

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FELICIANO ULIT Y TAMPOY, APPELLANT.*G.R. Nos. 131799-801. February 23, 2004*

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-131799-801/>**CALLEJO, SR., J.:**

Before the Court on automatic review is the Decision[1] dated December 17, 1997 of the Regional Trial Court of Makati City, Branch 62, in Criminal Cases Nos. 97-385 to 97-388 finding appellant Feliciano Ulit y Tampoy guilty beyond reasonable doubt of two counts of qualified rape.[2] In the same decision, the appellant was convicted of two counts of acts of lasciviousness. For each count of rape, the trial court sentenced him to suffer the supreme penalty of death, while for each count of acts of lasciviousness, the appellant was sentenced to suffer imprisonment “from eight (8) years, eight (8) months and one (1) day of prision mayor in its medium period, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal in its medium period, as maximum.” The appellant was, likewise, ordered to indemnify the victim Lucelle Serrano, the amount of P50,000 for each count of rape and P20,000 for each count of acts of lasciviousness.

The Indictments

Upon the sworn complaint of the victim Lucelle Serrano, four Informations were filed against her uncle, the appellant. The docket number and the accusatory portion of each Information reads:

Criminal Case No. 97-385

That sometime in the month of November 1996, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, who is the uncle of the complainant LUCELLE SERRANO y ULIT, hence, her relative by consanguinity within the third civil degree, while armed with a knife, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant LUCELLE SERRANO y ULIT, an eleven (11) year old girl, without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.[3]**Criminal Case No. 97-386**

That sometime in the month of February 1997, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, who is the uncle of complainant LUCELLE SERRANO y ULIT, hence her relative by consanguinity within the third civil degree, while armed with a knife, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant LUCELLE SERRANO y ULIT, an eleven (11) year old girl, without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.[4]**Criminal Case No. 97-387**

That sometime in the month of December 1996, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design by means of force,

violence and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon complainant LUCELLE SERRANO y ULIT, an eleven (11) year old girl, by then and there kissing her and touching her sexual organ, without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.[5]

Criminal Case No. 97-388

That on or about the 2nd day of March 1997, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon complainant LUCELLE SERRANO y ULIT, an eleven (11) year old girl, by then and there dragging her inside a bathroom and repeatedly kissing her on her cheeks [sic], without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.[6]

The appellant, assisted by counsel, pleaded not guilty during the arraignment. Joint trial of all the cases ensued.

In the meantime, Lucelle was undergoing psychiatric treatment at the Philippine General Hospital. On May 5, 1997, the prosecution presented her as its first witness.

On direct examination, Lucelle testified that she was born on February 19, 1986.[7] In November 1996, her uncle, the appellant, did something to her. When the prosecution asked her what happened, Lucelle did not answer. When asked if she wanted to continue with her testimony, again, she did not respond. The trial was reset to June 2 and 9, 1997. When trial resumed on June 9, 1997, Lucelle was questioned by the prosecution on direct examination, but still, she gave no answer. She cried profusely in open court. When asked by the court if she wanted to proceed with the trial, she remained silent. The trial was reset anew to July 9 and 14, 1997.

In the meantime, the trial court ordered that Lucelle be subjected to physical and psychological examinations at the National Center for Mental Health (NCMH). Dr. Rochelflume Samson examined Lucelle and submitted her Report dated August 29, 1997 with the following remarks and recommendation:

Based on clinical history, mental status examination and psychological evaluation, this patient is suffering from Post-Traumatic Stress Disorder. This illness is characterized by intense fear and feeling of helplessness whenever she recalls her traumatic experience of being raped. It causes her intense psychological distress whenever asked to talk about the rape scene or incident. Thus, she avoids recollections of the trauma.

At present, she is still manifesting symptoms described above. She would be having difficulties testifying in court because of this. She requires psychiatric treatment at the Out-Patient Section.[8]

During the trial on July 14, 1997, Lucelle refused to take the witness stand. The trial was reset to July 21, 1997.

During the hearing on October 20, 1997, the prosecution presented Lucelle anew to continue with her testimony on direct examination. She declared that the appellant raped her in November 1996 and many other times thereafter in her residence at No. 7104 San Maximo Street, Makati City. Instead of asking questions to elicit the facts and circumstances before and during the commission of the crimes, the prosecutor asked Lucelle to identify her signature in her sworn statement[9] and to affirm the truth of its contents. She did so. The public prosecutor then marked the sworn statement in evidence as Exhibit "H," and then manifested to the court that he had no more questions for the witness on direct examination.

On clarificatory questions by the court, Lucelle testified that she was born on February 19, 1986. The appellant mounted her, removed her pants, poked a knife at her and threatened her.[10]

On cross-examination, Lucelle testified that the appellant was her mother's older brother. In November 1996, she was not enrolled in any school. Her father was working at a construction firm, the appellant was employed at the Department of Environment and Sanitation in Makati City, while her grandmother, who lived with her, worked as a maid in Bel Air Subdivison. Her mother worked for one of her father's cousins. On re-direct examination, the prosecution elicited from Lucelle that the appellant raped her in November 1996 at 11:00 p.m. inside the room of her aunt Marina in her grandmother's house at No. 7104 San Maximo Street, Olympia, Makati City, and that her aunt, Marina, and her Ate Sharon were inside the room. When asked where her aunt and Ate Sharon were when she was being raped in her aunt's room, Lucelle did not respond. When asked why she did not respond to the questions propounded to her during the previous hearings and why she had been crying in open court, Lucelle replied that she was afraid of her uncle, the appellant.

