

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY MOSQUEDA, ACCUSED-APPELLANT.

G.R. Nos. 131830-34. September 03, 1999

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PER CURIAM:

For automatic review[1] by this Court is the joint decision[2] dated 29 October 1997, of the Regional Trial Court of Iloilo City, Branch 31, in Criminal Cases Nos. 45522, 45523, 45524, 45525, 45526, 45527 and 45528, finding accused appellant Jimmy Mosqueda (hereafter JIMMY), guilty of seven counts of rape committed against his very own daughter and sentencing him to two terms of reclusion perpetua and the extreme penalty of death in each of the five cases.

JIMMY was charged with rape under seven separate complaints filed by her daughter Jaymen Mosqueda (hereafter JAYMEN) who was then only 9 years old when the first rape happened. The said incidents were allegedly committed on separate occasions, to wit: on or about March 1991, June 1991, June 1994, October 1994, November 1994, December 1994 and 27 May 1995. The accusatory portion of the complaints in Criminal Case Nos. 45522[3] and 45523[4] are similarly worded, except for the dates of the commission of the crime, viz.:

That on or about..., in the Municipality of Dingle, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, with deliberate intent, did then and there wilfully, unlawfully and feloniously have sexual intercourse with his daughter complainant/victim Jaymen Mosqueda who was nine (9) years of age.

CONTRARY TO LAW.

Likewise, the accusatory portion of the complaints in Criminal Case Nos. 45524[5], 45525[6], 45526[7], 45527[8] and 45528[9] are similarly worded, except for the dates of the commission of the crimes, which read as follows:

That on or about ..., in the Municipality of Dingle, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, armed with a gun and bladed weapon, with deliberate intent and by means of threat and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter complainant/victim Jaymen Mosqueda who was 12[10] years of age, against her will and without her consent.

CONTRARY TO LAW.

On 6 December 1995, JIMMY, with the assistance of counsel de oficio, entered a plea of not guilty in each of the seven cases. Thereafter, the cases were consolidated and jointly tried.[11]

The evidence for the prosecution is summarized by the Office of the Solicitor General (OSG) in the brief for the appellee as follows:

The complainant Jaymen Mosqueda is the daughter of appellant and Minda Mosqueda. They were residents of Brgy. Bungloy, Dingle, Iloilo, Jaymen has brothers and sisters, namely: James Mosqueda, 16 years old, June Mosqueda, 10 years old, Jane Mosqueda, 9 years old, and Christine Mosqueda, 8 years old at the time the cases

were being tried. Jaymen also said that when she was sexually abused by her father in March 1991, her mother was in Kuwait as contract worker. Her eldest brother James was studying in Manila. James stayed with her aunts Weena Mosqueda and Editha Mosqueda. Jaymen and her two younger sisters and a brother were living with the appellant in their house in Brgy. Bungloy, (pp. 507, tsn, May 22, 1997)

Sometime in March 1991, complainant participated in a field demonstration as one of the muses in their school. On the night of that particular day, while she was sleeping, appellant holding a knife threatened her and proceeded to touch her breast and other parts of her body and told her not to tell anybody. Then appellant pointed the knife at her and she told him, "Father, I am your daughter," but her father warned her not to tell anybody. (pp. 8-10. Ibid.)

While appellant was touching her breast and other parts of her body, she pushed him away but she could not overcome his strength. While his father was doing all this, her younger brothers and sisters were sound asleep. After threatening her with a knife, appellant then placed the knife on the floor near her head. Appellant then made her hold his penis and proceeded to remove her shorts and panty. At first, she did not want to hold his penis but she was later forced to do so because he would not let her free. He then inserted his penis into her vagina because she felt pain. She tried to push him away but she could not because he was holding on to her and he was very forceful. While he was inserting his penis he was on top of her. He made a push and pull action. After which he went to sleep. Complainant cried. She did not tell anybody what happened to her because appellant threatened to kill her including her younger sisters, brother and paternal grandparents should she tell anyone. She wanted to send letters to her mother in Kuwait but appellant crumpled them. (pp. 11-15, *ibid.*)

