

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN MANGGASIN Y LUCANAS, ACCUSED-APPELLANT.

G.R. Nos. 130599-600. April 21, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

For review by the Court is the decision rendered by the Regional Trial Court of Ormoc City, Branch 35, in Criminal Case Nos. 4730-0 and 4731-0, finding accused-appellant Juan Manggasin y Lucanas guilty of two (2) counts of rape, the dispositive portion of which reads as follows:

WHEREFORE, all of the foregoing considered, this Court finds JUAN MANGGASIN y LUCANAS guilty of RAPE beyond reasonable doubt for two counts under Criminal Case No. 4730-0 and Criminal Case No. 4731-0, and hereby sentences him as follows:

Under Criminal Case No. 4730-0, since the commission of the offense was in March 1995 which is after the effectivity of Republic Act No. 7659 (the Death Penalty Law), and the attendant circumstance of the victim being under eighteen (18) years of age and of the offender being the common-law-spouse of the parent of the victim having been proven, the Court hereby sentences JUAN MANGGASIN Y LUCANAS to suffer the penalty of DEATH.

Moreover, the Court hereby orders the said accused to pay the offended party, the private complainant herein, the sum of P50,000.00 as indemnity, the sum of P20,000.00 as exemplary damage, and to pay the DSWD the sum of P20, 000.00 as actual damage.

Under Criminal Case No. 4731-0, since the commission of the offense was on September 3, 1991 which is before the effectivity of Republic Act No. 7659, the Court hereby sentences JUAN MANGGASIN Y LUCANAS to suffer the penalty of RECLUSION PERPETUA.

Moreover, the Court hereby orders the said accused to pay the offended party, the private complainant herein, the sum of P50,000.00 as indemnity, and the sum of P20,000.00 as exemplary damage.

SO ORDERED.[1]

The complainant, Maria Fe Empimo, was born on September 4, 1978, the child of Luciano Empimo and Lilia Manggasin.[2] Complainant's father, Luciano, died when she was just a few years old. When she was five (5) years old, her mother, Lilia, lived with herein accused-appellant, Juan Manggasin y Lucanas, with whom she begot four children.

When complainant was seven (7) years old, she lived with her sister, Rosenda, in Barangay Mas-in, Ormoc City, until she was eleven (11) when she returned and lived again with her mother and accused-appellant.[3]

It appears that at around 12 noon of September 3, 1991, complainant went with her mother to a nearby river to do some laundry. After a while, she was told to go back to the house and get her brother's clothes.[4]

In an affidavit, dated November 14, 1995, complainant stated that when she arrived in their house, she was "allured/hypnotized" by accused-appellant, which rendered her unconscious.[5] When she woke up, she felt some pain in her vagina, which was bleeding. When she asked accused-appellant what had happened to her, he warned her not to tell anyone what had been done to her, otherwise he would kill her and her mother.[6] During the trial, complainant explained that accused-appellant looked at her "sharply." She claimed that accused-appellant then "dragged" her and "embraced" her so tightly that both of them fell down. He then touched her private parts and inserted his penis into her vagina. After he was through, accused-appellant told her she would be killed if she told anyone about the incident.[7]

Complainant claimed that she had been sexually assaulted several times, the last one being one night during the last week of March 1995.[8] Complainant, then seventeen (17) years old, was asleep together with her mother, siblings, and accused-appellant in their house in Barangay Tambulilid, Ormoc City. Their house was a single-room affair, with a floor area of 5 by 6 meters. That evening, according to complainant, accused-appellant slept near the wall, while lying next to him on the floor was complainant's mother and the other children. Complainant slept on the opposite side of the room. At around 10 that night, accused-appellant lay beside her, then dragged her, and covered her mouth to prevent her from shouting. Accused-appellant removed her panties, inserted his penis into her vagina, and did the sexual act until he ejaculated. After he was through, he stood up and went back to his place beside complainant's mother. When the latter asked him where he had been, accused-appellant simply kept quiet and went back to sleep.[9]

Complainant said she related her ordeal to her mother, but the latter just told her to keep her disgrace to herself.[10] However, on November 21, 1995, complainant filed two (2) complaints for rape against accused-appellant. The complaint in Criminal Case No. 4731-0 charged -

