

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEPITO ALAMA MAGDATO, ACCUSED-APPELLANT.

G.R. Nos. 134122-27. February 07, 2000

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PER CURIAM:

Before us for automatic review[1] is the decision[2] of 5 May 1998 of the Regional Trial Court, Branch 1, of Legazpi City, 5th Judicial Region in Criminal Cases numbered 7658 to 7663, inclusive, finding accused-appellant Pepito Alama Magdato (hereafter PEPITO) guilty beyond reasonable doubt of six (6) counts of rape committed on her 12-year old daughter Cherry Ann Magdato (hereafter CHERRY ANN) and, in each count, sentencing him to suffer the penalty of death and to pay the amounts of P50,000 for the "civil aspect" of the case, and P20,000 as exemplary damages.

The information in Criminal Case No. 7658 alleged that PEPITO committed the crime of rape as follows:

That in the morning of April 7, 1997, at Barangay Gabawan, Municipality of Daraga, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste designs, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter CHERRY ANN MAGDATO, 12 years old, against her will and consent to her damage and prejudice.

ACTS CONTRARY TO LAW.[3]

The accusatory portions of the informations in Criminal Cases numbered 7659, 7660, 7661, 7662 and 7663 are similarly worded as that in Criminal Case No. 7658, except as to the dates and the time of the commission of the rapes which are, respectively, (a) 5 April 1997, at 9:00 a.m. in Criminal Case No. 7659[4]; (b) April 3, 1997, in Criminal Case No. 7660[5]; (c) 26 March 1997, at 10:00 a.m. in Criminal Case No. 7661[6]; (d) 24 March 1997, at 2:00 p.m. in Criminal Case No. 7662[7]; and (e) 11 March 1997, at 9:30 a.m. in Criminal Case No. 7663.[8]

The informations were based on complaints subscribed and sworn to by CHERRY ANN and her mother Rosita Llandelar Magdato.

The cases were consolidated and after PEPITO entered a plea of not guilty in each case during his arraignment, joint trial was had.

The witness presented by the prosecution were Dr. Babelyn Lana of the Daraga Health Unit of Daraga, Albay, and CHERRY ANN.

PEPITO took the witness stand and offered denial and alibi for his defense. His son, Dennis, Amelia Mata and Delia Solomon were presented as his witnesses.

The evidence for the prosecution is summarized by the Office of the Solicitor General in the Appellee's Brief as follows:

- The rape of March 11, 1997:

- On March 11, 1997, at about 9:30 in the morning, twelve year old Cherry Ann Magdato was playing with her one-year old brother Oliver outside their house at Barangay Gabawan at Daraga, Albay. Momentarily, she was called by her father, appellant Pepito Alama Magdato, to come upstairs and to put her brother Oliver to sleep. Cherry Ann obeyed her father. Her brother Oliver though did not want to sleep yet. Since Oliver refused to sleep, Cherry Ann, who was a Grade IV student, decided to study (pp. 7-8, tsn, C. Magdato, November 6, 1997).

- While studying, Cherry Ann noticed appellant looking at her uncle Junior Batagan from inside their house. Junior, who was their neighbor, was sweeping the area outside the house. Appellant went out of the house. When he came back, he turned on the radio almost full blast. Afterwards, he entered the bedroom where Cherry Ann was studying. He peeped at Junior Batagan through the holes in the room (pp. 8-9, tsn, C. Magdato, November 6, 1997)

- Thereafter, appellant sat on the mat laid on the floor near where Cherry Ann was studying. Cherry Ann felt uneasy and asked him what he intended to do. Appellant did not answer but instead grabbed Cherry Ann's left arm with both hands. Cherry Ann tried to shout but appellant covered her mouth with his palm and held her by the waist (pp. 9-12, tsn, C. Magdato, November 6, 1997).

