

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELISEO ALVERO Y LOREÑO @ "SIYOK"; ACCUSED-APPELLANT.*G.R. Nos. 134536-38. April 05, 2000*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-134536-38/>**PER CURIAM:**

For automatic review[1] by this Court is the judgment of 13 April 1998,[2] of the Regional Trial Court, Branch 10, of Abuyog, Leyte, in Criminal Cases Nos. 1631, 1632 and 1633, finding accused appellant Eliseo Alvero y Loreño @ "Siyok" (hereafter ELISEO) guilty of the crime of rape in each case committed against his own daughter, and imposing upon him the extreme penalty of death in each case.

ELISEO was charged with the rape of Loregin Cabahug (hereafter LOREGIN), his 15-year old daughter under three separate informations in Criminal Cases Nos. 1631, 1632 and 1633. The accusatory portion of the Information in Criminal Case No. 1631 reads as follows:

That sometime in the month of April 1996, in the Municipality of Abuyog, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, violence and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge of one LOREGIN ALVERO Y CABAUG, his 15-year old daughter, against her will and without her consent.

ACTS CONTRARY TO LAW.[3]

The Informations in Criminal Cases Nos. 1632 and 1633 are similarly worded, except as to the dates of the commission of the crime, which are "sometime in the month of May 1996," and "sometime in the month of June 1996," respectively.[4]

Upon his arraignment on 2 December 1996, ELISEO, with the assistance of counsel de oficio, entered a plea of not guilty in each of the three cases.[5] Thereafter, joint trial ensued.

The prosecution presented the following witnesses: the victim, LOREGIN; the examining physician, Dr. Roy Marie A. Margallo; and the victim's mother, Lourdes Cabahug Alvero. LOREGIN also testified as rebuttal witness. The trial court summarized the evidence for the prosecution as follows:

In the middle part of January 1996, Loregin Alvero y Cabahug, together with her mother, father, brothers and sisters, were in their house in Bgy. Sta. Elena, Purok 4, Bayugan I, Agusan del Sur. They were then sleeping when her father fondled her breasts. She issued an admonition to her father, after which she transferred to another place in the house to sleep. From January to March of 1996, her mother saw her father molesting her, who then reported this incident of molesting to the barangay officials. A confrontation before the office of the barangay officials took place, during which her father signed on a piece of paper promising not to molest her again, otherwise a case before the Court will be filed against him. For quite sometime, her father did not molest her.

On April 4 of the same year, her father wanted her to accompany him to Bgy. Cumpaitan to harvest palay. She

did not want to go with him, however, her mother prevailed upon her, so Loregin went with her father. While on her way, riding on a big bicycle, her father told her that they will go to the place of her cousin, only to find that she was being led to a banana plantation, and when already at the area, her father drew his pisaw (small knife), pulled and dragged her, then delivered a fistic blow on her abdominal area. Immediately, her father took off her panty, unbuttoned his pants, placed himself on top of her and inserted his penis into her vagina, causing her much pain. After the consummation of the sexual assault, her father warned her not to report this matter to her mother, otherwise Loregin will be killed by him. Thereafter, her father told her that they are going home and was made to backride on his bicycle. Along the way, her father told her that they will first go to Bgy. Sta. Irene to buy rice. Her father instead of cycling in the direction towards home, changed his mind and cycled straight ahead and when he became tired, they boarded a bus bound for Surigao. The bicycle was loaded on the bus. In Surigao, they boarded a ferry boat bound for Liloan, arriving in Liloan at nighttime, hence they passed the night at the ferry terminal in Liloan. When morning came, they boarded a vehicle for Maasin. From Maasin, they took the Bachelor bus bound for Baybay, then proceeded to Abuyog. Upon arriving in Abuyog, they slept in the house of auntie Zabeth in Bgy. Combis. The husband of Zabeth is a brother of her father. While they were living in the house of Zabeth for a period of about three weeks, her father would order her to sleep beside him and not beside Zabeth. During this period of three weeks, whenever her father leaves to cut banana stalks, he would bring her along. After cutting a few, he would prod her for a sexual intercourse and on being refused, he would box her on the abdomen and threaten her with a bolo. When already fallen, her father would then remove her panty and take off his pants, insert his penis into her vagina, causing her to suffer pain. After sexually assaulting her, her father would resume cutting banana stalks. These sexual assaults happened in April of 1996.

