

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO ABALA Y LACANARIA, ACCUSED-APPELLANT.

G.R. Nos. 135858-61. July 23, 2002

Ponente: PUNO, J.

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PUNO, J.:

ANTONIO ABALA was charged before the Regional Trial Court of San Pedro, Laguna, Branch 31, with rape in four (4) separate informations, docketed as Criminal Case Nos. 0709-SPL to 0712-SPL. The private complainant, Lea Arevalo y Abala, is his 13-year old niece. The informations read:

CRIM. CASE NO. 0709-SPL

“That on or about May 31, 1997, in the municipality of San Pedro, Province of Laguna, and within the jurisdiction of this Honorable Court, accused ANTONIO ABALA y LACANARIA, with lewd design, by means of force and intimidation did then and there wilfully, unlawfully and feloniously has (sic) carnal knowledge with (sic) one Lea Arevalo y Abala, 13 years old, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.”[1]

CRIM. CASE NO. 0710-SPL

“That sometime in the month of May 1997 in the Municipality of San Pedro, Province of Laguna and within the jurisdiction of this Honorable Court, accused ANTONIO ABALA y LACANARIA with lewd design, by means of force, and intimidation, did then and there wilfully, unlawfully and feloniously has (sic) carnal knowledge of Lea Arevalo y Abala, thirteen (13) years old, against her will and consent to her damage and prejudice.

CONTRARY TO LAW.”[2]

CRIM. CASE NO. 0711-SPL

“That sometime in the month of May 1997 in the Municipality of San Pedro, Province of Laguna and within the jurisdiction of this Honorable Court, accused ANTONIO ABALA y LACANARIA with lewd design, by means of force, and intimidation, did then and there wilfully, unlawfully and feloniously has (sic) carnal knowledge of Lea Arevalo y Abala, thirteen (13) years old, against her will and consent to her damage and prejudice.

CONTRARY TO LAW.”[3]

CRIM. CASE NO. 0712-SPL

“That sometime in the month of May 1997 in the Municipality of San Pedro, Province of Laguna and within the jurisdiction of this Honorable Court, accused ANTONIO ABALA y LACANARIA with lewd design, by means of force, and intimidation, did then and there wilfully, unlawfully and feloniously has (sic) carnal knowledge of Lea Arevalo y Abala, thirteen (13) years old, against her will and consent to her damage and

prejudice.

CONTRARY TO LAW.”[4]

When arraigned, the accused, assisted by counsel, pled “not guilty” to all the charges.[5] Trial ensued.

The prosecution presented as its sole witness the private complainant, Lea Arevalo.

At the time the rapes were committed in May 1997, the private complainant was thirteen (13) years old.[6] She was born on January 11, 1984, as evidenced by the certification issued by the Office of the Local Civil Registrar of Tarlac.[7] The accused is an older brother of her mother, Teresita Arevalo. She was then residing with her aunt, Cristina Mase, sister of her mother and of the accused, at Barangay Langgam, San Pedro, Laguna.[8]

The accused was residing in the same barangay, but in another house quite far from the house of his sister Cristina. He has two children with his estranged wife, but they were not living with him.[9]

In May 1997, the house of Cristina Mase was under construction. The room where the private complainant used to sleep had no door panel. Cristina would sleep in the sala and her son and daughter-in-law, in the other room. The house had three doors: the main door in front, the second, at the side, and the third, at the back. The backdoor did not have a door panel then.[10]

The private complainant recalled that the first rape took place in the first week of May 1997, at nighttime. She testified that at about 10:00 p.m, she went to bed. The accused entered her room and woke her up. He covered her mouth with his left hand and poked a knife at her. He dragged her out of the house and brought her to his house. She went with him because she feared he would maul her just like what he used to do to his children.[11]

Upon reaching his house, the accused closed the door and led the private complainant to his room. He made her lie down on a bed. When he removed her clothes, she fought back by kicking and striking him with her hands.[12]