In her sworn statement,[11] Lucelle alleged that sometime in November 1996, she was sleeping in a room in the house. It was about 6 o'clock in the evening. She was awakened when she felt someone kissing her on the cheek. When she opened her eyes, she saw her uncle, the appellant, armed with a bladed weapon (balisong). He poked the weapon on the left side of her neck. He warned her that if she told her parents, he would kill her. He removed her panties, undressed himself and mounted her. He then inserted his penis into her vagina. She felt pain in her private part and cried. The appellant, thereafter, left the room. Also during the month of November 1996, the appellant continued kissing her whenever her parents were out of the house.

In December 1996, Lucelle was in the room when the appellant entered and kissed her and mashed her private parts. Sometime in February 1997, the appellant again abused her (sinalbahe) while she was in the same room. It was about 11 o'clock in the evening. He again warned her not to divulge to her parents what he did to her. At 9:00 p.m. on March 2, 1997, Lucelle urinated in the bathroom and when she was about to go out, the appellant entered, pushed her inside and kissed her on her cheeks several times.

Celso Serrano, Lucelle's father, testified that sometime in November 1996, at dawn, he was in bed and noticed that the appellant was in the bedroom of his cousin-in-law. Sometime later, he went to the bathroom. He then heard his wife ask the appellant where he had come from and the latter replied that he just came from the roof of the house. On another occasion, one early Sunday morning, he noticed blood stains on Lucelle's short pants. When she declared that she had her monthly period, he gave her P5.00 with which to buy sanitary napkins. Lucelle refused to accept the money. He suggested that she wash herself but she just nodded her head. When he asked her why she refused to accept the money, Lucelle replied that she was afraid to tell him because she might be killed.

Lourdes Serrano testified that she was Lucelle's mother. Lucelle was born on February 19, 1986.[12] She and her husband Celso Serrano and their daughter Lucelle resided with her mother, Guadalupe Ulit, at No. 7104 San Maximo Street, Olympia, Makati City. Her sister Marina and the appellant, her brother, also resided in the same house. The family slept together in the evenings in the sala of the house while Marina slept in her bedroom. At times, Marina allowed her niece Lucelle to sleep in her bedroom. At 11:00 p.m. on February 19, 1997, Lourdes noticed that Lucelle was not at her side. The appellant, who usually also slept in the sala, was not there either. Lourdes went to Marina's bedroom and saw Lucelle in bed (papag), covered with a blanket. Beside her was the appellant who was wearing a pair of short pants and undershirt. When the appellant saw Lourdes, he slid down from the bed, went under the papag, and furtively left the room. When Lourdes removed the blanket, she saw Lucelle lying sideways with her knees up to her chin (nakabaluktot). Lucelle was trembling with fear. When Lourdes asked Lucelle what happened, she did not respond. Lourdes left the room and went back to the sala. She wanted to talk to the appellant but decided against it when she saw him seated in the sala, playing with his balisong.

Lourdes further testified that at 9:00 p.m. on March 2, 1997, she and her husband were having dinner when she noticed that Lucelle was nowhere to be found. She looked for her daughter in the house, but failed to find her. She then asked her cousin Nita if she had seen Lucelle. Nita replied in the negative. When Lourdes asked Nita if Lucelle was inside the bathroom, Nita responded that the appellant was using it. Momentarily, Lourdes saw the appellant emerge from the bathroom. He was in his short pants and his shirt was on his shoulder. He was perspiring profusely. Lourdes was flabbergasted when she saw Lucelle come out of the bathroom after the appellant. Lucelle was crying and looked pale. When Lourdes asked Lucelle why she was crying, she told her mother that she had just urinated. The appellant later told her sister Lourdes that he did not do anything to Lucelle.

Believing that the appellant had been abusing their daughter, Celso and Lourdes brought Lucelle on March 5, 1997, to Barangay Chairman Romeo Medina. On their way, Lucelle adamantly refused to tell her parents what the appellant did to her. However, when they reached the barangay headquarters, Lucelle told the barangay chairman that the appellant sexually abused her. Thereafter, Lourdes filed a complaint with the barangay chairman against the appellant for sexually molesting Lucelle.

Barangay Tanod Fernando David testified that on March 6, 1997, the barangay chairman ordered him and Barangay Tanod Antonio Echavez to invite and bring the appellant to the barangay hall. The barangay chairman asked the appellant if he raped Lucelle and the latter replied that he did. A Sinumpaang Salaysay was prepared in the Office of the Barangay Chairman in which the appellant admitted that he raped Lucelle in February 1997, and on March 2, 1997, despite her resistance, and that he threatened to kill her and her family if she divulged the incidents to her parents.[13] The appellant signed his statement in the presence of the barangay chairman and the barangay tanods.

From the barangay headquarters, the appellant was brought to the Makati City Police Headquarters where Celso, Lourdes and Lucelle filed a complaint against him for rape and acts of lasciviousness. SPO4 Lilia Hogar of the Women's Desk Unit took the sworn statements of Lourdes and Lucelle.[14] She conducted a custodial investigation of the appellant who was without counsel during which the latter admitted having raped the victim. SPO4 Hogar also prepared a report on her investigation of the victim's complaint.[15]

On July 28, 1997, Dr. Armie M. Soreta-Umil, NBI Medico-Legal Officer, testified that on March 12, 1997, she conducted genital and vaginal examinations on Lucelle and submitted Living Case Report No. MG-97-355 which contained the following findings:

GENERAL PHYSICAL EXAMINATION:

Height: 141 cm. Weight: 78 lbs.

Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject.

Breasts, developing, conical, firm. Areolae, light-brown, 2.6 cms. in diameter. Nipples, light-brown, protruding, 0.8 cm. in diameter.

No extragenital physical injuries noted.

GENERAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora, gaping. Labia minora, coaptated. Fourchette, lax. Vestibular mucosa, pinkish. Hymen, tall, thick, intact, distensible. Hymenal orifice, admits a tube 2.5 cms. in diameter. Vaginal walls, lax. Rugosities, shallow.

CONCLUSIONS

1.) No evident sign of extragenital physical injuries noted on the body of the subject at the time of

examination.

2.) Hymen, intact but distensible, and its orifice wide (2.5 cms. in diameter) as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing any genital injury.[16]

When the prosecution offered in evidence the appellant's Sinumpaang Salaysay before the barangay chairman[17] as part of the testimony of Barangay Tanod Fernando David, the appellant objected to its admission on the ground that the appellant was not assisted by counsel and that, he was forced and coerced into signing the same. Nevertheless, the trial court admitted the statement as part of David's testimony. The appellant's counsel, likewise, objected to the admissibility of Lucelle's sworn statement on the ground that she was incompetent to give the same because of her mental illness. The trial court admitted the sworn statement of Lucelle in evidence as part of her testimony.

After the prosecution had rested its case, the trial court reset the hearing to November 5, 1997 for the appellant to adduce his evidence. When the case was called for trial on that date, his counsel manifested to the court that the appellant was changing his plea in Criminal Cases Nos. 97-385 and 97-387 from "not guilty" to "guilty." He also manifested that he would no longer adduce any evidence in his defense in Criminal Cases Nos. 97-386 and 97-388 because the prosecution failed to prove his guilt beyond reasonable doubt for the crimes charged therein. The trial court suspended the proceedings and gave the appellant forty-five minutes to confer with his counsel. When trial resumed, the appellant reiterated his earlier manifestation. When told by the court that he could be sentenced to death for the rape charges, the appellant stood pat on his decision to plead guilty in Criminal Cases Nos. 97-385 and 97-387, and to no longer present any evidence in his defense in the other two cases. The appellant was re-arraigned in Criminal Cases Nos. 97-385 and 97-387 with the assistance of the same counsel and entered his plea of guilty to the charges.

On December 15, 1997, the trial court rendered judgment convicting the appellant of all the crimes charged. The decretal portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case Nos. 97-385 and 97-386, for rape, the prosecution has proven beyond reasonable doubt the guilt of the accused, FELICIANO ULIT Y TAMPOY, as principal in the two counts of statutory rape defined and penalized under Article 335 of the Revised Penal Code, as amended. He is hereby declare[d] CONVICTED in each of the cases. Accordingly he is sentenced to suffer the supreme penalty [of] DEATH in each of the two cases; and indemnify the victim LUCELLE SERRANO, in the amount of P50,000 as moral damages for each of the cases;

2. In Criminal Case Nos. 97-387 and 97-388, for acts of lasciviousness, the prosecution has proven beyond reasonable doubt the guilt of the accused, FELICIANO ULIT Y TAMPOY, as principal in two counts of acts of lasciviousness defined under Article 336 of the Revised Penal Code and penalized under Section 5(b) of R.A. 7610. He is hereby declared CONVICTED in each of the two cases; and, accordingly, he is sentenced to suffer in each of the cases an indeterminate prison term from eight (8) years, eight (8) months and one (1) day of prision mayor in its medium period, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal in its medium period, as maximum; and, indemnify the victim, LUCELLE SERRANO, in the amount of P20,000 as moral damages for each of the cases.

SO ORDERED.[18]

The trial court declared that even prescinding from the appellant's plea of guilty, the prosecutor adduced proof beyond reasonable doubt of the guilt of the appellant for qualified rape in Criminal Cases Nos. 97-385 and 97-386. The trial court ruled that although Lucelle did not testify on the contents of her sworn statement[19] the same were admissible in evidence as part of the *res gestae*.

The appellant did not appeal from the decision in Criminal Cases Nos. 97-387 and 97-388. In view of the trial court's imposition of the death penalty on the appellant in Criminal Cases Nos. 97-385 and 97-386, the said cases were brought to this Court on automatic appeal.

The appellant assails the decision of the trial court with the lone assignment of error, to wit:

THE TRIAL COURT ERRED IN SENTENCING THE ACCUSED FELICIANO ULIT WITH A DEATH PENALTY DESPITE HIS ADMISSION OF GUILT.[20]

The appellant does not contest his conviction for rape in Criminal Cases Nos. 97-385 and 97-386, and the validity of the proceedings in the said cases in the trial court. He pleads, however, that he be spared the death penalty. He asserts that he was so remorseful for the crimes he committed and that he pleaded guilty in Criminal Cases Nos. 97-385 and 97-387; he no longer presented any evidence in Criminal Case No. 97-388 so that the proceedings before the court would be shortened and simplified. Nevertheless, the appeal in a criminal case is a review de novo and the court is not limited to the assigned errors.[21] An appeal thus opens the whole case for review, and the appellate tribunal may consider and correct errors though unassigned and even reverse the decision of the trial court on the grounds other than those the parties raised as errors.[22]

Appellant's Plea of Guilty in
Criminal Case No. 97-385
was Imprudently Made.

