

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NELSON DELA CRUZ Y VILLATORA, ACCUSED-APPELLANT.

G.R. Nos. 131167-68. August 23, 2000

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PER CURIAM:

This is an automatic review of the judgment of conviction of the accused NELSON DELA CRUZ y VILLATORA rendered by the Regional Trial Court, 4th Judicial Region, Branch 34 of Calamba, Laguna, in Criminal Case Nos. 4804-96-C and 4805-96-C, both for the crime of rape. Complainants were his minor daughters, JARDELIZA DELA CRUZ and REDELIA DELA CRUZ.

At the outset, we note that the prosecutor overlooked the revelations of the two (2) complainants in their sworn statements that they had been raped by the accused on numerous occasions yet the two (2) Informations against the accused charged him with only one (1) count of rape in each case, thus:

In Criminal Case No. 4804-96-C:

“That on or about March 20, 1996, at Sitio Tambacan, Barangay Lingga, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, thru force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal relation with one JARDELIZA DELA CRUZ, a minor of 14 years old (sic), and daughter of the accused, against her will and consent.

“CONTRARY TO LAW.”[1]

In Criminal Case No. 4805-96-C:

“That on or about April 5, 1996, at Sitio Tambacan, Barangay Lingga, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, through force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal relation with one REDELIA DELA CRUZ, a minor of 15 years old (sic), and daughter of the accused, against her will and consent.

“CONTRARY TO LAW.”[2] (emphasis supplied)

The accused pled not guilty to the two (2) charges of rape. Joint trial of the cases ensued.

The prosecution evidence consisted of the testimonies of complainants JARDELIZA and REDELIA DELA CRUZ, and their mother DELIA DELA CRUZ. Complainant JARDELIZA DELA CRUZ, the accused's fourteen (14) year old daughter who finished only Grade 5, narrated her harrowing experience, thus: On the night of March 20, 1996, they slept in their house in Sitio Tambacan, Brgy. Lingga, Calamba, Laguna. Their house had three (3) rooms which were separated only by partitions. Her mother slept in one room, while her siblings slept in the room near the kitchen. At about 11:30 p.m., the accused tapped her shoulder but she failed to fully awaken. He then pinched her, and ordered her to position herself in the room so she could not be seen from the outside. She refused but the accused scolded her, poked a knife at her and threatened to kill her if she made a noise. The accused took

off her shorts and panty and ordered her to lie down. He then removed his shorts and brief, went on top of her and inserted his organ into hers. She felt intense pain but she could only sob in silence. She could not shout to her mother for help as the accused punched her whenever she cried audibly. Her ordeal lasted for about three (3) minutes. After satisfying his lust, the accused left the room and went out of the house. She awakened her mother and her sister Redelia and informed them about her violation. All they could do was cry. She revealed that her sister Redelia had been repeatedly raped by the accused in the past but could no longer recall the first incident.

On cross-examination, Jardeliza also revealed that she herself had been previously ravished by the accused. The last occasion happened on the night of March 20, 1996. Their family originally came from the Visayas and their nearest relatives lived in Manila. They had no relatives in Laguna. Her mother knew about the sexual abuses she and Redelia suffered but could not complain due to intense fear of the accused. Jardeliza said they could all freely go out of their house but they did not dare report the crime to the police authorities for fear that the accused would make good his threat to kill them all. It took several days after she was ravished by the accused on March 20, 1996 for her mother to gather the courage to tell Jardeliza's aunt, Mely Balasa, about the rape incidents. Balasa helped them report the bestial acts of the accused to the police authorities.[3]

REDELIA DELA CRUZ, the 15-year old daughter of the accused who finished only Grade 3, recounted her agonizing ordeal, thus: On April 5, 1996, at about 11:00 p.m., she was sleeping in their house in Sitio Tambakan, Calamba, Laguna. Her mother and her siblings were in Manila, but her two brothers, Ericson (then 5 years old) and Jonelle (11 years old), were with her in the house. At about 12:00 midnight, she woke up to look after her brothers. Upon seeing her, the accused stood up and ordered her to fix her bed sheets. He followed her into the room and warned: "Huwag kang magsusumbong." He threatened to kill her if she did. Then, he began to undress her. She cried and tried to leave the room but the accused held her tightly. When she tried to break free, the accused punched her and she weakened. She tried to cover herself with a blanket but her attempt to resist his advances was in vain. She cowered in fear as he threatened to kill them all. She did not shout to her neighbors for help as they lived far away. She did not ask help from her brother Ericson as she knew that the accused would hurt him as he did in the past. The accused succeeded in molesting her that night. Her ordeal lasted for about two (2) minutes. Thereafter, he admonished her again not to tell anyone about the incident. That was the last time he molested her. She said she was first raped by the accused in a field.[4]