- Appellant undressed himself. He removed his t-shirt and "maong" pants. Cherry Ann tried to escape from appellant by running from the bedroom but appellant caught her by her right foot and pulled her back into the bedroom (pp. 12-13, tsn, C. Magdato, November 6, 1997).

- Appellant tried to take off Cherry Ann's skirt. As he pulled the skirt down, Cherry Ann pulled it back up. As appellant was stronger than his daughter, he was able to eventually remove her skirt and panty, leaving her brown t-shirt on. He then forced Cherry Ann to sit on a covered drum above two and a half feet in height, which serve as a rice container. At that time, the drum was half filled with rice (pp. 13-15, tsn, C. Magdato, November 6, 1997).

- Appellant sat on top of Cherry Ann. He held his penis in his hand and inserted it into her vagina. Only part of appellant's penis was able to penetrate her sex organ. Cherry Ann felt excruciating pain but did not notice if her sex organ bled. Her mother though, almost four hours later, noticed bloodstain on the bedroom floor and casually remarked that it probably came from their dog. After having sexual intercourse with his own daughter, appellant left but not before he threatened to kill her if she told her mother what had happened (pp. 15-19, tsn, C. Magdato, November 6, 1997).

- Cherry Ann's mother, Rosita Llandelar, was not in the house when the rape was committed. She was a vendor who sold rice cakes and vegetables from morning till early evening in the market in Daraga, Albay (p. 22, Joint Decision, p. 8, tsn, C. Magdato, November 6, 1997).

- The rape of March 24, 1997:

- On March 24, 1997, at about two o'clock in the afternoon, Cherry Ann and her brother one-year old Oliver were inside the kitchen of their house at Barangay Gabawan in Daraga, Albay. Her brothers Pepito and Kevin, who were also in the house, were sent by appellant to buy cigarettes for him (pp. 20-21, tsn, C. Magdato, November 6, 1997).

- Appellant approached Cherry Ann in the kitchen and caressed her back. Appellant took off his shorts. He did not bother to take off his brief after putting out his penis through a slit therein (p. 21, tsn, C. Magdato, November 6, 1997).

- Cherry Ann tried to escape from appellant but the latter blocked her path and closed the windows and the door of the house. Appellant then took off Cherry Ann's skirt and shorts. Then he forcibly removed her panty. Cherry Ann tried to stop appellant by pressing her legs hard against each other but appellant who was very much stronger forced them open and inserted his penis into her vagina. Only part of appellant's penis was able

to penetrate her sex organ after which he made a push and pull movement with his body. Cherry Ann felt excruciating pain (pp. 22-25, tsn, C. Magdato, November 6, 1997).

- After having sexual intercourse with her, Cherry Ann saw appellant wiping from his penis a white substance which dripped off. Appellant warned her not to tell anybody about what took place between them otherwise he would kill her. Cherry Ann put on her shorts, went inside the bedroom and cried (pp. 25-26, tsn, C. Magdato, November 6, 1997).

- When the second rape was committed, Cherry Ann's mother was not in the house (p. 25, tsn, C. Magdato, November 6, 1997).

- The rape on March 26, 1997:

- On March 26, 1997, at about 9:30 o'clock in the morning, Cherry Ann was in the kitchen of their house located at Barangay Gabawan in Daraga, Albay, cooking vegetables. Cherry Ann's one year old brother Oliver was also in the house (pp. 3, 6 and 11, tsn, C. Magdato, November 12, 1997).

- While Cherry Ann was cooking, appellant approached her from behind and held her back. Fearful that appellant might rape her again, Cherry Ann cried (pp. 3-4, tsn, C. Magdato, November 12, 1997).

- Appellant caressed Cherry Ann's hands. Cherry Ann tried to pull away from appellant but he held on tightly and forced her to sit on a bamboo bench about a meter in length. Cherry Ann tried to escape but appellant pushed her down and undressed her (pp. 4-7, tsn, C. Magdato, November 12, 1997).

