

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN LIM Y BELTRAN, ACCUSED-APPELLANT.

G.R. Nos. 131861-63. August 17, 1999

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PER CURIAM:

This is an appeal from the decision,[1] dated June 5, 1997, of the Regional Trial Court, Branch 17, of Davao City, finding accused-appellant Benjamin Lim y Beltran guilty of three counts of rape and sentencing him to reclusion perpetua for the rape committed in 1993 and to death for the two rapes committed in 1994 and 1996. Accused-appellant was further ordered to indemnify the complainant, Jovelyn Morada, P30,000.00 for each rape committed against her.

Complainant Jovelyn Morada is the daughter of accused-appellant's common-law wife Vivian Cebrian. Her birth certificate (Exh. B),[2] shows she was born on April 23, 1981 out of the marriage of Vivian Cebrian and Jose Morada, Sr.

Upon her complaint, three informations for qualified rape were filed against accused-appellant in the Regional Trial Court of Davao City where the cases were docketed as Criminal Case Nos. 37,372-96, 37,373-96, and 37,374-96. The informations alleged:

Criminal Case No. 37,372-96

"The undersigned accuses the above-named accused of the crime of RAPE, under Art. 335, in relation to Art. 344 of the Revised Penal Code upon the instance of complainant Jovelyn C. Morada whose affidavit is hereto attached and form[s] part of this information, committed as follows:

"That sometime in the year of 1993, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being a stepfather of the complainant the common-law husband of her mother, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant, who was then only 12 years old, against her will.

"Contrary to law."[3]

Criminal Case No. 37,373-96

"The undersigned accuses the above-named accuse[d] of the crime of RAPE, under Art. 335, in relation to Art. 344 of the Revised Penal Code, upon the instance of complainant Jovelyn C. Morada whose affidavit is hereto attached and form[s] part of this information, committed a follows:

"That on or about August 18, 1996, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being step-father of the complainant, the common-law-husband of her mother, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant, who is only 15 years old, against her will.

"Contrary to law."[4]

Criminal Case No. 37,374-96

"The undersigned accuses the above-named accused of the crime of RAPE, under Art. 335, in relation to Art. 344 of the Revised Penal Code upon the instance of complainant Jovelyn C. Morada whose affidavit is hereto attached and form[s] part of this information, committed as follows:

"That sometime in the year of 1994, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, being step-father of the complainant, the common-law-husband of her mother, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant, who was then only 13 years old, against her will.

Contrary to law."[5]

To all the charges against him accused-appellant pleaded not guilty,[6]whereupon the cases were jointly tried.

The prosecution's main witness was complainant Jovelyn Morada. She testified[7] that on August 19, 1996, at around three o'clock in the morning, while she was asleep in their house in Panacan, Davao City, she was awakened by accused-appellant. She found herself removed from the place where she slept beside her younger sister. Jovelyn said she tried to break from accused-appellant's hold but she could not free herself. Nor could she scream as accused-appellant threatened to kill her. Describing how she had been raped, Jovelyn said that accused-appellant pulled down her skirt and then her panties and then inserted his penis in her vagina. Accused-appellant left the room shortly before Jovelyn's sister woke up and turned on the light, but not after he was through with complainant.

According to Jovelyn, accused-appellant also raped her in the same house in 1993 and 1994. Both rapes, like the one committed in 1996, were committed at dawn. When she was first raped by accused-appellant, Jovelyn did not tell her mother because she was afraid of her. However, when accused-appellant raped her for the second time, Jovelyn mustered enough courage to tell her mother, but the latter did not believe her. When she was raped for the third time on August 19, 1996, Jovelyn again told her mother. This time, according to Jovelyn, Vivian Cebrian believed her.

SPO1 Steven Batacan was the desk officer at the Panacan station where Jovelyn filed a complaint for rape against accused-appellant at 7:10 in the evening of August 19, 1996.[8] SPO1 Batacan testified[9] that Jovelyn was accompanied by her aunt Esterlita Cebrian. When he asked Jovelyn where her mother was, Jovelyn answered that her mother was attending to her business in Panacan, Davao City. Based on Jovelyn's complaint, a team of policemen arrested accused-appellant.

Vivian Cebrian, the victim's mother, testified[10] that Jovelyn was the youngest of her six children by her husband, Jose Morada, Sr., whom she married in 1968. After separating from her husband, she met accused-appellant in Manila in 1981. She later moved to Butuan City, Agusan del Norte and then to Davao City in 1990 but her relationship with accused-appellant, who was also married, continued. As a result of their relationship five children were born, the last of whom was dead at birth.

