

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSUE B. Dumlao, ACCUSED-APPELLANT.

G.R. Nos. 130409-10. November 27, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Before this Court on automatic review is the Joint Decision of the Regional Trial Court of Cabanatuan City, Branch 27, dated April 29, 1997, in Criminal Case Nos. 7257-AF and 7258-AF sentencing accused-appellant Josue B. Dumlao to the supreme penalty of death for raping his two nieces.

On February 10, 1997, two separate complaints were filed before the Regional Trial Court of Cabanatuan City, charging accused-appellant with rape. The first was filed by Jennifer Dumlao Matutino, assisted by her father Fernando Matutino. The complaint stated:

Criminal Case No. 7257-AF

That on or about between the year 1991 and May 1996, at Barangays San Isidro and Sta. Lucia Old, respectively, Municipality of Zaragoza, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the use of force and lewd designs, violence and intimidation, did then and there, willfully, unlawfully and feloniously abuse and had sexual intercourse on the person of the undersigned against her will, to the damage and prejudice of herein complainant, a minor.

CONTRARY TO LAW.

Cabanatuan City, Philippines, December 2, 1996.

(Sgd.) JENNIFER D. MATUTINO

Complainant[1]

The second complaint was filed by Jennifer's older sister, Benita Dumlao Matutino, who was also assisted by her father Fernando Matutino. The complaint similarly charged accused-appellant as follows:

Criminal Case No. 7258-AF

That on or about between the year 1991 and May 1996, at Barangays San Isidro and Sta. Lucia Old, respectively, Municipality of Zaragoza, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the use of force and lewd designs, violence and intimidation, did then and there, willfully, unlawfully and feloniously abuse and had sexual intercourse on the person of the undersigned against her will, to the damage and prejudice of herein complainant, a minor.

CONTRARY TO LAW.

Cabanatuan City, Philippines, December 2, 1996.

(Sgd.) BENITA D. MATUTINO

Complainant[2]

Upon arraignment, accused pleaded Not Guilty to both charges. Thereafter, as agreed upon by the parties, the two cases were tried jointly.

The prosecution, through its witnesses Dr. Raol Paculan, Benita Dumlao Matutino, Jennifer Dumlao Matutino, Dr. Agripina Reyes and Fernando Matutino established the following facts:

The victims, Benita Dumlao Matutino and Jennifer Dumlao Matutino are the daughters of spouses Fernando Matutino and Merlyn Dumlao. Both children were staying in the home of Virginia Baldonado, their maternal grandmother, since their parents became estranged in 1992.[3] Baldonado's house is located at Sta. Lucia Old, Zaragoza, Nueva Ecija. They lived in said house with their grandmother, the accused-appellant whom they called "Tito Judy", who was the brother of their mother, "Tito Nonong/Kuya Nonong", "Tatang Sonny" and "Ate Rowena". The house, which had two storeys, had one bedroom on each floor.[4] Benita and Jennifer together with their grandmother, Ate Rowena and Kuya Nonong slept in the room located upstairs, while the accused-appellant slept downstairs in the room beside the kitchen.[5]

Jennifer, one of the victims, testified that sometime in May, 1996, at around 10:00 p.m., she was roused from her sleep by accused-appellant.[6] The latter lifted her from the bed where she and her sister Benita were sleeping, covered her mouth, and brought her to the room downstairs.[7] She was able to recognize him since the room was illuminated by a gas lamp.[8] Accused-appellant removed her clothes and lay beside her, then went on to kiss her cheeks and embrace her. Jennifer slapped the accused-appellant. He parted her legs, placed himself on top of her, removed his shirt, and inserted his penis into her vagina[9] for about ten minutes.[10]

Jennifer further stated that her grandmother was not in the house when she was raped by accused-appellant that night. Her grandmother was then confined in a hospital in La Paz, Tarlac.[11] Only she, her sister Benita and accused-appellant were left in the house.[12]