That on or about the 3rd day of September 1991, at around 12:00 o'clock noon, in Brgy. Don Felipe Larrazabal, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused, JUAN MANGGASIN y Lucanas alias Johnny, being then the step-father of the complainant herein MARIA FE EMPIMO, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the said complainant MARIA FE EMPIMO, who was then about thirteen (13) years of age, against her will.[11]

The complaint in Criminal Case No. 4730-0 charged -

That sometime during the last week of March, 1995, in Brgy., Tambulilid, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused, JUAN MANGGASIN y Lucanas alias Johnny, being then the step-father of the complainant herein MARIA FE EMPIMO, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the said MARIA FE EMPIMO, a seventeen (17) year old lass, against her will.[12]

On November 27, 1995, complainant gave birth to a baby boy.[13]

At the ensuing trial, the prosecution presented four (4) witnesses, namely: Dr. Regino Lusino S. Mercado; complainant Maria Fe Empimo; complainant's half-sister Maria Empimo Calambo; and the representative of the Department of Social Welfare and Development (DSWD), Raquel Moralde.

Dr. Mercado identified the medical report (Exh. "A") issued by him after conducting a medical examination of Maria Fe Empimo on November 14, 1995. He testified that he found a 6 o'clock laceration in complainant's hymen which indicated that she has had sexual intercourse; that at the time of examination, complainant had been pregnant for approximately 9 months; and that she had probably been impregnated sometime between February 27, 1995 and March 27, 1995.[14]

Complainant, then eighteen (18) years old, testified during the trial that she was born on September 4, 1978.[15] This is confirmed by her mother, Lilia Manggasin.[16] With respect to the rape subject of Criminal Case No. 4730-0, complainant testified that at about 10 o'clock in the evening in March 1995, while her mother and siblings were asleep on the floor in their single-room house in Barangay Tambulilid, Ormoc City, accused-appellant lay beside her, dragged her, covered her mouth, and then removed her panty; that he inserted his penis into her vagina and then executed the sexual act; and that after he was through, he stood up and went back to his place beside her mother. Complainant said it seemed that her mother noticed what was going on which is why she asked him where he had been; that accused-appellant did not answer; and that by reason of the repeated acts of sexual abuse committed on her by the accused-appellant, she got pregnant and, on November 27, 1995, gave birth to a child whose father she identified in open court to be accused-appellant Juan Manggasin.

With respect to the rape subject of Criminal Case No. 4731-0, complainant testified that on September 3, 1991, at about 12 noon, while she and her mother were washing clothes at a nearby river, her mother told her to go back to their house and get the clothes of his younger brother; that they were at that time living in Barangay Don Felipe, Ormoc City; that upon reaching the house, accused-appellant gave her a "sharp look" and then dragged her and embraced her so tightly that both of them fell on the floor; that accused-appellant touched her private parts and then inserted his penis into her vagina; and that she did not resist because she was afraid of accused-appellant, who, even as he raped her, threatened to kill her if she divulged to anyone what had happened to her.[17] She identified her affidavit of November 14, 1995, paragraph 3 of which states that accused-appellant Juan Manggasin warned her not to tell anyone her story or else he would kill her and her mother.[18]

Raquel Moralde, a social worker at the DSWD, testified that her agency took care of complainant; that the latter was very quiet and shy when she arrived at the center; that she was often seen with blank stares; that the DSWD provided her immediate needs at the center and defrayed the costs of her delivery by caesarean operation; and that she prepared a report[19] containing her study and observations of Maria Fe as a sexually abused minor.[20]

Certain letters allegedly written by accused-appellant while in prison were adduced and marked as Exhibits E, F, G, H, K, L, M, N, N-1, O, P, and Q by the prosecution.

On the other hand, the defense presented four witnesses, namely: Elizabeth Roble, SPO4 Virginia Sab, Lilia Manggasin, and accused-appellant himself.