DELIA DELA CRUZ, the 33-year old mother of the complainants, completed only Grade 6. On the witness stand, she confirmed that the accused had been abusing their daughters since 1993. Some of the rapes were committed in her presence. She was hurt by the accused whenever she tried to prevent him from molesting their daughters. She had tried to use a bladed weapon on the accused to defend the honor of her daughters but her efforts were fruitless. When she asked the accused why he was ravishing his own flesh and blood, the accused would reply that he was re-channeling his love for her to his daughters. It took her years to report to the police authorities for fear that the accused would make good his threat to kill them, including her other children. She finally summoned enough courage to confide to her sister the bestial acts of the accused when she visited her relatives in Manila. Her sister promised to help them.[5] When they finally reported the incident to the police authorities, she brought her daughters to Manila for fear of their lives. They returned to their house in Laguna only, when she learned that the accused had already been detained in jail.[6]

For his defense, the accused NELSON DELA CRUZ claimed that Delia and her daughters filed the rape charges as they harbored ill feelings against him. Prior to his arrest on April 14, 1996, he and Delia had strained relations as he failed to attend to her when she suffered a miscarriage because he was then working in the field. On the other hand, Jardeliza was angry with him for not allowing her to marry her boyfriend Ramil Mendoza.[7]

The accused denied the accusations against him. He declared that at about 6:00 a.m. of March 20, 1996, he was in

Huyang, Calamba, Laguna, planting rice. He was accompanied by his daughter Jardeliza, his son Jonel, Marlon Julian (the live-in partner of Redelia), Ramil Mendoza (the suitor of Jardeliza), and his other laborers. At about 11:00 a.m., they returned to the house of the accused, ate lunch and counted their earnings from working the field that day. Thereafter, his wife Delia arrived with her brother Vicente Malasa and his wife Mely. The accused, his laborers, Lingga councilor Jimmy Lontoc, Marion and Vicente had a drinking spree until about 11:00 p.m. Then, the Malasa spouses requested Delia and Jardeliza to accompany them to Manila and oversee their house as they were going to the Visayas for the Holy Week. Delia and Jardeliza agreed. They left for Manila that night, hence, he could, not have sexually abused Jardeliza.[8]

He likewise denied abusing Redelia. He alleged that on April 5, 1996, at about 6:30 a.m., he worked in the farm of Mang Serving in Huyang, together with his son Jonel and Marlon. Delia and Jardeliza were then in Manila. When the accused returned to his house at 11:00 a.m., his cousin Tessie dela Cruz and his friend Naldo arrived and invited Redelia to go with them to the church. The four (4) left and returned at about 11:30 p.m. after attending the procession. The accused learned from Tessie that Marlon met them in the barrio and beat up Redelia as he was jealous of Naldo. He then admonished Redelia and Marlon to retire for the night and discuss the incident the following morning.[9] The next day, he asked Redelia and Marlon to part ways temporarily. The two agreed. On April 7, 1996, Marlon and his friends returned and had a drinking spree in his house. Thereafter, Marlon and his brother Jun forcibly took Redelia with them without his permission as Marlon wanted to resume his relationship with her. The accused looked for her but she did not return to their house for fear that he would hurt her.[10]

On September 2, 1997, the trial court convicted the accused and imposed on him two death sentences, thus:

“ACCORDINGLY, in Criminal Case No. 4804-96-C, this Court finds Nelson dela Cruz y Villatora GUILTY beyond reasonable doubt of the crime of rape and hereby sentences him to suffer the penalty of death.

“Accused is further ordered to indemnify the victim Jardeliza dela Cruz the sum of FIFTY THOUSAND (P50,000.00) PESOS as moral damages.

“In Criminal Case No. 4805-96-C, this Court finds accused Nelson dela Cruz y Villatora GUILTY beyond reasonable doubt of the crime of rape and hereby sentences him to suffer the penalty of death.

“Accused is further ordered to pay the victim Redelia dela Cruz the amount of FIFTY THOUSAND (P50,000.00) PESOS as moral damages.

“With costs against the accused.

“SO ORDERED.”[11]

We affirm the conviction of the appellant, with modifications.

In his Brief, the appellant avers that the trial court erred in giving full weight and credence to the testimonies of the prosecution witnesses and insists that his guilt had not been proved beyond reasonable doubt.