- Appellant pulled down Cherry Ann's skirt and panty. She tried to pull up her skirt but to no avail. Appellant then took off his shorts, leaving his short on. Cherry Ann tried to shout for help but appellant covered her mouth with his hand and pinned her thighs down on the bench. Appellant inserted his penis into her vagina. Only part of appellant's large penis was able to penetrate her sex organ. Cherry Ann felt excruciating pain (pp. 7-11, tsn, C. Magdato, November 12, 1997)

- After the rape, Cherry Ann saw appellant wiping a whitish substance from his penis (p. 11, tsn, C. Magdato, November 12, 1997).

- During the rape, Cherry Ann's mother, Rosita, was not in the house (p. 6, tsn, C. Magdato, November 12, 1997). However, on one occasion when appellant was not around, Cherry Ann told her mother about the rapes. Rosita told her daughter to just "ignore" what had happened because the next time it happened, they will file a case against him (pp. 12-14, tsn, C. Magdato, November 12, 1997).

- D. The rape of April 3, 1997:

- On April 3, 1997, at about ten o'clock in the morning. Cherry Ann was in the kitchen of their house in Barangay Gabawan, cooking vegetables. Her younger brother Oliver was also in the house (pp. 14 and 16, tsn, C. Magdato, November 12, 1997).

- Appellant, who had been pacing the kitchen while Cherry Ann was cooking approached her and caressed her back. Cherry Ann tried to avoid appellant's touch but he held her at the back and made her sit the bamboo bench. Cherry Ann cried (pp. 14-17, tsn, C. Magdato, November 12, 1997)

- Appellant pulled at Cherry Ann's shorts. Cherry Ann tried to pull up her shorts but appellant was too strong for her. He removed her shorts and her panty. Appellant took off his short pants. Cherry Ann tried to stand up from the bench but appellant pushed her down on the shoulders and sat on top of her (pp. 17 and 21, tsn, C. Magdato, November 12, 1997).

- Appellant inserted his penis into Cherry Ann's vagina. Only part of his large penis was able to penetrate her sex organ. Cherry Ann felt excruciating pain and cried. After the intercourse, Cherry Ann saw a whitish

substance come out of appellant's penis (pp. 19-20, tsn, C. Magdato, November 12, 1997).

- During the time of the rape, Cherry Ann's mother was not in the house (pp. 16 and 22, tsn, C. Magdato, November 12, 1997). Cherry Ann was not able to tell her mother about the fourth time she had been raped by appellant as he was always around her mother (pp. 22-23, tsn, C. Magdato, November 12, 1997).

- The rape of April 5, 1997:

- On April 5, 1997, at about nine o'clock in the morning, Cherry Ann was in the kitchen of their home at Barangay Gabawan, cooking rice. Oliver and another younger brother Kevin were in the house with her. Appellant was likewise in the kitchen, watching Cherry Ann (pp. 2-3, tsn, C. Magdato, November 19, 1997; p. 14, Joint Decision).

- After cooking rice, Cherry Ann played. While Cherry Ann played, appellant embraced her. She tried to free herself from appellant's embrace but appellant was too strong for her. Appellant made her sit on a chair and then took off his short pants (p. 4, tsn, C. Magdato, November 19, 1997)

- Appellant took of Cherry Ann's shorts and kissed her neck. Cherry Ann tried to resist appellant's advances but to no avail. Appellant sat on top of Cherry Ann (p. 5, tsn, C. Magdato, November 19, 1997)

- Appellant proceeded to insert his penis into Cherry Ann's vagina. Cherry Ann tried to remove appellant's penis from her sex organ and move away from him. However, appellant succeeded in inserting his penis and made a push and pull movement. Only part of appellant's penis was able to penetrate her vagina. Cherry Ann cried (pp. 6-7, tsn, C. Magdato, November 19, 1997).