In Criminal Case No. 97-385, the appellant was charged with qualified rape, i.e., the rape of his niece, who was a minor, punishable by death under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. Undoubtedly, the appellant was charged with a capital offense. When the appellant informed the trial court of his decision to change his plea of "not guilty" to "guilty," it behooved the trial court to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea as mandated by Section 6, Rule 116 of the Revised Rules of Criminal Procedure. In *People vs. Camay*,[23] this Court enumerated the following duties of the trial court under the rule:

1. The court must conduct a searching inquiry into the voluntariness and full comprehension [by the accused] of the consequences of his plea;
2. The court must require the prosecution to present evidence to prove the guilt of the accused and precise degree of his culpability; and
3. The court must require the prosecution to present evidence in his behalf and allow him to do so if he desires.[24]

The *raison d'être* for the rule is that the courts must proceed with extreme care where the imposable penalty is death, considering that the execution of such sentence is irrevocable. Experience has shown that even innocent persons have at times pleaded guilty. Improvident pleas of guilty to a capital offense on the part of the accused must be averted since by admitting his guilt before the trial court, the accused would forfeit his life and liberty without having fully understood the meaning, significance and the dire consequences of his plea.[25]

There is no hard and fast rule as to how the trial judge may conduct a searching inquiry. It has been held, however, that the focus of the inquiry must be on the voluntariness of the plea and the full or complete comprehension by the accused of his plea of guilty so that it can truly be said that it is based on a free and informed judgment. In *People vs. Aranzado*,[26] we formulated the following guidelines as to how the trial court may conduct its searching inquiry:

- (1) Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had

the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. These the court shall do in order to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent or avenging quarters.

(2) Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

(3) Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

(4) Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. Not infrequently indeed an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to see to it that the accused does not labor under these mistaken impressions.

(5) Require the accused to fully narrate the incident that spawned the charges against him or make him reenact the manner in which he perpetrated the crime, or cause him to supply missing details or significance.[27]

In *People vs. Ostia*,[28] we held that the trial court is also required to probe thoroughly into the reasons or motivations, as well as the facts and circumstances for a change of plea of the accused and his comprehension of his plea; explain to him the elements of the crime for which he is charged as well as the nature and effect of any modifying circumstances attendant to the commission of the offense, inclusive of mitigating and aggravating circumstances, as well as the qualifying and special qualifying circumstances, and inform him of the imposable penalty and his civil liabilities for the crime for which he would plead guilty to.[29]

In this case, the trial court failed to make a searching inquiry into the appellant's voluntariness and full comprehension of his plea of guilty. This is evident by the transcript of stenographic notes taken on November 5, 1998:

ATTY. MANALO

Your Honor, at today's reception of defense' evidence, accused informed this representation that he will no longer present evidence and instead willing to change his plea from not guilty to that of guilty. This accused's representation is therefore praying that he be allowed to change his plea from that of not guilty to guilty.

COURT

You better confer with your client and explain to him the consequences of his intended change of plea from not guilty to that of guilty.

ATTY. MANALO

Yes, Your Honor.

COURT (to the accused)

Is your counsel's manifestation true, that you would like to change your plea from not guilty to that of guilty

and that you are no longer presenting evidence in Criminal Cases Nos. 97-386 and 97-388?

ACCUSED

Yes, Your Honor.

COURT (to the accused)

You talk with your lawyer and think twice before asking the court to change your plea of not guilty to that of guilty. The Court will call your case again.

...

COURT (to the accused)

Mr. Ulit, earlier your counsel informed the court that you would like to change your plea from not guilty to that of guilty, in Criminal Case No. 97-385, for rape and Criminal Case No. 97-387, for Acts of Lasciviousness, do you affirm the manifestation of your counsel?

ACCUSED

Yes, Your Honor.

COURT (to accused)

Do you know that you are accused here for the crime of rape, a capital offense which carries with it a capital punishment?

ACCUSED

Yes, Your Honor.

COURT (to accused)

Despite your knowledge that you are charged with a capital offense which carries with it a capital penalty you still insists that you are pleading guilty?

ACCUSED

Yes, Your Honor.

COURT (to accused)

Was there anyone who forced you to change your plea of not guilty to that of guilty?

ACCUSED

None, Your Honor.

COURT (to accused)

Do you know that by pleading guilty you will be sentenced in accordance with [what] the law provides?

ACCUSED

Yes, Your Honor.

COURT (to accused)

Do you know that the penalty provided for by law is death penalty because the Information states that the victim is eleven years old and your niece and that you used a deadly weapon in the commission of the rape?

ACCUSED

Yes, Your Honor. I am willing to plead guilty.

COURT

Alright, arraign the accused.[30]

First. The trial court did not ask the appellant his reasons for changing his plea, from not guilty to that of guilty, and the cogent circumstances that led him to decide to do so.

Second. It appears in the Informations filed by the Public Prosecutor that the appellant opted not to avail himself of his right to a regular preliminary investigation and refused to execute a waiver under Article 125 of the Revised Penal Code. The records also show that the appellant executed a Sinumpaang Salaysay while detained at the barangay hall where he confessed to having raped the victim in February 1997 and March 2, 1997. However, the trial court did not ask the appellant whether he was assisted by counsel when he was brought to the Office of the Public Prosecutor for inquest investigation. Neither did the court a quo inquire about the circumstances and the appellant's reasons for refusing to execute the said waiver.