The appellant claims that the prosecution witnesses gave conflicting versions of the rape incidents. He cites the alleged contradiction in their testimonies with respect to the rape charges committed on Jardeliza, thus: (1) While Jardeliza declared that she was raped by the appellant while they were all sleeping in their house, Redelia testified that she saw the appellant abuse Jardeliza in their other house when she happened to pass by it and peeped through its wall; (2) Jardeliza declared that after she was raped by the appellant on March 20, 1996, she confided the incident to Redelia and Delia. In response, Redelia informed her that she (Redelia) had also been previously molested by the accused. However, during the trial, both Jardeliza and Redelia related that they knew that the

appellant had been abusing the other long before 1996. The appellant argues that if Jardeliza and Redelia were aware of these prior sexual assaults, there was no reason why they had to inform each other on March 20, 1996 of their agonizing experience; and (3) Delia contradicted Jardeliza's testimony as she claimed that on March 20, 1996, the appellant raped Jardeliza twice in that same day in her presence.

With respect to the rape he allegedly committed on Redelia, the appellant charges that a discrepancy likewise exists between the testimony of Redelia and Delia. Redelia claimed that on the date she was last raped by the appellant, Delia and Jardeliza were in Manila. Delia, however, declared that she was in their house on said date.

The appellant also assails the credibility of Delia for allowing him to abuse their daughters, sometimes even in her presence. He points out that Delia was free to report the incidents to the police authorities as she was never prevented by the appellant from leaving their house in Laguna and she even visited her relatives in Manila.

We are not persuaded.

After examining the records, we are convinced that the trial court did not err in giving credence to the testimonies of the prosecution witnesses. The testimonies of the victims themselves, detailing the poignant defloration they suffered in the hands of the appellant, were clear and convincing and withstood the rigid cross-examination by defense counsel.

JARDELIZA testified thus:

"Q: Now please tell the Court Ms. Witness where you were sometime on March 20, 1996 at about 11:00 o'clock in the evening?

"A: I was in our house, sir.

x x x

"Q: On that particular date and time what were you doing Ms. Witness?

"A: I was, sleeping.

"Q: What time more or less did you go to, bed on the night of March 20, 1996?

"A: About 7:00 in the evening, sir.

"Q: And what time more or less did you rise from bed?

"A: About 11:30 in the evening of that night sir I was awakened by him.

"Q: In what part of the house you mentioned earlier were you were (sic) then sleeping?

"A: In a room sir, on the floor.

x x x

"Q: When you said him, to whom are you referring to?

"A: My father sir.

"Q: Nelson dela Cruz, the accused in this case, is that correct?

"A: Yes, sir.

x x x

"Q: And what happened after your father likewise entered that room you mentioned?

"A: He told me not to make noise.

"Q: And aside from that what else did he say, if any?

"A: Nothing sir, but immediately when he entered the room he slowly approached me and immediately removed my shorts and panty.

"Q: What was your position then when your father removed your shorts and panty?

"A: I was standing.

x x x

"Q: And after your father removed your shorts and panty what else did you do?

"A: He asked me to lie down and he also removed his shorts and brief.

"Q: After your father removed his shorts and brief what else happened, if any?

"A: He went on top of me and slowly inserted his "ari" to my "ari."

"Q: You said that after your father was able to insert his penis to your private part what did you feel?

"A: It was painful sir.

x x x

"Q: Immediately before your father removed your shorts and panty did he tell you anything?

"A: Yes, sir.

"Q: Kindly tell the Court that statements (sic) made by your father?

"A: He told me not to make noise and if I will make noise he will kill me and he was then poking a knife at me sir.

x x x

CROSS-EXAMINATION:

x x x

"Q: When he removed your shorts and panty did it not occur to you to shout to your mother considering that she is only about (a) few meters far (sic)?

"A: He did not allow me and whenever I cry aloud he boxes (sic) me at my side.

"Q: That time did he box you?

"A: Yes, ma'am.

"Q: In what part of your body?

"A: On my side ma'am.

"Q: Did I hear you right that he was also carrying a knife that time?

"A: Yes, ma'am.

"Q: Did you actually see it?

"A: Yes, ma'am, a short knife.

"x x x"[12]

REDELIA, on the other hand, recounted her ordeal thus:

"Q: Now on or about April 5, 1996 in the evening, would you recall where you were?

"A Yes, sir, I was in the house.

x x x

"Q: You said that on April 5, 1996 in the evening you were then sleeping, please tell the Court what time more or less did you go to bed?

"A: About 11:00 sir.

x x x

"Q: What time more or less did you wake up if you can still recall?

x x x

"A: About 12:00 sir.

"Q: 12:00 in the same evening of April 5, 1996?

"A: Yes, sir.

"Q: And would you kindly tell the Court what made you rise up from bed?

"A: Because I was looking after my two brothers sir.

x x x

"Q: What happened when you woke up, to see your brothers?

"A: He also woke up and entered my room.

"Q: You said he also woke up. To whom are you referring to?

"A: Nelson dela Cruz, sir.

"Q: Your father, is that correct?

"A: Yes, sir.

"Q: When you saw him for the first time inside your house where was he at that time?

