

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO MAGTRAYO, ACCUSED-APPELLANT.*G.R. Nos. 134480-82. October 04, 2000*

Ponente: VITUG, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-134480-82/>**VITUG, J.:**

For automatic review is the decision of the Regional Trial Court Branch 19 of Cagayan de Oro City, convicting accused-appellant Gregorio Magtrayo of rape, on three counts, committed against Mary Mae L. Cabactulan and sentencing him to suffer three penalties of death, or one death sentence per each count of rape, and to pay private complainant indemnity in the sum of P150,000.00 and exemplary damages of P30,000.00.

Sometime in August, 1995, the Philippine National Police ("PNP") of Balingasag, Misamis Oriental, detained private complainant Mary Mae L. Cabactulan, for stealing several packs of cigarette at a marketstall. In an interview conducted by SPO4 Eusebia Delute, police chief investigator, Mary Mae narrated that she had run away from home because the common-law husband of her mother, herein accused-appellant Gregorio Magtrayo, raped her on three separate occasions during Saturday evenings of January, March and July of 1994, the exact dates of which she could not recall. Being a minor, Mary Mae was entrusted by Delute to the Department of Social Welfare and Development ("DSWD") Center in Balingasag.

Mary Mae was born on 12 January 1979, the third and only surviving child of Elvira Ladao and Vicente Cabactulan of Calawag, a remote barangay of Balingasag, in Misamis Oriental. Vicente soon died. Mary Mae was three years old when Elvira started living, without the benefit of marriage, with accused-appellant with whom she had four children. Mary Mae regarded accused-appellant as her own father and so affectionately addressed him "Papa".

Magtrayo supported his family working six days a week from Mondays to Saturdays. He would be home only on Sundays, he claimed, and return to his job on Mondays, at times Tuesdays, of the week. Elvira, to augment the family income, peddled food and drinks at a dancing hall until late evening. It was on one Saturday evening in January of 1994, according to Mary Mae, when accused-appellant, taking advantage of Elvira's absence, first made his lustful advances on Mary Mae, then only fourteen years old. Gregorio Magtrayo embraced Mary Mae, poked a knife at her neck, and told her not to shout or be killed. She tried to free herself but he was too strong for her. He pressed his legs tightly against hers, mashed her breasts and later tied her hands and feet to the bedposts with a nylon rope. He spread her legs and inserted his fingers, then his penis, to her vagina. Mary Mae felt pain and shouted "No, Pa, x x x it's painful." [1] After accused-appellant had made several push and pull movements, private complainant noticed blood in her genitalia. None of her four brothers and sisters witnessed the incident because accused-appellant had meanwhile transferred the sleeping children, then aged two to seven years old, from the lone bedroom of the house to the sala. When her mother arrived around midnight, Mary Mae immediately told her of what had transpired but Elvira refused to believe her.

Like before, on a Saturday in March of the same year, Mary Mae said she was sexually assaulted by

accused-appellant. He embraced her and when she ran to escape from him, accused-appellant caught up with her and pulled her to the bedroom. Fear cowed her to submission. The last rape was committed, also at about midnight, on a Saturday of the month of July 1994 when Elvira was still at the poblacion. Accused-appellant reclined beside her on the bed, removed her clothes and, despite her pleas, again violated her.

Unable to bear the repeated indignity, as well as the indifference of her mother to her plight, private complainant left home in August 1994 and, for the next three months, worked as a domestic helper in the house of Congressman Pelaez. Later, in the company of peers her age, she abandoned her new home and wandered from place to place. It was a year after, sometime in August 1995, when Mary Mae was caught pilfering several packs of cigarettes at a Balingasag market stall. At the police station, Mary Mae narrated her past ordeal before the interviewing police officer. Finding credence in her story, police officer Delute entrusted Mary Mae to the custody of the local DSWD. An examination conducted by Dr. Clarito Cañete, a rural health doctor, yielded the following prognosis -

"No physical findings, except that introitos readily admits one finger (physical virginity no longer possible)."[2]

Three informations for rape, docketed Criminal Cases No. 96-144, No. 96-355 and No. 96-356, were filed against Gregorio Magtrayo for the separate occasions of sexual assault on Mary Mae during the months of January, March and July of 1994; viz:

"I N F O R M A T I O N

"The undersigned Assistant Provincial Prosecutor, upon sworn complaint originally filed by private complainant, MARY MAE L. CABACTULAN, hereby accuses and charges GREGORIO MAGTRAYO, of the crime of RAPE committed as follows:

"That several years prior to 1994 when offended party was still 11 years of age and until the last week of July 1994, at Barangay Calawag, Municipality of Balingasag, Province of Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, accused GREGORIO MAGTRAYO, the stepfather of the offended party, by means of force, violence, threat and intimidation, did then and there willfully, unlawfully and feloniously succeeded in having carnal knowledge upon the offended party Mary Mae L. Cabactulan, against her will and consent.