Jennifer kept quiet about the incident because accused-appellant threatened her with physical harm should she ever report the incident to anyone.[13] However, she told her sister Benita about what accused-appellant had done to her two days after the incident, and Benita in turn told Jennifer that she (Benita) was also raped by the accused-appellant.[14]

The physical examination conducted by Dr. Raol Paculan disclosed that Jennifer had multiple healed lacerations on her hymen at 2, 3, 5, 7 and 9 o'clock positions,[15] and that her hymen was no longer intact, indicating that she had lost her virginity.[16]

At the time she was raped in May, 1996, Jennifer was only eleven (11) years old, having been born on July 12, 1984,[17] as indicated in her birth certificate.[18]

Benita Matutino testified that sometime in May, 1996, at around 1:00 a.m., while she was sleeping in the room located on the second floor of her grandmother's house, she was awakened from her sleep by the accused-appellant, whom she found lying beside her and kissing her.[19] Benita recognized accused-appellant since the room where she was sleeping was lighted.[20] Accused-appellant later succeeded in undressing her despite her resistance by kicking and pushing him away from her, because he was much stronger than she was. Accused-appellant held her hands tightly, and threatened to kill her and her sister Jennifer if she resisted.[21] He then inserted his penis into her vagina.[22] Benita recounted that on the day she was raped by accused-appellant, only she, Jennifer and accused-appellant were in the house of her grandmother, because the latter and their other companions in the house were in the hospital.[23]

Benita did not tell her grandmother about what happened because she was afraid that the accused-appellant would

kill her and her sister.[24] It was only sometime after the accused-appellant left their grandmother's house in September, 1996 to reside elsewhere that Benita wrote an undated letter to their father informing him that she and Jennifer were raped by accused-appellant in May, 1996, and that he had repeatedly raped them since 1991.[25] Benita sent said letter through her friend Girlie Soliman.[26] The letter reads:

Tatay,

Bago ang lahat binabati ko kayo ng magandang araw. Sana ay lagi kayong nasa mabuting kalagayan na malayo sa anumang sakit lalo na at si Kuyang kaya nga pala ako sumulat ay dahil sa ipagtatapat ko sa inyo pasensiya na kayo kung idinaaan ko pa sa sulat dahil nahihiya ako sa inyong sabihin ito ng harap harapan eto ay dahil sa nangyayaring hindi maganda sa aming dalawa ni Jenny. Matagal na naming gusto itong sabihin at dahil rin natatakot ako na sabihin ito at nagkaroon ako ng lakas ng loob. Ito ay dahil kay Tito Jude na hinahalay niya kami binababoy pinagsasamantalahan ng hayop na yoon huwag ka sanang mabibigla sa sinabi kong ito dahil yaan ay matagal na sa aming ginagawa ni Judy nodon pang buo pa ang ating bahay noong buo pa ang ating pamilya naaawa ako kay Jenny bata pa siya ginanoon na siya debaling ako nalan huwag na siya dahil masyado pa siyang bata tay sana ay wag mo sila Divinang pabayaang dahil ayokong mangyari (ang nangyari) sa kanila ang nangyari sa amin ngayon nagpapasalamat ako at nagawa konang isumbong sa inyo at ngayon nandito ako kanila Merlinda dito ako nakatira marami sa aking umaampon isa lang ang nagustuhan ko kanila Ate Wennie mababait sila. Mayaman hindi ako magiging alila sa kanila dahil kung sa pagluluto paglilinis ay madali lang. humihingi ako sa inyo ng patawad sa ginawa kong paglalayas at pakisabi narin ang nangyari sa akin kina nanay tanda tay mahal ko kayo kaya inilihim ko ito sa inyo dahil ayong mabahiran ng dungis ang pangalan ng Matutino dahil sa akin. Madalas kong naiisip na kaya siguro sa akin ito ginawa ay dahil galit sila sa ating pamilya wag sana kayong magagalit kung wala ang address namin dito dahil ayoko ng umuwi sa atin sa asiyenda ayoko na tay sawang sawa na ako daig pa namin ni Jenny may asawa tay mahal na mahal kita si Nanay at ang aking mga kapatid.

hanggang dito na lang ang aking sulat

Ang iyong anak

(Sgd.) Benita Matutino

I love you

my

Family[27]

Subsequently, her father fetched Benita in Panganiban, San Antonio, Nueva Ecija where she was staying and verified from her whether what she said in her letter was true. Her father then asked his sister to fetch Jennifer from their grandmother's house.