From the house of Zabeth, they transferred to the house of Lando. The father of Lando and the father of herein accused are brothers. They lived only for a short period of time with Lando, as they transferred to the house of Elena, her grandmother. While living with her grandmother in the month of May, her father would bring her along to the mountain to gather firewood and when already in the mountain, her father would again rape her. In the month of June, Loregin and her father transferred to the house which her father had built near the house of her lola. Sometimes her great grandmother Bayi, would visit them. In the new house, her father Eliseo raped her several times which series of rape would happen in the early morning.

Complaining witness Loregin, additionally testified that after she filed this complaint for rape against her father, Eliseo wrote her twice, asking for her help so that he can be released from jail which will enable him to go home to Butuan and will not molest her again. The first letter was handcarried to her by an old man, the second by a child, both individuals, she does not personally know. In both letters, her father asked that he be forgiven.

The prosecution requested that these letters be marked as its Exhibit "D" and series, reserving the presentation of the English translation.

On cross examination, complaining witness declared that their house in Bgy. Sta. Irene, Purok 4, consists only of a single space with no room. Her parents have seven children. Loregin has a twin sister named Lyn/Laine, who is smaller than she is. She and her twin sister sleep side by side with each other. Their father and mother likewise sleep side by side, by the wall. The fondling of her breasts by her father started on the month of January up till mid March, which her father usually does between the hours of 10:00 to 11:00 o'clock in the evening. During these times, her father would move away her twin sister. She did not tell her mother about these fondling incidents because she was warned by her father not to tell, otherwise, he will kill her (Loregin). Neither did she tell her twin sister as she might tell her mother, so their father will learn about it and might kill Loregin. One evening in the month of March, their mother saw accused father fondling Loregin's breasts. Their mother confronted herein accused.

On later questions on cross, complaining witness reaffirmed her testimony on direct starting from the time when her mother prevailed on her to go with her father supposedly to harvest palay in. Bgy. Cumpaitan, and

the rape committed on her at the banana plantation in Bgy. Cumpaitan. The nearest house to the banana plantation where she was raped was but four hundred (400) meters away. That after raping her, her father told her that they will go home; that instead of going home, her father cycled with her riding behind, to Bayugan, then boarded a jeepney for Butuan. The bicycle was loaded on the jeepney. They stayed overnight at the ferry terminal in Liloan. She restated her testimony on direct appertaining the route they took from Liloan up till the time they reached the house of her father's cousin in Abuyog and their living for sometime with her auntie Zabeth. She did not tell her auntie Zabeth, her uncle, her grandmother or any of her relative about the sexual abuse committed on her by her father because of the warning of her father not to tell anyone, otherwise Loregin will be killed by him. Zabeth's husband, who is a brother of Eliseo was then in Manila, hence Zabeth was living only with her children, the eldest of which was only Grade II. While in Combis, her father was hired to work on ricefields several times, but would bring herein complaining witness with him.

Complaining witness was able to befriend a household help of Pedro Bucton, from whom Loregin inquired whether she knows someone who is in need of a household help. This friendly household help told Loregin that she can come with her. Thus, one time she requested her father to buy carabao meat for their viand. This gave her opportunity to escape, by riding on a motorcycle, while her friend rode on a jeepney. This was on July 19. After the lapse of about three days, her father came looking for her, however, he was not able to detect her presence in the house of Bucton. It was only after about two weeks that her father was finally able to locate her. In the meantime, she already revealed to Pedro Bucton about the sexual abuse committed on her by her own father. The reason why she revealed to Pedro Bucton instead of to any of her relatives, this sexual abuse on her, was because Pedro Bucton did not know her father and would then not be able to tell her father about what she would disclose.