Regarding the charges of rape brought by her daughter against her common-law husband, Vivian claimed that Jovelyn told her about her disgrace only on August 19, 1996. Jovelyn told her that accused-appellant touched her (Jovelyn), but Vivian said "I do not know what part of her [Jovelyn's] body" had been touched. She said she told her daughter that she would confront accused-appellant when she returned home, and that if she found that what Jovelyn had said was true, she would leave accused-appellant. Vivian said she was going to confront accused-appellant after coming home that day, but the police had already arrested accused-appellant before she could do so.

Esterlita Cebrian is the wife of Vivian's brother and the aunt of Jovelyn. She testified[11] that on August 19, 1996 Jovelyn told her that she had been raped by accused-appellant, but her mother did not believe her. Esterlita said she went to see Vivian to inform her of what had happened to Jovelyn, but Vivian also refused to believe her. Esterlita and Jovelyn, therefore, went to the police station without Vivian and made a report.

Milagros Basmayor, social worker, interviewed Jovelyn after she had filed the complaint against accused-appellant. According to Ms. Basmayor,[12] she was told by Esterlita that Jovelyn's mother did not believe her daughter thinking that Jovelyn was "not mentally fit." Ms. Basmayor said she found that this was not the case.

Dr. Danilo P. Ledesma, medico-legal officer of Davao City, conducted a medical examination of Jovelyn on August 20, 1996. His findings are as follows:

GENERAL PHYSICAL EXAMINATION:

Height: 149.0 cms. Weight: 41.0 kgs.

Fairly nourished, normally developed, conscious, coherent, cooperative, ambulatory subject.

Breasts: Fully developed, hemispherical, firm. Areolae, light brown, 3.5 cms. in diameter. Nipples, light brown, 0.8 cm. in diameter.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora and minora, gaping. Fourchette, lax. Vestibule, pinkish, smooth. Hymen, thick, tall, intact, distensible. Hymenal orifice, annular, admits a tube, 2.5 cms. in diameter. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS:

- 1.) No evident signs of extragenital physical injuries noted on the body of the subject at the time of examination.
- 2.) Hymen, intact, but distensible and its orifice, wide (2.5 cms. in diameter), as to allow complete penetration by an average-sized male organ with erection without causing hymenal injury.

REMARKS: Semenology: Negative for spermatozoa.[13]

Dr. Ledesma explained[14] that women with the kind of hymen ("thick, tall, and x x x elastic") which the victim Jovelyn Morada has can get pregnant and give birth to a child without laceration of her hymen. He also said that the absence of sperm in the vaginal canal was not a sign that there was no sexual intercourse as the sperm could have been washed.

The defense then presented its evidence. Accused-appellant claimed he was impotent and could not have raped Jovelyn. He testified[15] that when he was 55 years of age, he had an accident, as a result of which his hips were broken and he could no longer have an erection. According to accused-appellant, in 1985 he separated from his first wife and decided to live with the victim's mother, Vivian Cebrian, by whom he has four children. He said that in 1990 he fell from a jeep and became impotent. Thereafter, he lived in Santiago, Agusan del Norte and only visited Vivian and her children in Panacan, Davao City.

After testifying for the prosecution, Vivian Cebrian again took the witness stand, this time as witness for the defense. She testified[16] that she earned a living selling fish in the public market in Panacan, Davao City. She

was in the market from 4:30 to 6:00 a.m., after which she usually stayed home to take care of her children. This had been her routine since 1992. Since that year, her common-law husband, herein accused-appellant, had been living in Santiago, Agusan, del Norte. Accused-appellant visited her in Davao City once or twice every three months. Vivian testified that accused-appellant could no longer have an erection as a result of an accident he had in 1992. She said she tried to "masturbate his sex organ, but it will not stand." She said they had a child, Ianbe Cebrian Lim, born on May 5, 1992, but that was before accused-appellant had an accident in July, 1992. She said accused-appellant did not seek medical treatment for his condition because they could not afford the cost.

Asked why she did not help her daughter Jovelyn in filing this case, Vivian answered she did not believe the charges were true. She claimed that her sister-in-law and Jovelyn did not consult her in filing the charges against accused-appellant.

