

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO ALBA, ACCUSED-APPELLANT.

G.R. Nos. 131858-59. April 14, 1999

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PER CURIAM:

For review is the decision,[1] dated November 7, 1997, of the Regional Trial Court, Branch 23 of Naga City, in two consolidated cases, finding accused-appellant Alfredo Alba guilty beyond reasonable doubt of two (2) counts of rape under Article 355 of the Revised Penal Code, and sentencing him, in Criminal Case No. 94-5517, to suffer the penalty of death, and in Criminal Case No. 94-5516, the penalty of reclusion perpetua. In addition, the trial court ordered accused-appellant to pay in each case, the offended party the amount of P50,000.00, as civil indemnity, P30,000.00 as moral damages, and P30,000.00, as exemplary damages, and the costs of the suit.

The information's against accused-appellant alleged ¾

In Criminal Case No. 94-5516:

"That sometime on the month of May, 1993 at Barangay Tamban, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie and succeed in having sexual intercourse with his daughter JANETTE ALBA, 9 years old then, against the latter's will to her damage and prejudice.

"ACTS CONTRARY TO LAW."

In Criminal Case No. 94-5517:

"That sometime on the 7th day of February, 1994 Barangay Tamban, Tinambac, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie and succeed in having sexual intercourse with his daughter JANETTE ALBA, 10 years old against the latter's will to her damage and prejudice.

"ACTS CONTRARY TO LAW."

The cases were tried jointly. The evidence of the parties is fairly summarized in the decision of the trial court, thus:[2]

"The cool and clear mountain creek seemed inviting to nine year old Janette Alba, that early morning of May 1993. She yielded to the tempting waters and leisurely dipped her young body. Then, her widowed father, Alfredo Alba came, disturbed her communion with nature and abruptly ended her sweet innocence.

"The first sexual desecration was not to be the last. The abuse was repeated and the last time happened in the afternoon of February 7, 1994, at their very own dwelling. While her "Mama" Maria, her father's second wife, was not at home, Janette Alba, again, was sexually molested by her own father. As in the first instance, Alfredo went on top of Janette, and had carnal congress with his daughter. Janel felt pain as before. She wept. The experience was too painful to bear for the ten year old, who had no one to turn to. Her mother was already dead and her only brother whom she hadn't seen was allegedly in Candelaria, Quezon. Janette wished her father

dead.

"Janette Alba reported the incident to a fat man whose name she does not know, who took pity on her and bought her a dress. The fat man brought her to the police authorities. Later, she was brought to a doctor, who examined her. The medical certificate of Dr. Marita B. Reyes, (Exhibit "A", p. 5, Record) indicated:

"x x x

"This is to certify that JANETTE ALBA Y SALDAÑA, 10 years old, child, residing at Tamban, Tinambac, Camarines Sur, has been examined in this hospital on February 13, 1994.

"Janette Alba y Saldaña, 10 years old, Tamban, Tinambac, Camarines Sur.

DOI:

POI: Tamban, Tinambac, Camarines Sur

TOI: From May 1993 to February 1994

DOE: February 13, 1994

POE: Tinambac District Hospital, Tinambac, Camarines Sur

TOE: 10:30 AM

Findings:

NOE: Allegedly rape (Statutory Rape)

TOE/DOE: (since 7 yrs. old)

I.E.: Hymenal laceration healed at 1:00 o'clock and 3:00 `clock position

x x x

"The police authorities investigated Janette Alba, and a complaint was filed before the MTC of Tinambac, Camarines Sur (p. 4, Record). Accused was arrested on February 14, 1994, while the victim was turned over to the Social Worker through the Municipal Mayor of Tinambac, Camarines Sur. The lower Court found the existence of a prima facie case for Rape and recommended the filing of the appropriate information. Prosecution Attorney Richard T. Cu affirmed the findings of the investigating Judge and two (2) informations for rape were filed with the Regional Trial Court.

"x x x x x x x x

"Dr. Marita Reyes, the Resident Physician of the Tinambac Medicare Hospital, examined the offended party, by placing her in a lithotomy position (lying flat on her back and placing her on a stirrup). She was able to determine that the vaginal orifice had a ten-centavo opening already, the hymen was lacerated, with a healed wound at 1:00 and 3:00 o'clock. The edges of the laceration are no longer sharp, there were no more signs of inflammation.