After she revealed to Pedro Bucton of the series of rape committed on her by her own father, she was subjected to medical examination at the Abuyog District Hospital.

Complaining witness firmly stated that the two letters sent to her by her father are in the penmanship of her father, as she knows very well the penmanship of her father.[6]

The defense is based solely on the testimony of ELISEO. He interposed the defense of denial. His version of the facts as summarized in the Appellant's Brief is as follows:

Accused Eliseo Alvero y Loreño testified that because of the incident that happened in their house on April 24, 1996, he left said house and arrived at Abuyog, Leyte on April 29, 1996, alone.

On April 24, 1996, he came home from the mountain. He overheard his wife talking with a man inside their room which was then closed. When his wife opened the door, he drew his bolo. His wife embraced him. The man whom he named Albino Butingana whom his wife was conversing with inside the room, jumped out of the window. Said man was only wearing a brief. His wife asked for his forgiveness. He left their house, passed the night in the house of his sister Anatacia Mendoza. The following day, he packed his things, left for the mountain to mortgage his pigs, proceeds of which he used as fare in going to Abuyog. He helped his uncle Alipio in farming and then worked on his own coconut land situated at Brgy. Combic. On May 25, 1996, his nephew Jimmy Alvero came to the farm of his uncle, informing him that his daughter Lorigin [sic] arrived. His daughter told him that his wife send to his place. His daughter stayed at the house of his sister-in-law Elizabeth (Zabeth) Alvero, which is half kilometer away from where he stayed. On June 6, 1996, her daughter came to see him, and told him that she wanted to work as house helper in Abuyog. His daughter was then accompanied by Nora Alvero. She later learned that his daughter was Nora's replacement as household helper of Odo Butcon. On July 10, 1996, he went to the house of Odo Butcon to ask money from Lorigin to be spent for the processing of copra at Brgy. Combis. He did not see his daughter, instead her employer. Bucton told him that his daughter was not around. On July 22, 1996, after delivering his copra to a store at Tab-oc, Abuyog, Leyte, he saw his daughter in the house of her employer. He alighted from the pedicab. While he was talking with his daughter, Odo Bucton arrived and pulled his daughter inside the house. Said Bucton drew his .38 caliber pistol,

prompting him to leave the house and went back to Tab-oc, Abuyog. While sitting at Tab-oc, a policemen accompanied by Odo Bucton arrived, thereafter brought him to the municipal building and placed him inside the prison cell. Odo Bucton harbored ill-feelings towards him, because of boundary dispute.

He also testified that the testimony of Lorigin [sic] about the fondling of her breast, sexual assault in banana plantation, in the mountain and in the hut he built near the house of his grandmother were all lies. He also denied sending his daughter-victim letters which were written in his penmanship inasmuch as all he knew was to sign his name.[7]

The trial court gave full faith and credit to the testimony of LOREGIN which "was given in a clear manner without any indication that the same was motivated by any ill feeling"; moreover her testimony was buttressed by the corroborative testimony of her mother, and by the findings in the medical report. It declared as baseless ELISEO's defense that the rape charge was fabricated by LOREGIN's mother for "it is inconceivable that a mother would draw her young daughter into a rape scam with all its attendant scandal and humiliation just because of a supposed feud. No mother in her right mind could possibly wish to stamp her child falsely with the stigma that follows heinous crime that is rape."

Accordingly, in its Judgment of 13 April 1998,[8] the trial court decreed as follows:

WHEREFORE, in view of the foregoing considerations, this Court finds the accused ELISEO ALVERO Y LOREÑO GUILTY BEYOND reasonable doubt of the crime of RAPE in Criminal Case No. 1631, committed in the month of April 1996; hereby imposing upon him the penalty of DEATH.