The first witness, Elizabeth Roble, a records officer of the Ormoc District Hospital, testified that she had issued a certificate of live birth to complainant Maria Fe Empimo; that the certificate was issued on September 25, 1996, about one (1) year after the birth of the child on November 27, 1995; that the entries were based on information supplied by an aunt of complainant; and that the word "unknown" in the blank space for the father's name was written.[21]

SPO4 Virginia Sab was presented to identify the extract from the police blotter showing the arrest of accused-appellant on November 14, 1995.[22]

Lilia Manggasin, common-law wife of accused-appellant and mother of complainant, denied that complainant was with her washing clothes on September 3, 1991 because complainant was then living in Barangay Don Felipe with her elder sister Rosenda; that it was only on the following day, September 4, 1991, that complainant went to their house because it was her birthday; that she had sent complainant to school until the latter finished the sixth grade; that while living in Barangay Don Felipe, complainant was allowed to have friends, and was "very happy" during that time; and that she did not notice if complainant had any problem and that when the family moved to Barangay Tambulilid, complainant went with them.[23]

Lilia Manggasin further testified that their house in Brgy. Tambulilid was small, had only one (1) room and no beds and that the family slept on the floor. According to her, accused-appellant Juan Manggasin slept behind her near the door, while the children slept beside her. Complainant slept at the other side. She testified that they had a lamp at night so that they could see anything inside the house; that complainant often went out at night to watch TV and usually came home at about 12 midnight; and that on November 14, 1995, complainant was fetched by agents of the DSWD who said they would help her.[24]

On cross-examination, Lilia Manggasin admitted that on September 3, 1991, complainant was after all with her washing clothes in the river. However, she maintained that, on that day, accused-appellant was not home as he was working in Barangay Punta which is about a kilometer from Barangay Don Felipe, where they then lived; and that accused-appellant did not return at lunch time as he brought with him his packed lunch. With respect to the second incident, she testified that during the last week of March 1995, she did not notice any rape or sexual intercourse occurring between accused-appellant and complainant.[25]

For his part, accused-appellant testified that, on September 3, 1991, he left for work in Barangay Punta returning home in the afternoon of the next day, September 4, 1991; that he did not go home for lunch on September 3, 1991 since he had his lunch box; and that prior to September 4, 1991, complainant was staying in Barangay Mas-in with her sister and it was only on September 4, 1991 that she started living with them. He denied having harmed complainant. He testified that there was no unusual incident that happened during the last week of March 1995; that he had never used force or intimidation on complainant; and that on November 14, 1995, he was arrested by the police; and that during the investigation, he was not afforded the assistance of counsel.[26]

On cross-examination, accused-appellant admitted, however, that he had sexual intercourse with complainant many times. He claimed that their relation began when she was seventeen (17) years old. He said that they engaged in sexual intercourse beginning 1995, often upon complainant's initiative.[27]

On May 23, 1997, the trial court rendered its decision, now the subject of this review.

Accused-appellant contends (1) that the trial court erred in finding him guilty of the crimes charged; and (2) that it erred in giving credence to the testimony of complainant for being materially inconsistent and improbable.[28] Accused-appellant admits having had sexual intercourse with complainant several times but claims that the same were with the consent of complainant and, oftentimes at her instance. He insists that the prosecution has not in fact proven that he used force or intimidation. He asserts that the sexual relation began when complainant was already seventeen (17) years old.[29]

We begin with the settled rule that the evaluation of the testimonies of the witnesses by the trial court is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain facts of substance or value which, if considered, might affect the result of the case.[30] In addition, in prosecutions for rape, this Court has been guided by the following considerations in the evaluation of the evidence: (a) an accusation for rape can be made with facility; it is difficult to prove it but more difficult for the person accused, though innocent, to disprove it; (b) in view of the nature of the crime in which only two persons are involved, the testimony of complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[31] Conviction must rest on nothing less than a moral certainty of guilt.[32]

Applying the foregoing rules, the Court finds no cogent reason to reverse or modify the trial court's finding that accused-appellant is guilty of sexually assaulting complainant.