The accused ordered her not to shout. Afraid that he would hurt her, she obeyed.[13] After removing her clothes, he disrobed himself. He mounted her and had sexual intercourse with her. During the sexual assault, he held her hands but she managed to kick his legs. He stayed on top of her for about twenty (20) minutes. Thereafter, he told her to put on her clothes. He let her walk back to her aunt’s house alone.[14]

The next incident occurred the following week. The accused barged in his sister’s house at nighttime while the private complainant and her companions were sleeping. He woke up the private complainant. His eyes were red and he smelled of liquor. Again, he poked a knife at her and brought her to his house. She pleaded with him not to rape her again. He ignored her. Once inside his house, the accused took her to his room. He tried to remove her clothes but she ward off his hands. Her efforts were futile. He succeeded in taking off her sando and T-shirt as well as her shorts and panty. Next, he undressed and made her lie down on the same bed where he first abused her. He went on top of her and had carnal knowledge of her. She felt pain when he went inside her. He was on top of her for about twenty (20) minutes. After the rape, he instructed her to get dressed.[15] He warned her not to report the incident to her mother because he could get incarcerated. Again, she went home alone.[16]

The private complainant kept silent about the two (2) rape incidents because the accused threatened he would kill her mother.[17] After each rape, she returned to her room and went back to sleep as her companions in the house were still asleep.[18]

About one and one-half weeks after the second rape, the private complainant was again roused from her sleep when the accused suddenly covered her mouth with his hand. He ordered her not to shout. He seemed inebriated. He poked a knife at her and, as in the previous occasions, he dragged her toward his house. Once they were in his room, he undressed her and himself, mounted her and had sexual intercourse with her. He stayed on top of her for

twenty (20) minutes. Thereafter, he instructed her to go home and she did. Again, he threatened her not to report the incident to her mother. Unknown to her, the 17-year old son of the accused, Meliton Abala, saw her in the house of the accused.[19]

The last rape was committed on May 31, 1997. Again, the accused entered the room of the private complainant when she and her companions in the house were in deep slumber. He poked a knife at her neck. He told her to be quiet, covered her mouth with his left hand and dragged her out of the house through the backdoor and brought her to his house.[20]

When they were inside the room, the accused told her to sit down on his bed. She kicked him and tried to escape. Her attempts were unsuccessful because he was poking a knife at her. While pulling down her shorts and panty, he warned her not to reveal the incident to anyone. He did not remove her T-shirt. Instead, he completely disrobed himself. He forcibly made her lie down on the bed and went on top of her. She struggled but he held her hands. Overpowered, he succeeded in his evil desire. As he thrust his private part into hers, she cried and pleaded with him to stop. He did not listen. He was on top of her for a long time. After his lust was satisfied, he told her to go home.[21]

After the fourth rape, Cristina confronted the private complainant with the report she got from Meliton Abala that he saw the private complainant in the house of the accused on the night she was abused for the third time. Cristina asked her what she was doing there at such a late hour of the night. She did not reply. She was afraid of the accused because of his threats that he would kill her mother.[22]

Eventually, the report reached the private complainant's mother, Teresita Arevalo, through the private complainant's first cousin, Marites. Apparently, Cristina informed Marites what had happened to the private complainant and the latter relayed it to Teresita. When Teresita confronted the private complainant if her Ate Marites was telling the truth, she finally confessed to her mother that she was molested by the accused. Her mother was furious and she helped her lodge the four (4) complaints for rape against the accused.[23]

On June 7, 1997, the private complainant underwent a medical examination at the National Bureau of Investigation in Manila. The examining doctor, Medico-Legal Officer Valentin T. Bernales, found a "deep healed laceration" on private complainant's hymen "at 4:00 o'clock and completed at 6:00 o'clock position, corresponding to the face of the watch." [24]

The sole witness for the defense was the accused.

The accused interposed the defense of denial and alibi. He claimed that his son, Meliton Abala, and daughter, Gladys Abala, 15 years old, were living with him in his house at Barangay Langgam, San Pedro, Laguna. His wife, Ma. Elena Moran, stayed some place else and would just pay him a visit once in a while. His other companions in the house were his brother, Dominador Abala, and his wife and their children. They occupied the other half of the house.