"A: He was on a bench.

"Q: Where is that bench placed?

"A: Near the door sir.

"Q: What happened after that Ms. Witness when you noticed the presence of your father inside your house?

"A: I did not proceed to the room anymore. I returned to the room where I was sleeping.

"Q: Kindly tell the Court the reason why you immediately returned to your room?

x x x

"A: He told me to return to my room and fix my bed.

x x x

"Q: When your father followed you inside your room what happened?

"A: He undressed me and raped me.

"Q: You said (he) immediately undressed you. (B)efore your father removed your clothes did he tell you anything?

x x x

"A: "Huwag daw akong magsusumbong."

"Q: Aside from that what else?

"A: That he will kill me if I tell anybody.

"Q: Would you kindly tell the Court your position at that time that your father was then removing your clothes?

"A: I was lying.

"Q: Before your father removed your clothes what did you do, if any?

"A: I was crying.

"Q: Aside from crying what else did you do, if any?

"A: I covered myself with blanket.

"Q: Would you kindly tell the Court why you covered your body with blanket?

"A: He was undressing me and to avoid what he was doing to me, I covered myself with blanket but he removed the blanket.

"Q: Was that the manner you resisted with the thing did by your father?

"A: I was avoiding him also, sir.

"Q: How?

"A: I rose and left the room.

"Q: But despite those attempts to prevent what your father wants to do, it's still not enough?

"A: I just cried because I can no longer avoid him because he was holding me tight.

"Q: You said you were raped by your father, tell the Court how?

"A: He asked me to lie down and went on top of me.

"Q: What did he do when he lied on top of you?

"A: He inserted his private part into mine.

"Q: By that you wish to tell the Court that he was not wearing anything when he went on top of you?

"A: Yes, sir.

"Q: Was the accused able to insert his penis to your private part easily?

"A: No sir, because I was resisting.

"Q: But just the same he was able to insert his penis to your private part?

"A: Yes, sir.

"Q: What else did he do after he was able to insert his penis to your private part?

"A: He kissed me.

"Q: For how long did your father remain in that position?

"A: For about two minutes sir.

"Q: Did you feel anything while your father was then in that position?

"A: Nothing Sir.

"Q: After two minutes what did your father do?

"A: He stood up and told me not to tell anybody.

"x x x"[13]

The inconsistencies cited by the appellant were clarified at the trial. Initially, Redelia claimed that on March 20, 1996, she saw the appellant ravish Jardeliza in their other house. On cross-examination, however, she explained that she could not remember exactly when she witnessed the incident as the appellant had molested Jardeliza in, every house they have been in "not only ten times, but countless of times"[14] Delia also explained her statement that the appellant molested Jardeliza twice on March 20, 1996. On cross-examination, Delia said that she could not be sure when the appellant raped Jardeliza twice in the same day as Jardeliza had been sexually abused by the appellant on numerous occasions.[15]

The appellant again tried to twist the testimony of Jardeliza when he insisted that it was only on the night of March 20, 1996, immediately after Jardeliza was raped, that Delia and Redelia first learned about the appellant's lecherous attacks on Jardeliza. However, the records would bear that on direct examination, Jardeliza categorically declared that after she was ravished by the appellant, she awakened Delia and Redelia and told them her ordeal that night. Jardeliza did not mention about her earlier forced sexual congress with the appellant as these were already known to Delia and Redelia.[16] Neither is it accurate to state that it was only on that night when Delia learned about Redelia's similar fate in the hands of the appellant. Prior to that night, Redelia had already narrated to Delia that she was first raped by the appellant in the farm and that she was the first one sexually molested by the appellant.[17]

It is not difficult to understand why Delia failed to report the rape of her daughters to the police authorities until after three (3) years. Delia completed only primary education. They were originally from the Visayas. They had no relatives in Laguna where they were residing. She had seven (7) children with the appellant who repeatedly threatened to kill them all if they reveal to anyone his misdeeds. She gathered the courage to break her silence only when her sister-in-law in Manila assured her of help. Her testimony against the appellant which exposed her daughters to public ridicule cannot be a sham. No mother could sacrifice her daughter's honor to perpetuate a lie.[18] Finally, it is incorrect to state that Delia totally did not lift a finger to save her daughters from the appellant's abuses. The records will bear that she attempted several times to prevent the accused from molesting their daughters. She even tried to hurt him with a knife but her efforts were all in vain as she was always

overpowered by the appellant.[19] In the words of Jardeliza: "She (Delia) just quarreled with my father. But she cannot (sic) do anything because 'naghahari-harian ang aming tatay sa pamilya.'"[20]

