

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNABE SANCHA, ACCUSED-APPELLANT.

G.R. Nos. 131818-19. February 03, 2000

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PER CURIAM:

Automatic review of the decision[1] of the Regional Trial Court, Branch 38, Daet, Camarines Norte, finding accused-appellant Bernabe Sancha guilty beyond reasonable doubt of two counts of rape of his daughter, aged 15, and sentencing him, in both cases, to suffer the penalty of death and to indemnify the victim in the amount of P100,000.00.

Two informations for rape were filed against accused-appellant.

In Criminal Case No. 8888, the information[2] against accused-appellant alleged -

"That on or about the 20th day of June 1996 at around 7:00 o'clock in the evening at Sitio Biray, Barangay Banocboc, Municipality of Vinzons, Province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged by bestial lust and taking advantage of his over-bearing power over his own daughter, Bermalyne Aban Sancha, who was living under his parental care, unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with said Bermalyne Aban Sancha, a girl of 15 years of age against the latter's will to her damage and prejudice.

"CONTRARY TO LAW."

In Criminal Case No. 8889, it was alleged -

"That on or about the 21st day of June 1996 at around 9:00 o'clock in the morning at Sitio Biray, Barangay Banocboc, Municipality of Vinzons, Province of Camarines Norte and within the jurisdiction of this Honorable Court, the above-named accused urged by bestial lust and taking advantage of his over-bearing power over his own daughter, Bermalyne Aban Sancha, who was living under his parental care, unlawfully, feloniously, and criminally, did then and there, commit sexual intercourse with said Bermalyne Aban Sancha, a girl of 15 years of age against the latter's will to her damage and prejudice.

"CONTRARY TO LAW."

The cases were then consolidated. When arraigned, accused-appellant pleaded not guilty to the charges, whereupon, joint trial commenced.

The prosecution evidence shows the following: Complainant Bermalyne Aban Sancha is accused-appellant's daughter by his wife Arsenia Aban Sancha. She is the second child of the couple. At the time she testified in court on February 26, 1997, Bermalyne was 16 years old. Upon the death of their mother on June 17, 1995, Bermalyne and her siblings, Emma, 19, Augusto, 12, Maritess, 10, and Rosalie, 8, had been left in the care of accused-appellant in their house in Sitio Biray, Barangay Banokbok, Vinzons, Camarines Norte. Soon after, however, Emma, the eldest, went to Manila.

In the evening of June 20, 1996, accused-appellant and his children, Bermalyne, Augusto, Maritess and Rosalie

were at home about to go to sleep. Their house was small (about one-fourth [¼] of the courtroom) with no partition inside. The family slept side by side on the floor. Accused-appellant slept between Augusto and Maritess. To the right of Augusto were Rosalie and Bermalyne. At about 7:00 p.m., after the children had fallen asleep, accused-appellant went near Bermalyne and then started to remove her t-shirt, short pants and underwear. Bermalyne was awakened, and she started to cry. Accused-appellant removed his short pants and underwear quickly, went on top of Bermalyne and then inserted his penis into her vagina. Bermalyne felt pain in her private parts as accused-appellant forced himself upon her. When accused-appellant removed himself from her, Bermalyne noticed her vagina bleeding. Accused-appellant raped her two more times that night, at about 10:00 p.m. and 12:00 midnight. Throughout the rape, Bermalyne was crying but accused-appellant threatened to kill her if she resisted or woke up her siblings.[3]

The following day, June 21, 1996, at about 8:00 a.m., accused-appellant again sexually assaulted his daughter. At about 11:00 a.m. of that day, while the other children were out, playing in the house of Arsenio Aban, Bermalyne's maternal uncle, accused-appellant again raped Bermalyne inside their house. Bermalyne tried to shout but accused-appellant covered her mouth with his hand. When Bermalyne's siblings returned home at about 3:00 p.m. of that same day, she did not tell them what had happened to her as she was afraid of accused-appellant and ashamed of her disgrace.[4] In fact, she did not even say anything of her ordeal to her uncles Artemio, Alejandro and Arsenio Aban, brothers of her late mother Arsenia, who were also residents of Sitio Biray. Later, Bermalyne and her siblings were brought by accused-appellant to their paternal grandfather's house in Mangcawayan, Vinzons, Camarines Norte.