His story was that he did not see the private complainant the whole month of May 1997. He did not know why the private complainant accused him of violating her on several occasions. He surmised that she filed the cases because he and his brother, Dominador, had a feud over their house. The house belonged to their late mother. Allegedly, he wanted to sell the house to buy a tricycle, but his siblings, namely, Lydia, Cristina, Teresita and Dominador were against his plan.

In its Decision, dated August 19, 1998, the trial court found the accused guilty of four (4) counts of rape. For each rape committed, he was sentenced to suffer the death penalty and ordered to pay the private complainant the sums of P100,000.00 as civil indemnity and P50,000.00 as moral damages, and to pay the costs.[25]

The cases are with us on automatic review.

The appellant raises the following assignment of errors:[26]

“I

THE TRIAL COURT MANIFESTLY ERRED IN RENDERING A VERDICT OF CONVICTION IN CRIMINAL CASE NOS. 0709 TO 0712 DESPITE (THE) FAILURE OF THE PROSECUTION TO PROVE (THE) ACCUSED-APPELLANT’S GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT MANIFESTLY ERRED IN CONVICTING (THE) ACCUSED-APPELLANT OF FOUR (4) COUNTS OF RAPE IN CRIMINAL CASE NOS. 0709 TO 0712 NOTWITHSTANDING THE FACT THAT THE SPECIAL QUALIFYING CIRCUMSTANCE OF PRIVATE COMPLAINANT’S RELATIONSHIP TO THE ACCUSED-APPELLANT WAS NOT ALLEGED IN THE SUBJECT INFORMATION THEREBY VIOLATING HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS AND TO BE INFORMED OF THE NATURE AND THE CAUSE OF THE ACCUSATION AGAINST HIM.”

We affirm the convictions but with modifications as to the penalties imposed.

The first assigned error boils down to the alleged lack of credibility of the private complainant. He cites several reasons why the Court should reject her story, to wit:

First. The appellant claims that he could not have dragged her out of her aunt’s house four (4) times without being noticed by its occupants. The private complainant could also shout to attract the attention of the residents in the vicinity. He also points out that he could not have brought her to his house and raped her because his children were living with him.

Second. The appellant claims that he would have been discouraged from going to where the private complainant stayed on those four (4) occasions considering that there was a light coming from outside the house, near the room of the private complainant.

Third. It is not credible that he used the same method in taking the private complainant from her aunt’s house, bring her to his house and rape her there because in doing so, he could have been easily identified. It is also doubtful that he used the same knife in forcing her to go with him to his house.

Fourth. The private complainant gave a “tailor-fit” answer regarding his physical condition during the second and third incidents, i.e., his eyes were red and he smelled of liquor.

Fifth. It is also incredible for him to spend the same length of time, about (20) minutes, in raping the private complainant on all the four (4) occasions.

The first assigned error lacks merit.

We find no reason to doubt the credibility of the private complainant. We quote with approval the following observations of the trial court as regards her credibility, thus:

“Considering the evidence on hand, the Court finds that the prosecution has fully established and proven that herein accused had sexually abused his own niece, 13-year old private complainant Lea, not only on one, but (also) on four (4) occasions in May 1997. Lea’s ... positive identification of (the) accused as the one who ravished her bespeaks of her spontaneity and veracity. Moreover, her answers to questions propounded to her during the trial on the identity of (the) accused were straightforward and coherent which simply strengthen her credibility. As oftentimes stated by the Supreme Court in rape cases, it is difficult to believe that young