Thereafter, he brought Jennifer and Benita to the police station in Zaragoza, Nueva Ecija to report the crimes.[28] Benita executed a sworn statement before the police, stating that sometime in May, 1996, at around 1:00 a.m., accused-appellant undressed and forcibly inserted his penis into her vagina. She said that the accused-appellant had been raping her since she was nine years old. She also explained that she did not report the said incidents earlier because accused-appellant threatened to kill her if she told anyone regarding the same.[29]

Benita also testified that on October 2, 1996, her father and a policeman brought her and her sister to the Dr. Paulino J. Garcia Memorial Research and Medical Center for physical examination.[30]

The physical examination conducted on Benita by Dr. Agripina Reyes revealed that the victim had multiple healed lacerations on her hymen at 3, 4, 5, 6, 8, 9, 11 and 12 o'clock positions.[31] Dr. Reyes also stated that Benita's hymen was no longer intact, indicating that she had lost her virginity.[32]

Benita was only 13 years old when she was raped by accused-appellant in May, 1996.[33] Her birth certificate which she presented in court indicates that she was born on August 14, 1982.[34]

The victims' father, Fernando Matutino, corroborated his daughters' statements. He told the court that on September 13, 1996, he received a letter from Benita informing him that she and Jennifer had been raped by accused-appellant.[35] Thereafter, he looked for his two daughters. When he found Benita, he asked her again whether what she said in her letter was true. She answered him in the affirmative. Subsequently, he brought his daughters to the police station in Zaragoza, Nueva Ecija to report the crimes.[36] He executed a statement[37] which was used as basis for the filing of the criminal complaints against accused-appellant.

The defense presented three witnesses, namely Virginia Baldonado, the accused-appellant himself and Roel Dumlao.

Virginia testified that sometime in May 28, 1996, when the alleged rapes were committed, she was confined in a hospital in La Paz, Tarlac where she stayed for three days.[38] Benita and Jennifer were left at her house. She said that accused-appellant stayed with her in the hospital on May 29, 1996 and he, together with her children Samuel, Roel and Rowena were with her when she was released therefrom.[39] Upon her return, her grandchildren made no report whatsoever about having been raped by the accused-appellant.[40] She further stated that accused-appellant seldom slept in her house since he was often out in the fields, located about two kilometers away from her house, pasturing ducks (itik), and that Benita and Jennifer only stayed with her in her house when they had classes.[41] Baldonado added that accused-appellant did not sleep in her house from May 1 to 31, 1996, and that Benita and Jennifer stayed in the house of her son Roel while she was confined in the hospital.[42]

Accused-appellant denied the charges against him[43] and claimed that the filing thereof were probably instigated by the victims' father, stating that maybe because when he [Fernando Matutino] took another wife he charged us so that his relationship with us may be severed.[44] He claimed that since 1990 or 1991, he spent most of his time pasturing ducks.[45] From 1991 to May, 1996, his pasture area was in a field in Sta. Lucia Old, Zaragoza, Nueva Ecija, which, according to him, was a two-hour walk from Baldonado's house.[46] His working hours were from 5:00 a.m. to 6:00 p.m. everyday.[47] He said that he seldom went home to his mother's house because he would usually sleep in the fields and his food and other needs were brought to him by his brothers.[48]

Roel Dumlao, a younger brother of the accused-appellant, testified that sometime in 1996, before the schoolyear started, he engaged the services of accused-appellant to pasture some 600 ducks owned by him.[49] He said that accused-appellant was at all times attending to the ducks in a pasture area in Sta. Lucia Old, Zaragoza, Nueva Ecija, which was located about two kilometers away from Baldonado's house.[50] Roel added that the distance between the pasture area and Baldonado's house can be negotiated by walking for less than one hour.[51] He stated further that sometime in May, 1996, his niece Jennifer stayed with him for about a month. Jennifer did not tell him anything about being raped by accused-appellant.[52]