Somehow, however, Artemio Aban learned from Flory Vasquez and one Julieta that Bermalyne had been raped by accused-appellant. When confronted, Bermalyne broke down and admitted to her uncle that she had been molested by her own father. So, on September 24, 1996, while accused-appellant was out fishing (naglaot), Artemio took Bermalyne to Sitio Biray where Bermalyne confided the matter to her aunt Flocerfida Aban, Artemio's wife. Artemio and Flocerfida did not bring Bermalyne back to Mangcawayan and instead took custody of her.[5]

The following day, September 25, 1996, at about 6:00 p.m., Bermalyne, together with spouses Artemio and Flocerfida, and Flory Vasquez, went to radio station Bombo Radyo (DZVX) in Daet.[6] They sought the help of station manager Rhonnel R. Peñaflor who accompanied them to the 501st Criminal Investigation Group (CIG) Office in Daet, Camarines Norte where the officer-in-charge, SPO2 Clemente Gonzales, conducted an investigation and placed Bermalyne's statements in writing (Exh. C).[7]

On September 26, 1996, Bermalyne filed a criminal complaint (Exh. B) for two counts of rape against accused-appellant before the Municipal Trial Court, Vinzons, Camarines Norte.

On the same day, September 26, 1996, Artemio and Flocerfida accompanied Bermalyne to the Camarines Norte Provincial Hospital in Daet, Camarines Norte for her medical examination. Dr. Marcelito B. Abas, medico-legal officer of Regional Health Office No. 5, examined Bermalyne and his report (Exh. A)[8] yielded the following results:

"GENITAL EXAM:

- = Healed hymenal laceration at 2, 8, 9 o'clock;
- = Vagina admits one finger easily but two fingers with slight difficulty."

The findings showed that the hymenal lacerations of Bermalyne could have been caused by the penetration of a turgid penis during sexual intercourse. There is no finding of other physical injuries inflicted upon Bermalyne.[9]

The defense then presented its evidence. Accused-appellant Bernabe Sancha interposed denials. According to him, at about 6:00 p.m. of June 20, 1996, Arturo and Edmundo Flavia went to his house and they drank two bottles of gin. As they got tired and became tipsy, the two left. At about 7:00 p.m., he was already asleep in his house in Sitio Biray, Barangay Banokbok, Vinzons, Camarines Norte together with his children, Bermalyne, Augusto, Maritess and Rosalie. He slept soundly and woke up at 7:00 a.m. of the following day, June 21, 1996. By 7:30 a.m., he left and did some usual farm work (kaingin) for more than two hours. At about 10:00 a.m., he went back to his house and slept again. He woke up at 3:00 p.m. He claimed that the charge of double rape was merely a scheme (pakana) of his brothers-in-law, Alejandro and Artemio, to get back at him for Arsenia's death. He alleged that they harbored ill-feelings against him for being negligent in attending to Arsenia while she was giving birth to her youngest child which resulted in her untimely demise. After Arsenia's death, Bermalyne would visit the house of her maternal uncles once in a while. He averred that the reason he transferred his family to Mangcawayan was that he wanted to take care of his father (Bermalyne's paternal grandfather) who was already very old. He said that when the case was filed, he did not ask Bermalyne why his brothers-in-law prevented him from seeing her. Nor did he bring up the matter to any member of his own family nor to any of his immediate relatives.[10]

On August 21, 1997, the trial court rendered a decision finding accused-appellant guilty of two counts of rape. The dispositive portion of its decision reads:[11]

"WHEREFORE, finding the accused Bernabe Sancha guilty beyond reasonable doubt of the two (2) counts of rape as charged under Art. 335 Revised Penal Code as amended by R.A. 7659, he is hereby sentenced to suffer the extreme penalty of DEA TH in both cases and to pay the offended party the amount of P100,000.00, as damages.