- After the sexual intercourse, Cherry Ann saw a whitish fluid come out of appellant's penis. Appellant then dressed himself, while Cherry Ann put on her shorts, still crying (p. 8, tsn, C. Magdato, November 19, 1997)

- The rape of April 10, 1997:

- On April 10, 1997, at about ten o'clock in the morning, Cherry Ann was in their home at Barangay Gabawan, washing dishes. Cherry Ann's younger brothers Oliver and Kevin were also at home (pp. 8 and 15, tsn, C. Magdato, November 19, 1997[7]).

- At that time, Cherry Ann thought that appellant was outside the house, tending to his carabao. However, while washing the dishes, she turned around and saw appellant staring at her. Appellant pulled her by the shoulders, caressing her at the same time. Cherry Ann broke free of appellant and tried to escape from him. Appellant caught Cherry Ann and pushed her to a chair (pp. 9-10, tsn, C. Magdato, November 19, 1997).

- Appellant took off his shorts and proceeded to undress Cherry Ann. He pulled down Cherry Ann's underwear and sat on her legs. She tried to resist appellant's advances by pushing him and by trying to shout but appellant was too strong for her. He covered her mouth with his hand whenever she attempted to scream for help (pp. 10-11 and 13, tsn, C. Magdato, November 19, 1997).

- Appellant inserted his penis into Cherry Ann's vagina. Cherry Ann felt excruciating pain and cried. After the sexual intercourse, appellant wiped Cherry Ann's vagina (pp. 11-12, tsn, C. Magdato, November 19, 1997).

- Cherry Ann reported the rapes to her mother. On April 18, 1997, which was the earliest possible time they could get away from appellant, Rosita brought Cherry Ann to the Daraga Police Station where they lodged six complaints for rape against appellant. Cherry Ann was investigated by the police and executed a sworn statement dated April 18, 1997, implicating her father (pp. 23-25, tsn, C. Magdato, November 12, 1997; pp. 13 and 22, Joint Decision).

- On April 21, 1997, Cherry Ann was brought by a social worker from the Department of Social Welfare and Development (DSWD) to the Daraga Rural Health Unit at Daraga, Albay, for physical examination. Cherry

Ann was examined by Dr. Babelyn Luna who found that her sex organ bore lacerations at the four o'clock and seven o'clock positions and that the lateral aspect of her labia minora was reddish upon examination (pp. 7-10, tsn, Lana, November 3, 1997). Dr. Lana disclosed that the lacerations could have been caused by the "entry of the male organ into the female organ" (p. 10, tsn, Lana, November 3, 1997) and by "a single or series of sexual contact" (p. 23, Joint Decision; p. 10, tsn, Lana, November 3, 1997).[9]

PEPITO's version, as narrated by him in his Appellant's Brief, is as follows:

Evidence for the defense shows that accused-appellant and his wife have six (6) children. Cherry Ann, complainant herein, is second to the eldest. He testified that Cherry Ann never treated them as her own parents. She used to leave their house and whenever confronted about it, she would impolitely answer. He further declared that it was impossible for him to have committed the six (6) charges of rape against his own flesh and blood. Aside from these, there were several persons present in their house during those times that the incidents allegedly happened. Among them were his mother, Tarciana, his mother-in-law, Elena Llandelar and his three (3) sons namely Dennis, Kevin and Oliver. During those times, Cherry Ann was at school while his wife was out in the market. He attributed all the accusations against him as ill-feelings on the part of Cherry Ann because of the punishment that she received from him whenever the former would answer back.

Dennis Magdato, brother of the complainant, corroborated accused-appellant's testimony. He testified that during those times that the crimes allegedly happened, he saw his father at the yard of their house making chicken coop. He also recalled that his two (2) grandmothers and his two (2) brothers were living in their house and that he could not remember if Cherry Ann was present at those times. (TSN, February 6, 1998, pp. 2-33; TSN, February 19, 1998, pp. 2-23)[10]

The trial court believed that CHERRY ANN, who had no sexual experience with any man before, was raped on various dated by PEPITO, her own father. It found as true her story of defloration, as corroborated by the medical certificate issued by one Dr. Babelyn Lana, showing, among others, that she suffered vaginal lacerations at four (4) and seven (7) o'clock positions. The trial court determined that CHERRY ANN's testimony positively identifying PEPITO as her rapist was categorical, unequivocal, candid, straight-forward, clear and full of details; her demeanor on the witness stand showed her intense hatred towards her father, whom she openly cursed, feeling no remorse if he were meted the death penalty.