"Janette Alba is now in the protective custody of the Department of Social Welfare and Development, at the Center for Girls in Pampang, Sorsogon, Sorsogon, according to Paciencia Relayo, a social worker who also testified for the prosecution. The child was referred to the DSWD and was fetched at Tinambac, Camarines Sur in February 1994. Ms. Relayo secured the birth certificate and baptismal certificate of Janette. It is shown that Janette was born on January 7, 1984, at Tamban, Tinambac, Camarines Sur, to spouses Alfredo Mariano Alba and Cristina Saldaña (Exhibit C, p. 64, Record). She was baptized on April 15, 1984 (Exhibit B, p. 65, Record).

"For the defense, only Alfredo Alba testified, although his counsel manifested that he will present three witnesses. The presentation of defense evidence was reset several times, but accused's common law wife, Maria Bolo, despite subpoena issued, failed to appear. The court noted that during several hearings of the case, said Maria Bolo was present (p. 17, TSN dated May 15, 1997 and p. 17, March 20, 1997), yet on the date she was supposed to testify she failed to come. She was subpoenaed several times, but she never came back to Court. Even accused's other witness was no longer presented. According to accused, his wife has not visited him for the last two months. (p. 108, Record).

"Alfredo Alba denied the charges against him. He asserted (sic) declared that Janet Alba is one of his children with the deceased Cristina Saldana. A son, Ramil was adopted and is in Candelaria while another one is already dead. He has a wife now, but just like his first wife, he is not legally married to Maria Bolo. He and Maria started living together in 1990 and Janette stayed with them. Alba stated that his wife worked as a laundry woman and Janette helped her. He claimed that Janette did not recognize Maria Bolo as a second mother and in 1994, the two had a disagreement, the fact of which Alba does not know because he was ill that time. He inquired from his wife what the disagreement was about, and the next thing he knew, he hit his wife because of his ill temper. (p. 7, TSN, May 5, 1997) Maria Bolo left Alba and went to a Kagawad where she aired her grievances. Later, accused was picked up from his residence by the barangay tanod and the policemen. Allegedly, he was arrested on the complaint of his wife. The authorities told him to just air his queries to the Station Commander, which he did. There he was informed that he was detained because he raped his daughter.

"At the time he was picked up from his house, Janette was not at home, because she asked permission to go to church. At 9:00 o'clock, she did not go home yet, and he came to know later, that Janette was taken by the barangay tanod.

"Accused denied the charge against him saying that he did not do that to his daughter (p. 9, TSN, May 15, 1997). Alba said that he never raped his daughter on these two occasions mentioned in the complaint, in May 1993 and on February 7, 1994. He claimed that he does not know the reason why his daughter complained against him, what he knows is that she just went to church. He remembers having inflicted corporal punishment on his daughter when he was informed that their neighbor lost something after Janette entered their store. Allegedly, his daughter got money from the drawer. And that was the time that Janette left their house (p. 15, TSN, dated May 15, 1997).

"Alba admitted on cross that from the time his wife died in childbirth in 1988, Janette was left in his custody. When Maria Bolo came into his life in 1990, the three of them lived together in one house. He worked to sustain his family. Maria also worked as a laundrywoman, especially when he got sick, and Janette helped her, despite their disagreements. Janette went to school too, but she wanted to take a vacation in Candelaria, where her brother was. He told her however, that they can go there only if he is able to find some money for the fare. Accused claimed that the two, Maria and Janette, got on well except when Janette became hardheaded and Maria would punish her. (p. 15, TSN, supra).

"Maria Bolo left him on February 10, 1994. He tried to get her back, telling the Barangay Kagawad where she worked that she was family (sic) and was entrusted by her parents to him, but the Kagawad told him that he should not intervene as she was working with them. She did not return to him anymore, but she is the same Maria Bolo, accused admitted, with whom he was talking with before he was placed on the witness stand. (p. 17, TSN, supra).

x x x x x x x x

"Janette Alba, was already a thirteen year old girl, when she testified in Court about her father's sexual abuses. Actually, her father had carnal congress with her thrice, but she could no longer recall the facts of the second sexual imposition. The offended party, who was too small and short for her age, narrated in Court, that the first sexual abuse happened while she was bathing in the creek in Tamban, Tinambac, near their house and she was

just a mere nine year old motherless child. The last molestation happened in their house, while her stepmother was not around. This was the time that she aired her complaint and a fat man helped her."