Noticeably, the accused mentioned the names of several people in his alibis but not a single one was presented to corroborate his testimony. There is nothing on record to support his defense. Neither does the Court doubt the noble motive of the victims and their mother in filing the rape charges. The alleged ill feelings harbored by Redelia, Jardeliza and Delia against the appellant are too flimsy to justify the filing of charges punishable by the death penalty. The appellant's assertion that the rape charges were motivated by his refusal to allow Jardeliza to marry her boyfriend is unworthy of belief. At the time of the rape incidents alleged in the Information, Jardeliza, merely fourteen (14) years old, was legally incapacitated to marry, with or without the appellant's consent, as she was below eighteen (18) years of age. Moreover, the acts imputed against the appellant -- incestuous rapes -- are not ordinary criminal offenses that can be hurled with facility. In relating their experiences in public, not only the victims, but their entire family as well, had to go through the humiliation of a trial. Surely, only the desire to seek justice impelled the victims to come out in the open and reveal their unfortunate fate in the hands of their own father.

The gravamen of the crime of rape is sexual congress with a woman by force and without consent.[21] If the victim is under twelve (12) years of age, force need not be proven for it is not an element of statutory rape.[22] However, if the woman is at least twelve (12) years old at the time the rape charged in the Information was committed, as in this case, both the elements of sexual intercourse and force or intimidation must be established.[23]

The evidence on record adequately proves carnal knowledge by force or intimidation. During the rape, it was established that the appellant poked a knife at Jardeliza, repeatedly boxed her side and threatened to kill her if she made any noise. Redelia was similarly threatened. Although the appellant was unarmed when he last molested Redelia, the coitus was nonetheless by force as the appellant held Redelia tightly and punched her, making her weak and totally incapable of offering resistance.

We now come to the question of whether the death penalty should be imposed on the appellant. Art. 335 of the Revised Penal Code, as amended by Section 11 of R.A. 7659, reads in 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 x x x."

The burden to prove the minority age of the victim is on the prosecution. As minority age is a qualifying circumstance, it must be proved beyond reasonable doubt. Using this unbending yardstick, the death penalty was not imposed by this Court in cases where there was no evidence at all of the minority age of the victim or where the evidence was weak, unreliable and insufficient.

In *People vs. Javier*,[24] the victim was alleged to be 16 years old. The Court observed that there is not much difference between a 16 and an 18 year old woman. Thus, we held that there is need to present independent proof of her actual age. We required the presentation of the minor's birth certificate but rightly, we did not rule out the presentation of the testimony of the victim's mother to prove minority in future cases. As minority was not proved by the prosecution, we did not mete out the death penalty.

In *People vs. Tipay*,[25] the victim was alleged to be 15 years old. Once more, the Court observed that it was difficult to differentiate a 16 from an 18 year-old girl. We stressed that the crucial years were between 15 to 17 years and we held that, in this situation, the prosecution's proof of minority age of the victim must be given the

strictest scrutiny. We examined the record of the case and found that there was no "independent" evidence that would prove the victim's minority age. The victim's age was merely alleged in the Information. Again, we did not impose the death penalty.

In *People vs. Cula*,^[26] the Court again did not appreciate the qualifying circumstance of minority. We held that there was absolutely no evidence at all on record to prove the victim's age. We even noted that the trial court failed to make a categorical finding regarding the minority of the victim. For failure of proof, we saved the accused-appellant from the death penalty.

In *People vs. Brigildo*,^[27] the prosecution again faltered in its task of proving the minority of the victim. We rejected the testimony of the victim's mother as to the victim's age as it contradicted the testimony of the victim herself. The Informations in said case even alleged a different age. "Faced with uncertainty regarding private complainant's age," we declined to penalize the accused-appellant with death.

In the case at bar, however, the prosecution proved the minority age of the victims beyond reasonable doubt. Delia, the victims' mother, categorically testified in the hearing of October 9, 1996 that her daughters were both fourteen (14) years of age at the time of the rape incidents complained of. Thus:

"Q: Mrs. Witness, will you kindly tell the Court the 'age of your daughter Redelia dela Cruz?

"A: She will be 15 this coming November, sir.

"Q: How about your other daughter Jardelisa dela Cruz?

"A: 14 years old, sir.

"Q: Now, in the month of April 1996, would you recall of any unusual incident that happened in your house?

"A: . . . (Redelia was) raped."^[28]

There is no reason to doubt Delia's testimony. As a mother, she has personal knowledge of the ages of her children. Her testimony was never challenged by the accused who could have presented the victims' birth certificates.^[29] Delia's testimony stood un rebutted by any other evidence. To be sure, this is not the first time that the Court is relying on the testimony of the victim's mother to establish the minority age of the victim. In *People vs. Balgos*,^[30] where the rape victim was six (6) years of age, we relied on the testimony of the victim's mother to prove the victim's age. Reposing trust on the testimony of the victim's mother, we imposed the death penalty on the accused-appellant.