In Criminal Case No. 1632 committed in the month of May 1996, this Court finds the accused ELISEO ALVERO Y LOREÑO GUILTY beyond reasonable doubt of the crime of RAPE; hereby imposing upon him the penalty of DEATH; and

In Criminal Case No 1633, committed in the month of June 1996, this Court finds the accused ELISEO ALVERO Y LOREÑO GUILTY beyond reasonable doubt of the crime of RAPE; hereby imposing upon him the penalty of DEATH.

The accused shall indemnify the victim Loregin Alvero Y Cabahug, the amount of Fifty Thousand (P50,000.00) Pesos in moral damages; and to pay the Costs.

SO ORDERED.[9]

The death penalty having been imposed on ELISEO, the records of the case were elevated to this Court for automatic review. In his Appellant's Brief, ELISEO interposes the following assignment of errors:

I
THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THREE (3) COUNTS OF RAPE DESPITE INSUFFICIENCY OF THE INFORMATIONS TO STATE THE PRECISE DATES OF THE COMMISSION OF THE OFFENSE.

II
THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE PATENTLY FABRICATED RAPE TALE OF THE COMPLAINANT AND HER MOTHER DESPITE CLEAR AND CONVINCING TESTIMONY OF THE ACCUSED-APPELLANT THAT HE COMMITTED NO RAPE AGAINST COMPLAINANT IN THE MONTHS OF APRIL, MAY, JUNE 1996.

In the Appellee's Brief, the Office of the Solicitor General recommends affirmance in toto of the appealed decision.

We cannot sustain ELISEO's contention that the informations are fatally defective for failing to state the exact

date and time of the commission of rape. The allegation of the exact time and date of the commission of the crime are not important in a prosecution for rape.[10] This is because the precise time of the commission of the crime is not an essential element of rape[11] and it has no substantial bearing on its commission.[12] Rule 110, Section 11 of the Rules of Court provides that it is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit. It is equally settled that a variance of a few months between the time set out in the indictment and that established by the evidence during trial has been held not to constitute an error so serious as to warrant reversal of a conviction solely on that score.[13]

On the issue of credibility, it is settled that findings of the trial court on the credibility of witnesses are entitled to great weight on appeal unless cogent reasons are presented necessitating a reexamination, if not the disturbance of the same; the reason being the former is in a better and unique position of hearing firsthand the witnesses and observing their deportment, conduct and attitude.[14]

We have carefully gone through the records of this case and we see no reason to depart from the findings and conclusions of the court below, especially on the credibility of witnesses. The testimony of LOREGIN is worthy of belief. As the trial court correctly observed, her testimony is candid, categorical and positive. She was consistent and straightforward in her declarations that her father ELISEO raped her repeatedly. During the direct examination, LOREGIN was able to give a thorough account of her father's sexual assaults, viz:

Q On the 4th day of April, where were you?

A In our house.

Q Do you recall what happened that first week of April?

A Yes, sir.

Q What was that incident about?

A

My father told me that we will harvest palay at Bgy. Gumpaitan. I do not want to go but my mother told me to go with him, so I obeyed.

Q Did you in fact go with your father to Bgy. Gumpaitan?

A Yes, sir.

Q Did you harvest palay?

A It did not push through.

Q Why?

A

It happened this way. While we were boarding the big bicycle just like the one used in the pedicab according to him we were going to the place of his cousin so I followed him only to find out that we were going to the banana plantation.

Q What happened there?

A When we arrived there, he told me to accompany him there for a conversation.

Q What happened next?

A While we were having a conversation he drew his pisao.

Q What did he do next, if any?

A He dragged and pulled me to the banana plantation.

Q What did he do after he pulled you to the banana plantation?

A While holding the pisao with his other hand, he boxed me on my abdomen.

Q What happened next?

A I was weakened.

Q What happened next?

A He immediately took off my panty.

Q What did he do next?

A He unbuttoned his pants.

Q Then, what did he do, if any?

A He laid on top of me.

Q Then what happened?

A I was about to shout but since it was very far apart I decided not to.