Complainant was nine (9) years old when appellant sexually abused her in March, 1991. Her birth certificate (Exhibit "B") shows her birthdate as March 3, 1982. She was in Grade II when she was abused. Appellant knew her classmates and teachers so she did not tell them what happened to her. After the incident, appellant encouraged her to join school activities. However, he scolded her for making friends in school or going out with them. Appellant fetched her from school and he would scold her thinking that she was having a boyfriend. (pp.15-18, *ibid.*)

In June, 1991, when complainant's mother was still in Kuwait, her elder brother still in Manila and while living with appellant and younger brother and sisters, appellant again sexually abused the complainant in the same house where the first sexual abuse was committed. Complainant was then nine (9) years old. (pp. 19-21, *ibid.*)

It was about 9:00 o'clock in the evening, shortly before the opening of classes when appellant woke her up, pointed a gun at her and threatened not to tell anybody. Despite her plea not to molest her because she is his daughter, appellant continued to rape her, first by touching her breast and different parts of her body. She tried to push the appellant but she could not overcome his strength. Appellant forced her to hold his penis, removed her shorts and panty, placed himself on top of her and inserted his penis into her vagina. He made a push and pull movement while his gun was on the floor. Appellant was then drunk so after satisfying himself he went to sleep. Again she did not tell anybody what happened because she was afraid appellant might kill her. (pp. 21-26, *ibid.*)

Sometime in June, 1994, they transferred to the house of her paternal grandmother located in Barangay Bungloy because their house was destroyed by storm. Only complainant, her younger brother and sisters, her father and paternal grandfather and grandmother were living in said house. She used to sleep with her two sisters and brother together with her grandmother in one bedroom. Her father was sleeping in another room. Her mother was still in Kuwait and her eldest brother was still in Manila. Later, her father asked her to transfer to his bedroom. When she refused to transfer, appellant wounded her left wrist with a knife causing it to bleed. Hence, she was compelled to transfer to her father's room. In her father's room, they slept on one bed with her sister Christine. (pp. 26-30, *ibid.*)

Complainant also stated that she had her first menstruation in April, 1994. She was twelve (12) years old then. (p.27, *ibid.*)

One night in June, 1994, inside her father's bedroom, appellant again threatened her with a knife, removed her shorts and panty and told her not to shout. Nevertheless, she shouted, "'Lola, please help me.'" Her grandmother came but she could not get inside because the room was locked. Besides, appellant told her not to meddle for after all complainant is his daughter. Christine was crying. She was holding complainant's hand. Jimmy, what if your daughter got pregnant?" But accused refused to listen and proceed[ed] to satisfy his lust. He inserted his penis into her vagina. She tried to push him away but she could not do so because her father was strong. Christine continued crying. Complainant could see her sister because of the light coming from a kerosene lamp located in the sala. Christine was five (5) years old when this happened. (pp. 30-34, *ibid.*)

According to the complainant, the walls dividing the rooms in her grandmother's house do not reach the roof. Thus, the kerosene lamp could partly illuminate their room. This enabled her to see her father's face though not very clearly. She was very sure that it was his father who was on top of her because of his voice. Like in the previous incidents, she did not tell anybody what happened. Although her grandmother knew about what appellant was doing, she too was afraid. Her grandfather, however did not know what is happening to her, since he was sleeping in the other room. (pp. 35-37), *ibid.*)

One night in August, 1994 during Jaymen's menstrual period, accused again abused her at gunpoint, pulled off her shorts and panty. She tried to hold on to her shorts but she could not overcome his strength. Appellant mashed her breast, put himself on top of her and raped her. Appellant inserted his penis into her vagina and made a push and pull movement. Appellant placed the gun behind their bed. This time Christine was six (6) years old. While her father was on top of her, she asked for help from Christine, hence, she rode on accused's back and keep on boxing his back. He pinched Christine causing her to cry. She knew that her father's gun was just near her head but she was afraid to get it. While her father was having sex with her, Jaymen pushed him but did not succeed. Considering that she was menstruating, she felt the pain in her vagina out of which blood came out that spilled all over her body and on the bed. She transferred to another room later but her father forcibly entered and took her back. (pp. 37-44, *ibid.*)