"CONTRARY TO and in violation of Article 335 of the Revised Penal Code."[3]

"I N F O R M A T I O N

"The undersigned Assistant Provincial Prosecutor, upon sworn complaint of Mary Mae Cabactulan hereto attached as Annex `A', accuses and charges Gregorio Magtrayo of the crime of RAPE, committed as follows:

"That on or about the month of March, 1994, at more or less 12:00 o'clock midnight, at Barangay Calawag, Municipality of Balingasag, Province of Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then the step father of the offended party, Mary Mae L. Cabactulan, did then and there willfully, unlawfully and feloniously and by the use of force, intimidation and threats pinned her down and succeeded in having carnal knowledge with Mary Mae L. Cabactulan, who was only 14 years old at that time, against her will and without her consent.

"CONTRARY to and in violation of Article 335, As Amended, of the Revised Penal Code."[4]

"INFORMATION

"The undersigned Assistant Provincial Prosecutor, upon sworn complaint of Mary Mae Cabactulan hereto attached as Annex `A', accuses and charges Gregorio Magtrayo of the crime of RAPE, committed as follows:

"That on or about the month of January, 1994, at more or less 12:00 o'clock midnight at Barangay Calawag, Municipality of Balingasag, Province of Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named being then the step father of the offended party, Mary Mae L. Cabactulan, did then and there willfully, unlawfully and feloniously and by the use of force, intimidation and threats pinned her down and succeeded in having carnal knowledge with Mary Mae L. Cabactulan, who was only 14 years old at that time, against her will and without her consent.

"CONTRARY to and in violation of Article 335, As Amended of the Revised Penal Code."[5]

Myrna de los Reyes, a guidance psychologist who conducted a series of tests on private complainant, described Mary Mae as "tomboyish" or as one who would be comfortable in associating with male companions. The witness found Mary Mae to be suffering from anxiety and anger, whose schizophrenic tendencies were typical of a sexually molested girl. Her extrovert nature and her preference for the company of friends were diagnosed as being her way to seek comfort outside a dysfunctional family. Coincidentally, when complainant was asked the witness stand to describe her relationship with her mother and accused-appellant, hurt and resentment was evident when she emphatically cried, "I am nothing to them." [6]

In his defense, accused-appellant insisted that Mary Mae had left their house in Calawag in August 1994 not because of having been raped by him but for his having punished her after she was caught stealing money from her mother. Accused-appellant later found her staying with a neighbor. He claimed that he was never absent from work at Vitarich since 1990. Not once, he said, was he home on a Saturday night. His alibi was corroborated by Emesto Ayop, a co-worker, and in whose residence in Purok 6, Tablon, accused-appellant lodged during workdays.

Elvira Ladao, mother of private complainant, described Mary Mae as being a good and obedient girl but admitted having had "disciplinary problems" with her. Elvira corroborated the testimony of her common-law husband that he was never home on Saturdays, particularly during the months of January to July 1994, when supposedly the sexual assaults took place. Elvira dismissed the charges of her daughter to be mere fabrications, asserting that on the Saturday nights when the incidents of rape were claimed to have happened, she had all the while been with Mary Mae. She could only recall two Saturdays when private complainant did not accompany her because the latter had to take care of her younger siblings. Elvira expressed incredulity over Mary Mae's account of the rape, claiming that the entire family slept on the floor and owned no bed to which Mary Mae could have been tied while being molested. She did not mind that her daughter was apprehended and in the custody of the DSWD but when she finally decided to go and visit her daughter at the DSWD Center, Mary Mae refused to see her. It was only during her second visit at the DSWD, when Mary Mae told her "I will not go to your place because your husband will rape me," [7] that Elvira first heard about the alleged rape. [8]

The trial court did not buy the defense of denial and alibi of accused-appellant. Giving more reliance to the testimony of private complainant than the version proffered by the accused, the trial court rendered judgment, thus:

"WHEREFORE, the court finds accused guilty of triple rapes and so hereby sentences accused to suffer 3 death sentences, or 1 death sentence for each case, to indemnify the complainant P50,000 in each case or the total of P150,000.00, and P10,000 as exemplary damages in each case or the total of P30,000, and to pay the costs.