On April 25, 1997, the trial court promulgated its Joint Decision, the dispositive portion of which states:

WHEREFORE, premises considered, the Court finds and so holds the accused JOSUE DUMLAO guilty beyond reasonable doubt of the crime of rape in each of the two cases, and sentences him to suffer the penalty of:

- DEATH in Criminal Case No. 7257-AF, and for him to indemnify the offended party in the amount of P50,000.00 as moral and exemplary damages;
- DEATH in Criminal Case No. 7258-AF, and for him to indemnify the offended party in the amount of P50,000.00, as moral and exemplary damages; and

- to pay the costs of this suit.

SO ORDERED.[53]

Accused-appellant contends that the trial court erred in giving credence to the "inherently incredible, inconsistent and contradictory testimonies" of Benita and Jennifer.[54] With respect to Jennifer, accused-appellant points out that it is unbelievable for her not to have screamed upon finding that a man was lying next to her and performing sexual acts on her, and not to have attempted to wake her sister who was sleeping beside her.[55] He stresses that it was only during cross-examination when Jennifer said that accused-appellant brought her out of the room where she and Benita were sleeping and transferred to the room downstairs.[56] He also argues that it could not have been possible for him to have maintained his hand on Jennifer's mouth to keep her from crying out loud while kissing her, embracing her, taking off her clothes and pushing her legs apart.[57]

Accused-appellant claims that Benita's testimony is likewise incredible, having stated that her sister was beside her when she was allegedly raped by accused-appellant, yet she did not scream or try to rouse Jennifer from her sleep to help her.[58]

It is also alleged by him that the testimonies of both complainants were not straightforward, but rehearsed, as evidenced for instance by the fact that they could tell the time during which they were raped even though it was not established that there was a clock in the room or whether any church bells chimed to indicate the time.[59] Moreover, it took complainants a long time before they reported the incidents to anyone,[60] and they failed to specify the threats supposedly made by him on them.[61]

Accused-appellant also assails the credibility of the testimony of Fernando Matutino, stating that the latter had a grudge against his wife, accused-appellant's sister, who had earlier left him for another man.[62]

He argues further that even the medical findings of Dr. Raol Paculan and Dr. Agripina Reyes failed to conclusively prove that the hymenal lacerations found in both Benita and Jennifer were caused by the alleged rapes. Both physicians admitted that hymenal lacerations can be caused by pulling sharp objects, masturbation or scratching.[63]

In addition, accused-appellant argues that the trial court should have quashed the informations filed against him for being vague as to the time of the commission of the offense, because the informations stated that the rapes were committed "on or about between the year 1991 and May, 1996." [64]

Accused-appellant also alleges that the trial court demonstrated partiality in favor of the prosecution during the trial, in violation of his constitutional rights. He points out that the trial court judge actively participated in nine out of the ten hearings on the cases, by directly propounding questions to the witnesses.[65]

The Court is not convinced by accused-appellant's arguments.

Article 335 of the Revised Penal Code, which defined the crime of Rape prior to the enactment of Republic Act No. 8353 (the Anti-Rape Law of 1997), states:

When and how rape is committed. --Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua:

x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances.

- 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.

In reviewing the cases before us, the Court observed the following guidelines which it had earlier formulated for the review of rape cases:

(1) an accusation of rape, can be made with facility, it is difficult to prove and even harder for the person accused to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense's evidence.[66]

The evidence proves beyond reasonable doubt that accused-appellant raped his niece Jennifer who in May, 1996 was only 11 years old.[67] Jennifer positively identified accused-appellant in open court as the one who raped her sometime in May, 1996, at around 10:00 p.m.:

Q

Jennifer Matutino do you know Jose Dumlao alias "Judy"?