Again, one night in October, 1994, appellant had sexual intercourse with complainant in the same room of her grandmother's house in Bungloy. Jaymen and her sister Christine were embracing each other when her father came, separated them and raped her. Christine stood up and returned to where Jaymen was despite the fact that Christine was gripping her hand and crying, appellant continued to rape her in the presence of Christine. The following morning, neither she nor Christine ever told anybody about the incident, the previous night. She shouted for help from her grandparents, but they did not go inside the room even though they knew that her father was raping her because they too were afraid. One time she saw accused pointing a gun at her grandparents. She said her father has no firearm license. Her father is a farmer and he used to plow the ricefield of her grandfather. (pp. 44-45, *ibid.*)

In November, 1994 while her father was already in bed complainant and Christine were preparing to go to bed, appellant approached her, pointed a gun at her, telling her that if ever she would tell her aunts what he was doing to her, he would kill her. She asked: what if I get pregnant?" appellant merely assured her that she would not get pregnant. Then appellant again raped her by inserting his penis into her vagina. Appellant made a push and pull movement for fifteen minutes. She said she tried to push her father but she failed. She felt the pain when her father inserted his penis into her vagina although she did not know or feel if anything or any fluid had entered her vagina. This time Christine was lying down and crying. Christine did not box him anymore. Complainant said, her father was drunk this time and while raping her he placed his gun above their heads. After consummating his sexual desire, appellant went back to where he was sleeping. Complainant and Christine embraced each other and cried. She also shouted for help from her grandparents, but appellant told them not to meddle because she is his daughter. Although her grandparents as well as her younger sister knew of what his father was doing to her, they were afraid to squeal because according to them there was no

sufficient evidence. (pp. 46-49, *ibid.*)

It was evening after Christmas in 1994 when appellant again sexually abused the complainant inside the same room. He scolded her when she refused to remove her shorts and panty. She pleaded not to rape her because she is his daughter. He assured her that she would not get pregnant. He also told her that he could see her mother's face on her. She told him: "I am not mother." Nonetheless, appellant persisted with his bestial act. This time he placed his gun over their heads. While holding and clicking the gun, he removed her shorts and panty. Christine was watching while her father was raping her. Christine reacted by calling her "Ne," but her father told Christine to shut up. Nene is complainant's nickname. (pp. 50-51, *ibid.*)

After removing her shorts and panty appellant placed himself on top of her, inserted his penis into her vagina and made a push and pull movement. Complainant knew that his father's penis was inside her vagina because she felt the pain. She did not also tell anybody about this incident because he threatened to kill her. (pp. 51-52, *ibid.*)

In the evening of May 27, 1995, before complainant left for Manila, where her aunt intended to enroll her in first year high school, appellant who was then under the influence of liquor, again, abused her. At gun point and in the presence of Christine, appellant started to touch her breast and the different parts of her body, pulled off her shorts and panty, inserted his penis into her vagina and made a push and pull movement. Complainant pushed her father but he was very strong. While pointing the gun at her, appellant warned complainant that if ever she would tell her aunt Editha, he would kill them all. Her aunt Editha was in her grandmother's house this time attending to the latter who was sick and had to be brought to Manila. Appellant for unknown reasons also pointed a gun at her eldest aunt who was then at her grandmother's house. Her eldest brother James also arrived. After the incident, complainant went to Manila ahead of her grandmother. She was accompanied by her cousins Diday and James. (pp. 53-54, *ibid.*)

The people in the house knew of this incident as she was crying, but they were not sure what was happening because according to them there was no evidence. (p. 55, *ibid.*)

While in Manila she stayed with her aunts Weena and Editha at San Isidro, Pasay City. Later, however, her aunts transferred to Camella Homes. Complainant stayed in Manila for only two (2) months when her aunts discovered that she was pregnant. Her aunts asked her who is the father of her child and she told them that it was appellant.

