THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ENRICO MARIANO Y EXCONDE, ACCUSED-APPELLANT.

G.R. Nos. 135511-13. November 14, 2001

Ponente: PARDO, J.

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PARDO, J.:

The Case

The case is before the Court on automatic review[1] of the decision[2] of the Regional Trial Court, San Pablo City, Branch 32[3] finding accused Enrico Mariano y Exconde guilty beyond reasonable doubt of three (3) counts of rape against his own daughter, Jenalyn F. Mariano, and sentencing him to death for each count and to pay Jenalyn F. Mariano the sum of P500,000.00 as moral and exemplary damages.

The Charge

On the basis of a sworn statement[4] of Jenalyn F. Mariano that the accused tried to rape her on three (3) occasions, on March 25, 1997, Assistant City Prosecutor of San Pablo City Perla D. Abril-Pawang filed with the Regional Trial Court, San Pablo City, three (3) criminal complaints[5] for rape under Article 335 of the Revised Penal Code against accused Enrico Mariano y Exconde, as follows:

> Crim. Case No. 10343-SP(97)
>
> "That sometime in the month of August, 1992, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, being then the father of JENALYN F. MARIANO, a minor, then (10) years of age having been born on August 14, 1982, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously had sexual intercourse with the said JENALYN F. MARIANO.
>
> "CONTRARY TO LAW.
>
> "City of San Pablo, March 21, 1997.
>
> "(Sgd.) PERLA D. ABRIL-PAWANG
> Assistant City Prosecutor"
>
> Crim. Case No. 10344-SP(97)
>
> "That sometime in the month of September, 1992, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, being then the father of JENALYN F. MARIANO, a minor, then (10) years of age having been born on August 14, 1982, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously had sexual intercourse with the said JENALYN F. MARIANO.
>
> "CONTRARY TO LAW.

"City of San Pablo, March 21, 1997.

"(Sgd.) PERLA D. ABRIL-PAWANG
Assistant City Prosecutor"

Crim. Case No. 10345-SP(97)

"That on or about February 02, 1997, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, being then the father of JENALYN F. MARIANO, a minor, then (10) years of age having been born on August 14, 1982, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously had sexual intercourse with the said JENALYN F. MARIANO.

"CONTRARY TO LAW.

"City of San Pablo, March 21, 1997.

"(Sgd.) PERLA D. ABRIL-PAWANG
Assistant City Prosecutor"

The Facts

I. The first attempt:

One night a few weeks after Jenalyn's mother left for London on August 9, 1992, then ten year-old Jenalyn was at home with her father, herein accused, and her brother, Ronald, in a rented house at Block 14, Lot 24, NHA, Barangay Sto. Angel in San Pablo City. While accused was drinking gin, he called both Jenalyn and Ronald and ordered each to drink a glass of gin. Since accused look irritated at them and both were afraid of their father who would spank them for no apparent reason, they drank gin as ordered. Accused then told them to sleep in the "sala." As instructed, they slept on a mat in the "sala." Accused joined them and slept between Jenalyn and Ronald. Jenalyn fell asleep immediately.[6]

At ten o'clock later that night, Jenalyn was stirred from her deep slumber by the movements of accused. Jenalyn was shocked to see her father naked. He was kneeling in front of her and his penis was touching her vagina. She no longer wore her panty. Accused's hands were mashing her pre-pubescent breast and he was forcibly introducing his penis in her vagina. Jenalyn struggled hard against accused, trying to remove accused's hands and to move aside his legs. Accused desperately tried to insert his penis into her vagina but could not. Then, accused masturbated. Jenalyn covered herself with a blanket and tried to sleep but was unable to do so at once, not only for fear that accused might rape her but likewise because she felt unbearable pain in her vagina.[7]

At around seven o'clock the next morning, Jenalyn woke up. She saw accused beside her, fast asleep. She got up, went to the toilet and urinated. Her vagina was still painful. She cleaned and washed her vagina. Jenalyn did not tell anybody about what the accused did to her because she was afraid of him since every time accused was drunk, he would warn them that he would kill them next to the others he had killed before.[8]