A

Yes, sir.

Q

Why do you know him?

A

Because he is the brother of my mother, sir.

Q

In other words Josue Dumlao is your uncle?

A

Yes, sir.

Q

Is Josue Dumlao, the accused in this case, present in Court?

A

Yes, sir.

Q

Can you point to him?

A

Yes, sir.

Q

Please point to him?

A

Witness stood up and pointed to a man inside the Courtroom and who, when asked of his name answered Josue Dumlao.

ATTY. ESTABILLO:

May we place on record that complainant in pointing to the accused did not directly face the accused.

COURT:

In order to satisfy the desire of counsel, will you please stand up and point again to the person of Josue Dumlao?

A

That man, sir. (The witness stood up and directly pointed to the accused Josue Dumlao)[68]

The trial court observed that she testified as to the details of the rape committed upon Jennifer in no uncertain terms, in direct and unwavering statements. Jennifer's answers to the questions propounded to her during the trial support the lower court's finding:

x x x

FISCAL BELTRAN:

Q

When you were awakened in the evening of May 1996 with your Tito Judy beside you, what did you do?

A

I pushed him, sir.

Q

Why did you push him?

A

Because he was kissing me, sir.

Q

On what part of your body was he kissing you?

A

At my cheeks, sir.

Q

After kissing you on your cheeks, what did you do?

A

He embraced me, sir.

Q

Were you lying down when he embraced you?

A

Yes, sir.

Q

What did you do when he embraced you?

A

I slapped him, sir.

Q

By the way, how did you recognize your Tito Judy on that time?

A

Because the house was lighted, sir.

Q

What kind of lighting?

A

"Kingky," sir.

COURT:

Q

That evening what else did your Tito Judy do to you?

A

He undressed me, sir and placed himself on top of me.

Q

What else?

A

When he undressed me, sir, he pulled my legs apart.

Q

After he pushed your legs apart what else did he do?

A

He also undressed himself and placed himself on top of me and inserted his private part to my private part.

Q

Was he able to insert his private part to your private part?

A

Yes, sir.

x x x[69]

Moreover, no improper motive can be imputed to her so as to make a false accusation against her own uncle and companion in her grandmother's house, especially considering that in doing so, she would have to narrate in open court and in full detail the traumatic incident which she experienced.[70]

The fact that she did not scream when accused-appellant started kissing her does not make her story less credible, contrary to accused's argument. It should be noted that Jennifer was sleeping before she was awakened by her accused-appellant's presence in her bed. The Court agrees with the Solicitor General that "[i]n such a situation not everyone would scream because people react differently to shocking events"[71] such as what Jennifer went through. Moreover, accused-appellant had moral ascendancy over the victim, being the uncle, hence, the natural tendency of the victim is not to scream but to struggle and resist quietly because of shock and confusion.[72]

The Court likewise agrees with the trial court's finding that Benita Matutino's testimony that she was raped by accused-appellant using force and intimidation sometime in May, 1996 is credible. Benita categorically stated that sometime in May, 1996, while she was sleeping in the room on the second floor of her grandmother's house, she was awakened from her sleep by accused-appellant, who was lying beside her and kissing her;[73] that accused-appellant was able to undress her despite the fact that she was kicking and pushing him away from her, because he was much stronger than she was; that accused-appellant held her hands tightly, and threatened to kill her and her sister Jennifer if she resisted him;[74] that accused-appellant succeeded in inserting his penis into her vagina.[75] The credibility of her testimony was not found to have been diminished by the lapse of some four months before she reported what accused-appellant had done to her and her sister. As held by the trial court, immediately after accused-appellant left the house of her grandmother to reside elsewhere, Benita wrote a letter to her father, telling him that she and Jennifer were raped; she also fled from her grandmother's house to avoid further sexual molestation.[76] It has been held that delay in reporting rape incidents in the face of physical violence cannot be taken against the victim, because oftentimes, the rape victim's actions are dictated by fear rather than by reason.[77]

The trial court's evaluation of the victims' testimonies in the cases at bar is entitled to the highest respect because it had the opportunity to observe the demeanor of the witnesses on the stand. Furthermore, as previously held by this Court in *People vs. Rodegelio Turco, Jr.*,[78]

x x x when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified were not true. x x x

The Court notes that the records of the cases fully support the lower court's findings.