unmarried women would tell a story of defloration, allow the examination of their private parts and thereafter, permit themselves to be the subject of a public trial, if they were not instigated by an honest desire to seek justice.... In the case at bar, it is really hard to conceive that a young and immature girl would reveal that she was raped and allow an embarrassing examination of her private part if her motive is not to bring to justice her uncle who had done her wrong. In fact, no young and decent Filipina would publicly admit that she was ravished and her honor tainted unless such was true, for it would be instinctive for her to protect her honor.... The mere fact that the accused wanted to sell the house owned by his late mother while his sisters and brother had made their protests is not sufficient motive for Lea to take (sic) a false imputation against her own uncle and charge him with the serious crime of rape. Admittedly, there was no sign of any physical injury noted on Lea's body at the time of her examination, but it does not necessarily mean that the element of force which is essential to the crime of rape is lacking. While physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to her rapist against her will because of fear for life and personal safety, still it is important to note that Lea clearly testified that she yielded to the carnal desires of her uncle accused for fear that he might kill or injure her since he was poking a knife at her on those 4 occasions. Despite the presence of the knife, she still managed to put up even a mild fight by kicking (the) accused and striking him with her bare hands thereby showing tenacity or vigor in her resistance. Moreover, the assertion of authority and moral ascendancy of the accused over Lea is already sufficient intimidation. In fact, when (the) accused warned her not to tell her mother about what he had done to her or else her mother (would) be killed, she followed him. On the other hand, the accusation of Lea was reinforced by the medical certificate entitled Living Case No. MG-97-812 (Exhibit E) of NBI Medico-Legal Officer Valentin Bernales who found a healed laceration on her hymen.”[27]

The records support the foregoing findings of the trial court. The private complainant's accounts of the rape incidents were straightforward, clear and concise, indicating that she was telling the truth when she testified in court. She recalled the first incident as follows:[28]

“PROS. LOMARDA:

Q: Miss Witness, ... in the course of your direct testimony you testified that it was during the first week of May, 1997 that he, I am referring to your Uncle Tony, the accused, first committed sexual abuse on you and you said that this transpired inside his house. Now, continuing your testimony on that point, Miss Witness, you said that your Tito Tony after removing your clothes made you lie down on the bed, do you recall having been asked that question by this representation?

A: Yes, sir.

Q: After he succeeded in removing your clothes, what did he do if he did anything?

A: He also removed his clothes, sir.

Q: He removed all his clothes?

A: Yes, sir.

Q: After your Tito Tony disrobed himself, what did he do if he did anything?

A: He approached me.

Q: What happened after he approached you?

A: He placed himself on top of me, sir.

Q: What did he do after placing himself on top of you?

A: He inserted his penis into my vagina, sir.

Q: You likewise testified, Madam Witness, that on that precise occasion in answer to the question of the court you said that there was a knife poked at you. My question is, when your Tito Tony inserted his penis into your vagina, where was the knife that he was then holding?

A: Beside him, sir.

Q: How long did your Tito Tony remain on top of you while his penis was inside your vagina?

A: Long time, sir.

Q: Would you say 20 minutes that he remained on top of you?

A: Yes, sir.

Q: In that period of 20 minutes when your Tito Tony was sexually abusing you, what did you do if you did anything?

A: I was fighting back, sir.

Q: How did you fight back your Tito Tony?

A: I kicked him, sir.

Q: Which part of his body did you kick?

A: I was able to hit his legs, sir.

Q: How about your hands, what did you do with your hands?

A: He was holding my hand, sir.

Q: Both your hands?

A: Yes, sir.

Q: After the 20-minute period had elapsed, what did you do?

A: After 20 minutes he stood up and asked me to put on my clothes, sir.

Q: Did you follow his instruction for you to put on your clothes?

A: Yes, sir.

Q: What did you do after you put on your clothes?

A: I went home, sir.”

The second rape was committed as follows:[29]

“(PROS. LOMARDA)

Q: Where did the second incident transpire?

A: In the house of Antonio, sir.

Q: How were you able to get in the house of your Uncle Tony?

A: By walking, sir.

Q: Did you ask your Uncle Tony why he was bringing you to his house?

A: Yes, sir.

Q: What did he tell you if he told you anything?

A: He did not say anything, sir.

Q: Did you notice about the physical condition of your Tito Tony during the second incident?

A: Yes, sir.