The records show that when the prosecution offered the appellant's Sinumpaang Salaysay in evidence to prove that he confessed to having raped the victim in February 1997 and March 2, 1997, the appellant objected thereto on the ground that he was not assisted by counsel and that he was coerced into signing the same.

Third. The trial court also failed to ascertain from the appellant whether he was assisted by counsel when he executed his Sinumpaang Salaysay while detained at the barangay hall; and, if he was not so assisted by counsel,

whether he had waived his right thereto, before and when he signed his Sinumpaang Salaysay.

Fourth. The trial court failed to ask the appellant why he was pleading guilty to a rape committed in November 1996, when in his Sinumpaang Salaysay,[31] he confessed to having raped the victim only in February 1997 and March 2, 1997. The appellant did not admit having raped her in November 1996 as alleged in the Information in Criminal Case No. 97-385. The trial court did not even inquire from the appellant who prepared and typed his Sinumpaang Salaysay and if the contents of his statement were explained to him before he signed the same.

Fifth. The trial court did not explain the following to the appellant, in plain and simple terms so as to be understood by him: (a) the elements of the crime of qualified rape; (b) the circumstances of relationship and the minority of the victim; and (c) that his plea of guilty to qualified rape would not mitigate the penalty for the crime in light of Article 63 of the Revised Penal Code.

Sixth. It was not explained to the appellant that if convicted of qualified rape, he would be civilly liable to the victim in the amount of P50,000 as moral damages and P75,000 as civil indemnity ex delicto.

Seventh. Neither did the trial court inquire from the appellant's counsel whether the meaning and the consequences of a guilty plea were explained to the appellant in a language or dialect known to and understood by him.

Eighth. The trial court failed to delve into and ascertain from the appellant his age, educational attainment and socio-economic status.

Ninth. The trial court failed to ask the appellant to narrate the facts and circumstances surrounding the incident of qualified rape as charged in Criminal Case No. 97-385.

Tenth. The appellant was not asked if he desired to adduce evidence in Criminal Case No. 97-385 in spite of his plea of guilty.

As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of the improvidence thereof, and when such plea is the sole basis of the condemnatory judgment.[32] However, where the trial court receives, independently of his plea of guilty, evidence to determine whether the accused committed the crimes charged and the precise degree of his criminal culpability therefor, he may still be convicted if there is ample proof on record, not contingent on the plea of guilty, on which to predicate conviction.[33]

In this case, the prosecution had already rested its case when the appellant decided to change his plea. In fact, the trial court granted the prosecution's motion that the evidence it had presented be considered proof of the degree of culpability of the appellant. It is, thus, incumbent upon this Court to determine whether the evidence adduced by the prosecution in Criminal Case No. 97-385 is sufficient to establish beyond reasonable doubt the appellant's guilt for qualified rape.

In determining the guilt of the accused in rape cases, the Court is guided by the following considerations: (a) that an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime which usually involves two persons, the testimony of the complainant must be scrutinized with extreme caution; and (c) that 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 of the defense.[34] It, likewise, bears stressing that in all criminal prosecutions, without regard to the nature of the defense which the accused may raise, the burden of proof remains at all times upon the prosecution to establish his guilt beyond reasonable doubt.[35]

The Prosecution Adduced Proof

of the Appellant's Guilt Beyond
Reasonable Doubt of the Crime
of Rape in Criminal Case
No. 97-385

We have reviewed the evidence on record and we are convinced that the prosecution adduced proof beyond reasonable doubt that the appellant raped the victim in November 1996. The victim declared in her sworn statement, on direct examination and her testimony on clarificatory questions made by the trial court, that indeed, the appellant raped her in November 1996. Quoted hereunder is the testimony of Lucelle on direct and on re-direct examination:

Fiscal

Q So, matapos mong ituro ang tiyuhin mo, ano ang ginawa niya sa iyo?

A Ginahasa niya ako.

Q Ilang ulit kang ginahasa?

A Marami po.

Q Kailan ka ginahasa ng tiyuhin mo?

A November po.

Q 19?

A 1996, po.

Q Saan ka ginahasa?

A 7104 San Maximo St., Makati City, po.[36]

...

Fiscal

Q Humigit-kumulang, anong oras ng gabi nang gahasain ka ng Tito Ely mo noong Nobyembre 1996?

A Alas onse po ng gabi.

Q Samakatuwid, hindi na siya nagtrabaho, wala na siya sa trabaho?

A Wala na po.

Q Saang lugar ka ginahasa?

A Sa 7104 San Maximo St.

Q Sa loob ba ng bahay?

A Opo.

Q Saang parte ng bahay ka ginahasa ng Tito mo?

A Sa kuwarta po.[37]

...

COURT

Q Noong Nobyembre 1996, ayon sa iyo ay ginahasa ka ng iyong Tito. Saan ka ginahasa ng Tito mo?

A Sa 7104 San Maximo St., po.

Q Doon din sa bahay na iyong tinitirhan?

A Opo.[38]

In her Sworn Statement,[39] Lucelle narrated in detail how the appellant ravished her:

06.T: Kailan ka unang senalbahe ng iyong TITO ELY?