II. The second attempt:

The second attempt occurred in September 1996. At that time, Jenalyn was living with her aunt, Sonia M. Flor, accused's older sister, and her aunt's two children at Block 14, Lot 27, NHA, Barangay Sto. Angel, San Pablo City. Accused was likewise staying there. Accused and Jenalyn occupied the extension room located at the back of Sonia's house.[9]

One night in September 1996, at around ten o'clock in the evening, accused, who was very drunk, ordered Jenalyn

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to sleep in the extension room. Jenalyn obeyed her father as he was drunk and she was afraid to cross him. Accused once again said the names of persons he killed. Jenalyn was half-asleep as she was afraid that accused might attempt to rape her again. Accused took off his pants when he came into the room. Wearing only his brief, he laid down on a folding bed where Jenalyn lay. He smoked a cigarette and placed a knife on a table.[10]

After he smoked one cigarette, accused removed the pillows by Jenalyn's side and entered the mosquito net which covered Jenalyn's side of the bed. Accused took off Jenalyn's "porontong" shorts and panty and placed himself on top of her. Jenalyn wanted to call out for help but accused poked the knife at her. Accused then tried to insert his penis into her vagina. Jenalyn struggled and kicked the accused. She felt accused's penis on her vagina. However, the penis was not able to penetrate Jenalyn's vagina. Accused stood up and masturbated until he ejaculated.[11]

III. The third try:

On February 2, 1997, accused wanted to rape Jenalyn for the third time. Jenalyn and accused were still staying at the extension room of the same house of Sonia M. Flor in San Pablo City. While Jenalyn and her two cousins, Abigail and Iris, were watching the Sunday noontime show called ASAP, accused came home after a drinking spree and proceeded to the extension room. He summoned Jenalyn by whistling at her. Afraid of her father, Jenalyn went to him. Accused told Jenalyn to lie down on the folding bed and sleep. Jenalyn obeyed him since accused was drunk and she was terrified. Accused took off his trousers and placed his knife on top of the cabinet where he kept his clothes. Jenalyn tried to sleep but could not as accused was talking and telling her that he had already changed his ways and that "malapit na akong mamatay."[12]

Clad in his brief, accused took the knife on top of the cabinet and placed himself on top of Jenalyn. He took off Jenalyn's pants and panty and, with his brief lowered to his knees, tried to insert his penis into her vagina. As accused tried to force his penis into Jenalyn's vagina, she felt "as if something has been broken or turning apart (sic)." Jenalyn struggled against accused and tried to kick him off. Accused's penis was not able to penetrate Jenalyn's vagina, as his sex organ was big. He then stood up and masturbated until he ejaculated.[13]

After the third attempted rape and Jenalyn could no longer stand the acts of her father, Jenalyn went to see her aunt, Rosario Fernandez Concepcion, a sister of her mother, and confided to her aunt what the accused had done to her. When Rosario asked Jenalyn why she divulged the incidents only then, she answered that it was because she was afraid. Jenalyn's aunt brought her to the police, who investigated her and took her statement.[14]

The Arraignment and Plea

On September 16, 1997, the trial court arraigned the accused.[15] Assisted by counsel de oficio, he pleaded "not guilty" to each count of rape.[16] Thereafter, a joint trial of the three cases on the merits ensued.[17]

The Trial

The prosecution presented evidence, principally the testimony of the victim, Jenalyn F. Mariano, which established the factual narration above. We quote:

On the first attempted rape committed on August 19, 1992:

> "ATTY. QUINTOS
>
> "Q
>
> On August 19, 1992 where were you residing?

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"A

At Block 14 Lot 24 NHA, Brgy. Sto. Angel, San Pablo City.

"xxx xxx xxx

"Q

Sometime in [sic] that date do you remember it there was any [sic] unusual incident that happened to you?

"A

Yes, sir.

"Q

Will you tell the Court what was that incident?

"A

A few weeks after my mother had left and one night when my father was drinking alone.

"xxx xxx xxx

"Q

Why were you awaken? (sic)

"A

I was awaken (sic) and I saw my father was kneeling in front of me and he was not wearing any brief and his organ was touching my organ.

"xxx xxx xxx

"Q

Tell the Court was he able to penetrate your vagina with his penis?

"A

Only at my singit and he was trying to insert.[18]

On the second attempted rape committed in September 1996, the complainant's testimony is clear, quoted as follows:

"ATTY. QUINTOS

"Q

In September 1996 do you also recall where you were residing?