We come now to the civil liability of the appellant. We affirm the trial court's award of moral damages to each of the victims in the amount of fifty thousand pesos (P50,000.00). In rape cases, moral damages may be awarded to the victim in such amount as the court deems just, without the need for pleading or proof of the basis thereof. The conventional requirement of *allegata et probata* in civil cases has been dispensed with in rape cases where the civil aspect is included in the prosecution as the mental, physical and psychological trauma suffered by the victim is too obvious to require the recital thereof at the trial by the victim.^[31]

However, we note that moral damages are all that the trial court awarded to the victims. It failed to award civil indemnity *ex delicto* which is mandatory upon the finding of the fact of rape and independent of the award for moral damages. Pursuant to current jurisprudence, a civil indemnity in the amount of seventy-five thousand pesos (P75,000.00) should be imposed for rapes qualified by any of the circumstances under which the death penalty is authorized under Republic Act No. 7659.^[32]

Four (4) members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the

death penalty, is unconstitutional. Nevertheless, they submit to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should be accordingly imposed.

IN VIEW OF THE FOREGOING, the appealed Decision sentencing the appellant NELSON DELA CRUZ y VILLATORA to two (2) death sentences for two (2) counts of rape in RTC Criminal Case Nos., 4804-96-C and 4805-96-C, is **AFFIRMED**. In addition to the award of moral damages to each of the victims, the appellant is further ordered to pay civil indemnity in the amount of seventy-five thousand pesos (P75,000.00) to each of the victims Jardeliza dela Cruz and Redelia dela Cruz. Moreover, the Department of Justice is hereby directed to investigate with dispatch the other claims of rape committed by the appellant on the two (2) victims, as revealed in their sworn statements and during their testimonies in open court in the cases at bar, and file the corresponding charges if warranted.

In accordance with Section 25 of Republic Act No. 7659, amending Section 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 pardoning power.

SO ORDERED.

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

SEPARATE OPINION

With due respect, I believe that appellant should be convicted only of simple, not qualified, rape and that the penalty should be reclusion perpetua, not death. Let me explain.

Since *People v. Garcia*,^[1] which was followed immediately by *People v. Perez*,^[2] *People v. Ramos*^[3] and a catena of similar cases, the Court has been strict in the interpretation and the application of the Death Penalty Law,^[4] particularly to the qualified forms of rape. The Court has required that the special circumstances prescribed by the law,^[5] which effectively qualify rape by increasing its penalty to death, must have been specifically alleged in the Information and proven during the trial. Failure to do so should save the accused from the death penalty.

In most of these cases the appellants were spared from lethal injection, because the informations charging them had failed to allege such special or qualifying circumstances; for instance, the minority of the victim or her relationship with the accused. This ruling was pursuant to the basic rule that the failure to allege qualifying circumstances in the indictment "would be a denial of the right of the accused to be informed of the charges against him x x x." It would be a denial of due process if one is charged with simple rape and then convicted of its qualified form punishable with death.^[6]

Recent rulings of the Court relative to the rape of minors require that proof of the age of the victim must be indubitable. We have invariably stated that in order to justify the imposition of death, there must be independent evidence proving the age of the victim, other than the latter's testimony or even that of her mother or the absence of denial by the accused.^[7] In *People v. Javier*,^[8] we unanimously held:

"x x x. Although the victim's age was not contested by the defense, proof of age of the victim is particularly, necessary in this case considering that the victim's age which was then 16-years old [was] just two years less

than the majority age of 18. In this age of modernism, there is hardly any difference between a 16-year old girl and an 18-year old one insofar as physical features and attributes are concerned. A physically developed 16-year old lass may be mistaken for an 18-year old young woman, in the same manner that a frail and young looking 18-year old lady may pass as a 16-year old minor. Thus, it is in this context that independent proof of the actual age of a rape victim becomes vital and essential so as to remove an[y] iota of doubt that the victim [was] indeed under 18 years of age as to fall under the qualifying circumstances enumerated in Republic Act. No. 7659. In a criminal prosecution especially of cases involving the extreme penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established by the prosecution in order for said penalty to be upheld. x x x Verily, the minority of the victim must be proved with equal certainty and clearness as the crime itself. Otherwise, failure to sufficiently establish the victim's age is 'fatal and consequently bars conviction for rape in its qualified form."