Vivian Cebrian's daughter by accused-appellant, Richie Lim, was the next witness. Richie testified[17] that Jovelyn had a boyfriend named Rico and that, one time, she saw them embracing and kissing each other. She said the two eloped and stayed in the house of Rico's parents for two days before Jovelyn was fetched by her (Richie's) parents. Jovelyn was severely scolded. Resenting the scolding, she charged accused-appellant with rape.

Accused-appellant agreed to be examined to determine his claim that he was impotent. Dr. Gene L. Gulanes, the examining physician, found the following:

"GENERAL PHYSICAL EXAMINATION:

Fairly nourished, normally developed, conscious, coherent, cooperative, ambulatory subject with the following vital signs: BP= 200/110 mmHg. PR= 117 beats/min. RR= 28/min.

Ht.= 156.0 cms. Wt= 54.0 kgs.

GENITAL EXAMINATION:

Pubic hair, fully grown, penis measuring 1 inch, circumcised, flaccid, soft, after thirty (30) minutes of stimulating his penis, no erection was noted.

CONCLUSIONS:

- No erection was noted
- Essential Hypertension

This certification is issued in connection with his/her application for whatever purpose it may serve.

Davao City, Philippines, 4/22/97.

[Signed]

[Signed]

BENJAMIN LIM

GENE L. GULANES, M.D.

MEDICAL OFFICER VI"[18]

Dr. Gulanes testified[19] that the stimulation of the penis to produce an erection was done manually. He said that accused-appellant did not show him any medical certificate of the accident allegedly suffered by him in 1990. Dr. Gulanes said that it was possible for accused-appellant to have had sexual intercourse from 1992 to 1996 and that as "impotency is usually related to emotional and psychological [problems]," such could not be determined by

mere stimulation for 30 minutes of accused-appellant's sexual organ.

Milagros Basmayor, social worker, was presented as witness on rebuttal. She produced a certified true copy of a Certificate of Fetal Death (Exh. F)[20] of Baby Boy Cebrian Lim delivered on October 17, 1994 at the Davao Medical Center. The boy's parents are listed in the certificate as "Benjamin Beltran Lim" and "Vivian Morgado [sic] Lim." Basmayor testified[21] that she came to know that the baby was stillborn from Jovelyn, who said she and her aunt took Vivian to the Davao Medical Center where she gave birth.

Based on the evidence of the parties, the trial court found accused-appellant guilty. The dispositive portion of its decision, dated June 5, 1997, reads:

"Accordingly, for the rape committed by accused in 1993, pursuant to the 1987 Constitution under Art. 335 of the Revised Penal Code, accused BENJAMIN LIM, is sentenced to suffer a penalty of reclusion perpetua, since the death penalty was not yet re-imposed in accordance with RA 7659.

"On the other hand, for rape committed by accused against the complainant in 1994, even if there is no specific reference on definite date of commission, considering that RA 7659 was effective, on January 1, 1994, accused on the same evidence, is sentenced to suffer the supreme penalty of death pursuant to Art. 335 of the Revised Penal Code, as amended by Sec. 11, par. 6 of RA 7659, in the manner as provided for in RA 8176.

"Accordingly, finding the evidence of the prosecution more than sufficient to prove beyond reasonable doubt the guilt of accused, BENJAMIN LIM of the offense charged committed, on August 18, 1996 against the complainant, his step-daughter, only 15 years, 3 months and 25 days at the time said rape was committed, in Crim. Case No. 37,373-96, pursuant to Sec. 11, par. 6 of RA 7659, accused, BENJAMIN LIM, is sentence[d] to suffer the supreme penalty of death through lethal injection, pursuant to RA 8176 in relation to Sec. 24 of RA 7659, in the manner and procedure [of] its execution as provided for by law.

"Notwithstanding the above-sentence in Crim. Case No. 37, 372-96, accused is likewise sentence[d] to suffer the penalty of reclusion perpetua. In Crim. Case No. 37,374-96, accused is sentence[d] to suffer the supreme penalty of death by lethal injection, pursuant to RA 8176 in re[la]tion to Sec. 24 of RA 7659, in the manner and procedure [of] its execution as provided for by law.

"Finding accused guilty of the three (3) informations against him, in accordance with Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil indemnity, accused BENJAMIN LIM, is moreover ordered to indemnify the complainant, JOVELYN MORADA, in the amount of P30,000.00, in each of the above-informations for the wrong done to complainant, resulting to the destruction of her early life and honor, ultimately rendering all her opportunity in the future hopeless and frustrated.