"Accused's custodian is hereby ordered to ship accused to the proper higher authority soon after the promulgation of this judgment.

"SO ORDERED."[9]

In its own review, the Court sees no cogent reasons to depart from the factual findings of the of the lower court.

Mary Mae Cabactulan, the private complainant, has testified in a credible manner. The Court finds no serious inconsistency in her testimony; indeed, her narration of the rape incidents on three different occasions is quite firm and clear. Thus -

"ATTY. LACUBTAN:

We are talking about January.

"COURT: (To the witness)

"Q.

With what hand did he hold a knife?

"A.

His right hand.

"Q.

Is it correct that you were already in bed when he raped you?

"A.

Yes, I was already in bed when (he) came to rape me.

"Q.

What did he do to the knife?

"A.

He poked it on my neck and told me that if I would shout, he would kill me.

"Q.

What did he do if any?

"A.

I was about to shout but he put his hand on my mouth.

"Q.

When the accused put his hand on your mouth, what did you do?

"A.

I kept on kicking but I cannot release from his hold (sic) because he is very strong.

"Q.

You said it was the right hand of the accused that hold the knife, what hand the accused (sic) used in holding your mouth?

"A.

At the time, he put down the knife and he laid (sic) on top of me.

"Q.

What did the accused use in holding your mouth?

"A.

The right hand.

"COURT:

Proceed.

"ATTY. LACUBTAN:

"Q.

You said he put down the knife, what part of the house the accused put down the knife?

"A.

Far from the bed.

"Q.

You said it was his right hand that held your mouth, what about his left hand?

"A.

Both hands while he was lying on top of me.

"Q.

You were telling this Court that both hands were holding you?

"A.

Yes, sir.

"Q.

What part of your body he was holding you?

"A.

He held my mouth and his legs were pressed tightly to my legs.

"Q.

And what anything happened (sic) after that?

"A.

After that he mashed my breast, then he inserted his finger to my vagina and then he inserted his penis to my vagina.

"Q.

What hand of the accused is mashing your breast?

"A.

Both hands.

"Q.

And so when he mashed your breast and your nipple, his hands were no longer on your mouth?

"A.

Yes, sir.

"Q.

Mary Mae, your hands and your feet were free at that time?

"A.

He tied my both hands with a rope on the bed.

"Q.

What kind of rope?

"A.

A nylon rope.

"Q.

Did you tell the police who investigated you Mary Mae that you were tied? "

"A.

Yes, sir.

"Q.

Now which happened first, the mashing of your breast or the tying of your hands?

"A.

Mashing my breast.

"Q.

Did the accused bring a rope at that time when he started holding you?

"A.

Yes, sir.

"Q.

Of what (sic) hands did he hold the rope?

"A.

His right hand.

"Q.

What about the knife, what hands of the accused used in holding the knife?

"A.

Also his right hand.

"Q.

Will you please describe that rope Mary Mae?

"A.

Big nylon rope.

"Q.

What part of your body was tied?

"A.

Hands and feet.

"Q.

In what portion of the hands?

"A.

At the ankle and also at the feet.

"Q.

How many hands did he use when he tied you?

"A.

Two (2) hands.

"Q.

Which was tied first, your left hand or your right hand?

"A.

Left hand.

"Q.

So when your left hand was tied, your right hand is (sic) free?

"A.

Yes, I resisted but he was on top of me.

"Q.

You said your hands and feet were tied, where were you tied?

"A.

On the bed.

"Q.

So that rope must be very long?

"A.

Yes, sir. Very long.

"Q.

When the accused mashed your breast and your nipple, what did you feel?

"A.

I felt the pain?

"Q.

When he inserted his finger to your vagina, what did you feel?

"A.

It is very painful and there was blood.

"Q.

In that bed, Mary Mae, you said both your feet were tied, will you please tell this Honorable Court the relative positions of your feet?

"A.

He spread my legs then he lay on top of me and he inserted his penis on my vagina.

"Q.

How far was it that your legs were spread by him, is it like this? (Counsel spreading his legs about two (2) feet).

"A.

Like that, sir.

"COURT: (To the witness)

"Q.

You said your legs were tied, how did the accused tie your feet?

"A.

He tied it separately.

"Q.

To what it tied? (sic)

"A.

At the right post of the bed.

"Q.

How about your left?