"SO ORDERED."

Accused-appellant seeks reversal of his conviction alleging errors in the trial court's decision.

First. Accused-appellant points out inconsistencies in Bermalyne's statements as to the number of times he allegedly raped her. He says that at one time, she said she was abused three times, while at another time she said four times. On the other hand, a witness for the prosecution, Flocerfida Aban, testified that Bermalyne related to her that she had been raped by accused-appellant twice. Accused-appellant contends that because of these discrepancies, Bermalyne was lying.

This contention is without merit. The perceived discrepancies in the testimony of Bermalyne as to the number of times she was raped are inconsequential. Inconsistencies of this nature can be expected of a young girl whose harrowing experience she is called upon to recall.[12] They tend to buttress, rather than weaken, her credibility, since they indicate that her testimony was not contrived.[13] Indeed, victims of rape hardly retain in their memories the dates, number of times and manner they were violated. For this reason, it has been held that the exact date of the commission of the rape is not an essential element of the crime.[14] What is material is that the commission of the rape by accused-appellant against complainant is sufficiently proven. Discrepancies should refer to significant facts which are crucial to the guilt or innocence of an accused. Inconsistencies and discrepancies in details which are irrelevant to the elements of the crime, such as the exact time of the commission of the crime, are not grounds for acquittal.[15]

On the other hand, that Bermalyne was telling the truth is evident from a reading of her testimony as she recounted, with tears welling in her eyes, how she was molested by her father three times on the night of June 20, 1996 and twice in the morning of June 21, 1996:

"Q

You said awhile ago that you were about to sleep on that evening of June 20, 1996 , at around 7:00 o'clock , is it not?

A

Yes, sir.

Q

Were you able to sleep that night?

A

No, sir.

Q

Why were you not able to sleep that night on June 20, 1996 , at around 7:00 o'clock in the evening?

FISCAL FERRER

Witness is crying, Your Honor. I would like to place on record that witness is shedding tears.

ATTY. BARANDON

I would like to put on record that the alleged victim cannot answer simple question, Your Honor.

COURT

The witness is crying that's the reason why she could not answer. And the court is waiting for that answer.

FISCAL FERRER

Q

Who were the persons inside your house?

A

Augusto, Maritess, Rosalie and my father, sir.

Q

Where is your [father] at that time?

A

He was in the sala, sir.

Q

How about you?

A

I was also in the sala, sir.

FISCAL FERRER

Q

What was your distance?

A

A bit far, sir.

Q

What happened?

A

My father went near me, sir.

Q

What did he do?

A

He undressed me, sir.

ATTY. BARANDON

We believe the answer should be louder.

(WITNESS)

A

He undressed me, sir.

Q

You said that your father removed your dress, what else did he do?

A

My pant[y], sir.

Q

What [were] you wearing that night?

A

T-shirt, sir.

Q

That was also removed by your father?

A

Yes, sir.

Q

Were you wearing short pants?

A

Yes, sir, I was wearing.

xxx xxx xxx

FISCAL FERRER

Q

When your father was removing your T-shirt, and short pants, what did you do, if any?

A

I was crying, sir.

Q

Did he stop when he saw you crying?

A

No, sir, he did not.

Q

So, do you mean to say that you were totally naked when your father removed your clothes including your pant[y]?

A

Yes, sir.

Q

When you were totally naked, what did your father do next?

A

(At this juncture, witness is shedding tears). He inserted his penis in my vagina, sir.

Q

Did your father also undress himself?

A

Yes, sir.

Q

What did your father remove?

A

He removed his brief, sir.

Q

What else did he remove aside from his brief?

A

Short pants, sir.

Q

And when your father removed his short pants, did you see his penis?