She said she no longer called him father after appellant had committed these bestial acts. After a brief huddle, her aunts decided to send her back to Iloilo City in order to file a complaint against the appellant. Consequently, she delivered a baby named Rowena Mosqueda in a hospital at Pototan on October 8, 1995. However, the baby died nine (9) days after she was born. (Exhibit "C", death certificate) Her aunts wrote her mother in Kuwait informing her of what happened to Jaymen. Her mother came home in February, 1997, but she returned to Kuwait shortly thereafter. (pp. 52-59, *ibid.*)

It was her mother's sister Joditha Prequencia, and Marlene Teniso, her aunt by her mother side who accompanied her in filing a complaint with the MCTC, Dingle, Iloilo. (p.23, *tsn*, May 23, 1997)

Christine Mosqueda, 8 years old and youngest sister of complainant testified that while she was staying in the house of her grandmother Lola Oloy in Barangay Bungloy, she used to sleep in one room with her sister Nene, referring to Jaymen Mosqueda, together with her father Jimmy Mosqueda. On several nights she saw her father laid on top of her sister, she pulled him away but her father pinched her on the thigh causing her to cry in pain. Next, she saw her father undress her sister Jaymen, and place himself in top of her. While Jimmy Mosqueda was on top of Jaymen, she saw a gun over the head of Nene. Witness, while testifying on the witness stand, raised her four (4) fingers, indicating the four occasions that she estimated she actually saw her father lie on top of her sister Jaymen. (pp. 3-9, *tsn*, June 19, 1997).[12]

JIMMY, as the sole witness for the defense, interposed denial and alibi. He testified that he did not rape his daughter. He claimed that during those dates that the alleged rapes were committed, he was not with his daughter. From March 23, 1991 up to September 14, 1994, he was in Manila working as a mechanic in Intedral Motor Corporation. While employed in Intedral Motors he used to stay with his sister Editha in Pasay City. Although he went home to Iloilo City after 14 September 1994, He then worked as bus conductor for eight months with the LG Liner, the terminal of which is located at Jaro, Iloilo City while the victim was staying in Dingle, Iloilo City. As to the sexual abuse committed on 7 May 1995, JIMMY denied knowledge about the same. He claimed that at that time he was in a hospital in Pototan, Iloilo City and stayed there for four (4) months attending to his sick mother.[13]

On 29 October 1997, the trial court found JIMMY guilty of the crime of rape in each of the seven cases. The dispositive portion of the decision reads as follows:

WHEREFORE, finding the accused Jimmy Mosqueda, guilty beyond reasonable doubt of the crime of Rape committed thru force and intimidation under Article 335 of the Revised Penal Code, in relation to Section 11 of Rep. Act No. 7659, in all seven (7) counts as charged, namely in Criminal Cases Nos. 45522, 45523, 45524, 45525, 45526, 45527 and 45528, judgment is hereby rendered as follows:

1. In Criminal Cases Nos. 45522 [sic] and 45523, sentencing the said accused Jimmy Mosqueda to suffer the penalty of reclusion perpetua in each of these two (2) cases or charges with all the accessory penalties of the law;
2. In Criminal Cases Nos. 45524, 45525, 45526, 45527 and 45528, sentencing the accused to suffer the extreme penalty of death in each of these five (5) cases or charges with all the accessory penalties of the law;
3. Ordering the accused to pay the offended girl Jaymen Mosqueda or any of her legal representatives or next of kin in the event of her death or incompetence, the amount of P20,000.00 for moral damages, and P10,000.00 for exemplary damages in each of the seven (7) above-captioned criminal cases. Costs against the accused.[14]

The records of Criminal Cases Nos. 45524, 45525, 45526, 45527 and 45528, pursuant to Article 47 of the Revised Penal Code as amended by Section 22 of R.A. No. 7659, were forwarded to us for automatic review by reason of the imposition of the extreme penalty of death in each of these cases. The judgment in Criminal Cases Nos. 45522 and 45523, where the penalty imposed in each is reclusion perpetua, will be considered to have been appealed to us despite absence of notice of appeal which was necessary pursuant to the first part of Section 3(c) of Rule 122 of the Rules of Court, considering that only one decision was rendered in these seven consolidated cases.[15]

In his Appellant's Brief, JIMMY interposed a lone assignment of error, namely that the trial court committed serious error in rejecting the defense of alibi and in giving full faith and credence to the testimonies of the witnesses for the prosecution. It is his contention that the people's evidence fails to meet the quantum required to overcome the constitutional presumption of innocence.