"A.

Also at the post of the bed, of the same bed.

"Q.

You mean your two (2) legs were tied on the same post?

"A.

It was tied separately.

"Q.

So your left leg was tied on the same post or to the opposite post?

"A.

To the opposite post.

"Q.

When your feet were tied respectively to the post of the bed and your thighs were spread, were you still wearing your clothes?

"A.

No more as he undressed me.

"Q.

Which happened, he tied you first before he undressed you?

"A.

I was undressed first and then he tied me.

"Q.

And after the accused inserted his finger on your vagina, what happened first?

"PROS. LUCAGBO: Already answered.

"COURT: Several occasions he answered that. (To the witness)

"Q.

Did his penis penetrate inside your vagina?

"A.

Yes, your honor.

"Q.

All of it?

"A.

Yes, your honor.

"Q.

What did you feel?

" A.

It was very painful and it even bled.

"Q.

Was there any push and pull movements?

"A.

After that I felt wet on my vagina.

"Q.

Tell the court was that your first experience with sexual intercourse or not?

"A.

Yes, that was the first."[10]

Similarly, Mary Mae was no less plausible in her testimony that accused-appellant forcibly ravished her for the second time on a Saturday in March 1994.

"Q.

In another case no. 96-355, you accused your stepfather in raping you in March, on what part of the house the rape took place.

"A.

That was at the kitchen, he suddenly embraced me and brought me to the bedroom.

"Q.

You did not run away?

"A.

I ran but he was able to catch me and pulled me towards the bedroom.

"Q.

You were in the kitchen when you were held by the accused and you ran away to the bedroom?

"A.

No, sir. He embraced me at that time and brought me to the bedroom.

"Q.

You did not shout?

"A.

I did not shout because he warned me not to shout if I will do so he will kill me.

"COURT (TO WITNESS):

"Q

What time was that?

"A.

It was midnight.

"Q.

What were you doing in the kitchen at that time?

"A

I was washing the plate.

"Q.

At 12:00 midnight?

"A.

Yes, your honor.

"Q.

And this time, the accused was not holding a knife anymore?

"A.

Yes, your honor.

"Q.

He does not have a rope anymore?

"A.

Yes, your honor.

"Q.

And you could have fought him back if you did? (sic)

"A.

Yes, I could have fought back but the fear is already with me and he already warned me not to tell anybody.

"Q.

When was that threats happened?

"A.

Every time he had sexual intercourse with me he threatened me.

"Q.

From January to March 1994, did he have sexual intercourse with you again?

"A.

Yes, there was a time but I could not remember the date.

"Q.

After January is February and after February is March, in what were you ever assaulted by the accused?

"A.

There was a time he sexually assaulted me but I can not remember the month.

"Q.

That was the first intercourse and the second one that you were explaining?

"A.

Yes, your honor.

"COURT: Proceed.

"ATTY. LACUBTAN:

"Q.

And that intercourse Mary Mae that you said that happened between January and March you of course consented?

"A.

No, I did not consent to it.

"COURT: (To witness)

"Q.

This is March now, you were dragged to the room, did you consent?

"A.

No, he forced me.

"COURT: Proceed.

"ATTY. LACUBTAN:

"Q.

You said you were dragged to the bed, were you seated on the bed or were you pushed to lie down?

"A.

He let me lie down on the bed.

"Q.

And you did not resist?

"A.

Yes because he said that if I will tell it to anybody, he will kill me.

"Q.

In fact during the time it was no longer the accused who undressed you but it was you who took off your panty because of your fear?

"A.

No, he was the one who undressed me.

"Q.

But you did not anymore resist?

"A.

I resisted.

"Q.

When you were already not in bed (sic), please tell the court what did the accused do to you?

"A.

He mashed my breast and have sexual intercourse with me.

"Q.

Where was your left hand and right hand rested?

"A.

He put my hands on my back and pressed it tightly.

"Q.

In March Mary Mae, you said that your breast were being mashed by the accused while your hands were being pressed on your back, when his penis penetrated your vagina, did you not feel any sensation.

"A.

No, because that was very painful."[11]

Mary Mae convincingly declared that, for the third time, accused appellant forcibly had sexual intercourse with her in the month of July 1994. Thus-

"Q.

On your third complaint against the accused you were being rape (sic) for the last time in July 1994, where did it happen?

"A.

Also in our house.

"Q.

What time?

"A.

At midnight.

"COURT: (To the witness)

"Q.

Also Saturday?

"A.