ATTY. BARANDON

Very leading, Your Honor.

FISCAL FERRER

I will reform the question.

Q

When your father removed already his short pants and brief, what did he do to you?

A

He inserted his penis into my vagina, sir.

Q

Was he able to insert his penis into your vagina?

xxx xxx xxx

ATTY. BARANDON

We put [it on] record that the witness is crying.

(WITNESS)

A

No, sir.

COURT

The court would like to hear if the penis was able to be inserted by the accused into your vagina?

(WITNESS)

A

Yes, sir.

FISCAL FERRER

Q

And what did you feel when you said he inserted his penis into your vagina?

A

It was painful, sir.

Q

Now, when your father was about to insert his penis into your vagina, what was your position in relation to your father?

A

I was lying on my back, sir."[16]

"FISCAL FERRER

Q

After your father had removed your dress including your underwear you said that you were on a lying position, is it not?

A

Yes, sir.

Q

In what portion of the sala were you lying at?

A

On one side of the sala, sir.

Q

On the floor of the sala?

A

Yes, sir.

Q

While you were lying what was the position of your father in relation to you after he undressed himself?

A

He placed himself on top of me.

Q

You mean to say that your father was on top of you?

A

Yes, sir.

Q

When your father was on top of you what did you do next?

A

He violated me.

Q

You mean to say that your father was able to insert his penis?

ATTY. BARANDON

That will be leading.

FISCAL FERRER

Q

What do you mean by your father violated you?

A

He had carnal knowledge with me.

Q

For how long was your father on top of you while he was having carnal knowledge with you?

A

About one hour.

Q

While your father was on top of you and having carnal knowledge with you what did you do, if any?

A

I was crying.

Q

When you cried did your father stop of what he was doing to you?

A

No, sir. He did not.

Q

Did you plead mercy to your father when he was on top of you?

A

Yes, sir.

Q

Did he accede to your plea?

A

No, sir.

Q

You mean to say despite your plea for mercy he did not stop of what he was doing to you?

A

Yes, sir.

Q

While your father was on top of you, what did you feel in your private organ?

A

Painful, sir.

Q

And why was your private organ painful while your father was on top of you?

A

Because he violated me.

COURT

Q

Which is painful?

A

My vagina, Your Honor.

xxx xxx xxx

FISCAL FERRER

Q

Did you tell your father that your vagina was painful?

A

Yes, sir.

Q

And what was the reaction of your father upon hearing that?

A

He removed himself on top of me.

Q

And when he removed himself on top of you what did you notice or observe from your private organ?

A

It was bleeding.

Q

And when you saw that your private organ was bleeding when your father removed himself from you what did you do to your private organ?

A

None, sir.

Q

And after your father removed himself on top of you what happened next?

A

Nothing more.

Q

Did you get dress[ed]?

A

Yes, sir.

Q

How about your father, where did he go?

A

He was staying at the sala.

Q

By the way [Ms.] Witness, how many times did your father [lie] on top of you on that night of June 20, 1996 ?

A

Three (3) times, sir.

Q

You mean to say that your father abused you for three (3) times on that night of June 20, 1996 while you were in the sala of your house?

ATTY. BARANDON

We will object to that question, Your Honor. It will be misleading because the first question was 'ilang beses

ka pinatungan?’ and she said three (3) times. The next question of the Fiscal was ‘ilang beses ka inabuso?’ There will be no basis.

COURT

No, it was answered three (3) times and that is another question.

Q

How many times were you violated, in local parlance she used 'kinayos'?

WITNESS:

A

Three (3) times, Your Honor.

FISCAL FERRER

Q

During those times that your father violated you on three (3) occasions on the night of June 20, 1996 where are your brother Augusto, sisters Maritess and Rosalie?

A

They were in the house.

Q

Where particularly in the house?

A

In the sala.

Q

Who is the nearest to you among your brother and sisters while your father was violating you?

A

Rosalie, sir.