The trial court held that the victims' testimonies were corroborated by the respective reports of the physicians who conducted physical examinations on them. The report of Dr. Paculo who examined Jennifer revealed that her hymen was no longer intact, indicating that she had lost her virginity,[79] and that the child had multiple healed hymenal lacerations at 2, 3, 5, 7 and 9 o'clock positions.[80] Likewise, the physical examination report of Dr. Reyes who conducted the examination on Benita stated that she suffered multiple lacerations in her hymen at at 3, 4, 5, 6, 8, 9, 11 and 12 o'clock positions, [81] and that her hymen was no longer intact, a sign that she was no longer a virgin.[82]

No error was committed by the trial court in giving more credence to the testimonies and other evidence presented by the prosecution than the accused-appellant's denial of the charges against him. All that accused-appellant offered in his defense was the alibi that he hardly slept in Baldonado's house because he spent most of his time pasturing ducks[83] in a field in Sta. Lucia Old, Zaragoza, Nueva Ecija. According to him, it would take about two hours to walk from the pasture field to Baldonado's house and vice-versa.[84] Certainly, accused-appellant's alibi cannot prevail over the testimony of the victims and their positive identification of accused-appellant as the person who raped them.[85]

While this Court affirms the finding of the lower court that the accused-appellant is indeed guilty beyond reasonable doubt of having raped both Benita and Jennifer, it cannot affirm the imposition of the penalty of death in either case because the relationship between accused-appellant to the victims, i.e., that he was their uncle and therefore a relative by consanguinity within the third civil degree, was not alleged in either of the two complaints.[86] The relationship between accused-appellant and each of the two victims should have been specifically alleged in the criminal complaints for rape before the trial court imposed the death penalty upon accused-appellant. The reason behind this requirement was explained in *People vs. Antonio Ferolino*,[87] thus:

These seven attendant circumstances [mentioned in Art. 335 of the Revised Penal Code as amended by R.A. No. 7659[88]], given that they alter the nature of the crime of rape and thus increase the degree of the penalty, are in the nature of qualifying circumstances. Plainly, these attendant circumstances added by R.A. 7659 are not ordinary aggravating circumstances, which merely increase the period of the penalty. These are special qualifying circumstances which must be specifically pleaded or alleged with certainty in the information; otherwise, the death penalty cannot be imposed.

Having failed to allege that accused-appellant is the uncle, i.e., relative by consanguinity within the third civil degree of Benita and Jennifer, the penalty imposable for each charge of rape shall be reclusion perpetua.

It is also necessary to increase the award of damages as fixed by the trial court. The lower court in its decision ordered the accused-appellant to indemnify each of the victims in the amount of Fifty Thousand Pesos (P50,000.00) only, representing moral and exemplary damages. Under prevailing jurisprudence, however, the award of Fifty Thousand Pesos (P50,000.00) as civil indemnity is mandatory upon the finding of the fact of rape.[89] The Court has previously explained that the indemnity authorized under the law[90] as civil liability *ex delicto* for the offended party is equivalent to actual or compensatory damages in civil law.[91] It is not to be confused with moral damages, which is awarded when it is shown that the victim suffered physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.[92]

In addition to civil indemnity, moral damages may be awarded to rape victims,[93] without need of proof other than the fact of the rape itself.[94] The fact that each of the victims suffered mental, physical and psychological trauma as a result of the rape are too obvious to still require the recital thereof at trial.[95] Under current rulings,

the award of moral damages should be in the amount of Fifty Thousand Pesos (P50,000.00) for each crime.[96]