In *People v. Cula*,^[9] we emphasized that the burden of proving the age of the victim fell on the prosecution. We ruled thus:

"At all events, it is the burden of the prosecution to prove with certainty the fact that the victim was below 18 when the rape was committed in order to justify the imposition of the death penalty. The record of the case is bereft of any independent evidence, such as the victim's duly certified Certificate of Live Birth, accurately showing private complainant's age. The fact that accused-appellant Manuel has not denied the allegation in the complaint that Maricel was 16 years old when the crime was committed cannot make up for the failure of the prosecution to discharge its burden in this regard. Because of this lapse, as well as the corresponding failure of the trial court to make a categorical finding as to the minority of the victim, we hold that the qualifying circumstance of minority under Republic Act No. 7659 cannot be appreciated in this case, and accordingly the death penalty cannot be imposed."

In *People v. Tipay*,^[10] the victim was alleged to have been only 15 years of age at the time of the rape incident. But the records were "bereft of any independent evidence which would accurately show complainant's age." Hence, the Court ruled: "That complainant's [age] was alleged in the information and/or complaint as under 16 years is not sufficient. Nor does the lack of denial on the part of accused-appellant excuse the prosecution from discharging its burden in this regard."^[11]

In *People v. Bragildo*,^[12] the victim was alleged to be 11 years old only, and the Court agreed that she was undisputedly a minor. Yet, we sought more concrete evidence to prove her exact age. We held:

"The separate Informations in Criminal Case Nos. 4591-0 and 4607-0 alleged that the offended party in the two rape cases was the appellant's 'step-daughter who is 11 years old.' It is undisputed that the victim in the instant case is a minor. However, the records are unclear as to her exact age. The prosecution failed to present her birth certificate or any other evidence to prove just how old she really is. The separate Information filed alleged that the victim was 11 years old when she was raped in March and October, 1994. Yet, testifying a year later, complainant claimed she was only 11 years old. Her mother's testimony on cross-examination, by contrast, would seem to indicate that she was around 15 years old at the time of the rapes complained of x x x.

x x x x x x x x

Thus, we are faced with the uncertainty regarding private complainant's exact age, not only because of ambiguous testimony on record, but also because the prosecution failed to present her birth certificate or other equally acceptable official document concerning her date of birth."^[13]

Thus, considering that the true age of the complainant had been placed in doubt and not properly proved, the Court was constrained to reduce the penalty of death to reclusion perpetua.

In various cases, the certificate of live birth accurately showing the complainant's age or some other official document or record, such as a school record, has been recognized as competent evidence to establish the victim's age.[14] Thus, in *People v. Amban*,^[15] the Court appreciated the school record of the offended party to establish her age. But a bare photocopy of the victim's Certificate of Birth that has not been formally offered in evidence would not suffice, even if the appellant has not contested the victim's age. Thus, we held in *People v. Tabanggay*:^[16]

"x x x [W]e find insufficient the bare testimony of private complainants and their mother as to their ages as well as their kinship to the appellant. We note that a photocopy of Genalyn's Birth Certificate is included in the records of the case. But it was neither duly certified nor formally offered in evidence. Therefore, no probative value can be given to it. Furthermore, we cannot agree with the solicitor general that appellant's admission of his relationship with his victims would suffice. Elementary is the rule that the prosecution bears the burden of proving all the elements of a crime, including the qualifying circumstances. In sum, the death penalty cannot be imposed upon appellant."

In the foregoing case, the victims' ages were alleged to be 13 and 14.

Of course, to avoid any absurdity the rule may engender, insofar as victims aged 10 years or below are concerned, the full Court concurred in *People v. Tipay*^[17] that the Court may take judicial notice of the ages of such victims.

"This does not mean, however, that the presentation of the certificate of birth is at all times necessary to prove minority. The minority of a victim of tender age who may be below the age of ten is quite manifest and the court can take judicial notice thereof. The crucial years pertain to the ages of fifteen to seventeen where minority may seem to be dubitable due to one's physical appearance. In this situation, the prosecution has the burden of proving with certainty the fact that the victim was under 18 years of age when the rape was committed in order to justify the imposition of the death penalty x x x."

In the instant case, the victims according to the Informations were aged 14 and 15 years at the time they were raped. However, per the ponencia, "the victims' mother categorically testified in the hearing of October 9, 1996 that her daughters were both fourteen (14) years of age at the time of the rape incidents." In any event, whether 14 or 15, they were so near the borderline; necessitating more solid proof other than bare verbal statements. Consistent with our doctrine initially laid down in *Javier* and followed through in *Cula*, *Tipay*, *Brigildo* and *Tabanggay*, there must be independent evidence that accurately shows the victims' ages. I must repeat the rationale: in this era of modernism and rapid growth, the victims' mere physical appearances are not enough to gauge their exact ages. Based on the recent aforecited unanimous Decisions of this Court, I respectfully submit that when the victim's alleged ages at the time of the sexual assault were between 13 and 18 years, neither their bare testimonies nor those of their respective mothers would be sufficient proof of their ages to qualify the crime and justify the imposition of the death penalty. Verily, independent proof of each element of a crime, especially a heinous one, must be shown with moral certainty and beyond reasonable doubt. Be it remembered that the proof of age in the present case spells the difference between life and death!