On November 7, 1997, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, this Court finds the accused ALFREDO ALBA y MALANO GUILTY beyond reasonable doubt of the crime of Rape under Article 335 of the Revised Penal Code, as amended by Section 11, of R.A. No. 7659, in both criminal cases. Accused is hereby sentenced to RECLUSION PERPETUA in Criminal Case No. 94-5516, and the maximum penalty of DEATH in Criminal Case No. 94-5517. He is likewise directed to indemnify the offended party, the amount of Fifty Thousand Pesos (P50,000.00), for desecrating her sweet innocence, moral damages of Thirty Thousand Pesos (P30,000.00) and Exemplary Damages of Thirty Thousand Pesos (P30,000.00) in both cases and to pay the costs of this suit.

"SO ORDERED."

Accused-appellant seeks the reversal of his conviction on the following grounds:

"I. THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

"II. THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT ON THE BASIS OF A FATALLY DEFECTIVE INFORMATION WHICH VIOLATES ACCUSED-APPELLANT'S RIGHT TO DUE PROCESS AND TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM."

The Court has carefully reviewed the records of this case and has found accused-appellant's contentions to be without merit.

FIRST. Accused-appellant points to the alleged failure of the offended party, Janette Alba, to give the exact date she was raped by accused-appellant for the second time and the date when she was turned over to the custody of the DSWD as indicating that she was prevaricating.

With respect to the date of the rape, she said it was in February of 1994. She was not asked when exactly it was committed. If the defense wanted to test her credibility, it should have pointedly asked her for the exact date. It is noteworthy that the information in Criminal Case No. 94-5517 alleged that the second time Janette was raped by her father was on February 7, 1994. At any rate, proof of the exact date the rape was committed is not required so much so that the offended party's failure to recall the exact date is fatal. As this Court has held in several cases,[3] the exact date of commission of rape is not an element of the crime.

As for the date the victim was entrusted to the custody of the DSWD, it has not been shown in what way the victim's failure to recall it can affect her credibility. The fact is that for lack of anyone to take custody of her, considering her tender age, she was entrusted to the care of the DSWD.

Nor is it clear that there exists an inconsistency in the testimony of the offended party as to the place where she was raped for the first time. Accused-appellant cites the following portion of the testimony of the offended party ^{3/4}

Q Now, in May, 1993, where were you raped by your father?

A In our house.[4]

and compares this with the trial court's finding that the offended party was raped the first time in May 1993 at a creek.

Janette Alba, the offended party, said she was raped the first time at a creek in Tamban, Tinambac, Camarines Sur. The second time she was raped was in their house. The following is her testimony:[5]

"COURT:

Q What were you doing then in May 1993 when you were raped by your father?

A I was taking a bath at the creek in Tamban, Tinambac, Cam. Sur.

Q Do you mean to say, you were raped by your father at the creek?

A Yes Ma'am.

Q How about in February 1994, where did your father allegedly raped you?

A In the house.

She appears to have been merely confused in saying that when she was first abused in May 1993 she was in their house because, immediately before she was asked by the private prosecutor where she had been raped in May 1993, she was asked when she was raped for the last time, and she answered it was in February 1994. It is clear that when she was next asked where she was raped in May 1993, she was laboring under the impression that she was being asked where she had been raped in February 1994.

Thus, the offended party's answer, quoted by the defense, appears in the following context:

Q When was the first time?

A On May, 1993.

x x x x x x x x

Q How about the last one, when did it happen?

A On February, 1994.

Q Now, in May, 1993, where were you raped by your father?

A In our house.

Q Where is this house situated?

A At Tamban, Tinambac, Cam. Sur.

At any rate, if the defense wanted to impeach her credibility, she should have been confronted with the alleged inconsistent statements and asked to explain the same.[6] As accused-appellant did not do so, it waived the defense based on this ground.

SECOND. Accused-appellant claims that there was delay on the part of the victim in reporting the incident. He points out that the first rape was committed in May of 1993, but it was only after she had been raped again in February of 1994 that she finally complained. Meantime, she continued to live in the same house with accused-appellant for a period of almost one year. The delay, he says, makes it doubtful that the crime had been committed.

This contention is without merit. It is quite possible that the offended party wanted to conceal her dishonor and simply suffer in silence, but that she finally decided to complain after her father again violated her. It is not unusual for any woman to try to keep her dishonor a secret and to suffer alone in her misfortune rather than subject herself to public scrutiny and even ridicule or pity.[7]

Moreover, as the Court pointed out in *People v. Melivo*:^[8]

"A rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies this terror, because the perpetrator is a person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and the degree of fear.