"Pursuant to Sec. 22 of RA 7659, par. 2 thereof, the Branch Clerk of Court of this Court, is ordered to elevate the entire records of these cases with the Clerk of Court of the Honorable Supreme Court, Manila, for review of this judgment and corresponding appropriate action and issuance of its decision en banc, as the case may be.

"SO ORDERED.

Given this 5th day of June 1997 at Davao City, Philippines."

Hence this appeal. Accused-appellant contends that:

"I

THE COURT A QUO COMMITTED SERIOUS ERROR IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT AND IN DISREGARDING THE THEORY OF THE DEFENSE.

"II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THREE (3) COUNTS OF RAPE DESPITE THE EVIDENCE TO THE CONTRARY."

Accused-appellant contends that there are "loose ends" in Jovelyn Morada's testimony which undermine her credibility.

First, he contends that Jovelyn's testimony as to her alleged rape in 1993 that accused-appellant "embraced me" and "told me, not to tell my mother that he molested me"[22] is insufficient to prove the alleged first rape.

The contention is without merit. The question to her, in answer to which she said accused-appellant had embraced her and threatened her with harm if she told her mother she had been "molested," was precisely how she was raped in 1993. Her testimony is as follows:

"Q - Now, sometime in August 1996 in the evening, where were you?

A - I was sleeping.

Q - Where?

A - In the room together with my younger sister.

Q - Now, that room which you said you were sleeping with your younger sister will you describe the lighting condition of that room at that time?

A -

It was lighted because there is an electric post near our house and the walling of our house as well as the roofing is made of "trapal"; the light of the post enter into that room.

Q - Where did you sleep in that particular room?

A - On the bed.

Q - When you were sleeping at that time, do you know of any unusual event that transpired?

A - There was an incident.

Q - What was that?

A -

I was at that time already soundly sleeping as well as my younger sister and I just observe later on that when I was awoken, I was already far from where my younger sister was sleeping.

Q - What happened?

A - I struggled because I wanted to be free from him.

Q - You said "him" to whom are you referring to?

A -

My stepfather.

Q - Are you referring to the accused in this case?

A - Yes, sir.

Q - Now, so what else transpired when you were at that point when you said you were held by your stepfather?

A - At that time, I turn on my side and he embraced me and he tried to take off my panty.

Q - And at that time Jovelyn Morada what were you wearing?

A - A skirt.

Q - Now, please describe to the Honorable Court, how your stepfather remove your panty and your skirt?

A - (Witness demonstrated she pulled it down, as if pulling down her panty) He pulled it down.

Q - When your panty was pulled down by your stepfather, what happened next?

A - He inserted his penis in my vagina.

Q - And what happened next when your stepfather inserted his penis in your vagina?

A - I struggled because I really did not want it to happen.

Q - What did you do aside from struggling?

A - At that moment, my younger sister was awaken and she switch-on the light.

Q - Now, when you were sexually attacked by your stepfather, why did you not shout?

A - Because he told me that he will kill me and boxed me, that is why, I was afraid.

xxx xxx xxx

Q - Now, Jovelyn Morada in 1994, do you remember of any sexual attack made by your stepfather on your person?

A - Yes, sir.

Q - How did he do it?

A - He also at that time inserted his penis to my vagina.

Q - Did you report that incident in 1994 to your mother?

A - Yes, sir.

Q - Now, what was the reaction of your mother?

A - She did not do anything.

Q - In the incident of 1994, considering that you are the stepdaughter of the accused, how did the accused do it to you?

A - Because there are times that my mother is not around or not in the house.

Q - Did you resist on the attack made by your stepfather?

A - Yes, I struggled.

Q - What happened to your resistance against the accused?

A - I was not able to free myself from him, because of his superior strength.

Q - Now, in 1993, Jovelyn Morada, do you recall of any other sexual attack made by your stepfather?

A - Yes, sir.

Q - And where did it happen?

A - Also in our house.

Q - What time, during the day or evening?

A - It was in the evening.

Q - Where was your mother at that time?

A - She was at that time in the house.

Q - And why is it that your stepfather was able to perform that act to you, when according to you, your mother was around?

A - At that time, my mother was sleeping and she was only aware later on, that her husband my stepfather was no longer beside her.

Q - At that time in 1993, please describe how you were raped, sexually abused by your stepfather?

A -

He embraced me.

Q - And what else?

