municipality of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will."

"CONTRARY TO LAW."^[2] (Emphasis supplied)

The other three (3) informations are similarly worded (a) except that the paternity and filial relationship of the accused and the victim was not expressed and (b) except with respect to the dates of commission of the offenses charged on the 10th October 1994,^[3] 13th October 1994,^[4] and 15th October 1994.^[5] Thus:

"The undersigned complainant MARIVIC REÑOLA y DELOBIAR, a minor, 16 years old, accuses VICTOR REÑOLA y CORPEN, of the crime of rape, committed as follows:

"That on or about 10th October 1994, (13th October 1994,^[6] and 15th October 1994^[7]), in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will."

"CONTRARY TO LAW."^[8]

When arraigned on the four (4) informations, accused Victor Reñola, assisted by counsel, entered a plea of not guilty. The trial thereupon proceeded.

The inculpatory facts, according to the prosecution in its evidence given at the trial, were synthesized by the Solicitor-General.

"Private complainant Marivic Reñola, 16 years of age, is one among the six (6) children of appellant Victor Reñola (tsn, August 29, 1995, pp. 3-4; tsn, October 12, 1995, pp. 5-6).

"On 10 October 1994, around 2:00 o'clock in the morning, inside their house at No. 5 Upper Plaza, 21st Street, West Rembo, Fort Bonifacio, Makati City, complainant was suddenly awakened as she felt somebody on top of her (tsn, October 21, 1995, pp. 3-5). When she opened her eyes, she saw her father, herein appellant Victor, pointing to her a 'balisong' and trying to insert his penis into her vagina (ibid., pp. 5-6). Complainant resisted but failed to 'overcome' appellant (id., p. 6) Appellant laid on top of her daughter for five (5) minutes, more or less, (id., p. 7) and succeeded in penetrating his penis into her vagina (id., pp. 6-7), thereafter releasing semen on her belly (id., p. 7).

"After satisfying his beastly lust, appellant went out towards the kitchen (id., pp. 7-8). Complainant felt the pain and cried (id.). Appellant told her not to tell her mother or else he would kill both of them (id., p. 8)

"Complainant's harrowing ordeal was repeated barely three (3) days later, on 13 October 1994, and again on 15 October 1994, on approximately the same time in the morning, at the same place, the same manner, and by the same aggressor - appellant, her very own father (id., pp. 9-12). Appellant then would punch the thighs of complainant when the latter resisted (id, pp. 10 and 12). Complainant could only cry (id., p. 12)) as appellant 'kept on repeating that he will kill me (complainant) and my mother if I will tell my mother.' (id., p. 9) On all those occasions complainant's mother was out of the house (id., pp. 5,11).

"After the third assault on her virtue, complainant found the courage to narrate her experience to a friend and neighbor, Laila Meri (id., p. 13). The latter got 'angry' and 'mad' (id.) and even uttered, 'do you want me to kill him?' (id.) Meri related the story to complainant's mother, who, in turn, confronted complainant about it (id., pp. 13-14). Complainant confirmed the story (id., p. 14). This time, complainant's mother started observing appellant (id.).

"But not for long, on 23 February 1995, as complainant's mother was again out of the house because she had to attend a councilor 'caucus,' appellant repeated and succeeded in raping complainant for the fourth time (id., pp. 14-15). The following day, 24 February 1995, complainant told the incident to her mother who decided to report it to the police (id., p. 15). There, at the South Sector Police Station, complainant, and her mother as well, executed statements complaining of 'what my own father did to me' (id., pp. 15-16).

"On 27 February 1994, around 4:30 p.m., complainant was medically examined by Dr. Jesusa Nieves Vergara, a Medico Legal Officer of the Philippine National Police, Camp Crame, Quezon City (tsn, August 22, 1995, pp. 3, 22). The examination resulted to the following:

'Conclusion:

'Subject is in non-virgin state physically. There are no external signs of application of any form of violence.