The trial court gave no weight to PEPITO's bare denial and alibi. In the first place these cannot prevail over the positive and clear testimony of her daughter that indeed it was he who raped her. His imputation of ill-motive against her daughter, such as her undergoing corporal punishment in his hands whenever she committed mistakes, which allegedly motivated her to file the rape cases against him, was so inconsequential as to drive her to accuse her own father with so serious a crime such as rape. The alibi PEPITO offered was worthless, he having admitted his presence at the scene of the crime, i.e., he was, during all the time of the incidents in question, at the back of their house making a chicken coop.

Finally, the trial court disregarded for being biased the testimony of Dennis Magdato, PEPITO's son, as evidenced by Dennis' admission in court that he will do everything to save his father from being convicted.

In his Appellant's Brief dated 22 March 1999, PEPITO, through the Public Attorney's Office, interposes a single error, to wit:

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In support thereof, PEPITO argues that he should be acquitted because when the inculpatory facts are susceptible of two or more interpretations, one of which is consistent with his innocence, the evidence does not fulfill the test

of moral certainty required for conviction. He asserts that his alibi that during the times the rapes were allegedly committed by him against CHERRY ANN, the latter was in school, was corroborated not only by his eldest child Dennis Magdato, but by no less than Amelia Mata, the principal of the school where CHERRY ANN studied and Lilia M. Solomon, CHERRY ANN's teacher. CHERRY ANN's attendance in school having been confirmed by her said two teachers who have no reason to falsify the truth, PEPITO's defense of alibi, although looked down by the courts as a weak defense, becomes relevant in these cases. Further, CHERRY ANN had a motive to charge him because he always scolded her for being hard-headed.

In the Appellee's Brief filed by the Office of the Solicitor General, the People argues that PEPITO's alibi is without merit, and the testimony of his witness corroborating the same cannot prevail over that of CHERRY ANN, which the trial court found to be credible and convincing. Moreover, the medical evidence on record fully supports CHERRY ANN's testimony. The lame assertion of PEPITO that CHERRY ANN concocted the series of rapes because she wanted to get back at him for the occasions he had punished her is totally baseless. No woman, especially of tender age, such as 12 year old CHERRY ANN, would concoct against her father a story of defloration, allow an examination of her private part and expose herself to ridicule and humiliation of a public trial if she was not motivated solely by a desire to vindicate her honor.

The People prays that the decision be affirmed in toto.

After a very exhaustive, objective and painstaking review of the evidence offered by the parties, we find ourselves unable to yield to the ratiocination of PEPITO.

We are fully convinced of CHERRY ANN's sincerity, candor and truthfulness as to the facts of her rapes, and the number of times that she was raped. There is no iota of evidence showing that her account of her defilements were a result of falsehood. PEPITO's insinuation of ill-motive on the part of CHERRY ANN in the filing of the rape charges against him is too lame and flimsy. Parental punishment is not a good reason for a daughter to falsely accuse her father of rape. It takes depravity for a young girl to concoct a story which would put her own father on death row and drag herself and the rest of her family to a lifetime of shame.[11] We cannot believe, and there is at all no evidence on record except the self-serving claim of PEPITO, that 12-year old CHERRY ANN would fabricate a story of defloration against her own father, make public her painful and humiliating experiences which are better kept in secret or forgotten, allowed her private parts to be examined, expose herself to the trouble, inconvenience, embarrassment and humiliation of a public trial, and jeopardize her chances of marriage unless she was telling he truth was motivated by nothing but the desire to obtain justice for the grievous wrongs committed against her by her own father.[12] Furthermore, Rosita Leandelar Magdato, CHERRY ANN's mother and PEPITO's wife, spared no effort and lost no time in immediately reporting the rapes and assisting CHERRY ANN in instituting the criminal complaints. There is no showing at all that Rosita did so out of any ulterior motive. Certainly no mother would have the courage to expose an ignominious act of her husband which could lead to a breakup of the family unless she were prompted by a desire to obtain justice for her daughter.