First. As aptly observed by the Solicitor General in this case, complainant testified in a straightforward, candid,

and firm manner that accused-appellant had sexually abused her. When an alleged victim of rape says that she was violated, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[33] It is improbable that a victim of tender years and one not exposed to the ways of the world would impute a crime so serious as rape to any man, let alone her stepfather, if what she claimed was not true.[34]

The alleged inconsistency, pointed out by accused-appellant, between complainant's affidavit and her direct testimony is more apparent than real. In her affidavit, she said she was "allured/hypnotized" by accused-appellant and because of that she became unconscious. This is not inconsistent with her testimony that accused-appellant had a "sharp look" which somehow affected her will to resist. Because of the "sharp look" given to her by accused-appellant, she was intimidated and lost her will to resist him until she yielded to his criminal desires. What complainant was actually saying, both in her affidavit and during her testimony in court, is that accused-appellant exercised such moral ascendancy over her that she was overpowered by him. Accused-appellant did not need a deadly weapon to intimidate complainant and make her submit to his lustful desires. As the trial court put it:

The swiftness of the act, the dragging, the sharp look, the tight embrace, the falling down together - these could render one young, small, inexperienced, and unwary girl of twelve (12) years turning thirteen (13), into a kind of unconsciousness or stupor. The two versions, while apparently contradicting or mixed-up, somehow reinforce the authenticity of the testimony of the private complainant. The truth somehow stands out: that the accused had carnal knowledge of the private complainant and that carnal knowledge was with force or intimidation. In the consideration of the Court, this piece of testimony in open court by the private complainant, far from having the effect of impeaching her statement in a previous affidavit she executed in connection with the case as the accused would want the Court to believe (see TSN, supra, p. 34), is another example of the off-quoted rule about contradictions or discrepancies between a testimony and a statement in an affidavit. Rather than discrediting the private complainant, such apparent discrepancy or contradiction in effect strengthens the veracity of her allegation about the rape incident. Discrepancies between the affidavit and the testimony in court do not necessarily discredit the witness "because it is a matter of judicial experience that affidavits taken ex parte are almost always incomplete and often inaccurate.[35]

Accused-appellant further contends:

Further, it is undisputed that after Fe was allegedly raped on the first day of her visit at her mother's house, she (Fe) stayed on not for a few days more but for four (4) years until November 1995. (TSN, November 21, 1996, pp. 24-25). It is not true that she had no choice. After all, she could have stayed with her other sister. However, she opted to stay.

Accused-appellant admitted that complainant lived with him and his wife when complainant was eleven (11). Since on September 3, 1991 she was just a day short of thirteen (13), this means that complainant had been living with accused-appellant for two years before she was abused. Before that, when complainant was just five (5) years old until she was seven (7), she had also lived with accused-appellant and his wife, who is complainant's mother. All in all, therefore, complainant had lived for at least four (4) years with accused-appellant and his wife - time enough for accused-appellant to have gained moral ascendancy over complainant, thus making her an easy prey to his sexual advances. Thus, accused-appellant testified on cross-examination by the prosecutor:

Q So, she was never been in school while she was in the custody of Rosenda?

A Maybe because there was no card.

Q So, you enrolled her in grade one (1). In what school?

A Public.

Q Her age was already eleven (11) years old when she was in grade one (1). Am I right?

A Yes, sir.

Q And she was continuously staying with you from age eleven (11) up to age thirteen (13)?

A Yes, sir.[36]

Given the fact that complainant was a child of tender age, completely in the power of accused-appellant, it is not difficult to understand why even after she had been abused on September 3, 1991 she stayed on and did not complain until she was again abused in March 1995 by accused-appellant.

The second sexual assault in March 1995 inside the small single-room house where the rest of the family slept is not uncommon. This Court has taken notice of the fact that crimes against chastity have been committed in many different kinds of places which many would consider as unlikely or inappropriate.[37] As this Court has held, rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping for lust is no respecter of time and place.[38]

Second. Accused-appellant contends that, on both occasions when she was raped, complainant did not show a determined resistance. The sexual molestations of complainant started when she was just twelve (12) years of age and lasted until she was seventeen (17). Accused-appellant is the common-law spouse of complainant's mother and the family breadwinner. As already stated, accused-appellant exercised a moral ascendancy over complainant which made the threats he made to her effective. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for life and personal safety.[39] Complainant's complete obedience to accused-appellant's command, her lack of struggle against him, and her silence despite her sufferings were all caused by her fear of accused-appellant. In complainant's mind, she was convinced of the danger to her and her family.[40] As has been aptly said, accused-appellant's moral ascendancy over the victim takes the place of violence and intimidation.[41]