"x x x The rapist perverts whatever moral ascendancy and influence he has over his victim in order to intimidate and force the latter to submit to repeated acts of rape over a period of time. In many instances, he succeeds and the crime is forever kept on a lid. In a few cases, the victim suddenly finds the will to summon unknown sources of courage to cry out for help and bring her depraved malefactor to justice.

"Given this pattern, we have repeatedly ruled that the failure of the victim to immediately report the rape is not indicative of fabrication. 'Young girls usually conceal for some time the fact of their having been raped.' x x x

"In all of these and other cases of incestuous rape, the perpetrator takes full advantage of his blood relationship, ascendancy, and influence over his victim, both to commit the sexual assault and to intimidate the victim into silence. Unfortunately for some perpetrators of incestuous rape, their victims manage to break out from the cycle of fear and terror. In *People v. Molero*, we emphasized that "an intimidated person cowed into submitting to a series of repulsive acts may acquire some courage as she grows older and finally state that enough is enough, the depraved malefactor must be punished."

Accused-appellant says it is improbable for the offended party to have confided in a total stranger. When the offended party was first raped, she was just 9 years old. (She was 10 when she was raped the second time.) Aside from her father, she had no one to turn to for help. Her mother died when she was still an infant while her only brother had been adopted by a family in Candelaria, Quezon. She did not even know the address of her brother's family. She had no choice but to live with her father in the same house even after she had been raped by him. Under these circumstances, it is understandable why she confided even in a stranger.

THIRD. Accused-appellant contends that the victim's competence as a witness should have been first established considering that she was a minor at the time she testified. There is, however, no law requiring that a witness' competence be first established before he can testify.

The pertinent provisions of Rule 130 of the Revised Rules on Evidence state:

"SEC. 20. Witnesses; their qualifications. ^{3/4} Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. x x x

"SEC. 21. Disqualification by reason of mental incapacity or immaturity. ^{3/4} The following persons cannot be witnesses:

- (a) Those whose mental conditions, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;
- (b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully."

The burden of showing that a witness is incompetent to testify is on accused-appellant.^[9] The fact that the offended party is a minor does not mean that she is incapable of perceiving and of making her perception known. In the case at bar, the offended party was questioned by accused-appellant's counsel concerning her competence, and her answers show that she was competent to testify, thus:^[10]

"ATTY. AREJOLA:

Do you know the consequences of your testimony if you are believed by the Court?

"ATTY. VARGAS:

What is the materiality of the question, your Honor?

"ATTY. AREJOLA:

It involves the life of the accused, so, it is very material.

"COURT:

Let her answer the question.

A No, sir.

Q Well, I am telling you that if your testimony are believed by the Court, your Father can be sentenced to death, do you understand that?

A Yes, sir.

Q And you like that to happen?

A Yes Sir.

Indeed, as this Court observed in one case,[11] children of sound minds are likely to be more observant of incidents which take place within their view than older persons, and their testimonies are likely more correct in detail than that of older persons. Other than the allegation of minority, the defense failed to adduce other grounds for the disqualification of the victim as a witness.

FOURTH. Accused-appellant makes much of the testimony of Dr. Marita Reyes that it is possible the laceration on the victim's hymen was caused by a hard object other than a male's sexual organ. He quotes the following testimony of Dr. Reyes:[12]

ATTY. AREJOLA:

"Q

You mean Doctor, that this hymenal laceration could have been caused not merely by male organ but, a hard object like a ballpen, a piece of stick which the child could have inserted by herself to her organ?

A It is possible."

The question posed was, however, a hypothetical one and, therefore, the answer was also hypothetical. The fact remains that the burden was on accused-appellant to controvert the clear, candid, and straightforward testimony of the offended party that accused-appellant raped her in May of 1993 and again in February of 1994. She told the court:[13]

"Q Please tell the Court how old were you in the year 1994?

A I was ten (10) years old.

Q Where are you residing now?

A I am residing at DSWD, Sorsogon.

x x x x x x x x

"ATTY. VARGAS:

Q Is your Mother still alive?

A No, sir.

Q Is your father still alive?

A Yes Sir.

Q Where is your father residing?

A

At Tamban, Tinambac, Cam. Sur.

Q And what did you say? where are you residing at present?

A At DSWD, Sorsogon.

Q Why are you not living with your father?

A Because I was abused.