We reject PEPITO's alibi. Firstly, the testimonies of PEPITO's witnesses corroborating his alibi can not prevail over the testimony of CHERRY ANN regarding her accounts of the rapes, which we find to be credible. Secondary, PEPITO's defense of alibi, which is already weak, became even weaker when supported by a relative, in this case, his own son Dennis.[13] However, even if we consider his son's testimony that he saw him during the rape incidents in question working on a chicken coop, this is not an assurance that his father could not have committed the rapes imputed to him by CHERRY ANN. We have held that to establish alibi, it is not only incumbent upon the accused to show that he was present at some other place about the time of the alleged crime, but also that he was at such other place for so long a time that it was impossible for him to have been at the place where the crime was committed at the time of its common.[14] PEPITO miserably failed to prove such

impossibility. Furthermore, we are not persuaded by the testimonies of Amelia Mata and Lilia Solomon, which tended to show that he may not have committed the rapes on the dates in question allegedly because CHERRY ANN was in school. Amelia Mata admitted that school year 1996-1997 ended on 3 April 1997, thus:

Q Madam witness, you said a while ago that the school year 1996 to 1997 ended on April 3, 1997, was there still a class on that day?

A No, more sir.[15]

Clearly, then, there is no credible evidence that CHERRY ANN was in school on the dates in April 1997 when she was raped. Neither is there convincing evidence that CHERRY ANN was in school on the dates and time in March 1997 when she was raped. Amelia Mata was not her teacher and did not know CHERRY ANN personally. Mata was the principal of the school where CHERRY ANN's studied and had no hand in the recording of the child's attendance in school. She testified, thus:

Q

Do you know personally Cherry Ann Magdato?

A

I do not know her your honor because I am not the teacher and adviser of that girl, it just happened that, that girl has been always absent and the teacher had to tell me and find out the cause of absences of that girl.

xxx

Q

You did not even get personally got acquainted with her?

A

Yes, your honor.

xxx

Q

Madam witness, you have said that the teacher of Cherry Ann Magdato for the school year 1996 to 1997 was a certain Lilia Solomon and do you know madam witness who prepared this school register which is the record of attendance?

A

It was Mrs. Solomon, sir.

Q

How come that it came to your possession?

A

Because the Court ordered me and so I borrowed it before coming to court.

Q

And you are very much certain that this is the school register or record of attendance and enrollment which was given to you by Lilia Solomon?

A

Yes, sir.[16]

We find to be correct the penalty of death imposed by the trial court for each of the six (6) crimes of qualified rape. Such penalty is justified under Article 335 of the Revised Penal Code, as amended by R.A. 7659. The informations for rape in these cases explicitly allege that CHERRY ANN is the daughter of PEPITO and she was only twelve (12) years old when he committed the rapes in question. Under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, the death penalty shall be imposed if the crime of rape is committed with, inter alia, the following attendant circumstances:

- When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

The prosecution proved that CHERRY ANN was born on 10 February 1985 though her testimony[17] and her birth certificate.[18] PEPITO also categorically admitted that CHERRY ANN was only twelve (12) years old on the dates she allegedly was raped. Thus, on direct examination he declared:

ATTY. BALIWAS:

x x x

Q

Now, Mr. Witness how about Cherry Ann Magdato, is she the same Cherry Ann Magdato the private complainant in this case?

A

Yes, sir.

Q

And would you tell us her birthday?