For rape to exist it is not necessary that the force or intimidation employed be so great or of such character as could not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard and fast rule. It is therefore enough that it produces fear-fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. Intimidation would also explain why there are no traces of struggle which would indicate that the victim fought off her attacker.[42]

We agree with the trial court that accused-appellant's allegation that he and complainant were maintaining amorous relations behind her mother's back is but a mere concoction of the accused-appellant in order to exculpate himself from criminal liability. His offers of marriage to complainant, contained in his self serving letters to her while he was in prison,[43] do not prove anything. If at all, they are a plea for pardon which implies an admission of guilt. On the contrary, her silence, her blank stares, as observed by the agents of the DSWD, her

refusal to read the letters and decision to turn them over to the DSWD agents belie his blatant claim.

As regards the delay in instituting the instant complaints, it is settled that it is not uncommon for young girls to conceal for some time the assaults on their virtues because of the rapist's threat on their lives,[44] more so when the rapist is living with her.[45] A young girl, unlike a mature woman, cannot be expected to have the courage and intelligence to immediately report a sexual assault committed against her especially when accompanied by a death threat.[46] In *People v. Coloma*,[47] this Court held that even a delay of eight (8) years is not a sign of fabrication.

Third. Complainant's testimony, as well as those of the other witnesses for the prosecution, is positive, credible, and convincing. In contrast, accused-appellant has been shown to have lied. At first he denied having had intercourse with complainant. Later he retracted his previous testimony and admitted having had sexual intercourse with complainant several times, although claiming that the acts were consented to, if not upon her initiative. Accused-appellant would thus have the Court believe that complainant was a child of loose morals who begged even her mother's common-law husband for sex. The records do not, however, bear out his claim.

Lilia Manggasin, who, as already shown, turned her back on her own daughter and testified for the defense, lied with regard to the incident of September 4, 1991. She claimed that complainant was at that time living with her sister in Barangay Mas-in and, therefore, could not have been with her in Barangay Don Felipe. She later admitted that complainant was really with her washing clothes. Lilia Manggasin's apathy to her daughter's plight made it possible for her common-law husband to abuse her daughter. She testified in behalf of her husband if only to save him, the family breadwinner, from punishment.

She admitted this in court. She testified as follows:

Q Upon the death of your husband, Luciano Empimo it was already this Juan Manggasin who supported you?

A Yes.

Q As a matter of fact, the support of your family solely relied upon Juan Manggasin?

A Yes.

Q Were you a laundry woman already at the time when you have a common law relationship with Juan Manggasin?

A When we started living together with Juan Manggasin, I already stopped accepting laundry.

Q

Now that Juan Manggasin is under detention you sought service of other expenses if only to survive by being a laundry woman, am I right?

A I seek for laundry.

Q So you would agree with me that you are in a desperate need of Juan Manggasin so that you could survive?

A Yes.

Q And it is for this reason that you are testifying for and in his behalf, am I correct?

A Yes.

Q Notwithstanding the complaining witness of this case is your very own daughter Maria Fe Empimo?

A Yes.[48] (Underscoring supplied).

As aptly observed by the trial court:

In her direct examination, Lilia testified that on September 3, 1991, while they were residing at Brgy. Don Felipe Larrazabal, she was washing clothes in a river near their house. She said Juan Manggasin, her husband, was not with her as he was then working. Nor was Maria Fe with her as the former was with her elder sister in Brgy. Mas-in (TSN, supra, pp. 4-5). It was only the following day, that is, on September 4, 1991, that Maria Fe came to their house as it was her birthday. So, we can see here, Lilia's testimony was at the start a denial or refutation of the testimony of Maria Fe that she was with her mother, Lilia, on September 3, 1991. The defense would try to destroy or refute private complainant's testimony re the 1991 rape incident.

Not only that, Lilia would testify that since the river where she was washing clothes was very near their house, if there is a noise in the house, she could hear it (TSN, supra, p. 5). This would show thus an improbability of a rape incident that was alleged to have happened inside the house on the said date under Criminal Case No. 4731-0.

However, on cross-examination, Lilia finally admitted that Maria Fe was with her helping her in washing clothes on that fateful day of September 3, 1991 (TSN, supra, pp. 24-25).