The findings of a trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge over an appellate magistrate in the appreciation of testimonial evidence. It is well entrenched that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth.[16] In the absence of any showing that the trial court's calibration of credibility was flawed, we are bound by its assessment.[17] The assessment of credibility of witnesses is best left to the trial court whose judgment thereon is entitled to the highest respect by appellate courts, it having had the unique opportunity to observe the demeanor of the witnesses.[18]

We have carefully reviewed the testimonies of the witnesses both for the prosecution and the defense, as well as all the evidence on record, especially so because of the death penalty imposed in each of the five cases, and we are convinced that the trial court correctly held that the guilt of JIMMY was established beyond reasonable doubt.

We have no reason to doubt the testimony of JAYMEN. In fact, JIMMY in his Appellant's Brief did not ascribe any flaw or inconsistency in the victim's testimony. At the witness stand, JAYMEN gave a candid, plain and straightforward account of her harrowing experience in a manner reflective of honest and unrehearsed testimony. JAYMEN was able to recount in detail each of the seven rapes committed against her by her own father on different occasions, free of any significant inconsistencies.[19] We find no iota of evidence showing that JAYMEN's account was a result of deliberate falsehood.

A rape victim who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness.[20] When the testimony of a rape victim is simple and straightforward, unshaken by a rigid cross-examination and unflawed by any inconsistency or contradictions, as in the present case, the same must be given full faith and credit.[21]

The records reveal that for several times, JAYMEN cried while she was testifying in open court.[22] The crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.[23]

Furthermore, it is doctrinally settled that testimonies of rape victims who are of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credit, as the willingness of the complainant to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of her complaint.[24] It is highly inconceivable that the child would make up stories against her father and admit that she was ravished if that was not true.[25]

Moreover, JAYMEN'S eight-year-old sister, Christine, whom the accused claimed to be his favorite,[26] and who was able to witness the beastly act of their father in four occasions, corroborated her testimony. Notwithstanding Christine's tender age, she was able to give a detailed and vivid account of what she witnessed.[27]

The failure of complainant to immediately disclose the violations committed against her will not in anyway affect her credibility and the truth of her testimony that she was raped. One cannot expect an innocent, naïve and frail little girl to act like an adult or like a mature and experienced woman who would know what to do under such difficult circumstances.[28] It is settled decisional rule that delay in reporting a rape case committed by a father against his daughter due to threats is justified. In the numerous cases of rape that have reached this Court, we find that it is not uncommon for young girls to conceal for some time the assaults on their honor because of the rapist's threat on their lives.[29]

In many instances, rape victims simply suffer in silence. With more reason would a girl ravished by her own father keep quiet about what befell her. Furthermore, it is unfair to judge the action of children who have undergone traumatic experiences by the norms of behavior expected of mature individuals under the same circumstances.[30]

Even the fact that the victim did not offer strong resistance and did not give any outcry when she was being raped cannot be taken against her, especially in this case where the victim has been abused repeatedly over a period of time. This Court has consistently held that rape is committed when intimidation is used on the victim and this includes the moral kind of intimidation or coercion. Intimidation is a relative term, depending on the age, size and strength of the parties, and their relationship with each other.[31]

In a rape committed by a father against his daughter, the moral dominance and parental influence that essentially flows from the reverence and respect a child has toward their parents which are ingrained and observed in the minds of the Filipino children, substitute for force and intimidation, which produce reasonable fear in the child.[32]

In the light of JAYMEN's positive identification of JIMMY and her detailed description of the seven rapes committed against her, the defense of alibi must fail. It is settled that alibi is the weakest of all defenses for it is easy to fabricate and difficult to disprove; it cannot prevail and is worthless in the face of the positive identification of the accused by credible witnesses that the accused committed the crime.[33]