"A

Yes, sir.

"xxx xxx xxx

"Q

Do you remember if there was any unusual incident that occurred to you?

"A

Yes, sir.

"Q

Tell the Court what was that?

"A

In the house of my auntie my father told me that he will not sexually molest me because he has changed.

"xxx xxx xxx

"Q

While you were there in the house of your auntie, was there anything that happened to you?

"A

Yes, sir.

"Q

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Tell the Court what was it?

"A

It was already night time [sic] of September, 1996, he told me to sleep at the back of the extension room, at the back of the house of my auntie.

"xxx xxx xxx

"Q

While you were sleeping in the extension room, was there any [sic] unusual incident that happened to you?

"A

Yes, sir.

"Q

What was that?

"A

While I was sleeping although I was not fully sleeping and I was a little awake I was then very much afraid because he might do it again [sic].

"xxx xxx xxx

"Q

After he smoked one stick of cigarette, do you know what did he do?

"A

He removed the pillows placed on my side and then he entered the mosquito net.

"Q

When he was inside the mosquito net what did he do?

"A

He placed himself on top of me.

"Q

While he was on top what did he do?

"A

He was forcing his penis to insert to (sic) my vagina and then kakanyogkanyog.

"Q

What did he do when he was kakanyogkanyog?

"A

I was struggling, I was kicking him.

"Q

Did you feel his penis?

"A

Yes, sir.

"Q

In what part of your body did you feel his penis?

"A

On my vagina.

"Q

You mean to tell the Court he was able to penetrate you?

"A

Yes, sir.

"Q

What did you do when he placed his penis inside your vagina?

"A

I was pushing him by kicking him and when he was not able to penetrate because my vagina was so small he again stood up and masturbated and then a white substance came out from his penis.[19]

On the third rape try committed on February 2, 1997, again we quote Jenalyn's testimony:

"xxx xxx xxx

"Q

On February 2, 1997, where were you?

"A

In the house of my aunt, and we were viewing television.

"xxx xxx xxx

"Q

While you were there was there an unusual incident that happened between you and your father?

"A

Yes, sir.

"Q

What was that?

"A

When he arrived, he removed his long pants and again he was carrying a knife and he placed his knife on top of a cabinet where he used to place his clothes.

"xxx xxx xxx

"Q

And then what did he do?

"A

"Pinatungan niya ako."

"Q

What happened to the long pants you were wearing?

"A

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He removed it?

"Q

And what happened to your pants?

"A

He also removed it.

"Q

What happened after that?

"A

"Pinatungan niya ako."

"Q

What happened when he placed himself on top of you?

"A

Again he made a "kakanyog-kanyog movement again, when he was not able to insert his penis he stood up and masturbated and then I saw a white substance came out from his penis.

"xxx xxx xxx

"Q

How long was he on top of you?

"A

It was fact (sic), because it could not penetrate, because his penis was big."[20]

Clearly, from the victim's testimony, there was no consummated rape. The accused did not succeed in inserting his penis into the vagina of his daughter. There was nothing in the victim's testimony that proved that the male penis reached the labia of the pudendum of the victim's vagina. She only said that "his penis was touching my vagina."[21] There was no penetration, however slight.[22] The victim said that there was indeed no penetration because the penis of the accused was too big. The penis of the accused did not enter the labia majora of the victim but merely stroked the surface of the female organ.

Other prosecution witnesses were Felix Fernandez, an uncle of Jenalyn, and Dr. Marysol C. Cerda. Felix Fernandez testified that Jenalyn revealed to him that on February 17, 1997, she was sexually abused by the accused.[23] Dr. Marysol[24] C. Cerda, who conducted a medico-legal examination on Jenalyn testified that on

February 17, 1997, she was a doctor at the San Pablo City District Hospital. She examined Jenalyn at around 9:15 in the evening. The examination revealed that Jenalyn's hymen admitted one finger with ease and that it bore old healed lacerations at 2 o'clock, 5 o'clock, 7 o'clock and 9 o'clock. She identified her medico-legal report and declared that the lacerations could have been caused by penetration by the opposite sex, excessive exercises, accident, or trauma.[25]