Q

Approximately what was your distance from Rosalie while your father was violating you while you were inside that house?

A

That place where Atty. Barandon is seated. (Witness indicating a distance of two (2) meters, more or less.)

COURT

2 ½ more or less.

FISCAL FERRER

Q

And what was Rosalie doing then while your father was violating you?

A

She was sleeping.

Q

How about your sister Maritess what was she doing then?

A

She was also sleeping.

Q

How about your brother Augusto?

A

He was also sleeping.

Q

Did you try to wake them up when your father was violating you on three (3) occasions during that night of June 20, 1996 ?

A

No, sir.

Q

Why did you not wake them up while you were being violated by your father?

A

Because I was warned by my father not to wake them up.

Q

You mean to say your father warned you not to wake them up, is that what you were saying?

A

Yes, sir.

Q

And because your father warned you not to wake them up you did not wake them up out of fear, is it not?

A

Yes, sir.

Q

You said that the first time that he violated you was around 7:00 o'clock in the evening, is it not?

A

Yes, sir.

Q

What time was the second time that your father violated you on June 20, 1996 ?

A

10:00 o'clock , sir.

Q

What time was the third time that your father violated you again on June 20, 1996 ?

A

12:00 midnight .

Q

By the way, were you able to sleep that night when your father violated you three (3) times?

A

No, sir.

Q

What did you do the whole night when you said you were not able to sleep?

A

I kept on crying.

Q

Where was your father when you kept on crying that night?

A

He was in the sala.

Q

Did you try to talk to your father why he did that to you?

A

No, sir.

Q

The following day, June 21, 1996 , what happened next, if any?

A

I stayed in the house.

Q

And what time was that?

A

At 8:00 o'clock in the morning.

Q

And while you were in your house at 8:00 o'clock in the morning of June 21, 1996 , what happened next to you?

A

He again violated me.

Q

You mean to say that your father again had carnal knowledge of you on June 21, 1996 ?

A

Yes, sir.

Q

Where?

A

In the sala, sir.

Q

And what time did your father violate you again on June 21, 1996 when you said you were in the sala of your house?

A

About 11:00 o'clock in the morning.

Q

And how did your father again violate you on June 21, 1996 , will you describe that to this Honorable Court?

A

He again undressed me.

Q

And after undressing you what happened next?

A

He removed my shorts and panty.

Q

And after your father had removed your dress, shorts and panty, what did he do next?

A

He undressed himself.

Q

And after your father undressed himself what did he do to you?

A

He removed his shorts and brief.

Q

And after removing them what did your father do?

A

He inserted his penis into my vagina.

Q

Did the penis of your father able to insert into your vagina on June 21, 1996 ?

A

Yes, sir.

Q

And what did you feel when the penis of your father again entered into your vagina?

A

It is painful.

Q

And for how long was your father on top of you?

A

About two (2) hours.

Q

Are you sure of that, that your father was on top of you for two (2) hours?

A

Yes, sir.

Q

And how many times did your father place himself on top of you on June 21, 1996 ?

A

Twice, sir.

Q

You mean to say that your father again violated you twice on June 21, 1996 ?

A

Yes, sir.

Q

Ms. Witness, while your father was violating you or having carnal knowledge with you on June 21, 1996 where [were] Rosalie, Maritess and Augusto, your brother and sisters?

A

They were with our neighbors."[17]

The rule is settled that the trial court's appreciation of the evidence will not be disturbed on appeal unless there is good reason for doing otherwise. Accused-appellant has not shown that the trial court misappreciated the evidence.[18] Invariably, on questions of credibility of witnesses, we give due deference to the observations of trial courts since they have a better opportunity for observation than appellate courts. It has thus since become doctrinal that the evaluation of testimonial evidence by the trial court is accorded great respect.[19]

At several instances during her testimony, Bermalyne broke down and cried as she was overcome by emotion, indicating that she was telling the truth.[20] As the trial court observed, she was unperturbed throughout her lengthy cross-examination.[21] If Bermalyne had concocted her tale, she would not have remained consistent throughout her entire testimony in the face of intense and lengthy interrogation.[22]