Q What is it that you did not like to be done to you by your father?

A When he put his penis on my sexual organ.

Q What was your feeling if any once he inserted his organ to your vagina?

A It was painful.

Q What happened next after he placed his sexual organ to your vagina?

A It was consummated.

Q Thereafter what did you do?

A He put back my panty.

Q Thereafter, what happened?

A As I was lying then, I stood up and he told me that if ever I will report or tell my mother he will kill me.

Q Thereafter what did both of you do?

x x x

A

We were about to go home but instead he proceeded to buy rice and changed his mind and went directly ahead. He said that we will always be together. When he was tired driving, we together with the bicycle boarded a bus for Surigao.

Q What else did you do?

A We boarded a ferry boat proceeding to Liloan. Since it was night at Liloan.

Q While sleeping at Liloan, what did the both of you do?

A In the morning, we boarded a vehicle to Maasin.

Q From Maasin, where did you go?

A From Maasin we took a Bachelor Bus for Baybay.

Q And then?

A We proceeded to Abuyog.

Q When you arrived to Abuyog, what did you do?

A We went to certain Felix Yungco at Bgy. Victory, Abuyog, Leyte, his cousin.

Q How long have you been there?

A We spent the night at their house.

Q After you spend the night in their house where did you go?

A We proceeded to Bgy. Kumbis.

Q Where did you go?

A To the house of Auntie Zabeth.

Q How is your father related to Auntie Zabeth?

A The husband of Auntie Zabeth is the brother of my father.

Q For how long have you stayed there?

A Perhaps three weeks.

Q And on that three weeks, did you recall any untoward incident that happened?

A Yes, sir.

Q What was that incident about?

A

In the house of Auntie Zabeth he would not like that I will stay beside Auntie Zabeth. He would order me to stay beside him always.

Q What other incident could you recall?

A Whenever they would harvest banana stalks, he would bring me with him also.

Q Where is that area?

A Far from the house of Auntie Zabeth.

Q Could you describe that area?

A The place is a banana plantation with coconuts and other plants and there is no house.

Q Upon reaching that area, what would your father do if any?

A He would harvest banana stalks.

Q Thereafter?

A After a few harvested banana stalks he would request me to have sex intercourse with him but I refused.

Q When you refuse, what did your father do?

A He boxed me on my abdomen and he got his bolo.

Q What did he do next?

A He held my hand as I was lying and took off my panty.

Q After taking off your panty what he did he do?

A He took off his short pants.

Q And then?

A He placed his penis on my sex organ.

Q What would you feel if any once he inserted his penis to your vagina?

A It was painful.

Q What happened next?

A I started to shout but there are no people around.

Q And what happened next?

A I stood up and put on back my pants.

Q What would you do both after that?

A He would continue to cut the banana stalks.

Q Could you recall the period this incident took place?

A In the month of April.

Q You mean this happened only once in April 1996.

A No, sir during the first week at Auntie Zabeth's place when we arrived.

x x x

Q

Since you said that you lived at the house of your Auntie Zabeth for three weeks, where did you go after three weeks?

A We transferred to the place of Mano Lando.

Q How is he related to your father?

A His father and the father of Mano Lando are brothers.

Q For how long have you stayed at the house of Mano Lando?

A Not long.

Q Why? Where did you go?

A We transferred to the place of my grandmother.

Q What's her name?

A Leona but I do not know her surname.

Q While there at the place of your grandmother do you recall of any untoward incident that happened?

A There was.

Q What was it?

A He would bring me to the mountain to gather firewood and then would rape me again.

Q Where is that mountain? How far is that mountain to the place of Mano Lando and your grandmother?

A Not too far but it is a mountain.

Q And can you recall when did you stay at the house of Mano Lando or your grandmother?

A In May.

Q Why? In June where did you go?

A My father constructed a house near the house of my Lola so we transferred there.

Q Who lived in the house your father had constructed

A The two of us. Sometime Bayi would go there.

Q Who is Bayi?

A Our great grandmother.