Q How did your father abuse you? or what exactly did your father do to you?

A I was raped by him.

Q For how many times?

A Three (3) times.

Q When was the first time?

A On May, 1993.

"ATTY. AREJOLA:

Your Honor, I wish to know if this case charges the accused with three (3) offenses, so, if there are more than three (3) offenses to be proved, then, we will object to that, your Honor, because, he has being charged only for rape committed on May 1993 and February, 1994.

"ATTY. VARGAS:

Q How about the last one, when did it happen?

A On February, 1994.

X X X X X X X X

Q Now, tell this Honorable Court, exactly how did your father raped you in May, 1993?

A He went on top of me, and, inserted his penis to my vagina.

Q Was his penis able to penetrate your vagina?

A Yes Sir.

Q What did you feel?

A I felt pain.

Q And then, what happened next?

A He left.

Q What did you do?

A I cried.

Q Why did you cry?

A Because it was painful.

Q Now, in February, 1994, tell this Honorable Court exactly how were you raped by your father?

A He again went on top of me and inserted his penis into my vagina.

Q Was his penis able to penetrate your vagina?

A Yes Sir.

Q Again, what did you feel?

A I felt pain.

Q And, for how long did your father stay on top of you?

A Only for a short time.

Q And after that, what did your father do?

A He left.

Q How about you, when your father left you, what did you do?

A I cried."

As the trial court correctly ruled:[14]

"The offended party related her ordeal in the hands of her father in a straightforward, candid and categorical manner. So it was held by the Court that when the testimony of the victim of rape is simple and straightforward, unshaken by a rigid cross-examination and unflawed by any inconsistency or contradiction, the same must be given full faith and credit. (Pp. Saballe, 236 SCRA 365, 1994) The cross-examination yielded nothing to assail Janette's credibility, on the contrary, vital matters which were not taken up during the direct were revealed on cross. Her declarations do not reveal that she foisted these rape charges against her father just to get even, after the latter punished her for a wrongdoing. It is likewise not shown that she was merely taught or coached on what to say about the incidents. It is hard to believe that at her tender age and naivette, Janette would fabricate such a sordid tale against her father that would send him to the gallows for most of his life or to his death. Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to concoct a story which would put her own father for the most of his remaining life in jail and drag herself and the rest of her family to a lifetime of shame. (Pp v. Melivo, 253 SCRA 347, 1996) The Court likewise said that it is most improbable that a victim of tender years and not one exposed to the ways of the world, would impute a crime as serious as rape to any man if it were not true, (Pp. v. Dela Cruz, 251 SCRA 77 (1996), more so, if the man is her father, whom she had known all her young life to be her guardian, protector and defender."

It is hardly necessary to reiterate here that the findings of trial courts are entitled to great respect because of the opportunity such courts have of observing the demeanor of the witnesses while testifying.

FIFTH. Accused-appellant contends that the charge against him that he raped his daughter in May of 1993 is too

general, as a result of which he was not informed of the nature and cause of the accusation against him in violation of due process.

Again, this contention is untenable. An information is valid as long as it distinctly states the statutory designation of the offense and the acts or omissions constitutive thereof.[15] Rule 110 of the Revised Rules on Criminal Procedure states in relevant parts:

"SEC. 6. Sufficiency of complaint or information. $\frac{3}{4}$ A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of commission of the offense; and the place wherein the offense was committed.

"SEC. 11. Time of the commission of the offense. $\frac{3}{4}$ It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit."

The informations against accused-appellant comply with the rules. They are not susceptible of being construed as charging crimes other than incestuous rape. In addition, it is sufficient if the acts complained of are alleged to have taken place as near to the actual date when the offense was committed as the information or complaint will permit. As already stated above, the precise time of its commission is not an essential element of the crime of rape, without which there is no crime committed.

Indeed, the proceedings in the trial court demonstrate that accused-appellant knew full well what the charges against him were. He denied them as only a person who is aware of the gravity of the charge against him would do.

Moreover, it is now late for accused-appellant to question the form or substance of the informations. In entering a plea of not guilty during his arraignment, he waived all possible objections to the sufficiency of the informations against him. As Sections 1 and 8 of Rule 117 provide:

"SECTION 1. Time to move to quash. $\frac{3}{4}$ At any time before entering his plea, the accused may move to quash the complaint or information."

"SEC. 8. Failure to move to quash or to allege any ground therefor. $\frac{3}{4}$ The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion shall be deemed a waiver of the grounds of a motion to quash, except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty and jeopardy, as provided for in paragraphs (a), (b), (f) and (h) of Section 3 of this Rule."