Lilia, the witness, is one kind of a difficult witness. Either she did not understand the question propounded to her, or she was lying as she could not answer revealing questions when cornered. She is wont in that attitude as the Court can recall her demeanor during her examination . . .

....

It is the impression of this Court that Lilia Manggasin tried to lie on significant facts so as to cover up any damaging detail to the cause of her husband's defense. As she was found to be lying on a material detail in the September 1991 incident, her credence as a witness is greatly impaired. *Falsus in uno, falsus in omnibus*. Either she evades answering the question or she does not answer at all. At most, her testimony would give a flat denial of any rape incident involving the accused that occurred on September 3, 1991 and in March 1995.

The same attitude Lilia displayed in testifying on the March 1995 rape incident. She could not admit, that is, she denied that Juan Manggasin was having sexual intercourse with her daughter, Maria Fe; she did not notice it. x x x

This testimony of Lilia, however, was later impeached by the admission of Juan Manggasin himself about his having sexual intercourse with Maria Fe (see TSN of February 24, 1997, p. 27 et seq.). As far as her whole testimony in favor of the accused is concerned, the defense fails to tilt the scale of justice in its favor.[49]

A point not raised on appeal by the defense but made by it during trial is that accused-appellant was arrested on November 14, 1995 and then investigated by the police without the presence of counsel. It was contended that accused-appellant's right under Art. III, §12 was violated. This constitutional provision refers to the rights of persons under custodial interrogation, violation of which results in rendering any confession or admission made by them inadmissible in evidence. However, in this case, no confession or admission obtained from accused-appellant while he was under custodial interrogation is involved in this case. There is, therefore, no basis for any claim that his constitutional rights under Art. III, §12 were violated.

Nor is there any basis for finding that his arrest was illegal. It is not clear whether he was arrested without any warrant in violation of Art. III, §2 of the Constitution. Even assuming this to be the case, the illegality of his arrest and detention must be deemed cured by the subsequent order of arrest issued by the trial court on November 21, 1995.

For the foregoing reasons, we are of the opinion that the evidence fully sustains the finding of the trial court that accused-appellant is guilty of two counts of rape. However, we think the trial court erred in sentencing accused-appellant to death in Criminal Case No. 4730-0. Art. 335 of the Revised Penal Code, as amended by §11 of R.A. 7659, otherwise known as the Death Penalty Law, provides in pertinent part:

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.

As this Court has held, the concurrence of the minority of the victim and her relationship to the offender being a special qualifying circumstance, which increases the penalty as opposed to a generic aggravating circumstance which only affects the period of the penalty, should be alleged in the information, because of the accused's right to be informed of the nature and cause of the accusation against him.[50]

In this case, the informations in Criminal Case Nos. 4730-0 and 4731-0 alleged that accused-appellant, who is the stepfather of complainant, succeeded in having carnal knowledge of the latter who was then below eighteen (18) years of age. However, the evidence shows that accused-appellant is not the complainant's stepfather because he and complainant's mother were not really married but only lived in a common-law relationship. To this effect are the testimonies of the complainant,[51] her mother,[52] and even accused-appellant himself.[53] Thus, although a common-law husband is subject to punishment by death in case he commits rape against his wife's daughter, nevertheless the death penalty cannot be imposed on accused-appellant because the relationship alleged in the information in Criminal Case No. 4730-0 against him is different from that actually proven. Accordingly, accused-appellant must be sentenced to the lesser penalty of reclusion perpetua.

With regard to accused-appellant's civil liability, the trial court correctly granted P50,000.00 civil indemnity in each of the cases. However, an additional amount of P50,000.00 as moral damages should also be granted even in the absence of proof it being assumed that the victim suffered moral injuries entitling her to such an award.[54] On the other hand, there being no aggravating circumstance found in either cases, the award of exemplary damages should be deleted. Finally, since no evidence was introduced with respect to the amount of expenses incurred by the DSWD in taking care of complainant and defraying the costs of her childbirth, the award of actual damages should likewise be disallowed.

WHEREFORE, the decision of the Regional Trial Court of Ormoc City, Branch 35 in Criminal Case Nos. 4730-0 and 4731-0 is affirmed with the following modifications:

- (1) In Criminal Case No. 4730-0, accused-appellant's sentence is reduced to reclusion perpetua and he is, in addition, ordered to pay P50,000.00 as moral damages.
- (2) In Criminal Case No. 4731-0, accused-appellant is also ordered to pay P50,000.00 as moral damages.
- (3) The awards of actual damages in favor of the DSWD and of exemplary damages in the two cases are hereby disallowed.