Furthermore, where the existence of an aggravating circumstance is proven, as in the cases before us where the circumstances of minority and relationship were established, exemplary damages may be awarded, in accordance with Article 2230 of the Civil Code.[97] Thus, an award of exemplary damages in the amount of Twenty-Five Thousand Pesos (P25,000.00) for each count of rape in the cases before us is proper.[98]

WHEREFORE, the joint decision of the Regional Trial Court of Cabanatuan City, Branch 27 in Criminal Case Nos. 7257-AF and 7258-AF finding accused-appellant JOSUE B. DUMLAO guilty beyond reasonable doubt of the crime of rape under Article 335 of the Revised Penal Code, as amended, in each of the two cases is hereby AFFIRMED, with the MODIFICATION that the penalty in each case is reduced to reclusion perpetua. Accused-appellant is likewise sentenced to pay the following amounts:

(1) In Criminal Case No. 7257-AF, to pay complainant Jennifer Matutino Fifty Thousand Pesos (P50,000.00) as civil indemnity; Fifty Thousand Pesos (P50,000.00) as moral damages; and Twenty-Five Thousand Pesos (P25,000.00) as exemplary damages; and

(2) In Criminal Case No. 7258-AF, to pay complainant Benita Matutino Fifty Thousand Pesos (P50,000.00) as civil indemnity; Fifty Thousand Pesos (P50,000.00) as moral damages; and Twenty-Five Thousand Pesos (P25,000.00) as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., Gutierrez, and Carpio, JJ., concur.

[1] Records, Crim. Case No. 7258-AF, p. 35.

[2] Records, Crim. Case No. 7258-AF, p. 39.

[3] TSN, February 19, 1997, p. 3.

[4] TSN, February 18, 1997, pp. 2-3; TSN, February 19, 1997, p. 4.

[5] TSN, February 19, 1997, p. 4.

[6] TSN, February 18, 1997, p. 3.

[7] Id., at 11 (cross-examination).

[8] Id., at 4.

[9] Id., at 4-5.

[10] Id., at 5.

[11] Id.

[12] Id., at 11.

[13] Id., at 10.

[14] Id., at 12.

[15] Records, Crim Case No. 7257-AF, p. 7.

- [16] TSN, February 10, 1997, p. 5.
- [17] TSN, February 18, 1997, p. 7.
- [18] Exhibit "E" and "E-1," see also TSN, February 18, 1997, p. 7; Joint Decision, p. 3; Rollo, p. 28.
- [19] TSN, February 19, 1997, p. 4.
- [20] *Id.*, at 6.
- [21] TSN, February 19, 1997, pp. 4-5; TSN, February 20, 1997, p. 5.
- [22] TSN, February 19, 1997, pp. 5-6.
- [23] TSN, February 19, 1997, p. 6; TSN, February 20, 1997, p. 6.
- [24] TSN, February 19, 1997, p. 7.
- [25] TSN, February 19, 1997, p. 7; see also Sinumpaang Salaysay of Fernando Matutino, Records, Crim Case No. 7257-AF, p. 6.
- [26] TSN, February 19, 1997, pp. 7-8.
- [27] Joint Decision of the Regional Trial Court in Crim Case Nos. 7257-Af and 7258-AF, Rollo, pp. 29-30; Records, Crim Case No. 7258, pp. 8-8-a.
- [28] TSN, February 19, 1997, pp. 8-9.
- [29] Sinumpaang Salaysay signed by Benita Matutino, Records, Crim. Case No. 7258-AF, p. 5.
- [30] TSN, February 19, 1997, p. 10.
- [31] Records, Crim Case No. 7258-AF, p. 6; TSN, January 20, 1997, p. 6.
- [32] TSN, January 20, 1997, *Id.*
- [33] TSN, February 19, 1997, p. 10.
- [34] Exhibit D, D-1 and D-2.
- [35] TSN, February 25, 1997, p. 4.
- [36] *Id.*, at 4-6.
- [37] Records, Crim. Case No. 7258-AF, p. 7.
- [38] TSN, March 24, 1997, p. 2
- [39] *Id.*, at 3.
- [40] *Id.*
- [41] *Id.*
- [42] *Id.*, at 4.
- [43] TSN, April 7, 1987, p. 3
- [44] *Id.*, at 5.