'Remarks:

'Vaginal and peri-ureteral smears are negative for gram-negative diplococci and for spermatozoa.' (Decision, p. 4)

"Dra. Vergara however found hymenal 'healed lacerations' at '7 and 9 o'clock' positions, compatible with the victim's claim that she was raped sometime in October of 1994 (tsn, August 22, p. 22); and, opined that since the victim was already in a 'non-virgin' state, it is common and usual not to find any medical signs or indications that she was raped on 23 February 1995 (ibid. pp. 26-27). More so, considering that the examination was made four (4) days from the occurrence of the last rape (23 February) in which case the abrasions or congestions she was supposed to see could have healed (id., pp. 26-27, 33, 36 and 42)."[9]

The accused professed his innocence, presenting his defense, thusly:

" x x x the physical evidence presented did not show any proof of slight contusion or bruise on any part of her body. Moreover, the Medico-legal officer stated that according to her findings, the offended party had no recent sexual activity which could not back up the alleged rape done on February 24, 1995 but only the alleged

sexual abuses done in 1994 because of the presence of healed lacerations. However, said findings of healed lacerations cannot be specifically attributed to the alleged sexual abuses done in 1994 considering that cases were not filed at the earliest opportunity. Moreover, healed lacerations could have been caused by any other activity done in the sex organ whether sexually or not."[10]

Insisting that the allegations of the complainant should not be taken seriously, the defense further pointed out -

"Digesting the testimony of the offended party, the following observations reveal incredibility:

"FIRST, the allegations of the offended party on the happening of the four counts of rape are the same.

"It was too much to believe that all the alleged instances of rape as to the scenario were all the same. The time, the holding and pointing of the knife, the force, the struggling, the release of semen on top of the offended party's belly, and the going out towards the kitchen were all present. There have been no major variations in the stories except on the third time that there was boxing on the thigh. It therefore shows rigidity in form which suggests prevarication.

"SECOND, the offended party stated that between October 15, 1994 up to the last incident of rape on February 23, 1995, there were times that she and his father were left alone in their house. She left their house on those times at 4:00 p.m. and came back at 7:00 p.m. because she was scared of him. However, the alleged instances of rape happened at 2:00 a.m.

"It is unbelievable that complainant wished to suggest that she avoided her father to prevent the sexual abuse on her. But, on the first and second instances of rape, they allegedly happened at 2:00 a.m., a time beyond 4:00 p.m. and 7:00 p.m."[11]

The accused would attribute the filing of the complaints against him on some ulterior motives on the part of the complainant rather than to seek justice.

"Accused-appellant testified that x x x Marivic Reñola, was not a good girl. She had the habit of going out of the house without asking permission. As a father, he was angry with Marivic that he talked to her regarding her behavior. His daughter Marivic was just angry at him because he was very strict on her. That could have been the reason why Marivic filed the instant cases against him."[12]

In its decision,[13] dated 13 December 1995, the trial court found Victor Reñola guilty beyond reasonable doubt of the crimes charged and sentenced him to suffer the extreme penalty of death for each count of rape taking into consideration the special qualifying circumstances that the victim Marivic Reñola was then only 16 years old and the daughter of the accused. The trial court likewise ordered the convict to pay the victim the sum of P200,000.00 by way of moral damages.

The case has been directly elevated to this Court for automatic review, a process required by law whenever the death penalty is imposed by a trial court. Contending that the prosecution has failed to overcome the constitutional presumption of innocence by the exacting standard of proof beyond reasonable doubt, appellant would here basically downgrade the testimony of the complainant.

In crimes of the nature now on appeal, the testimony of the offended party is certainly most vital, and it must undoubtedly be received with greatest caution.[14] Since, except for the actual participants, no other witnesses can give an account on what may have really transpired, a conviction or an acquittal of the accused would virtually depend on the testimony of the complainant.[15] If found to be credible, the lone declaration of facts given by the offended party has been held to suffice in order to sustain a conviction.[16] It is thus imperative that the testimony meets the test of credibility and should bear the stamp of truth and candor.[17] The testimony, in fine, not only must proceed from the mouth of a credible witness but it must also be credible in itself for it to

deserve approbation.[18] These stringent measures should be expected since the accused generally would have little to offer but bare denial and alibi, two defenses which jurisprudentially are among the weakest defenses in a criminal prosecution.

The matter of assigning value and weight to the testimony of witnesses, as well as the determination of the credibility of a witness, by and large, is a function of the trial court it being in the best vantage to make that evaluation. This Court has thus consistently adhered to the policy of not unduly disturbing the findings of the trial court on questions relating to that issue. Cogent reasons to the contrary are generally summed up to refer to situations when, quite often postulated, certain facts of substance and significance have been plainly overlooked or when the trial court's findings are shown to be clearly arbitrary.[19]

Most regrettably for appellant, in this instance, the Court, after taking meticulous care in reviewing the evidence submitted by both the prosecution and the defense, must agree with the trial court in its judgment of conviction.