Q And while there living at your new house with your father do you recall of any untoward incident that happened?

A There was.

Q What was it?

A When Bayi is not around he would rape me.

Q At what time would this rape incident would occur?

A At early morning.

Q How many times did this alleged raping incident occurred?

A For several times. [15]

It is doctrinally settled that a rape victim who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent is a credible witness[16] and her testimony must be given full faith and credit.[17] Such credibility is definitely enhanced when the accusing words, as in the present case, are directed against a close relative, especially the father. A rape victim's testimony against her father is entitled to greater weight, since ordinarily and customarily, Filipino children revere and respect for elders. This is too deeply ingrained in Filipino

children and families and is even recognized by law.[18] It is thus unthinkable, if not completely preposterous, that a daughter would audaciously concoct a story of rape against her father in wanton disregard of the unspeakable trauma and social stigma it may generate on her and the entire family.[19] A teen-age unmarried lass does not ordinarily file a rape complaint against anybody, much less her own father, if it is not true.[20]

Not even the failure of LOREGIN to immediately report the rape incidents would diminish her credibility nor undermine the charges of rape. The delay can very well be attributed to the fear instilled in LOREGIN by the continuing threats and intimidation by her father who exercised moral ascendancy over her. The silence of a victim of rape or her failure to disclose her misfortune without loss of time to the authorities does not prove that the charges are baseless and fabricated. The victim would rather bear the ignominy and pain in private than reveal her shame to the world or risk the rapist's making good the threat to hurt her.[21]

The imputation by ELISEO of ill motive on the part of his wife hardly merits consideration. We find it difficult to accept ELISEO's claim that his wife concocted the charges of rape because he caught her having an affair with another man. It is unnatural for a parent, more so a mother to use her offspring as an engine of malice especially if it will subject her child to the humiliation, disgrace and even stigma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement or if the same is not true.[22] And no mother in her right mind will sacrifice her daughter's honor to give vent to a grudge knowing that such an experience would damage her daughter's psyche and tar her for life.[23] Moreover, it is unbelievable that a daughter would agree to charge her own father with rape, exposing herself to the ordeal and embarrassment of a public trial, and subject her private parts to examination, just to keep a mantle over her mother's liaison with another man or to please her employer.[24] It would take a most senseless kind of depravity for a young daughter to concoct a story which could put her own father to suffer death.[25] A daughter, especially one of tender age, would not accuse her father of this heinous crime had she really not been aggrieved.[26]

With more reason that we cannot accept the claim of ELISEO that her daughter LOREGIN was manipulated by her employer in to filing the present case in retaliation for asserting claims of ownership over portions of the adjacent coconut land owned by the said employer. Such imputation not only remains unsubstantiated but is also incredible, contrary to reason and too unnatural to merit faith and credit.

More importantly, the medico legal evidence supported the fact of repeated carnal knowledge. LOREGIN is already in a non-virgin state. "There are hymenal tags around the vaginal orifice and there was less resistance in the vaginal canal which indicated that she has been violated for several times. Her healed lacerations are more than one month old which more or less coincided with the alleged dates of commission of the offense.[27]

In addition, ELISEO sent LOREGIN two letters in which he implored her forgiveness. ELISEO was not able to refute the authenticity of the same. A comparison between the signatures in the letters and ELISEO's signature on the subpoena will readily show that they were written by one and the same person. In criminal cases, except those involving quasi-offenses or those allowed by law to be settled through mutual concessions, an offer of compromise by the accused may be received in evidence as an implied admission of guilt. Evidently, no one would ask for forgiveness unless he had committed some wrong and a plea for forgiveness may be considered as analogous to an attempt to compromise. Thus the letters of ELISEO containing an appeal for condonation of his acts cannot but be construed as an implied admission of his guilt.[28]

In contrast to the explicit declarations of the prosecution witnesses on ELISEO'S lechery, the defense relied solely on bare denial. As between a categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail. A mere denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of

credible witnesses who testify on affirmative matters. As against the positive identification and credible testimony by the private complainant, mere denials of the accused cannot prevail to overcome conviction by the trial court.[29]