We are thus convinced that accused-appellant raped Bermalyne. It is well-settled that in rape cases, the accused may be convicted based solely on the testimony of the rape victim, if such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. For by its very nature, rape is committed with the least possibility of being seen by the public. In fact, the presence of eyewitness could even raise serious doubts of its commission.[23]

In this case, Bermalyne's testimony is corroborated by medical findings of hymenal lacerations. Nor may the absence of physical injuries on Bermalyne preclude rape. In cases of incestuous rape, accused-appellant's moral ascendancy over the victim takes the place of violence and intimidation.[24] Moreover, for rape to exist, it is not necessary that the force or intimidation employed be so great or of such character as could not be resisted. It is enough that the intimidation produces such fear in the victim that if she does not yield to the demands of the accused, something grave would happen to her. Intimidation would also explain why there are no traces of struggle which would indicate that the victim fought off her attacker.[25] In fact, the law does not even impose a burden of proving resistance on the part of the rape victim.[26]

Second. Accused-appellant claims that on June 20, 1996, he went to sleep at 7:00 p.m., which was earlier than his children, and that he did not wake up until 7:00 a.m. of the following day, June 21, 1996. He never got up during the night, not even to urinate. He said that at 7:30 a.m., he went to work in the farm and came back at about 10:00 a.m. He slept and woke up at 3:00 p.m.[27] On the other hand, Bermalyne categorically testified that accused-appellant raped her thrice - at 7:00 p.m., 10:00 p.m. and 12:00 midnight - on June 20, 1996, and twice - at 8:00 a.m. and 11:00 a.m. - on June 21, 1996.[28]

Our cases show that those who commit rape are no respecter of time and place. The crime of rape has been known to be committed in places ordinarily considered as unlikely. The scene of the rape is not always nor necessarily isolated or secluded.[29] Rape can be committed in places where people congregate, in parks, along the roadside, within school premises, inside an occupied house and even in a room where other members of the family are also sleeping.[30] Among couples with big families who live in cramped quarters, the presence of other members of

the family is not necessarily a deterrent to the commission of this crime.[31] In this case, it is not impossible for the rape to have taken place inside a small house with no partition and with five occupants therein, including accused-appellant and Bermalyne.

Third. Accused-appellant claims that the two criminal cases for rape filed against him had been concocted by his brothers-in-law. They had been harboring a grudge against him believing that he failed to give the best care to his wife, Arsenia, while she was giving birth to their youngest child, as a result of which she died. Accused-appellant denied that he ever was wanting in caring for his wife during her delivery. He said:

"FISCAL FERRER

You said also that your wife died due to giving birth on June 17, 1995?

A

Yes, sir.

Q

And will you agree with me that somebody assisted your wife in delivering a child?

A

Yes, sir.

Q

And what's the name of the midwife who assisted your wife?

A

Ramona, sir.

Q

And this Ramona is also the midwife of your other children [Bermalyne], Emma, Augusto and Rosalie?

A

Yes, sir.

Q

Why did your wife die on June 17, 1995 ?

A

Because of delivering [a] child, sir.

Q

Was the child alive?

A

Dead, sir.

Q

Together with the mother?

A

Yes, sir.

Q

And you did not participate in the delivery of your wife?

A

I participated, sir.

Q

Your participation is boiling water and giving the necessary things required by the midwife?

A

Yes, sir.

Q

And it was the midwife who actually prepared your wife in delivering her baby?

A

Yes, sir.

Q

And in one way or another, you have nothing to do with the death of your wife?

A

Yes, sir.

Q

And the death of your wife is considered to be an accident?

A

Yes, sir.

Q

And your relatives Avelino, Arsenio and her parents knew this fact that your wife died because of giving birth?

A

Yes, sir.

Q

And you also accept the fact that your wife died because of carrying/delivering a baby?