Q: What was his physical condition if you can still remember?

A: His eyes were red and he smell (sic) liquor, sir.

Q: Madam Witness, you said that in the first incident, you saw your Uncle Tony poking a knife at you, my question is, did you see that same knife in the second incident?

A: Yes, sir.

x x x x x x x x

Q: How did he use that knife on you during the second incident?

A: The same way that he did in the first incident, sir.

x x x x x x x x

Q: Aside from you and your Uncle Tony, were there other occupants of his house that night?

A: None, sir.

Q: And what did the accused do when you arrived at his house?

A: He brought me inside the bedroom, sir.

Q: While he was bringing you inside one of the room(s) of his house, did you not protest or otherwise complain?

A: I protested, sir.

Q: How did you manifest your protest?

A: I told him not to do again what he did to me before, sir.

x x x x x x x x

Q: Once inside the room, what happened thereat, Madam Witness?

A: He undressed me, sir.

Q: Did you not put up a fight while your Uncle Tony was undressing you?

A: I was fighting back, sir.

Q: How did you fight him?

A: I was trying to remove his hands from holding my clothes, sir.

Q: Did you succeed in preventing your Uncle Tony from removing your clothes?

A: No, sir.

x x x x x x x x

Q: What were you wearing on the night of the second incident?

A: Shorts, sir.

Q: Were you wearing a panty during that time?

A: Yes, sir.

Q: What did he do with your panty?

A: He also removed it, sir.

Q: How about from the waist up, what were you wearing that night?

A: Sando and T-shirt, sir.

Q: Were those sando and T-shirt removed too?

A: Yes, sir.

Q: By that, you mean you were completely and totally naked?

A: Yes, sir.

Q: After disrobing you, what did your Uncle Tony do if he did anything?

A: He also removed his clothes, sir.

Q: Did he remove all his clothes?

A: Yes, sir.

Q: After removing his clothes, then you and him being both naked, what did he do?

A: He made me lie down on the bed, sir.

Q: Was that the same bed that he made you lie down that first time that he sexually abused you?

A: Yes, sir.

Q: After you were made to lie down by your Uncle Tony on the bed, what did you do if you did anything?

A: He placed himself on top of me, sir.

Q: What happened after he placed himself on top of you?

A: He inserted his penis into my vagina, sir.

Q: Did you feel anything once his penis entered your vagina?

A: Yes, sir.

Q: What was it?

A: It was painful, sir.

Q: Could you still recall how long that your Uncle Tony stayed on top of you the second time?

A: Long time, sir.

Q: Which is longer in point of time, the first incident or the second incident that he remained on top of you?

A: The same time, sir.”

The third rape incident was committed in almost similar fashion. The private complainant testified as follows:[30]

“(PROS. LOMARDA)

Q: Do I get it right that you were also sleeping when your Tito Tony arrived during the third incident?

A: Yes, sir.

Q: How were you able to wake up?

A: He suddenly put his hand on my mouth, sir.

Q: What did he tell you?

A: He told me not to shout, sir.

Q: Did you notice anything about his face?

A: Yes, sir.

Q: What was the thing that you noticed from him?

A: His eyes are red and he smell (sic) liquor, sir.

Q: What else happened when he placed his hand into (sic) your mouth?

A: He dragged me towards his house, sir.

Q: Why did you go with him?

A: He was dragging me and his knife was poked at me, sir.

Q: Was that the same knife that he used in the previous incidents?

A: Yes, sir.

Q: Again, you arrived in his house?

A: Yes, sir.

x x x x x x x x

Q: And once you and your Tito Tony were inside the room, what happened thereat?

A: He undressed me, sir.

Q: After he undressed you, what did he do if he did anything?

A: He also undressed, sir.

Q: When both of you were already naked, what happened next?

A: He placed himself on top of me, sir.

Q: Then what happened next?

A: He inserted his penis into my vagina, sir.

Q: How long did he stay on top of you?

A: The same length as the first and the second incidents, sir.”