A

February 10, 1985.[19]

Four Members of the Court, although maintaining their adherence to the separate opinions expressed in *People v. Echegaray*[20] that R.A. No. 7659, insofar as it prescribes the death penalty, is unconstitutional, nevertheless, bow to our ruling, by a majority vote, that the law is constitutional and that the death penalty can accordingly be imposed.

In line with prevailing jurisprudence, however, the damages as well as the amount thereof must be modified. The trial court ordered PEPITO to pay CHERRY ANN the amount of P50,000 for the "civil aspect" and the amount of P20,000, as exemplary damages in each count of rape. The trial court may have in mind the indemnity for rape when it spoke of "civil aspect." Pursuant, however, to *People v. Victor*,[21] the amount of P50,000 as indemnity should be increased to P75,000 for each count of rape, since the offense is qualified by circumstances under which the death penalty is now authorized to be imposed by law. In addition, as held in *People v. Prades*,[22] the amount of P50,000 as moral damages must also be awarded to the victim for each count of rape without need for pleading or proof of the basis thereof. The fact that the complainant in rape has suffered the trauma of mental physical and psychological sufferings which constitute the basis for moral damages are too obvious to still require recital

thereof at the trial by the victim since we assume and acknowledge such agony on her part as a gauge of her credibility. The award of exemplary damages in the amount of P20,000 is in order.[23]

WHEREFORE the assailed decision, dated 5 May 1998 of Branch 1 of the Regional Trial Court of Legazpi City, 5th Judicial Region, in Criminal Cases Numbered 7658-63 to 7663, inclusive, finding accused-appellant PEPITO ALAMA MAGDATO guilty beyond reasonable doubt, as principal, of six (6) counts of rape under Article 335 of the Revised Penal Code, as amended by R.A. 7659, and sentencing him to the penalty of death in each case is hereby AFFIRMED, with the MODIFICATION that accused-appellant is ordered to pay in each case the offended party, Cherry Ann Magdato, the amount of P75,000 as indemnity and P50,000 as moral damages, in addition to the award of P20,000 as exemplary damages.

Upon finality of this decision, let certified true copy thereof, as well as of the records of these cases, be forthwith forwarded to the Office of the President for possible exercise by the President of his pardoning power pursuant to Article 83 of the Revised Penal Code, as amended by Section 25 of R.A. No. 7659.

Costs de oficio.

SO ORDERED.

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

[1] 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 [1994]).

[2] Original Record (OR), 108-141; Rollo, 22-55. Per Judge Romeo S. Danas.

[3] OR, Criminal Case No. 7658, 1.

[4] Id., Criminal Case No. 7659, 1.

[5] Id., Criminal Case No. 7660, 1.

[6] Id., Criminal Case No. 7661, 1.

[7] Id., Criminal Case No. 7662, 1.

[8] Id., Criminal Case No. 7663, 1.

[9] Rollo, 135-143.

[10] Id., 78-79.

[11] People vs. Cabanela, 299 SCRA 153 [1998].

[12] People vs. Lucas, 232 SCRA 537 [1994]; People v. Guzman, 265 SCRA 228 [1996].

[13] See People v. Sanchez, G.R. No. 121039-45, 25 January 1999; People v. Sancholes, 271 SCRA 527 [1997].

[14] See 2 VICENTE J. FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES: EVIDENCE 582 (1991) and hosts of cases cited therein.

[15] TSN 12 February 1998, 23.

[16] TSN, 12 February 1998, 6-8.

[17] TSN, 6 November 1997, 3.

[18] Exhibit "B."

[19] TSN, 6 February 1998, 4.

[20] 267 SCRA 682 [1997].

[21] 292 SCRA 186 [1998]; *People v. Alfeche*, 294 SCRA 352 [1998].

[22] 293 SCRA 411 [1998]; *People v. Calma*, 295 SCRA 629 [1998]; *People v. de los Santos* 295 SCRA 583 [1998].

[23] *People v. Matrimonio* 215 SCRA 613 [1992].

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