Further, except for his bare allegations, JIMMY was not able to present collaborative evidence to support his alibi. He was not able to present proof of his employment. He cannot even present any person, even his own sister, to corroborate his claim. As correctly observed by the trial court:

It is strange that in the entire Barangay of Bungloy, Dingle, Province of Iloilo where accused has lived for quite a time, or even from the transportation company with which he has allegedly worked as a bus conductor, not a single soul had expressed sympathy and come to the defense of the accused to corroborate his alibi defense. On the other hand, every member of the family of the offended girl Jaymen, including accused's sister Editha where he allegedly stayed while purportedly employed in the Intedral Motors Corporation at Pasay City, have nothing but hatred against the accused for his devilish act of causing irreparable ruin to the honor and future of an innocent girl of his very own flesh and blood.[34]

The claim of JIMMY that he was in Manila from 23 March 1991 up to 14 September 1997 is belied by his own testimony, to wit:

Q. Can you tell us since when did your wife work in Kuwait?

A. Since 1988.

COURT:

Q. Up to now your wife is still working in Kuwait?

A. Yes, Your Honor.

Q. When this alleged incident happened, was your wife in Kuwait?

A. Yes, Your Honor.

COURT:

Proceed.

ATTY. DADIVAS:

Q. While your wife was in Kuwait, did she send money to you?

A. Occasionally.

COURT:

Q. Is it your wife the bread earner of the family?

A. Yes, Your Honor.

Q. And what are you doing while your wife is earning money in Kuwait?

A. I wanted to go back to my work in Manila but my children would not permit me.

Q. While your wife was in Kuwait, you were jobless?

A. I had work as a bus conductor of LG Liner.[35]

Further, it is quite unnatural for him to leave his children alone in their house, the eldest of whom is herein victim who was then only nine years old, considering that during the said period, his wife was already working in Kuwait and his eldest son, who then 15 years old was studying in Manila. In his testimony, he said that it was only in 1995 that he and his children transferred to the house of his parents.[36]

As to his other alibi, the same, even if true, is also not sufficient to relieve him from liability. His claim that after 14 September 1994 he was in Balantang, Jaro, working as bus conductor of LG Liner and for four months he was in a hospital in Pototan, does not preclude his presence at the locus criminis. It was not physically impossible for JIMMY to have been at the scene of the crime at the time of rape. In fact in his testimony, he admitted that while he was working at the bus company he still visited his children every so often, especially during pay day and that during his stay in the hospital, he still went home to get some money.[37] It is elementary that for alibi to prosper, the requirements of time and place must be strictly met. This means that the accused must not only prove his presence at another place at the time of the commission of the offense but he must also demonstrate that it would be physically impossible for him to be at the scene of the crime at that time.[38] As aptly found by the trial court:

In the face of accused's own declaration, this court is neither persuaded that accused could not have found opportunity to stay in his house in Bungloy sufficient to enable him to consummate the acts of sexual abuse against his daughter Jaymen, nor is it physically impossible for him to reach his house and that of his mother in Bungloy where the crimes under trial were committed, and where he used to live with his children including Jaymen, even granting arguendo that he really worked as a bus conductor of LG Liner from 1994 to May 1995, considering that the distance from Iwa Ilawod at Pototan, Iloilo, where their bus used to pass en route to Roxas City and vice-versa to Iloilo City up to Barangay Bungloy, is only 1 1/2 kilometers and could be negotiated on foot in a matter of fifteen (15) to twenty (20) minutes.[39]

Neither can we sustain the contention of JIMMY that the rape charges were merely concocted by JAYMEN's aunt, who allegedly has harbored ill feelings against JIMMY for the latter's refusal to give her a loan. Not a few accused in rape cases, in fact, have attributed similar charges brought against them to family feuds, resentment or revenge. These supposed motives have never swayed the Court against lending credence to the testimony of complainants who remain firm and steadfast in their account of how they ravished by sex offenders.[40]

For the foregoing reasons, we do not hesitate to rule that the evidence fully sustains the findings of the trial court that JIMMY is guilty of the seven counts of rape. The imposition by the trial court of death penalty in each of the five rapes must be upheld, considering that the same were committed after the effectivity of R.A. No. 7659, imposing the penalty of death in rape cases committed on a victim who is under eighteen years of age and the offender is a parent, and such circumstances were duly alleged in the complaints in this case.