A

Yes, sir.

Q

And your relatives and the brothers of your wife accepted the fact that your wife died because of some factors beyond the control of the midwife, is it not?

A

Yes, sir.

Q

And your brother-in-law knew the fact that you have nothing to do with the death of your wife? Spped

A

Yes, sir.

Q

And they even went to the wake of your wife and during the burial, is it not?

A

Yes, sir.

Q

And even to the extent of helping you and sympathizing with you due to the untimely death of your wife.

A

Yes, sir."[32]

A prosecution for rape inevitably exposes the complainant to public scrutiny. That is why some victims of rape would rather suffer in silence than face publicity. No woman would want to go through the humiliation of trial unless she actually has been so brutalized that she desires justice for her suffering.[33] In this case, Bermalyne told the court –

"FISCAL FERRER:

Q

Ms. Witness, when you gave your statement to the CIS regarding this incident when you filed this criminal complaint against your father before the MTC of Vinzons, what was the reason that prompted you to file this case against your own father?

A

In order for him not to repeat what he did to me.

Q

With these two (2) cases already filed against your father at your instance and despite what your father did to you, can you still forgive your father?

A

Not anymore, Sir.

Q

You still love your father after what he did to you?

A

I don't love him anymore.

Q

And what do you want that should happen to your father when you filed this case?

A

Hang him."^[34]

We do not think Bermalyne would agree to play along with her uncles just so the latter can punish accused-appellant who is her father. Bermalyne must be so depraved that she would be willing to allow herself to be used as a pawn of her uncles in a plot that can send her father to his death, let alone expose her family to shame.^[35]

Nor do we see any basis to find Bermalyne's uncles so evil as to falsely charge accused-appellant for negligence that was so uncertain.

Fourth. The trial court found accused-appellant guilty of two counts of rape and sentenced him, in both cases, to suffer the penalty of death and to indemnify the victim in the amount P100,000.00 as damages.

Art. 335 of the Revised Penal Code, as amended by Republic Act No.7659, provides:

"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 concurrence of both the minority of the victim and her relationship to the offender constrains the Court to affirm the death penalty imposed by the trial court. Four members of the Court, although maintaining their adherence to the separate opinions expressed in *People v. Echegaray* [36] that R.A. 7659, insofar as it prescribes the penalty of death, is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

As to the monetary liability of accused-appellant, the Court finds that the award by the trial court of P100,000.00 as damages, which is P50,000.00 for each count, should be increased to P150,000.00, or P75,000.00 for each count of rape, as civil indemnity. According to jurisprudence,^[37] since the crime of rape is committed or effectively qualified by circumstances which warrant the imposition of the death penalty by applicable amendatory laws, the complainant should be indemnified P75,000.00 for each count of rape. The additional amount of P50,000.00 for each count of rape by way of moral damages must also be awarded. This award is automatically made in rape cases without need of proof for it is assumed that the complainant has suffered moral injuries entitling her to such an award.^[38]

WHEREFORE, the appealed decision of the trial court, finding accused-appellant Bernabe Sancha guilty beyond reasonable doubt of the crime charged and imposing upon him the penalty of death, is **AFFIRMED** with the **MODIFICATION** that accused-appellant is ordered to pay complainant Bermalyne Aban Sancha P75,000.00 for each count of rape or P150,000.00 civil indemnity, and an additional amount of P50,000.00 in each of the two cases or P100,000.00 as moral damages.

In accordance with Section 25 of R.A. 7659, amending Art. 83 of the Revised Penal Code, upon finality of this decision, let the records of these cases be forthwith forwarded to the Office of the President in case he decides to exercise his prerogative of mercy.

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.

[1] Per Judge Sancho Dames II.

[2] Rollo, pp. 14-15.

[3] TSN of Bermalyne A. Sancha, Feb. 26, 1997, pp. 10-18; Feb. 27, 1997, pp. 2-11 (morning session); See sworn statement of Bermalyne Aban Sancha dated September 26, 1996 (Exh. C), Crim. Case No. 8888, pp. 4-5.