For the foregoing reasons, we hold that the trial court correctly found accused-appellant guilty of two (2) counts of rape. The offended party was born on January 7, 1984.[16] Accordingly, when she was raped for the first time in May of 1993, she was just 9 years old. When she was raped a second time on February 7, 1994, she was 10 years old.

However, as the rape in Criminal Case No. 94-5516 was committed before the effectivity of R.A. 7659 on December 31, 1993,[17] the trial court correctly sentenced accused-appellant to suffer the penalty of reclusion perpetua in accordance with the original provision of Art. 335 of the Revised Penal Code that the crime of rape, when committed against a woman who is under 12 years of age even though no force or intimidation is used or the offended party is not deprived of reason or otherwise unconscious, shall be punished by reclusion perpetua. On the other hand, the rape subject of the prosecution in Criminal Case No. 94-5517 was committed on February

7, 1994, i.e., after the effectivity on December 31, 1993 of R.A. 7659, amending Art. 335 of the Revised Penal Code, hence, accused-appellant was correctly sentenced to death.

As amended by R.A. 7659, Art. 335 provides:

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

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- 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.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be 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.

x x x x x x x x

Four (4) Members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray*[18] 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.

The amount of damages awarded by the trial court must be modified. The trial court ordered accused-appellant to pay the offended party the amounts of P50,000.00, as civil indemnity, P30,000.00, as moral damages, and P30,000.00, as exemplary damages in the two cases. The civil indemnity in Criminal Case No. 94-5517 should be increased from P50,000.00 to P75,000.00 considering that the crime was committed under circumstances which justify the imposition of the death penalty.[19] The award of moral damages in the amount of P30,000.00 in both cases should be increased to P50,000.00 in each case. Moral damages in the amount of P50,000.00 are automatically granted in rape cases without need of proof for it is assumed that the victim has suffered moral injuries entitling her to such an award.[20] However, the award of exemplary damages in the amount of P30,000.00 in both cases should be deleted for lack of legal basis.[21]

WHEREFORE, the decision of the Regional Trial Court, Branch 23 of Naga City, is **AFFIRMED** with the **MODIFICATION** that accused-appellant Alfredo Alba is ordered to pay the offended party, Janette Alba, in Criminal Case No. 94-5516, the sum of P50,000.00 as civil indemnity and P50,000.00 as moral damages and, in Criminal Case No. 94-5517, the sum of P75,000.00 as civil indemnity and P50,000.00 as moral damages. The award of exemplary damages is disallowed.

In accordance with Section 25 of R.A. 7659, amending Article 83 of the Revised Penal Code, upon the finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for his reference in case he decides to exercise his prerogative of mercy. No pronouncement as to costs.

SO ORDERED.

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

[1] Per Judge Lore R. Valencia-Bagalacsa.

[2] Decision, pp. 1-5; Rollo, pp. 15-19.

[3] People vs. Dimapilis, G.R. Nos. 128619-21, December 17, 1998; People vs. Malapo, G.R. No. 123115, August 25, 1998; People vs. Ocampo, 206 SCRA 223 (1992).

[4] TSN, March 20, 1997, p. 5.

[5] Id., pp. 18-19.

[6] Rule 132, Sec. 13.

[7] People vs. Bartolome, G.R. No. 129054, September 29, 1998; People vs. Gallo, 284 SCRA 590 (1998).

[8] 253 SCRA 347, 356-358 (1996).

[9] Vicente Francisco, Evidence 117 (1996).

[10] TSN, March 20, 1997, p. 11.

[11] People vs. Alambra, 55 Phil. 578 (1931).

[12] TSN, February 5, 1997, p. 9.

[13] TSN, March 20, 1997, pp. 2-7.

[14] Decision, p. 6; Rollo, p. 20.

[15] People vs. Dimapilis, G.R. No. 128619-21, December 17, 1998; Sta. Rita vs. Court of Appeals, 247 SCRA 484 (1995).

[16] Records, p. 64.

[17] People v. Godoy, 250 SCRA 676 (1995).

[18] 267 SCRA 682 (1997).

[19] People vs. Victor, G.R. No. 127903, July 9, 1998.

[20] People vs. Prades, G.R. No. 127569, July 30, 1998.

[21] People vs. Mengote, G.R. No. 130491, March 25, 1999.

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