Cognizant that the pivotal and the crucial point in this review, like in the various cases reaching this Court and as to be so expected, is the testimony of the complainant, the Court here again finds it most fitting to listen to Marivic, in her own words, on the unfortunate tale.

Marivic Reñola, testifying:

"Q Miss witness, can you tell us when were you born ?

"A January 18, 1978, Sir.

"X X X X X X X X

"Q How about the name of your father ?

"A Victor C. Reñola, Sir.

"Q The accused in this case is named Victor Reñola, do you know him ?

"A Yes, Sir.

"Q Why do you know him ?

"A He is my father, Sir.

"Q Now, point to him if he is inside the courtroom.

"A (witness looked around and pointed to a man wearing orange T-shirt whom when asked stood up and answered by the name of Victor Reñola).

"Q Can you still remember where were you on October 10, 1994 at about 2:00 o'clock in the morning?

"A I was in our house, Sir.

"X X X X X X X X

"Q What were you doing in your house?

"A I was sleeping, Sir.

"Q Can you tell us of any unusual incident that transpired while you were sleeping in your house on October 10, 1994?

"A On October 10, 1994, before the incident, my mother was not in the house.

"Q What happened in your house at 2:00 o'clock while your mother was not in the house?

"A I was then sleeping at that time and I was awakened when I felt that somebody was on top of me whom I recognized as my father.

"Q You said that you were awakened when you felt someone on top of you, is that correct?

"A Yes, Sir.

"Q When you opened your eyes, you recognized him as your father.

"A Yes, Sir.

"Q What was he doing when you first opened your eyes?

"A He was holding a 'balisong,' Sir.

"Q What was he doing with his 'balisong,'

"A It was pointed at me (nakatutok sa akin).

"Q What was he doing while he was pointing the 'balisong' at you?

"A He was inserting his penis into my vagina, Sir.

"Q Was he able to insert his penis to your vagina?

"A No, Sir.

"COURT:

"Q While your father was trying to insert his penis to your vagina, what did you do?

"A I was trying to fight him back, Sir.

"Q Were you able to fight him back?

"A I can't overcome him, Sir.

"FISCAL DE JOYA

"Q So, was he able to insert his penis to your vagina?

"A Yes, Sir.

"Q What did you feel after he inserted his penis to your vagina?

"A Masakit po.

"Q

How long did he stay on top of you?

"A More or less five minutes, Sir.

"Q

You said that he was able to finish, is that correct?

"A Nakaraos po.

"Q What do you mean by the word 'nakaraos'? sa aking puson.

"A Dahil po nailabas na niya (because he splitted his penis on my belly).

"Q After he released his semen on top of your 'puson,' what else happened?

"A After that, he went out, sir.

"COURT:

"Q When you he went out, you mean he went out of the room, describe the room, was there a room?

"A None, Sir.

"FISCAL DE JOYA:

"Q When you said he went out, from where?

"A He went out and proceeded to our kitchen.

"Q What did you do when he went to the kitchen?

"A I cried, Sir.

"Q Now, what happened to you, did you tell your mother?

"A I did not directly tell her, Sir.

"Q Why did you not tell your mother about what happened to you?

"A I was afraid because he told me that he will kill us if I will tell that incident to my mother, Sir.

"Q Now, how about on October 13, 1994 at about . . . in the early morning of the same date, where were you?

"A I was in the house, sleeping, Sir.

"Q Tell us again of any unusual incident that transpired while you were sleeping in your room on October 13, 1994?

"A On October 13, 1994, I was awakened and he was on top of me, Sir.

"COURT:

"Q At about what time?

"A 2:00 o'clock in the morning, Sir.

"FISCAL DE JOYA:

"Q In other words, you want to impress before the Court that he repeated the same on October 13, 1994.

"A Yes, Sir.

"Q What did he do this time?

"A

He pointed the 'balisong' at me and he kept on repeating that he will kill me and my mother if I will tell my mother, Sir.

"Q While poking the 'balisong' to you, what did he do?

"A He inserted his penis to my vagina.

"COURT:

"Q What did you do when your father inserted his penis to your vagina?

"A I kept on fighting back, Sir.

"FISCAL DE JOYA:

"Q Were you able to fight?

"A No, Sir because he was boxing both of my two thighs, Sir.

"Q Was he able to finish this time?

"A He again released it on top of my belly, Sir.

"COURT:

"Q Was he able to insert his penis inside your vagina?

"A Yes, Sir.