[4] TSN of Bermalyne A. Sancha, Feb. 27, 1997, pp. 11-17 (morning session)

[5] Id., pp. 18-28; TSN of Flocerfida Aban, Feb. 27, 1997, pp. 11-21 (afternoon session); TSN of Artemio Aban, March 3, 1997, pp. 2-9.

[6] TSN of Bermalyne A. Sancha, Feb. 27, 1997, pp. 6-10 (afternoon session); TSN of Flocerfida Aban, Feb. 27, 1997, pp. 21-25; TSN of Artemio Aban, March 3, 1997, pp. 9-11.

[7] TSN of SPO2 Clemente Gonzales, Feb. 28, 1997, pp. 2-11.

[8] Crim. Case No. 8888, RTC Records, p. 4.

[9] TSN of Dr. Marcelito B. Abas, Feb. 26, 1997, pp. 2-8.

[10] TSN of Bernabe Sancha, March 10, 1997, pp. 2-29.

[11] Rollo, p. 24.

[12] People vs. Empante, G.R. Nos. 130665 and 137996-97, April 21, 1999; People vs. Padilla, 301 SCRA 275 (1999)

[13] E.g. People vs. Calayca, 301 SCRA 192 (1999)

[14] People vs. Lim, G.R. Nos. 131861-63, August 17, 1999; People vs. Alba, G.R. Nos. 131858-59, April 14, 1999; People vs. Villamor, 297 SCRA 262 (1998); People vs. Bugarin, 273 SCRA 384 (1997)

[15] People vs. Maglente, G.R. Nos. 124559-66, April 30, 1999.

[16] TSN, Feb. 26, 1997, pp. 13-18.

[17] TSN, Feb. 27, 1997, pp. 2-14 (morning session)

[18] People vs. Lim, *supra*.

[19] E.g. People vs. Lopez, 302 SCRA 669 (1999)

[20] People vs. Ramos, 296 SCRA 559 (1998)

[21] TSN, Feb. 27, 1997, pp. 2-15 (afternoon session)

[22] People vs. Perez, 296 SCRA 17 (1998)

[23] People vs. Medina, 300 SCRA 98 (1998)

[24] People vs. Bernaldez, G.R. Nos. 132779-82, January 19, 2000; People vs. Panique, G.R. Nos. 125763, October 13, 1999; People vs. Bartolome, 296 SCRA 615 (1998); People vs. Balmoria, 287 SCRA 687 (1998)

[25] People vs. Manggasin, G.R. Nos. 130599-600, April 21, 1999; citing People vs. Cañada, 253 SCRA 277 (1996)

[26] People vs. Cantos, G.R. No. 129298, April 14, 1999.

[27] TSN of Bernabe Sancha, March 10, 1997, pp. 5-8.

[28] TSN of Bermalyne A. Sancha, Feb. 27, 1997, pp. 7-14.

[29] People vs. Sandico, G.R. No. 128104, May 18, 1999; People vs. Perez, *supra*.

[30] People vs. Batoon, G.R. No. 134194, October 26, 1999.

[31] People vs. Geromo, G.R. No. 126169, December 21, 1999.

[32] TSN of Bernabe Sancha, March 10, 1997, pp. 15-17.

[33] E.g. People vs. Lopez, *supra*.

[34] TSN of Bermalyne A. Sancha, Feb. 27, 1997, pp. 30-31 (morning session)

[35] People vs. Acala, G.R. Nos. 127023-25, May 19, 1999; People vs. Melivo, 253 SCRA 347 (1996)

[36] 267 SCRA 682 (1997)

[37] People vs. Victor, 292 SCRA 186 (1998); People vs. Alba, *supra*; People vs. Empante, *supra*; People vs. Lim, *supra*.

[38] People vs. Prades, 293 SCRA 411 (1998)

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