As regards the May 31, 1997 rape incident, the private complainant testified as follows:[31]

“PROS. LOMARDA:

Q: Upon (your) arrived (sic) at the house of your uncle you were brought to one of his room(s), what happened inside the room?

A: He asked me to sit down on the bed and I tried to fight back, sir.

Q: How did you put up a fight back (sic) with your Uncle Tony?

A: I kicked him, sir.

Q: Aside from kicking your Uncle Tony, what else did you do if you did anything?

A: I am (sic) trying to escape, sir.

Q: While you were kicking and trying to escape from your Uncle Tony, where was the knife that you said he was holding?

A: He was still holding it, sir.

Q: After kicking and you said you are trying to escape from him, what else happened?

A: I was not able to escape and he continued poking the knife at me, sir.

Q: And what did he do when he poked the knife at you?

A: He told me not to report and while he was saying that he was pulling my dress, sir.

Q: To which direction did he pull your dress?

A: He is pulling down my short(s), sir.

Q: Was he able to pull down your short(s)?

A: Yes, sir.

Q: Were you wearing panty at that time?

A: Yes, sir.

Q: What did he do with you?

A: The panty was pulled down together with my short(s), sir.

Q: What were you wearing on the waist up?

A: T-shirt, sir.

Q: What happened to that t-shirt?

A: It was not removed, sir.

Q: After your short(s) was pulled down, what did he do if he did anything?

A: He removed his clothes, sir.

x x x x x x x x

Q: When he was already naked, what did he do if he did anything?

A: He forcibly caused me to lie (down), sir.

Q: And what did he do when you were lying on the bed?

A: He put himself on top of me, sir.

Q: What happened next?

A: I was struggling but he held my hands, sir.

Q: What happened next?

A: He forcibly inserted his penis to my vagina, sir.

Q: Was he able to insert his penis to your vagina?

A: Yes, sir.

Q: While at that time when he inserted his penis to your private part, what did you do?

A: I was crying and I told him not to do that to me, sir.

Q: Did he listen to you?

A: No, sir.

Q: How long did he remain on top of you?

A: Long time sir.

Q: After that what happened?

A: After that he told me to go home, sir."

There was nothing unusual with the fact that the appellant followed the same method in molesting the private complainant. Repeatedly, he waited until the private complainant and her companions in the house had gone to bed before he would surreptitiously enter her room. He avoided the sala where his sister, Cristina Mase, was sleeping, by exiting through the backdoor. He would then poke a knife at her and drag her to his house where he would eventually satisfy his lust. The scheme worked for him perfectly. It was not, therefore, strange that the appellant did not vary his strategy in raping the private complainant.

The fact that the private complainant did not shout to attract attention while she was being taken forcibly from her aunt's house did not make her less credible. It must be noted that when she was roused from her sleep, the appellant immediately covered her mouth with his hand, thus preventing her from calling for help. She was also threatened with a knife poked at her neck. We also consider that, at that time, she was only thirteen (13) years old, her height was no more than 143 cms. and her weight was merely 79 lbs.[32] It could hardly be expected that such a frail girl would put up a prolonged fight against the obviously stronger and armed appellant. Moreover, the appellant exercised moral ascendancy over the private complainant.[33]

We reject the appellant's allegation that it was impossible for him to commit the rapes in his house because his children were staying with him. Lust is not a respecter of place or time.[34] It has been committed inside a room in a thickly populated area during a wake.[35] It has been committed in a room adjacent to where other members of the family stay or in a room which the victim shared with others.[36]

The appellant further questions the behavior of the private complainant after the rapes—she put on her clothes without protestation, headed back home alone and slept as if nothing unusual had happened to her. It is also contended that she did not report the sexual abuses to the authorities.

We are not persuaded. It is well established that the appellant had instilled fear upon the private complainant's young mind during the sexual assaults. He threatened to kill her mother if she would report the incidents to anyone. She was seized by fear even as she was allowed to go home by the appellant. The private complainant satisfactorily explained her silence, thus:[37]

“(PROS. LOMARDA):

Q: The first and the second incident, did you not report this to anybody in your family?