S: Noon pong Nobyembre 1996 hindi ko na po matandaan ang petsa, mga bandang 6:00 ng gabi po nang ako ay natutulog sa loob po ng kuwarta ay nagising na lang po ako nang maramdaman ko na may humahalik sa aking pisngi, at nang ako po ay magising ay nakita ko po si TITO ELY na may hawak na balisong na humigit kumulang po sa 10 pulgada ang haba na nakatutok sa aking kaliwang leeg habang humahalik po sa aking pisngi at ang sabi ay kung ako daw po ay magsusumbong sa aking magulang ay papatayin po niya (TITO ELY) ako. Pagkatapos po ay hinubaran po ako ng panty at naghubad na rin po si TITO ELY ng kanyang short pants at pumatong na po sa akin. Ipinasok po ni TITO ELY and kanyang (TITO ELY) ari sa aking “PEPE” at ako po ay nasaktan at umiyak na lang po ako at nang makaraos po si TITO ELY ay umalis na lang[40]

We do not agree with the ruling of the trial court that the contents of the sworn statement of Lucelle are hearsay, simply because she did not testify thereon and merely identified her signatures therein. By hearsay evidence is meant that kind of evidence which does not derive its value solely from the credence to be attributed to the witness herself but rests solely in part on the veracity and competence of some persons from whom the witness has received the information.[41] It signifies all evidence which is not founded upon the personal knowledge of the witness from whom it is elicited, and which, consequently, is not subject to cross-examination.[42] The basis for the exclusion appears to lie in the fact that such testimony is not subject to the test which can ordinarily be applied for the ascertainment of truth of testimony, since the declarant is not present and available for

cross-examination. In criminal cases, the admission of hearsay evidence would be a violation of the constitutional provision while the accused shall enjoy the right to confront and cross-examine the witness testifying against him.[43] Generally, the affidavits of persons who are not presented to testify on the truth of the contents thereof are hearsay evidence.[44] Such affidavit must be formally offered in evidence and accepted by the court; otherwise, it shall not be considered by the court for the simple reason that the court shall consider such evidence formally offered and accepted.[45]

In this case, Lucelle testified on and affirmed the truth of the contents of her sworn statement which she herself had given. As gleaned from the said statement, she narrated how and when the appellant raped and subjected her to lascivious acts. She was cross-examined by the appellant's counsel and answered the trial court's clarificatory questions. The prosecution offered her sworn statement as part of her testimony and the court admitted the same for the said purpose without objection on the part of the appellant.

The Prosecution Proved Beyond
Reasonable Doubt that the Appellant
Raped the Victim in February 1997

The trial court convicted the appellant of rape in Criminal Case No. 97-386 on the basis of Lucelle's sworn statement,[46] the testimony of her mother, Lourdes Serrano, the appellant's statement[47] executed in the Barangay Chairman's Office, and the testimony of Dr. Armie Soreta-Umil. We agree with the trial court's findings and conclusion.

First. In Lucelle's sworn statement,[48] she declared that the appellant subjected her to sexual abuse.

Second. Lourdes saw Lucelle in bed (papag) in Marina's room, covered with a blanket beside the appellant who was wearing a pair of short pants and undershirt. He slid down from the papag, went under the bed and slipped outside. When Lourdes removed the blanket, she saw Lucelle trembling with fear, lying sidewise, her knees near her chin (nakabaluktot).

Third. The appellant admitted to the barangay chairman on March 5, 1997, that he raped Lucelle in February 1997:

Na, noong isang araw ng PEBRERO 1997, sa loob ng kuwarte ng aking kapatid na babae, pumasok ako na nadatnang nakahiga si LUCILLE ULIT sa isang papag na anyong natutulog. Lumapit ako sa kanya at pinaghihipuan sa maseselang parte ng kanyang katawan at nang siya'y magising tinakot ko siyang huwag sisigaw, habang siya ay aking hinuhubaran ng "Short" na kasama pati ang kanyang "panty." Nagpupumiglas siya habang ako ay nakadagan sa kanya na noon din ay hinuhubad ko ang aking "brief." Pinaghahalikan ko po siya habang siya ay nagpupumiglas at umiiyak at noon din ay aking pinasok ang aking ari sa kanyang ari. Umiiyak siya habang ang aking ari ay labas masok sa kanyang ari. Nang ako ay makaraos ay tinakot ko siyang huwag magsusumbog sa kanyang mga magulang.[49]

Although the appellant was not assisted by counsel at the time he gave his statement to the barangay chairman and when he signed the same, it is still admissible in evidence against him because he was not under arrest nor under custodial investigation when he gave his statement.[50]

The exclusionary rule is premised on the presumption that the defendant is thrust into an unfamiliar atmosphere and runs through menacing police interrogation procedures where the potentiality for compulsion, physical and psychological, is forcefully apparent. As intended by the 1971 Constitutional Convention, this covers "investigation conducted by police authorities which will include investigations conducted by the municipal police, the PC and the NBI and such other police agencies in our government." [51] The barangay chairman [52] is not deemed a law enforcement officer for purposes of applying Section 12(1) and (3) of Article III of the

Constitution. Under these circumstances, it cannot be successfully claimed that the appellant's statement before the barangay chairman is inadmissible.

The Sufficiency of Evidence on
Lucelle's Relationship with the
Appellant, her Minority, and the
Propriety of the Imposition of
the Death Penalty

The appellant's conviction for two counts of rape having been duly established by the prosecution, we now come to the question of the penalty to be meted upon him.

Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, which was the law in effect at the time of the commission of the subject rapes, provides in part:

ART. 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

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

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

...

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.

...

The qualifying circumstances of minority and relationship must concur. More importantly, they must be both alleged and proved, in order to qualify the crime of rape and warrant the imposition of the death penalty.[53] In addition to the requirement that the qualifying and aggravating circumstance must be specifically alleged in the information, it must be established with certainty that the victim was below eighteen (18) years of age or that she was a minor at the time of the commission of the crime. It must be stressed that the severity of the death penalty, especially its irreversible and final nature once carried out, makes the decision-making process in capital offenses aptly subject to the most exacting rules of procedure and evidence.[54]

The relationship between the appellant and the victim has been adequately established. The allegations in both Informations that the appellant is the victim's "uncle," "a relative by consanguinity within the third civil degree" is specific enough to satisfy the special qualifying circumstance of relationship.

In *People v. Ferolino*,[55] we said —

In this case the allegation that FERLYN is ANTONIO's niece is not specific enough to satisfy the special qualifying circumstances of relationship. If the offender is merely a relation — not a parent, ascendant,

step-parent, or guardian or common law spouse of the mother of the victim - it must be alleged in the information that he is "a relative by consanguinity or affinity [as the case may be] within the third civil degree." That relationship by consanguinity or affinity was not alleged in the informations in these cases. Even if it was, it was still necessary to further allege that such relationship was within the third civil degree.[56]

The prosecution's evidence has also shown that the appellant is the victim's uncle, being the older brother of the victim's mother, a fact that the appellant himself admitted.

The same cannot, however, be said with respect to the age of the victim. In *People v. Pruna*,[57] the Court, after noting the divergent rulings on proof of age of the victim in rape cases, set out certain guidelines in appreciating age, either as an element of the crime or as qualifying circumstance:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
 - a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
 - b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
 - c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.
6. The trial court should always make a categorical finding as to the age of the victim.[58]

In the present case, no birth certificate or any similar authentic document was presented and offered in evidence to prove Lucelle's age. While the victim testified that she was born on February 19, 1986, therefore 11 years old when the appellant twice raped her, the same will not suffice as the appellant did not expressly and clearly admit the same as required by *Pruna*. The corroboration of Lucelle's mother as to her age is not sufficient either, as there is no evidence that the said certificate of birth was lost or destroyed or was unavailable without the fault of the prosecution. The fact that there was no objection from the defense regarding the victim's age cannot be taken against the appellant since it is the prosecution that has the burden of proving the same. Moreover, the trial court did not make a categorical finding of the victim's minority, another requirement mandated by *Pruna*.

Another issue that needs to be settled is the third paragraph of Article 335 of the Revised Penal Code, as amended, which provides that, "[w]henever rape is committed with the use of a deadly weapon or by two or more persons, the imposable penalty shall be reclusion perpetua to death."

The evidence on record shows that the appellant raped Lucelle with the use of a deadly weapon in both rape incidents as alleged in both informations, and under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, the imposable penalty for the crime is reclusion perpetua to death.

In the determination of whether the death penalty should be imposed on the appellant, the presence of an aggravating circumstance in the commission of the crime is crucial. In the cases at bar, although the relationship of uncle and niece between the appellant and the victim has been duly proven, the alternative circumstance of relationship under Article 15 of the Revised Penal Code cannot be appreciated as an aggravating circumstance against the appellant. While it is true that the alternative circumstance of relationship is always aggravating in crimes against chastity, regardless of whether the offender is a relative of a higher or lower degree of the offended party, it is only taken into consideration under Article 15 of the Revised Penal Code “when the offended party is the spouse, ascendant, descendant, legitimate, natural or adopted brother or sister, or relative by affinity in the same degree of the offender.” The relationship of uncle and niece is not covered by any of the relationships mentioned.[59]

Hence, for the prosecution’s failure to prove the age of the victim by any means set forth in Pruna, and considering that the relationship of uncle and niece is not covered by any of the relationships mentioned in Article 15 of the Revised Penal Code, as amended, the appellant can only be convicted of rape in its aggravated form, the imposable penalty for which is reclusion perpetua to death.

There being no modifying circumstances attendant to the commission of the crimes, the appellant should be sentenced to suffer reclusion perpetua for each count of rape, conformably to Article 69 of the Revised Penal Code.

The victim is entitled to moral damages without need of proof other than the fact of the rape itself because it is assumed that the victim has suffered moral injuries entitling her to such an award.[60] We find the trial court’s award of P50,000 as moral damages to the victim in each rape to be in order.

However, the trial court erred in not awarding civil indemnity to the victim in each case, the same being mandatory upon the finding of the fact of rape.[61] Thus, this Court awards the victim the sum of P50,000 as civil indemnity for each count of rape.

In addition to this, appellant is ordered to pay the victim P25,000 as exemplary damages, the qualifying aggravating circumstance of use of a deadly weapon having attended the commission of the crime.[62]

WHEREFORE, the Decision of the Regional Trial Court of Makati City, Branch 62, in Criminal Cases Nos. 97-385 to 97-388 is AFFIRMED with MODIFICATION. The appellant Feliciano Ulit y Tampoy is found GUILTY beyond reasonable doubt of two counts of rape in Criminal Cases Nos. 97-385 and 97-386, and in each case, is hereby sentenced to suffer the penalty of reclusion perpetua and ordered to pay the victim, Lucelle Serrano, P50,000 as moral damages; P50,000 as civil indemnity; and P25,000 as exemplary damages. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, and Tinga, JJ., concur.