In his defense, accused denied the accusations against him.[26] He interposed the defense of alibi. He claimed that in August 1992, he was in hiding at the house of his compadre in Gasan, Marinduque because of threats to his life for having killed two persons in San Pablo City.[27] From 1995 to August 1997, he stayed with one Alma Flores in Brgy. Cupang.[28]

Sonia M. Flor testified for the accused and corroborated his alibi that he was not in San Pablo City in 1992, as he was in hiding somewhere else due to the commission of two cases of homicide,[29] nor was he there in the years 1996 and 1997, since accused was not sleeping at her (Sonia's) house.[30] On cross-examination, Sonia Flor said that she could not say that Jenalyn fabricated the cases since she was not with them all the time. She confirmed, however, that whenever accused visited his children, instead of showing love to them, he mauled them and maltreated them.[31]

On August 3, 1998, the trial court rendered a decision convicting the accused of the charges, the dispositive portion of which reads:

> "IN VIEW OF THE FOREGOING considerations, the accused is hereby pronounced guilty beyond reasonable doubt of three (3) counts of rape in the three (3) Criminal Informations cited above and for the consequences of his acts said accused ENRICO MARIANO is hereby sentenced to suffer the capital punishment of DEATH in three (3) counts and to pay the costs. Accused Enrico Mariano is ordered to pay Jenalyn F. Mariano the sum of P500,000.00 as moral and exemplary damages.
>
> "SO ORDERED."[32]

Hence, this automatic review.[33]

The Issue

The issue is whether the accused is guilty of consummated rape, or attempted rape on the basis of the evidence adduced.

The Court's Ruling

We find accused Enrico Mariano y Exconde guilty of three counts of attempted rape, not consummated rape.

In his brief, accused denied that he raped his daughter Jenalyn. He claimed that the testimony of Jenalyn lacked the element of truthfulness and was not in accord with natural human experience[34] as shown by her shifting testimony as to how accused raped her, more particularly regarding the penetration of accused's penis in her vagina and the presence of the knife.[35]

We find that Jenalyn testified categorically that accused tried to insert his penis into her vagina, but did not penetrate her vagina. In the first try, the penis stroked only her singit (groin). Neither was there penile penetration of her vagina on the second and third attempts.[36] In her re-direct testimony, Jenalyn clarified that there was no penile penetration of her vagina, only "fingering." We quote:

> "Q
>
> The observation of the defense counsel is to the effect that you did not exactly remember the date when the

first act of rape was committed upon you by your father, can you recall how many times you were sexually molested by your father?

"A

Three times.

"Q

I will read to you question and answer marked as Exhibit C question No. 5 by the police.

"Q

- No. 5 - T - Saan at kailan nangyari ito?

S - Doon po sa aming dating tinitirhan sa Block 14, Lot 24, NHA, Brgy. Sto. Angel, Lungsod ng San Pablo, noon buwan ng August, 1994 mga bandang alas 9:00 ng gabi, at patuloy na ginagawa niya iyon sa akin hanggang sa noong Pebrero 9, 1997.

will you please explain to the Court what do you mean by that?

"A

Because every time that he was drank [sic] and we were then living in the extension house, he used to fingered [sic] me.

"Q

And you can vividly remember three times?

"A

Yes, sir."[37]

In People v. Campuhan,[38] we held that "a grazing of the surface of the female organ or touching the mons pubis of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, i.e., touching of either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness." In People v. Bation,[39] we ruled that

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for consummated rape to be established, "what is essential is that there be penetration of the female organ no matter how slight." In People v. Oliver,[40] the Court ruled that rape is consummated "when the penis touches the pudendum, however slightly."[41] Or, there is "entrance of the male organ within the labia or pudendum of the female organ."[42] Very recently, in People v. Francisco, the Court ruled that "[T]here must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. As the labias, which are required to be `touched' by the penis, are by their natural situs beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.