A - And he told me, not to tell my mother that he molested me.

Q - Why?

A - I don't know.

Q - Why is it that it was only in 1996, that these incidents were reported?

A - Because I cannot anymore take what he had done to me."[23]

On re-direct examination, Jovelyn elaborated on her testimony regarding the 1993 rape:

"Q -

You mean to say that in 1993, your stepfather went to your room at about 1:00 o'clock?

A - Yes, sir.

Q - Did you notice when he went inside your room?

A - No.

Q - What did you notice on that night of 1993?

A - I was aware when my skirt was already taken off as well as my dress.

Q - How about your panty?

A - Also my panty.

Q - How about your stepfather, what did you notice on him?

A - He also took out his short pants as well as his brief.

Q - Did you notice when he was already on top of you?

A - Yes, sir.

Q - When he was really on top of you, what did you do?

A - I also wanted to be free from him.

Q - Did you call his name?

A - Yes, sir.

Q -

And did he answer?

A - He told me, not to move, and not to say anything and he embraced me tightly that I cann[ot] free from him.

Q - What happened after that?

A - After he have [sic] a sexual intercourse with me, he put on again his shortpant.

Q - Did he say anything to you?

A - No more."[24]

Second, accused-appellant contends that Jovelyn's claim that she was looking at the calendar and the clock on the wall while she was being raped on August 19, 1996 is contrary to ordinary human behavior.

Accused-appellant misrepresents Jovelyn's testimony. What she said was that she looked at the calendar after, not during, the rape.[25] There is nothing unnatural about this. Jovelyn testified that she always looked at the calendar to know what day it was. Nor did she say she purposely looked at the clock while accused-appellant was abusing her. What she said was that while she was being raped, she could see the clock on the wall and that was how she was able to tell the time she was raped.[26]

The trial court, which had the opportunity to see Jovelyn while testifying, found her testimony to be "natural" and "unhesitant." 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.

Accused-appellant also claims that there was no rape because of the lack of resistance on the part of Jovelyn on the three occasions she claims she was raped. He argues it cannot be said that he exercised moral and physical influence over Jovelyn because it is her own mother who was the breadwinner in their family while the accused-appellant only visited them in their house.

This contention is not true. Accused-appellant was not just an occasional visitor in the house of complainant. While he may not have stayed with Jovelyn and her mother all the time as he worked in Santiago, Agusan del Norte, the fact is that he made conjugal visits to Jovelyn's mother, begetting in five years four children.[27] Two of the children were born during the time accused-appellant said he was in Santiago, Agusan del Norte. Indeed, accused-appellant went to Davao City where Vivian lived once or twice every three months, each visit lasting from one week to two weeks.[28] (Vivian herself estimated that she and accused-appellant had been living together for almost 15 years.[29]) From this, it can reasonably be inferred that accused-appellant had become part of Jovelyn's family life and that accused-appellant, as the common-law husband of her mother, had gained such moral ascendancy over Jovelyn that any resistance that normally should be expected from any other girl could not have been put up by her. As has been said, the moral ascendancy of the accused takes the place of force and intimidation as an element of rape.

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 only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard and fast rule. It is therefore enough that it produces fear-fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. Intimidation would also explain why there are no traces of struggle which would indicate that the victim fought off her attacker.[30]

Moreover, Jovelyn's testimony shows that force and intimidation were indeed used to make her submit to the will of accused-appellant. With respect to the rape in 1996, she testified that despite her resistance accused-appellant succeeded in ravishing her. She was threatened with death if she made an outcry.[31] With regard to the 1994 rape, she testified she also resisted accused-appellant's advances, but was not able to free herself because of accused-appellant's superior strength.[32] In 1993, when she was raped for the first time, accused-appellant held her tightly and after the rape she was warned not to tell her mother that she had been raped.[33]

As pointed out by the Solicitor General, Jovelyn was only 12 in 1993 when she was raped for the first time by accused-appellant. She could easily be intimidated into submission by someone whom she knew was her mother's live-in partner. As stated in *People vs. Maglente*,[34] the test is whether the threat or intimidation produces a reasonable fear in the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. In this case, we are convinced from the evidence that accused-appellant used threat and intimidation to subjugate complainant's will and break her resistance down. Thus, the fact that no injury was noted on Jovelyn by the attending physician does not negate the fact that she was raped.