"FISCAL DE JOYA:

"Q After the second time, was there anything that happened to you?

"A Yes, Sir.

"Q When was that?

"A October 15, 1994, Sir.

"Q What time did this happen?

"A 2:00 o'clock in the morning, Sir.

"Q And what happened on October 15, 1994? at 2:00 o'clock in the morning?

"A My mother was not in the house and I was the only one left in the house.

"Q What else happened?

"A I was again awakened and I felt that he was on top of me and he was again holding the 'balisong.'

"Q And what did he do for the third time?

"A He again inserted his penis to my vagina and again released on top of my belly, Sir.

"Q After he finished, what did you do?

"A He again went out.

"COURT:

"Q What did you do when your father again inserted his penis to your vagina?

"A I was just crying, Sir.

"Q Did you consent to his inserting his penis to your vagina for the third time voluntarily?

"A No, Sir.

"FISCAL DE JOYA:

"Q What did you do to prevent him from inserting his penis to your vagina?

"A I was trying to push him away from me, Sir.

"Q

Were you able to push him?

"A No, Sir, because he kept on punching my thighs, Sir.

"Q

After the third time that you were raped by your father, what did you do?

"A I just cried, Sir.

"Q Did you tell anybody of what happened to you?

"A Yes, Sir.

"Q To whom did you narrate your experience?

"A

To my best friend, Sir.

"Q

What is the name?

"A Laila Meri, Sir.

"Q

And where is this Laila Meri living?

"A Also in West Rembo, Sir.

"Q

When you narrated your ordeal to Laila Meri, what did she do?

"A She was angry, she was mad, Sir.

"Q What else did she do?

"A She asked me what I wanted to do to my father, she said, 'do you want me to kill him'? and I was not able to answer.

"Q What else did she do?

"A She told my mother of what happened to me.

"Q

So, what did your mother do when your best friend told your mother your experience?

"A My mother confronted me if it is true or not?

"Q And what was your answer?

"A I said it is true, Sir.

"Q And what did your mother do?

"A She observed us.

"Q And can you tell us what happened next?

"A On February 23, 1995 again, my mother was not at home, she was then in a 'caucus', meeting of a councilor and again it happened to me.

"Q What happened on the fourth time, what did he do?

"A He again inserted his penis to my vagina.

"FISCAL DE JOYA:

"Q What were you doing then when he put his penis inside your vagina?

"A I kept on fighting him back.

"Q What happened when you were fighting back?

"A He was able to insert his penis to my vagina.

"Q What was he carrying at that time?

"A 'Balisong.'

"Q Was he able to finish at that time?

"A Yes, Sir, he again released his semen to my belly.

"Q So, what did you do?

"A On February 24, I told my mother and she decided to report it to the police.

"Q Where did you go on February 24?

"A South Sector, police station.

"Q And what did you do there?

"A We complained of what my own father did to me.

"x x x x x x x x

"FISCAL DE JOYA:

"Q So, after your statements were taken by the police in the Southern Sector, what did you do next?

"A

I went to the medico-legal office.

"x x x x x x x x

"COURT:

"Q Were you medically examined?

"A Yes, Sir, in Camp Crame.

"Q

After your medical examination, what did you do?

"A We waited for the result of the medico legal examination, Sir.

"Q What did you do after you received the medical certificate?

"A We went home, Sir.

"Q What else happened when you arrived in your house?

"A My father was no longer in our house. He was already arrested by the police.

"Q Where was he taken?

"A Southern Sector, Sir."[20]

The cross-examination conducted by the defense counsel failed to dent, in any significant way, the narration of Marivic and the identity given by her of the malefactor.

"CROSS EXAMINATION BY ATTY. ELEVASO TO WITNESS MARIVIC REÑOLA

"ATTY. ELEVASO:

"x x x x x x x x"

"Q After telling this incident to your best friend, what did you do?

"A None, Sir.

"Q Is it not true that after telling this incident to your best friend, you have forgiven your father?

"A No, Sir.

"Q

From the time that the last incident that you mentioned, October 15 and last incident February 23, was there any occasion that you were alone in the house, you and your father between October 15 and February 15?

"A Yes, Sir.

"Q And what happened when you were alone with your father?

"A I went out of our house, Sir.

"COURT:

"Q What was your purpose in getting out of the house?

"A Because I am scared at him, Sir.

"ATTY. ELEVASO:

"Q What time do you leave your house if your father is there?

"A In the afternoon, Sir.

"Q And what time do you return to your house?