[45] *Id.*, at 2.

[46] *Id.*

[47] *Id.*, at 7.

[48] *Id.*, at 4, 7.

[49] TSN, April 17, 1997, p. 4.

[50] *Id.*, at 3-4.

[51] *Id.*, at 8.

[52] *Id.*, at 6, 11.

[53] Rollo, p. 37.

[54] Appellant's, Brief, *Id.*, at 78.

[55] *Id.*

[56] *Id.*, at 81.

[57] *Id.*

[58] *Id.*, at 86.

[59] *Id.*, at 79, 86.

[60] *Id.*, at 89.

[61] *Id.*, at 82, 86.

[62] *Id.*, at 94.

[63] *Id.*, at 96.

[64] *Id.*, at 76.

[65] *Id.*, at 97-116.

[66] *People vs. Ireneo Padilla*, G.R. No. 137648, March 30, 2001, pp. 7-8.

[67] Her birth certificate, admitted as Exhibit "E" for the prosecution, indicates that she was born on July 12, 1984. See Joint Decision of the Regional Trial Court, p. 3; Rollo, p. 28.

[68] TSN, February 18, 1997, p. 2.

[69] *Id.*, at 4-5.

[70] See *People vs. Henson*, 270 SCRA 634 644 (1997); *People vs. Betonio*, 279 SCRA 532, 549 (1997).

[71] Appellee's Brief, Rollo, p. 152.

[72] *People vs. Talledo*, 262 SCRA 544 (1996).

[73] TSN, February 19, 1997, p. 4.

[74] *Id.*, at 4-5; TSN, February 20, 1997, p. 5.

[75] *Id.*, at 5-6.

[76] Joint Decision of the Regional Trial Court, p. 9; Rollo, p. 34.

[77] *People vs. Watimar*, G.R. Nos. 121651-52, August 16, 2000.

[78] G.R. No. 137757, August 14, 2000.

[79] TSN, February 10, 1997, p. 5.

[80] Records, Crim Case No. 7257-AF, p. 7.

[81] Records, Crim Case No. 7258-AF, p. 6; TSN, January 20, 1997, p. 6.

[82] TSN, January 20, 1997, p. 6.

[83] *Id.*, at 2.

[84] *Id.*

[85] *People vs. Barbera*, G.R. No. 130609, May 30, 2000.

[86] See Complaint in Crim. Case No. 7257-AF, Records, p. 2 and complaint in Crim Case No. 7258-AF, Records, p. 2.

[87] G.R. Nos. 131730-31, April 5, 2000.

[88] Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, states that if any the following attendant circumstances is present in the commission of the rape:

- 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.
- When the victim is under the custody of the police or military authorities.
- 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.
- When the victim is a religious or a child below seven (7) years old.
- When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
- When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
- When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation. (Emphasis supplied.)

[89] *People vs. Caniezo*, G.R. No. 136594, March 13, 2001, p. 13; *People vs. Magompit, Jr.*, G.R. No. 139962-63, March 7, 2001; p. 17; *People vs. Penaso*, 326 SCRA 311, 323 (2000).

[90] Article 100, REVISED PENAL CODE.

[91] *People vs. Victor*, 292 SCRA 186, 200 (1998).

[92] Article 2217, Civil Code.

[93] People vs. Hofileña, 334 SCRA 214, 229 (2000).

[94] People vs. Bares, G.R. Nos. 137762-65, March 27, 2001, p. 22; People vs. Hofileña, supra ; People vs. Bernaldez, 322 SCRA 462, 473 (2000); People vs. Robles, 305 SCRA 273, 283 (1999).

[95] People vs. Robles, supra.

[96] People vs. Hofileña, supra; People vs. Bares, supra; People vs. Bernaldez, supra.

[97] People vs. Caniezo, supra.

[98] People vs. Mangompit, supra.

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