"But in the absence of any showing of the slightest penetration of the female organ, i.e., touching either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness."[43]

In the testimony of Dr. Cerda, she admitted that the old healed lacerations found in Jenalyn's vagina "could have been caused by penetration by the opposite sex, excessive exercises, accident or trauma." In Campuhan, we elaborated on this. We said that "In cases of rape where there is a positive testimony and a medical certificate, both should in all respects complement each other, otherwise, to rely on the testimonial evidence alone, in utter disregard of the manifest variance in the medical certificate, would be productive of unwarranted or even mischievous results. It is necessary to carefully ascertain whether the penis of the accused in reality entered the labial threshold of the female organ to accurately conclude that rape was consummated. Failing this, the thin line that separates attempted rape from consummated rape will significantly disappear."[44] In Francisco, we further said that "[T]he prosecution has the onus probandi of establishing the precise degree of culpability of the accused. It must demonstrate in sufficient detail the manner by which the crime was perpetrated. Certainly, the testimony of the victim to the effect that the accused repeatedly poked her vagina and that she felt pain as a consequence thereof, would not be enough to warrant the conclusion that a consummated rape had indeed been committed. The quantum of evidence in criminal cases requires more than that. More so in the instant case where even the medico-legal certificate failed to back up the charge of consummated rape."[45]

Consequently, on reasonable doubt, we cannot convict the accused of consummated rape.[46] He could be guilty only of attempted rape.

As to the amount of damages, the trial court not only overlooked to impose civil indemnity which is mandatory upon a finding of the fact of attempted rape,[47] but it awarded an excessive sum of P500,000.00 as moral and exemplary damages. Prevailing jurisprudence[48] sets the amount of the civil indemnity in attempted rape at P30,000.00. Thus, the victim Jenalyn F. Mariano must be awarded civil indemnity in the sum of P30,000.00, for each count of rape in Criminal Cases Nos. 10343-SP, 10344-SP and 10345-SP.

Moral damages may be awarded in recognition of the victim's injury as being inherently concomitant with and necessarily resulting from the attempted rape, especially since the victim is the offender's own innocent daughter who shall forever be haunted by a most unpleasant memory of a beastly father.[49] We award her moral damages of P25,000.00, for each count of attempted rape.[50] In addition, exemplary damages in the amount of P10,000.00, for each count of attempted rape must be awarded likewise in the hope of deterring other fathers with perverse tendencies and aberrant sexual behavior from preying upon and sexually abusing their own young daughters.

We come to the penalty.

The penalty for attempted rape is two (2) degrees lower than the imposable penalty of death for consummated

qualified rape.[51] Two (2) degrees lower is reclusion temporal, the range of which is twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, and in the absence of any mitigating or aggravating circumstance, the maximum of the penalty to be imposed upon the accused shall be taken from the medium period of reclusion temporal, the range of which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree, which is prision mayor, the range of which is from six (6) years and one (1) day to twelve (12) years, in any of its periods.[52] This penalty shall be imposed in each of the three cases of attempted rape.

WHEREFORE, the Court SETS ASIDE the decision dated August 3, 1998 of the Regional Trial Court, San Pablo City, Branch 32 in Criminal Cases Nos. 10343-SP, 10344-SP and 10345-SP. In lieu thereof, the Court finds accused Enrico Mariano y Exconde guilty beyond reasonable doubt of attempted rape, under Article 335, in relation to Article 51, Revised Penal Code, in each of the aforesaid cases, and hereby sentences him to an indeterminate penalty of ten (10) years of prision mayor, as minimum, to sixteen (17) years and four (4) months of reclusion temporal, as maximum, in each case; to indemnify the victim Jenalyn F. Mariano in the sum of P30,000.00 as civil indemnity, plus the sum of P25,000.00 as moral damages and P10,000.00 as exemplary damages, in each case, and to pay the costs.

The accused shall serve the penalty successively, subject to the three-fold rule.[53]

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

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[1] Pursuant to Article 47, Revised Penal Code, as amended by Republic Act No. 7659, Section 22.

[2] Judge Zorayda Herradura-Salcedo, presiding, Rollo, pp. 21-36.

[3] In Criminal Cases Nos. 10343-SP, 10344-SP and 10345-SP.

[4] Folder of Exhibits, pp. 3-4.

[5] Assisted by Juliana Añonuevo, Jenalyn's grandmother, Rollo, pp. 8-10.

[6] TSN, Jenalyn F. Mariano, October 6, 1997, pp. 3-4, 14-15, 11.

[7] Ibid., pp. 6-8.

[8] Ibid., pp. 8-9.

[9] Ibid., pp. 10-11, 16.

[10] Ibid., pp. 11-13.

[11] Ibid., pp. 13-14.

[12] Ibid., pp. 18-22.