WHEREFORE, I vote to convict the appellant of two counts of simple, not qualified, rape and to impose two terms of reclusion perpetua, not death.

[1] 281 SCRA 463, November 6, 1997.

[2] 296 SCRA 17, September 24, 1998.

[3] 296 SCRA 559, September 25, 1998.

[4] RA 7659.

[5] Under Art. 266-B of the Revised Penal Code, as amended by RA Nos. 7659 and 8353, the death penalty shall be imposed if rape is committed with any of the following aggravating/qualifying 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 or any law enforcement or penal institution;

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third degree of consanguinity;

4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

5) When the victim is a child below seven (7) years old;

6) When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV) /Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime."

[6] *People v. Garcia*, supra, p. 489.

[7] *People v. Cula*, GR No. 133146, March 28, 2000; *People v. Tipay*, GR No. 131472, March 28, 2000; *People v. Brigildo*, GR No. 124129, January 28, 2000; *People v. Licanda*, GR No. 134084, May 4, 2000; *People v. Tabanggay*, GR No. 130504, June 29, 2000.

[8] 311 SCRA 122, 141, July 26, 1999, per Melo, J. The rule was reiterated in *People v. Cula*, *ibid.*; *People v. Tipay*, *ibid.*

[9] GR No. 133146, March 28, 2000, p. 13, per Melo, J.

[10] GR No. 131472, March 28, 2000, per Melo, J.

[11] *Ibid.*, p. 31.

[12] GR No. 124129, January 28, 2000, per Quisumbing, J.

[13] *Ibid.*, pp. 14-15.

[14] *People v. Balgos*, GR No. 126115, January 26, 2000; *People v. Llamó*, GR No. 132138, January 28, 2000;

People v. Alama, GR Nos. 134122-27, February 7, 2000; People v. Amban, GR No. 134286, March 1, 2000; People v. Gajo, GR No. 127749, March 9, 2000; People v. Magat, GR No. 130026, May 31, 2000; People v. Lasola, GR No. 123152, November 17, 1999; People v. Diasanta, GR No. 128108, July 6, 2000.

[15] GR No. 134286, March 1, 2000

[16] GR No. 130504, June 29, 2000, pp. 29-30, per Panganiban, J.

[17] GR No. 131472, March 28, 2000, per Melo, J.

[1] Original Records of Crim. Case No. 4804-96-C, p. 11.

[2] Original Records of Crim. Case No. 4805-96-C, p. 12.

[3] August 21, 1997 TSN, pp. 2-23.

[4] October 2, 1996 TSN, pp. 4-18, 21-23.

[5] October 9, 1996 TSN, pp. 1-7, 11-13, 16-17.

[6] Sworn Statement of Delia Dela Cruz; Original Records, p. 4.

[7] February 17, 1996 TSN, pp. 7-8, 30-31.

[8] Id., pp. 2-6.

[9] Id., pp. 8-14, 17-18.

[10] Id., pp. 14-17.

[11] Rollo, at pp. 23-24.

[12] August 21, 1996 TSN, pp. 3-17.

[13] October 2, 1996 TSN, pp. 3-10.

[14] Id., pp. 23-25.

[15] October 9, 1996 TSN, p. 10.

[16] August 21, 1996 TSN, at p. 11.

[17] Id., pp. 10-11.

[18] People vs. Escobar, 281 SCRA 498, 505 (1997); People vs. Ramirez, 266 SCRA 335, 354 (1997); People vs. Sanchez, 250 SCRA 14, 27 (1995).

[19] October 9, 1996 TSN, pp. 6, 12 & 14.

[20] August 21, 1996 TSN, p. 20.

[21] People vs. Tan, 264 SCRA 425, 438 (1996).

[22] People vs. Andres, 253 SCRA 751, 757 (1996).

[23] People vs. Mahinay, 302 SCRA 455 (1999).

[24] 311 SCRA 122, 140-141 (1999).

[25] G.R. No. 131472, March 28, 2000.

[26] G.R. No. 133146, March 28, 2000.

[27] G.R. No. 124129, January 28, 2000.

[28] October 9, 1996 TSN, pp. 4 & 8.

[29] Wigmore on Evidence, vol. 4, p. 487.

[30] G.R. No. 126115, January 26, 2000.

[31] *People vs. Alba*, 305 SCRA 811, 831 (1999), citing *People vs. Prades*, 293 SCRA 411, 430 (1998); *People vs. Victor*, 292 SCRA 186, 200-201 (1998).

[32] *People vs. Tipay*, *supra*.

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