A: No, sir.

Q: Could you give us the reason why you failed to report these first and second incidents?

A: I was afraid, sir.

Q: Afraid of whom?

A: Of my Uncle Tony, sir.

COURT:

Q: Why?

A: Because he told me that if I report to my mother, he will kill my mother, Ma'am.

PROS. LOMARDA:

Q: When did he utter this threat, during the first or the second incident?

A: Both, sir.

Q: After each sexual intercourse or before each sexual intercourse?

A: After, sir.”

His threats[38] continued to cow her to silence even after the fourth incident.[39] She would have kept her ordeals in secret, except that her mother learned of the incidents from other sources. She testified as follows:[40]

“(PROS. LOMARDA):

Q: How long after the third incident did your Auntie Cristina confront you about the incident?

A: She asked me after the fourth incident, sir.

COURT:

Q: Why did you not tell your Auntie Cristina about the incident when she asked you?

A: I was afraid, ma'am.

Q: Afraid of whom?

A: My Uncle Tony, ma'am.

Q: Why were you afraid?

A: Because of his threat to kill my mother, ma'am.

Q: What prompted you to lodge this complaint against your Uncle Tony?

A: When my mother learned about the incident from my Ate Marites, my mother immediately brought me to the barangay hall, ma'am.”

The appellant furthermore claims that the private complainant charged him with four (4) counts of rape because of an alleged quarrel between him and his siblings concerning his plan to sell the house of their late mother. The claim deserves little attention. The private complainant had nothing to do with the said feud and it is inconceivable that her mother would subject her to the humiliation, not to mention the inconvenience, trauma and scandal of a public trial had not her intention been to bring the appellant to justice. We repeat that it is highly unnatural for a parent to use her own offspring as an engine of malice, especially if it will further expose her to shame and dishonor.[41]

In sum, we hold that the prosecution has established beyond reasonable doubt that the appellant had carnal knowledge of the private complainant on those four (4) occasions, against her will, through force and intimidation.

The appellant assails the Informations in Criminal Case Nos. 0710-SPL to 0712-SPL which merely alleged that the rapes were committed “sometime in May 1997.” He claims it was unfair that, during the trial, the private complainant was allowed to testify that the first three (3) rapes occurred on the first week, the second week and sometime in the fourth week of May 1997. The appellant invokes our ruling in *U.S. vs. Dichao* (27 Phil. 422) and insists that the “private complainant’s failure to recall the exact dates of the subject incidents penetrates deeply into the core of her credibility.”[42]

The failure to allege in the Informations the exact dates when the rapes were committed is not fatal. In rape cases, the exact dates are not material elements of the offense. Nor can the appellant claim that he was prejudiced by the testimony of the private complainant. His counsel extensively cross-examined the private complainant on the dates she was abused by the appellant. Besides, the defense of the appellant is a general denial that he never encountered the private complainant in the whole month of May 1997.

The appellant’s reliance in *US vs. Dichao* is misplaced because the information therein was insufficient on its face for being vague because it merely charged that the rape was committed “on or about and during the interval between October, 1910, to August, 1912....” In the cases at bar, the Informations allege that the rapes were committed in May 1997. The dates cannot be condemned as too vague especially when the private complainant testified as to the specific week of May when the sexual assaults were committed against her.

We now review the penalties imposed by the trial court.

To impose the death penalty in qualified rape, the information must allege the special qualifying circumstances of relationship between the accused and the victim and the victim’s minority.[43] In the cases at bar, the age of the victim was alleged and proved through her birth certificate.[44] The special circumstance of relationship, i.e, that the appellant is an uncle of the victim, was not alleged in the Informations. The fact that it was proved will not justify the imposition of the death penalty. Hence, the appellant can not be convicted of qualified rape and can only penalized be by reclusion perpetua.[45]