Yes, your honor.

"COURT: Proceed.

"ATTY. LACUBTAN:

"Q.

And your mother was also out at that time?

"A.

No, my mother was at the dancing hall at that time selling.

"Q.

And your younger brothers and sisters were already asleep?

"A.

Yes, sir.

"Q.

And you were not yet asleep?

"A.

I was already asleep at that time and he lay down beside me and told me not to say anything.

"Q.

And what did you tell him.

"A.

I said no pa because it is painful.

"Q.

But this time you removed your clothes?

"A.

My stepfather was the who undressed me.

"Q.

Did he also mash (sic) your breast?

"A.

Yes, sir.

"Q.

And you did not resist?

"A.

I resisted.

"Q.

After that, what did you do?

"A.

I cried because it was very painful.

"Q.

Were your younger brothers and sisters not awakened by your cry?

"A.

No, sir. They are yet very young.

"Q.

All these three months in January, March and July 1994 in any occasion have you not shouted or did you not make any outcry?

"A.

I shouted but he covered my mouth."[12]

It had not escaped the Court's attention that the testimony of private complainant did suffer from a number of inconsistencies. During direct examination, she stated that on the night the first rape was committed in January, she was in the kitchen washing dishes when accused-appellant dragged her to the room,[13] and in March, when the second rape occurred, she was already sleeping with her brothers and sisters when the accused laid down beside her and then had her.[14] Later, however, upon cross-examination, private complainant flipped flopped in her account and recounted that, in January, she was in bed when accused-appellant raped her[15] and that it was during the month of March when she was in the kitchen and brought to the bedroom.[16]

These inconsistencies, however, are not valid and sufficient justification for totally discarding Mary Mae's testimony. At most, minor inconsistencies should be regarded as being indicative of an unrehearsed account. A person cannot be expected to remember all the minor details of an occurrence, let alone when the incident is traumatic and occur on different dates. Indeed a rape victim, it is said, would prefer to forget rather than to remember the ugly details of her sad experience.

The defense contends that the small size of the hut and the presence of the four sleeping siblings of private complainant makes it nearly impossible for rape to take place thereat. This argument has been dismissed many times by the Court which has consistently said that lust is no respecter of time and precinct, and that it can be committed in most unlikely places such as in a park, along a roadside, within school premises, or even in an occupied room.[17] There is, in fact, no known rule that rape can only be perpetrated in seclusion.[18]

The defense asseverates that the charges against accused-appellant are mere fabrications of private complainant to get back at him for his heavy-handed method of discipline and that her choosing to report to the authorities the rapes more than a year after their occurrence is only indicative of a deceitful scheme to ease herself away from an

impending indictment for theft by appealing to the sense of pity of the arresting officers. The defense pictures private complainant Mary Mae to be a disobedient girl who loves to go out with friends and who has no qualms in engaging in pre-marital sex and typical teen-age vices of smoking and drinking.

The Court is not persuaded. It finds the testimony of the victim to be candid and straightforward. It is highly improbable for a girl her age and with a low I.Q., attested to by the examining psychologist, to concoct an elaborate tale without wavering in its material points despite the harrowing cross-examination.

The delay of private complainant in making the criminal accusation did not impair her credibility.[19] Mary Mae explained that she did not complain earlier to the authorities due to the fear that her "father" might kill her.[20] Surely, the moral ascendancy of accused-appellant and his threats against her were enough to intimidate her. Instead, she did the only thing she knew, which was to tell her mother of the wrong done to her. Unfortunately, Mary Mae could not find an ally in Elvira that made her decide to run-away from home, a place which to her mind had ceased to afford her the refuge, the warmth and solace she desperately needed at the time. Silvana Tecson Vega, a DSWD social worker, testified that Elvira did not even visit her daughter in jail nor at the DSWD despite notice from DSWD personnel of her daughter's plight. Elvira later approached their office four times only to beg them to discontinue the charges against Gregorio Magtrayo. Exhibiting a conduct uncharacteristic of a concerned parent, consistently with the statement of Mary Mae that her mother was indifferent to her suffering, Elvira Ladao came to visit her daughter only ten months after the latter's detention, or on June, 1996, not evidently out of concern but to convince her to drop the charges.[21] Mary Mae, illustrative of a victim seeking justice for the crime committed against her, staunchly refused, despite the pleas of her mother, to withdraw the criminal cases filed against Magtrayo. This newly found courage can partly be explained by the security, safety and comfort she apparently saw in the protective hands of the authorities.