Nor does the absence of lacerations in Jovelyn's hymen and sperm in her vagina belie her charges of rape. The presence of laceration in the hymen is not necessary to prove rape.[35] The absence of spermatozoa in the vagina, on the other hand, could be due to a number of reasons, such as vertical drainage of the semen from the vagina, the acidity of the vagina, or washing of the vagina immediately after sexual intercourse, as pointed by us in another case.[36]

Accused-appellant claims that since 1990 he has been impotent as a result of a fall from a jeep. To be sure, the evidence of the accident, which allegedly rendered accused-appellant impotent, is conflicting. According to

accused-appellant, the accident occurred in 1990.[37] On the other hand, his common-law wife, Vivian Cebrian, said it happened in July 1992[38] after their child, Ianbe Cebrian Lim, was born on May 5, 1992.[39] But even if accused-appellant's alleged accident took place in 1992, the fact is that on October 17, 1994, his wife Vivian had a stillbirth (Exh. F), thus belying his claim that he was impotent.

In truth, impotency being an abnormal condition should not be presumed. The presumption is in favor of potency.[40] In this case, even the doctor who performed a manual stimulation of accused-appellant's penis but failed to make it erect could not say that accused-appellant had no erection before the examination. To the contrary, he admitted that it was possible that accused-appellant was still capable of sexual intercourse.

Finally, accused-appellant contends that the dates of the commission of the crimes as alleged in the informations in Criminal Case No. 37,372-96 ("sometime in the year 1993") and Criminal Case No. 37,374-96 ("sometime in the year of 1994") are so indefinite that the preparation of his defense was prejudiced. He claims that the informations should have been dismissed for being vague and ambiguous.

It is noteworthy, however, that accused-appellant did not ask for a bill of particulars under Rule 116, sec. 10 of the Rules of Court before he was arraigned.[41] It is, therefore, late in the day for him to question the form or substance of the informations.[42] In any case, the date of the commission of the rapes is not an essential element of the crime.[43] The exact dates and time of the rapes committed in 1993 and 1994 are not material to accused-appellant's defense that he became impotent as a result of an accident he had because his claim is that the accident took place in 1990 or 1992, before the commission of the crimes imputed to him. For the same reasons, the fact that Jovelyn testified that she was raped on August 19, 1996[44] even though the information in Criminal Case No. 37,373-96 alleged that the rape took place "on or about August 18, 1996" is not an obstacle to his conviction of said rape.

The point is not raised by accused-appellant, but it should be noted that the informations alleged that accused-appellant is the "stepfather of the complainant the common-law husband of her mother." It is this: Art. 335, as amended by R.A. 7659, provides:

"x x x

"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 "

This Court has held that the concurrence of the minority of the victim and her relationship to the offender being a special qualifying circumstance, which increases the penalty as opposed to a generic aggravating circumstance which only affects the period of the penalty, should be alleged in the information because of the accused's right to be informed of the nature and cause of the accusation against him.[45]

Although "stepfather" refers to a man who is married to the victim's mother after the death of the victim's biological father, accused-appellant is also alleged in the three informations as the common-law husband of complainant's mother. The relationship of accused-appellant to complainant is thus alleged together with her age at the time of the commission of the crime. This makes the cases at bar different from *People vs. Manggasin*, supra, because in that case, accused-appellant was alleged to be the stepfather of the complainant but the evidence showed that he was not married to complainant's mother. There was thus no proof of the relationship alleged in

the information and, therefore, it was held that the qualifying circumstance was not proved. On the other hand, in these cases, the relationship of "common-law spouse" of complainant's mother was both alleged and proved and, therefore, the legal requirement has been satisfied justifying the imposition by the trial court of the death penalty. Four members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echegaray*[46] 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.

While it is true that R.A. 7659 took effect on December 31, 1993[47] (not January 1, 1994 as held by the trial court), because of the failure of the prosecution to establish in Criminal Case No. 37,372-96 that the 1993 rape was committed on that date, it is in keeping with the principle that doubts should be resolved in favor of accused-appellant that the penalty imposed for this crime is the lower penalty of reclusion perpetua.