[13] Ibid., pp. 22-23.

[14] Ibid., pp. 23-25.

[15] Original Record, p. 14.

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[16] Ibid.

[17] Original Record, p. 19, et seq.

[18] TSN, Jenalyn F. Mariano, October 6, 1997, pp. 4-7 (emphasis supplied).

[19] TSN, Jenalyn F. Mariano, October 6, 1997, pp. 10-14 (emphasis supplied).

[20] TSN, Jenalyn F. Mariano, October 6, 1997, pp. 18-23 (emphasis supplied).

[21] TSN, Ibid., p. 6. See People v. Tolentino, 367 Phil. 755, 764 [1999], per CJ Davide, Jr.

[22] Cf. People v. Campuhan, 329 SCRA 270 [2000].

[23] TSN, Felix Fernandez, October 1, 1997, pp. 3-13.

[24] Spelled elsewhere in the records ad "Marisol."

[25] TSN, Dr. Marisol C. Cerda, October 20, 1997, pp. 3-6; Folder of Exhibits, p. 7.

[26] TSN, Enrico Mariano, November 24, 1997, p. 28.

[27] Ibid., pp. 2-3.

[28] Ibid., p. 25.

[29] TSN, Sonia Flor, January 13, 1998, pp. 3-4.

[30] Ibid., pp. 6-9.

[31] Ibid., p. 9.

[32] Rollo, pp. 21-36, at p. 35.

[33] On March 16, 1999, we accepted the cases (Rollo, p. 42). On November 17, 2000, the Court promulgated a decision, the dispositive portion of which reads:

"WHEREFORE, the appealed decision dated December 18, 1998 of the Regional Trial Court of Pasay City, Branch 109 in Criminal Cases Nos. 10343-SP, 10344-SP and 10345-SP finding accused-appellant Enrico Mariano guilty beyond reasonable doubt of three (3) counts of incestuous rape, is hereby AFFIRMED with the MODIFICATION that the penalty in Criminal Case No. 10343-SP is reduced to reclusion perpetua, and the accused-appellant is ordered to pay the victim, Jenalyn Mariano, in Criminal Cases Nos. 10344-SP and 10345-SP the sum of P75,000.00 for each case and in Criminal Case No. 10343-SP the sum of P50,000.00 by way of civil indemnity, in addition to the sum of P50,000.00 as moral damages, and P25,000.00 as exemplary damages, for each of the three (3) counts of incestuous rape.

"In accordance with Sec. 25 of the (sic) RA 7659, amending Art. 83 of the Revised Penal Code, upon the finality of this Decision, let the records of Criminal Cases Nos. 10344-SP and 10345-SP be forthwith forwarded to His Excellency, the President of the Philippines for the possible exercise of his pardoning power. Costs de oficio."

The clerk of court could not enter judgment and remand the records to the trial court due to error in the dispositive portion of the decision. On October 16, 2001, the Court resolved, ex mero motu, to set aside the decision and to re-deliberate on the case.

[34] Rollo, pp. 54-67, at pp. 60-61.

[35] Ibid., p. 65.

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[36] TSN, supra, Note 20, at pp. 7, 13, 23.

[37] TSN, supra, Note 20, at pp. 35-36.

[38] Supra, Note 22, at p. 282, per J. Bellosillo.

[39] 364 Phil. 731, 748 [1999].

[40] People v. Oliver, 362 Phil. 414, 424 [1999].

[41] Citing People v. Caballes, 340 Phil. 213, 225 [1997]; People v. Andan, 336 Phil. 91, 115 [1997]; People v. Magana, 328 Phil. 721, 745 [1996].

[42] People v. Alojado, 364 Phil. 713, 724 [1999].

[43] People v. Francisco, G. R. Nos. 135201-02, March 15, 2001, per J. Bellosillo.

[44] People v. Campuhan, supra, Note 22.

[45] People v. Francisco, supra, Note 43.

[46] People v. Tolentino, supra, Note 21.

[47] Ibid.

[48] Ibid.

[49] People v. Nava, 333 SCRA 749 [2000].

[50] People v. Tolentino, supra, Note 21.

[51] Ibid.; Article 51, Revised Penal Code.

[52] People v. Francisco, supra, Note 43.

[53] Article 70, Revised Penal Code.

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