[1] Penned by Judge Roberto C. Diokno.

[2] Criminal Cases Nos. 97-385 and 97-386.

- [3] Records, p. 2.
- [4] Id. at 4.
- [5] Id. at 6.
- [6] Id. at 8.
- [7] Annex “A,” Records, p. 13.
- [8] Id. at 67.
- [9] Exhibit “H,” Records, p. 80.
- [10] TSN, 20 October 1997, pp. 5-6.
- [11] Exhibit “H.”
- [12] Exhibit “A,” Records, p. 71 (Certificate of Baptism).
- [13] Exhibit “F,” Records, p. 77.
- [14] Exhibits “B” and “E.”
- [15] Exhibit “G,” Records p. 78.
- [16] Exhibit “C,” id. at 74.
- [17] Exhibit “F,” id. at 77.
- [18] Records, pp. 226-227.
- [19] Annex “A,” id. at 13.
- [20] Rollo, p. 65.
- [21] *People v. Espejon*, 377 SCRA 412 (2002); *People v. Feliciano*, 365 SCRA 613 (2001).
- [22] *People v. Lucero*, 355 SCRA 93 (2001).
- [23] 152 SCRA 401 (1987).**
- [24] Ibid.
- [25] *People v. Alborida*, 359 SCRA 495 (2001).
- [26] 365 SCRA 649 (2001).**
- [27] Id. at 661-662.
- [28] G.R. No. 131804, February 26, 2003.
- [29] Id. at 14-15.
- [30] TSN, 5 November 1997, pp. 2-4.
- [31] Exhibit “F.”
- [32] *People v. Derilo*, 271 SCRA 633 (1997).

- [33] *People v. Rodriguez*, 375 SCRA 224 (2002).
- [34] *People v. Mariano*, 345 SCRA 1 (2000); *People v. Tacipit*, 242 SCRA 241 (1995).
- [35] *Ibid.*
- [36] TSN, 20 October 1997, pp. 3-4.
- [37] *Id.* at 14.
- [38] *Id.* at 16.
- [39] Exhibit “H.”
- [40] *Ibid.*
- [41] Rules on Evidence, *Herrera Remedial Law*, Volume V, 1999 ed., pp. 563-564.
- [42] *Id.* at 564.
- [43] Fernando, the Revised Rules of Court of the Philippines, Part I, Vol. VIII, 1997 ed., pp. 515-518.
- [44] *Vallarta v. Court of Appeals*, 163 SCRA 587 (1988); *People v. Santos*, 139 SCRA 583 (1985).
- [45] Section 34, Rule 132, Rules of Court.
- [46] *Supra.*
- [47] *Supra.*
- [48] *Supra.*
- [49] *Supra.*
- [50] *People vs. Diano*, 339 SCRA 515 (2000).
- [51] *People vs. Andan*, 269 SCRA 95 (1997).
- [52] R.A. 7160 (Local Government Code of 1991).

SECTION 389. Chief Executive: Powers, Duties and Functions.—

(a) The punong barangay, as the chief executive of the barangay government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.

(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:

- (1) Enforce all laws and ordinances which are applicable within the barangay;
- (2) Negotiate, enter into, and sign contracts for and in behalf of the barangay, upon authorization of the sangguniang barangay;
- (3) Maintain public order in the barangay and, in pursuance thereof, assist the city or municipal mayor and the sangguniang members in the performance of their duties and functions;
- (4) Call and preside over the sessions of the sangguniang barangay and the barangay assembly, and vote only to break a tie;
- (5) Upon approval by a majority of all the members of the sangguniang barangay, appoint or replace the

barangay treasurer, the barangay secretary, and other appointed barangay officials;

(6) Organize and lead an emergency group whenever the same may be necessary for the maintenance of peace and order or on occasions of emergency or calamity within the barangay;

(7) In coordination with the barangay development council, prepare the annual executive and supplemental budgets of the barangay;

(8) Approve vouchers relating to the disbursement of barangay funds;

(9) Enforce laws and regulations relating to pollution control and protection of the environment;

(10) Administer the operation of the katarungang pambarangay in accordance with the provisions of this Code;

(11) Exercise general supervision over the activities of the sangguniang kabataan;

(12) Ensure the delivery of basic services as mandated under Section 17 of this Code;

(13) Conduct an annual palaring barangay which shall feature traditional sports and discipline included in national and international games, in coordination with the Department of Education, Culture and Sports;

(14) Promote the general welfare of the barangay; and

(15) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

(c) In the performance of his peace and order functions, the punong barangay shall be entitled to possess and carry the necessary firearm within his territorial jurisdiction, subject to appropriate rules and regulations.

[53] *People v. Emperador*, 390 SCRA 1 (2002).

[54] *People v. Ilagan*, G.R. No. 144595, August 6, 2003.

[55] 329 SCRA 719 (2000).

[56] *Id.* at 735 (Emphasis ours).

[57] 390 SCRA 577 (2002).

[58] *Id.* at 604.

[59] *People v. Lamberte*, 142 SCRA 685 (1986).

[60] *People v. Balas*, 372 SCRA 80 (2001).

[61] *People v. Larena*, 309 SCRA 305 (1999).

[62] *People v. Catubig*, 363 SCRA 621 (2001).

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