The amount of damages awarded by the trial court must also be modified in line with our recent rulings. Moral damages in the amount of P50,000.00 should be awarded in each of the three cases. 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.[48] The civil indemnity should be likewise increased from P30,000.00 to P50,000.00 in Criminal Case No. 37,372-96 and to P75,000.00 in Criminal Case Nos. 37-373-6 and 37,374-96 considering the imposition of the death penalty in those two cases is justified.[49]

WHEREFORE, the decision of the Regional Trial Court, Branch 17, of Davao City is AFFIRMED with the MODIFICATION that, in Criminal Case No. 37,372-96, accused-appellant Benjamin Lim y Beltran is ordered to pay the offended party, Jovelyn Morada, P50,000.00 by way of civil indemnity and P50,000.00 by way of moral damages; and, in Criminal Case Nos. 37,373-96 and 37,374-96, P75,000.00 civil indemnity and P50,000.00 moral damages in each of said two cases.

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, and Ynares-Santiago, JJ., concur.

[1] Per Judge Renato A. Fuentes; Rollo, pp. 17-33.

[2] Records of Criminal Case Nos. 37,372-96, 37,373-96, and 37,374-96, p. 35.

[3] Rollo, p. 7.

[4] Id., p. 8.

[5] Id., p. 9.

[6] Records of Criminal Case Nos. 37,372-96, 37,373-96 and 37,374-96, pp. 13-14.

[7] TSN, pp. 3-17, February 18, 1997.

[8] Per the police blotter (Exh. C), Records in Criminal Case Nos. 37,372-96, 37,373-96, and 37,374-96, p. 36.

[9] TSN, pp. 19-25, November 5, 1996.

- [10] Id., pp. 10-19.
- [11] TSN, pp. 2-5, November 6, 1996.
- [12] Id., pp. 6-17.
- [13] Exh. A, Records of Criminal Case No. 37,372-96, p. 6.
- [14] TSN, pp. 5-9, November 5, 1996.
- [15] TSN, pp. 2-11, March 26, 1997.
- [16] TSN, pp. 3-13, April 21, 1997.
- [17] Id., pp. 13-19.
- [18] Exh. I, Records of Criminal Case Nos. 37,372-96, 37,373-96, and 37,374-96, p. 54.
- [19] TSN, pp. 2-7, May 7, 1997.
- [20] Records of Criminal Case Nos. 37,372-96, 37,373-96 & 37,374-96, p. 53.
- [21] TSN, pp. 9-10, May 7, 1997.
- [22] TSN, p. 7, February 18, 1997.
- [23] Id., pp. 3-7, (underscoring supplied).
- [24] Id., pp. 11-12.
- [25] Id., p. 14.
- [26] Ibid.
- [27] TSN, p. 8, March 26, 1997.
- [28] TSN, p. 11, April 21, 1997.
- [29] TSN, p. 13, November 5, 1996.
- [30] People vs. Cañada, 253 SCRA 277, 285 (1996).
- [31] TSN, p. 5, February 18, 1997.
- [32] Id., p. 7.
- [33] Id., pp. 7, 12.
- [34] G.R. Nos. 124559-66, April 30, 1999.
- [35] People vs. Domantay, G.R. No. 130612, May 11, 1999; People vs. Maglente, G.R. Nos. 124559-66, April 30, 1999.
- [36] People vs. Acala, G.R. Nos. 127023-25, May 19, 1999.
- [37] TSN, pp. 3 & 10, March 26, 1997.
- [38] TSN, pp. 5 & 7, April 21, 1997.
- [39] Id., p. 6. Ianbe's birthdate, however, per his medical certificate (Exh. E, Records of Criminal Case Nos.

37,372-96, 37,373-96, and 37,374-96, p. 44) was May 7, 1992.

[40] Mencionano vs. Neri San Jose, 89 Phil. 63 (1951).

[41] Rocaberte vs. People, 193 SCRA 152 (1991).

[42] People vs. Alba, G.R. Nos. 131858-59, April 14, 1999; People vs. Dimapilis, G.R. No. 128619-21, December 17, 1998; People vs. Garcia, 281 SCRA 463 (1997).

[43] Id., People vs. Bugarin, 273 SCRA 384 (1997); People vs. Hortillano, 177 SCRA 729 (1989).

[44] TSN, p. 14, February 18, 1997.

[45] People vs. Manggasin, G.R. Nos. 130599-600, April 21, 1999.

[46] 267 SCRA 682 (1997).

[47] See People vs. Simon, 234 SCRA 555 (1994).

[48] People vs. Prades, 292 SCRA 186 (1998).

[49] People vs. Victor, 293 SCRA 411 (1998); People vs. Alba, G.R. Nos. 131858-59, April 14, 1999; People vs. Maglente, G.R. Nos. 124559-66, April 30, 1999.

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