The records disclosed however that ELISEO actually committed more than three acts of rape. However, considering that ELISEO was charged with only three counts of rape, we can only affirm the trial court's judgment of conviction and its imposition of the death penalty for each of the three counts of rape alleged and proved. Under Article 335 of the Revised Penal Code, as amended by R.A. 7659, the presence of the special qualifying circumstance of minority of the victim and the relationship of the offender with the offended party justifies the imposition of the supreme penalty of death. In the instant case, these two circumstances were specifically alleged in the complaint and were duly proved at the trial.

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

On the civil liability of ELISEO, we note that the trial court merely ordered the payment of moral damages in the sum of P50,000 but did not award civil indemnity which is mandatory upon the finding of the fact of rape. Thus, consistent with the current case law,[30] ELISEO should be ordered to pay LOREGIN the amount of P75,000 in each of the three counts of rape. In addition, exemplary damages must also be awarded in the hope of deterring fathers with perverse tendencies and aberrant sexual behaviors from sexually abusing their daughters.[31]

WHEREFORE, the judgment of the Regional Trial Court of Abuyog, Leyte, Branch 10, in Criminal Cases Nos. 1631, 1632 and 1633 finding accused-appellant ELISEO ALVERO y LOREÑO guilty beyond reasonable doubt of three counts of rape and sentencing him to suffer the death penalty in each of the three cases is hereby **AFFIRMED**, with the **MODIFICATION** that in addition to the award of moral damages of P50,000, he is hereby **ORDERED** in each case to pay P75,000 as civil indemnity and P25,000 as exemplary damages.

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

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, 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).

[2] Per Judge Enrique C. Asis.

[3] Rollo, 5.

[4] Id., 6, 7.

[5] Original Record (OR), 3, 4.

[6] OR, 105-111; Rollo, 40-46.

- [7] Rollo, 69-71.
- [8] Supra note 2.
- [9] OR, 115-116; Rollo, 50-51.
- [10] People v. Bernaldez, 294 SCRA 317, 327 [1998].
- [11] People v. Molero, 144 SCRA 37, 406 [1986].
- [12] People v. Lacaba, G.R. No. 130591, 17 November 1999.
- [13] Rocaberte v. People, 193 SCRA 152, 156 [1991].
- [14] See People v. Landicho, 258 SCRA 1 [1996]; People v. Villaviray, 262 SCRA 13, 18 [1996]; People v. Leoterio, 264 SCRA 608, 617 [1996].
- [15] TSN, 15 April 1997, 9-16.
- [16] People v. Gecoma, 254 SCRA 82 [1996].
- [17] People v. Saballe, 236 SCRA 365 [1994].
- [18] See People v. Burce, 269 SCRA 293, 314 [1997].
- [19] People v. Tresballes, G.R. No. 126118, 21 September 1999.
- [20] People v. Sacapano, G.R. No. 130525, 3 September 1999.
- [21] People v. Padil, G.R. No. 127566, 22 November 1999.
- [22] People v. Silvano, G.R. No. 127356, 29 June 1999; People v. Escobar, 281 SCRA 498 [1997].
- [23] People v. Cura, 240 SCRA 234 [1995].
- [24] See People v. Gabayron, 278 SCRA 78, 91 [1997].
- [25] People v. Rivera G.R. No. 130607, 17 November 1999.
- [26] People v. Dusohan, 227 SCRA 527 [1993].
- [27] TSN, 12 March 1997, 7, 9, 10, 12, 18
- [28] See People v. Prades, 293 SCRA 411 [1998].
- [29] People v. Garcia, 281 SCRA 463, 481 [1997].
- [30] People v. Prades, 293 SCRA 411 (1998).
- [31] See People v. Matrimonio, 215 SCRA 613 [1995]; People v. Lao, 249 SCRA 137, 148 [1995].

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