No pronouncement as to costs.

SO ORDERED.

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

- [1] Rollo, p. 40.
- [2] TSN, p. 18, Nov. 20, 1996.
- [3] Id., pp. 19-20.
- [4] Id., p. 30.
- [5] Exh. D, Records, p. 6.
- [6] Ibid.
- [7] TSN, pp. 31-32, Nov. 20, 1996.
- [8] Exh. D, Records, p. 6.
- [9] TSN, pp. 4-6, Nov. 21, 1996.
- [10] Id., p. 6.
- [11] Exh. C, Records, p. 4.
- [12] Exh. B, id., p. 2.
- [13] Exh. I, id., p. 25.
- [14] TSN, pp. 5-12, Nov. 20, 1996.
- [15] Id., p. 18.
- [16] TSN, p. 20, Jan. 29, 1997.
- [17] TSN, pp. 31-32, Nov. 20, 1996.
- [18] Id., pp. 32-34; Exh. D, Records, p. 6.
- [19] Exh. J, Records, pp. 27-32.
- [20] TSN, pp. 6-10, Nov. 26, 1996.
- [21] TSN, pp. 5-12, Jan. 27, 1997.
- [22] Id., pp. 13-17.
- [23] TSN, pp. 3-9, Jan. 29, 1997.
- [24] Id., pp. 9-14.
- [25] Id., pp. 15-29; TSN, pp. 15-19, Jan. 31, 1997.
- [26] TSN, pp. 4-16, Feb. 24, 1997.

[27] Id., pp. 21-34.

[28] Appellant's Brief, p. 5; Rollo, p. 60.

[29] TSN, pp. 21-34, Feb. 24, 1997.

[30] People v. Raptus, 198 SCRA 425 (1991); People v. Excija, 258 SCRA 424 (1996); People v. Mengote, G.R. No. 130491, March 25, 1999.

[31] People v. Matrimonio, 215 SCRA 613 (1992); People v. Echegaray, 257 SCRA 561 (1996). People v. Ramirez, 266 SCRA 335 (1997).

[32] People v. Quindipan, 253 SCRA 421 (1996).

[33] People v. Tabao, 240 SCRA 758 (1995); People v. Ramirez, 266 SCRA 335 (1997).

[34] People v. Sagaral, 267 SCRA 671 (1997).

[35] Rollo, p. 27.

[36] TSN, p. 20, Feb. 24, 1997.

[37] People v. Rafanan, 182 SCRA 811 (1990); People v. Umali, 242 SCRA 17 (1995); People v. Quinevista, Jr., 244 SCRA 586 (1995).

[38] People v. Cura, 240 SCRA 234 (1995).

[39] People v. Quiamco, 268 SCRA 516 (1997).

[40] People v. Soan, 243 SCRA 627 (1995).

[41] People v. Casil, 241 SCRA 285 (1995); People v. Taneo, 284 SCRA 251 (1998); People v. Agbayani, 284 SCRA 315 (1998).

[42] People v. Cañada, 253 SCRA 277, 285 (1996).

[43] Exhibits K, L, and N-1.

[44] People v. Montefalcon, 243 SCRA 617 (1995).

[45] People v. Vitor, 245 SCRA 392 (1995).

[46] People v. Soan, 243 SCRA 627 (1995).

[47] 222 SCRA 255 (1993).

[48] TSN, pp. 20-21, Jan. 29, 1997.

[49] Joint Judgment, dated May 23, 1997, pp. 19-23; Rollo, pp. 32-36.

[50] People v. Ilao, G.R. No. 129529, Sept. 29, 1998; People v. Ramos, G.R. No. 129439, Sept. 25, 1998; People v. Garcia, 281 SCRA 463 (1997).

[51] TSN, p. 22, Nov. 20, 1996.

[52] TSN, pp. 18-19, Jan. 29, 1997.

[53] TSN, p. 17, Feb. 24, 1997.

[54][54] People v. Prades, G.R. No. 127569, July 30, 1998.54

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