Nor would the inability of Mary Mae to remember the exact dates when she was ravished lessen the veracity of her testimony. In any event, the date of the rape not being an essential element in the commission of rape[22] would not be of comfort to the defense theory.

The alibi proffered by accused-appellant has been correctly ignored by the trial court. His place of work is only two hours away from Calawag by available means of transportation. The pervading rule is that alibi, being easy to fabricate and difficult to disprove, cannot prevail over, indeed it is practically worthless, in the face of positive identification.[23]

The trial court did not commit error in regarding the three acts of intercourse in January, March and July committed by accused-appellant against private complainant as being constitutive of three separate acts of rape. Nevertheless, the Court agrees with the Solicitor General in recommending that the penalty of reclusion perpetua, instead of death, should only be imposed on Gregorio Magtrayo.[24] The Solicitor General explains -

"It is respectfully recommended that the correct penalty imposable in all three (3) criminal cases is Reclusion Perpetua, because the common-law relationship between appellant and the mother of the victim, Elvira Ladao, was never alleged in the information. The three (3) information for rape alleged that appellant was the step-father of the Mary Mae but the prosecution proved that appellant was merely a common law spouse of Mary Mae's mother. Appellant is the live-in partner of Elvira Ladao. As recently held by this Honorable Court in *People vs. Manggasin*, G.R. Nos. 130559- 500, April 21, 1999 -

"In this case the information in Criminal Case Nos. 4730-0 and 4731-0 alleged that accused appellant, who is the stepfather of the complainant succeeded in having carnal knowledge of the latter who was then eighteen (18) years of age. However, the evidence shows that accused appellant is not the complainant's stepfather because he and complainant's mother were not really married but only lived in a common-law relationship. To these effect are the testimonies of the complainant, her mother, and even accused-appellant himself. Thus,

although a common-law husband is subject to punishment by death in case he commits rape against his wife's daughter, nevertheless, the death penalty cannot be imposed on accused-appellant because the relationship alleged in the information in Criminal Case No.4730-0 against him is different from that actually proven. Accordingly, accused appellant must be sentenced to the lesser penalty of reclusion perpetua."

The award of damages in favor of the victim must be modified conformably with existing jurisprudence. For each count of rape, accused- appellant must be ordered to pay to the private complainant civil indemnity of P50,000.00 and another P50,000.00 by way of moral damages or a total of P300,000.00 for all three counts of rape.

WHEREFORE, accused-appellant GREGORIO MAGTRAYO is found GUILTY of three separate counts of RAPE committed against Mary Mae L. Cabactulan and hereby sentenced to suffer the penalty of reclusion perpetua for each count of rape and to indemnify the private complainant P50,000.00 as civil indemnity and P50,000.00 as moral damages, or sum of P100,000.00 for each count of rape or a grand total of P300,000.00 for all three counts of rape. Costs against accused-appellant.

SO ORDERED.

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

Davide, Jr., C.J., I vote to affirm the award of exemplary damages.

[1] TSN, Mary Mae L. Cabactulan, 31 July 1997, pp. 42-53.

[2] Exhibit B, Records, p. 4.

[3] Records, Criminal Case No. 96-144, p. 1.

[4] Records, Criminal Cases No. 96-355 and No. 96-356, p. 1.

[5] Records, Criminal Cases No. 96-355 and No. 96-356, p. 24-A.

[6] TSN, Cabactulan, 21 July 1997, p. 62.

[7] TSN, Elvira Ladao, 23 September 1997, p. 97.

[8] Id., pp. 96-97.

[9] Rollo, p. 32.

[10] TSN, Mary Mae Cabactulan, 23 July 1997, pp. 42-50

[11] Ibid., at 53-58

[12] Ibid., at 58-60.

[13] Ibid., 21 July 1997, p. 12

[14] Ibid., p. 14.

[15] Ibid., 23 July 1997, p. 42.

[16] Ibid., p. 54.

[17] People vs. Cabillan, 267 SCRA 258.

[18] People vs. Burce, 269 SCRA 293.

[19] People vs. Devilleres, 269 SCRA 716.

[20] TSN, Mary Mae L. Cabactulan, 31 July 1997, p. 28.

[21] TSN, Mary Mae Cabactulan, 31 July 1997, pp. 24-25.

[22] People vs. Quinones, 22 SCRA 249.

[23] People vs. Quiamco, 268 SCRA 516.

[24] Brief for Appellee, Records, pp. 29-30.

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