"A At 7:00 o'clock in the evening, Sir.

"Q After 7:00 o'clock, is your father still in your house?

"A He is in the other house watching TV.

"Q The October 15, 1994 incident, did you tell this incident to anybody?

"A

No, Sir.

"Q And is it not true that you did not tell anybody on what happened to you is because you have forgiven father?

"A No, Sir.

"Q So, up to now, you have not forgiven your father on what he did to you.

"A Yes, Sir.

"Q And why did you tell this to your best friend, the October 15 incident?

"A Because I was ashamed at that time.

"Q And on the first time that you told this to your best friend, about this incident, were you not also ashamed?

"A

Because I could no longer tolerate what my father was doing to me.

"Q So, when you did not tell your best friend of the October 15 incident, are you telling us that you have tolerated that incident?

"A No, Sir.

"Q On the 23rd of February, were you alone with your father at 2:00 a.m.?

"A No, Sir.

"Q Who was with you?

"A My younger brother, Sir.

"COURT:

"Q How old was your younger brother?

"A Seven (7) years old, Sir.

"Q Now or in 1995?

"A 1995, po.

"Q What was he doing at that time?

"A He was sleeping, Sir.

"Q And when you said that your father abused you at that time, what was your brother doing?

"A

He was sleeping, Sir.

"Q And during that time and when your father abused you, did you not do anything to wake up your brother.

"A No, Sir.

"Q Were there anybody else with you in the room at this time?

"A None, Sir.

"Q When your father was abusing you on February 23, how did you react, how did you feel, what did you feel?

"A I cried because it hurts my feeling of what he did to me.

"Q Is it not true that you have forgiven your father after the February 23, incident?

"A No, Sir."[21]

The straightforward testimony of the victim at the witness stand impels this Court to agree with the court a quo in concluding that "although it was only Marivic who testified that she was raped by her father Victor, the Court entertains no doubt that Marivic was telling the truth." More than what has been testified to would only be the ugly, sordid and inconsequential details that the victim would most likely rather forget. Even a few inconsistent remarks in rape cases will not necessarily derail the testimony of the offended party for, after all, rape victims, as has so aptly been pointed out by the Solicitor General, cannot be expected "to be errorless in the recount of details of a clearly harrowing experience." [22]

The medico-legal officer, Dr. Jesusa Nieves Vergara, who examined the victim was positive and categorical that the hymenal lacerations she found on complainant were compatible with the latter's claim that she had been raped sometime in October of 1994. Naturally, the medical examination conducted four (4) days after the 23rd February 1995 incident found no medical signs or indications thereof for, by then, the complainant had long been in a "non-virgin" state.

It is not indispensable that marks of external bodily injuries should appear on the victim. The testimony of the complainant that she kept on "fighting back" should be reasonably interpreted to mean that she struggled or gave resistance; the law does not expect the rape victim to resist unto death. [23]

The complainant does not appear to have any strong reason or nefarious motive to fabricate the grave charges against her very own father and so expose not only herself but the family as well to shame and scandal. [24] A victim of sexual assault, the Court has said before, would obviously not be willing to undergo the humiliation of a public trial, let alone testify on the details of her ordeal, if her reasons were other than her natural passion to avenge her honor [25] and to condemn a grave injustice done to her. [26]

Evil acts, however, should come to an end. The 23rd February 1995 incident was the last straw that broke the camel's back, so to speak, and so it did when the complainant gathered enough strength, along with her mother, to report the bestial acts of and denounce her father to the authorities.

The law under which appellant has been accused of, and proven guilty, is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which 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."

Although the matter of the proper imposition of the penalty has not been questioned by appellant, nevertheless, an appeal in a criminal proceeding brings up the entire case open for review and it becomes the duty of the appellate court to correct an error such as may be found in the appealed judgment, whether assigned to be an error or not.[27]