Four justices of the Court have continued to maintain the unconstitutionality of Republic Act No. 7659 insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

As to the monetary liability of JIMMY, the trial court correctly awarded exemplary and moral damages. Exemplary damages are imposed to deter other fathers with perverse tendencies or aberrant sexual behaviors from sexually abusing their own daughters.[41] Moral damages may be awarded, pursuant to Article 2219(3), in relation to Article 2217, of the Civil Code, to victims of rape notwithstanding the absence of proof of the basis for its award, it being assumed that the victim suffered moral injuries entitling her to such an award.[42] However, the amount of P20,000 awarded by the trial court as moral damages must be increased to P50,000 in conformity with recent jurisprudence.[43]

The award of civil indemnity in addition to moral and exemplary damages awarded by the trial court is also in order. Civil indemnity is mandatory upon the finding of the fact of rape; it is distinct from and should not be denominated as moral damages which is based on different jural foundation and assessed by the court in the exercise of sound discretion. Moral damages, vis-à-vis compensatory damages or civil indemnity, are different from each other and should thus be awarded separately from each other.[44] Thus, in line with prevailing jurisprudence, JIMMY must be ordered to pay the victim in each count of rape the additional amount of P50,000 in Criminal Cases Nos. 45522 and 45523 where the penalty imposed in reclusion perpetua;[45] and P75,000 in Criminal Cases Nos. 45524, 45525, 45526, 45527 and 45528 where the death penalty was imposed.[46]

WHEREFORE, the judgment of the Regional Trial Court, Branch 31, Iloilo City, finding accused-appellant JIMMY MOSQUEDA guilty beyond reasonable doubt, as principal, of seven counts of rape and sentencing him to suffer, in each of the cases, the penalty of reclusion perpetua in Criminal Cases Nos. 45522 and 45523 and the death penalty in Criminal Cases Nos. 45524, 45525, 45526, 45527 and 45528 is hereby AFFIRMED, with modification that said award of moral damages is increased to P50,000 and accused-appellant is required to pay civil indemnity for each count of rape in the amount of P50,000 in Criminal Cases Nos. 45522 and 45523; and P75,000 in Criminal Cases Nos. 45524, 45525, 45526, 45527 and 45528.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this decision, let certified true copies thereof, as well as the records of this case be forwarded without delay to the Office of the President for possible exercise of the clemency or pardoning power.

SO ORDERED.

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

[1] Pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659, entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes, which took effect on 31 December 1993 (People v. Simon, 234 SCRA 555).

- [2] Per Judge Recaredo P. Barte.
- [3] Rollo, 5.
- [4] Id., 6.
- [5] Id., 7.
- [6] Id., 8.
- [7] Id., 9.
- [8] Id., 10.
- [9] Id., 11.
- [10] In Crim. Case No. 45528, Jaymen was 13 years old when the rape alleged therein as committed.
- [11] Original Record (OR), 28.
- [12] Rollo, 107-122.
- [13] TSN, 17 October 1997, 4-10.
- [14] Rollo, 18-34.
- [15] See *People v. Alitagtag*, G.R. Nos. 124449-51, 22 June 1999.
- [16] *People v. Betonio*, Sept. 26, 1997 as cited in the case of *People v. Victor*, July 9, 1998.
- [17] *People v. Tanton*, Nov. 28, 1997.
- [18] *People vs. Cristobal*, 252 SCRA 507, 515 [1996].
- [19] TSN, 22 May 1992, 8-15, 21-55.
- [20] *People v. Gecoma*, 254 SCRA 82 [1996].
- [21] *People v. Saballe*, 236 SCRA 365 [1994].
- [22] TSN, 23 May 1997, 9.
- [23] *People vs. Alquizalas*, G.R. No. 128386, March 25, 1999 citing *People v. Gecoma*.
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