We now come to the aggravating circumstance that the rapes were committed with the “use of a deadly weapon.” Again, this circumstance was not alleged in the Informations. Thus, even if it was proven at the trial, it cannot qualify the crime and the trial court erred in using this circumstance to impose the death penalty against the appellant.[46]

As regards the civil liabilities of the appellant, the prevailing jurisprudence calls for an award of P50,000.00 as civil indemnity in favor of the victim. In addition, the victim should be given an award of moral damages, without need of proof other than the fact of the rape itself.[47]

IN VIEW WHEREOF, the judgment of the Regional Trial Court of San Pedro, Laguna, Branch 31, finding the

appellant, ANTONIO ABALA y LACANARIA, guilty beyond reasonable doubt of four (4) counts of rape in Criminal Case Nos. 0709-SPL, 0710-SPL, 0711-SPL and 0712-SPL, is AFFIRMED, with MODIFICATION that the appellant should be held liable of simple rapes and suffer the penalty of reclusion perpetua for each count of rape. Further, appellant is ordered to pay the private complainant the reduced amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages for each count of rape. No pronouncement as to costs.

SO ORDERED.

Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

Davide, Jr., C.J., on leave.

Belosillo, J., No part. Did not take part in deliberation.

[1] Original Records, p. 1.

[2] Id., p. 6.

[3] Id., p. 10.

[4] Id., p. 14

[5] Id., p. 38.

[6] Id., p. 10.

[7] Exh. "G", Original Records, p. 72. Her name appears as Lhea A. Arevalo; see also Exh. "F", Original Records, p. 73.

[8] TSN, June 15, 1998, pp. 3-4.

[9] Id., pp. 4, 9.

[10] Id., pp. 6-8, 11.

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

[12] Id., p. 14.

[13] Id., pp. 14-15.

[14] TSN, June 24, 1998, pp. 3-4.

[15] Id., pp. 5-11.

[16] TSN, June 24, 1998, p. 11; TSN, June 15, 1998, p. 15.

[17] TSN, June 24, 1998, pp. 11-12.

[18] Id., pp. 5, 11.

[19] Id., pp. 12-16.

[20] TSN, June 15, 1998, pp. 5-9.

[21] Id., pp. 11-12.

- [22] *Id.*, pp. 16-17.
- [23] *Id.*, pp. 18-19; Exhs. “A” to “D”, Original Records, pp. 19-22.
- [24] Exh. “E”, Original Records, p. 22.
- [25] Original Records, pp. 90-95.
- [26] Rollo, p. 51.
- [27] Decision, dated August 19, 1998; see note 24.
- [28] TSN, June 24, 1998, pp. 2-4.
- [29] *Id.*, pp. 6-10.
- [30] *Id.*, pp. 13-14.
- [31] *Id.*, pp. 11-12.
- [32] Exh. “E”, Original Records, p. 22.
- [33] *People vs. Talledo*, 262 SCRA 544 (1996), cited in *People vs. Dumlao*, *infra*.
- [34] *People vs. Catubig, Jr.*, 342 SCRA 179 (2000).
- [35] *Ibid.*
- [36] *People vs. Abella*, 315 SCRA 36 (1999), *People vs. Vergel*, 316 SCRA 199 (1999).
- [37] TSN, June 24, 1998, pp. 12-13.
- [38] *Id.*, p. 15.
- [39] *Id.*, p. 17.
- [40] *Id.*, pp. 17-18.
- [41] *People vs. Ariola*, G.R. Nos. 142602-05, October 3, 2001.
- [42] Reply Brief, Rollo, pp. 156-159.
- [43] *People vs. Lomibao*, 337 SCRA 211 (2000); *People vs. Bayona*, 327 SCRA 190 (2000).
- [44] See note 7.
- [45] *People vs. Diaz, Sr.*, 337 SCRA (2000).
- [46] *People vs. Licanda*, 331 SCRA 357 (2000); *People vs. Lamberte*, 142 SCRA 685, 693 (1986); cf. *People vs. Napiot*, 311 SCRA 772, 783 (1999).
- [47] *People vs. Prades*, 292 SCRA 411 (1998).

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