A reading of the four (4) informations accusing appellant of the crime of rape would show that it was only in Criminal Case No. 95-708 where the relationship between the accused and the young victim, father and daughter respectively, was pleaded. The three (3) other informations, i.e., in Criminal Cases No. 95-1114, No. 95-1115 and No. 95-1116, although stating the minority of the victim, failed, nevertheless, to indicate her filial relationship with the accused. This Court has declared in *People vs. Garcia*,[28] reiterated in *People vs. Ramos*,[29] *People vs. Ilao*,[30] *People vs. Dimapilis*,[31] and, recently, in the case of *People vs. Lumberio*,[32] that the circumstances under the amendatory provisions of Section 11 of R.A. No. 7659, the attendance of any of which would mandate the single indivisible penalty of death prescribed in Article 335 of the Revised Penal Code, are in the nature of qualifying circumstances. The Court stressed in *Dimapilis* that unlike a generic aggravating circumstance which may be proved even if not alleged, a qualifying circumstance cannot be proved as such unless alleged in the information although it may be proved as an ordinary generic aggravating circumstance if so included among those enumerated in Article 14 of the Code. Since the qualifying circumstance of relationship of the victim with the offender, unlike in Criminal Case No. 95-708, was not alleged in the three (3) complaints-information in Criminal Cases No. 95-1114, No. 95-1115 and No. 95-1116, the penalty of death cannot rightly be imposed in the latter three (3) criminal cases.

In sum, the Court finds no reason to disturb the specific finding of the trial court that the guilt of

accused-appellant Reñola has been proved beyond reasonable doubt. The supreme penalty of death was properly imposed upon him in Criminal Case No. 95-708. Four members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray*[33] that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional, nevertheless, bow to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty can accordingly be imposed. The Court must modify the death penalty for the three counts of rape in Criminal Cases No. 95-1114; No. 95-1115 and No. 95-1116 which should each be reduced to reclusion perpetua.

In line with the prevailing jurisprudence, an additional award of civil indemnity ex delicto of P75,000.00 is made in favor of the offended party in Criminal Case No. 95-708 and P50,000.00 for each count of the three (3) other rape cases.

WHEREFORE, the judgment of conviction, as well as the imposition of the death penalty, rendered by the Regional Trial Court, Branch 66, of Makati City, in Criminal Case No. 95-708 is hereby **AFFIRMED** with the **MODIFICATION** that accused-appellant, in addition to the P50,000.00 awarded by the trial court by way of moral damages, should indemnify the victim in the amount of P75,000.00 by way of indemnity ex delicto. The decision of the court a quo with respect to Criminal Case No. 95-1114, Criminal Case No. 95-1115 and Criminal Case No. 95-1116 is **AFFIRMED** with the **MODIFICATION** that Victor Reñola is sentenced to suffer the penalty of reclusion perpetua for each count of rape and to pay the additional amount of P50,000.00 as indemnity for each count of rape for a total amount of P150,000.00.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Puno, J., abroad on official leave.

Panganiban, J., on leave.

[1] Penned by Judge Eriberto U. Rosario, Jr.

[2] Original Records, p. 1.

[3] Crim. Case No. 95-1114

[4] Crim. Case No. 95-1115

[5] Crim. Case No. 95-1116

[6] Records, p. 30.

[7] Records, p. 31.

[8] Records, p. 29.

[9] Rollo, pp. 76-80.

[10] Rollo, p. 52.

[11] Rollo, pp. 55-56.

[12] Rollo, p. 52.

[13] Original Records, pp. 83-90.

[14] People vs. Godoy, 250 SCRA 676.

[15] People vs. Rivera, 242 SCRA 26.

[16] People vs. Bulaybulay, 248 SCRA 601; Anciro vs. People, 228 SCRA 629; People vs. Lascuna, 225 SCRA 386.

[17] People vs. Matrimonio, 215 SCRA 613.

[18] People vs. Pidia, 249 SCRA 687.

[19] People vs. Quijada, 223 SCRA 77.

[20] TSN, Marivic Reñola, 29 August 1995, pp. 3-19.

[21] TSN, 29 August 1995, pp. 3-25.

[22] People vs. Butron, 272 SCRA 352.

[23] People vs. Igdanes, 272 SCRA 113.

[24] People vs. Bantasil, 249 SCRA 367.

[25] People vs. Delovino, 247 SCRA 637.

[26] People vs. Abendano, 242 SCRA 531.

[27] People vs. Medina, G.R. No. 126575, 11 December 1998, citing People vs. Correa, et al., G.R. No. 119246 (January 30, 1998); People vs. Olfindo, et al, 47 Phil. 1; People vs. Borbano, 76 Phil. 708; People vs. Garcia, 281 SCRA 463.

[28] 281 SCRA 463 (1997)

[29] G.R. No. 129439, September 25, 1998.

[30] G.R. No. 129529, September 29, 1998.

[31] G.R. No. 128619-21, December 17, 1998.

[32] G.R. No. 126575, December 11, 1998.

[33] G.R. No. 117472, 07 February 1997.

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