THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO NAVARETTE Y AQUINO, ACCUSED-APPELLANT.

G.R. Nos. 136840-42. September 13, 2001

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PER CURIAM:

The case before the Court involves three counts of incestuous rape said to have been committed by herein appellant Romeo Navarette y Aquino against his 12-year old daughter. The trial court, following a finding of guilt, has imposed the penalty of death.

Navarette was charged before the court a quo in three separate informations, viz:

> "CRIMINAL CASE NO. 2901
>
> "That on or about June 11, 1994, at nighttime purposely sought to ensure and facilitate the commission of crime, in Barangay Bonfal Proper, Municipality of Bayombong, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Romeo Navarette y Aquino, who is the parent or father of herein complainant, with lewd design and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, who is under 12 years of age, in her dwelling while she was sleeping or otherwise unconscious, although she subsequently woke up from her sleep while being raped, against her will and consent, to her damage and prejudice including her mother."[1]
>
> "CRIMINAL CASE NO. 2902
>
> "That sometime in the month of October or thereabout in the year 1994, at nighttime purposely sought to ensure and facilitate the commission of crime, in Barangay Bonfal Proper, Municipality of Bayombong, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Romeo Navarette y Aquino, who is the parent or father of herein complainant, with lewd design and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, who is under twelve years of age, in her dwelling while she was sleeping or otherwise unconscious, although subsequently woke up from her sleep while being raped, against her will and consent, to her damage and prejudice including her mother."[2]
>
> "CRIMINAL CASE NO. 2903
>
> "That on or about December 5, 1994, at nighttime purposely sought to ensure and facilitate the commission of crime, in Barangay Bonfal Proper, Municipality of Bayombong, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Romeo Navarette y Aquino, who is the parent or father of herein complainant, with lewd design and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, who is under twelve years of age, in her dwelling while she was sleeping or otherwise unconscious, although she subsequently woke up from her sleep while being raped, against her will and consent, to her damage and prejudice including her mother."[3]

Appellant was arraigned, tried, and after a protracted hearing, convicted by the Regional Trial Court ("RTC") of

Nueva Vizcaya, Branch 28, in its 13th November 1998 consolidated decision. The convicted accused was meted the extreme penalty of DEATH and "to indemnify the offended party, Massachusette Navarette, damages in the amount of FIFTY THOUSAND (P50,000.00) pesos and to pay exemplary damages in the amount of TWENTY FIVE THOUSAND (P25,000.00) pesos to deter other sex perverts from sexually assaulting hapless and innocent girls, especially their own kins."[4]

Pleading for his life, Navarette, in this automatic review of his case by the Court, maintains that the trial court has "ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[5] Counsel for appellant capsulized the evidence for the defense; thus:

> "Evidence for the defense shows that since 1986, accused-appellant, his wife and his two (2) children resided at Bonfal Proper, Bayombong, Nueva Vizcaya. When his wife, Aprilyn left for Hongkong in 1991, his daughter, Massachusette was left with him while his son, Romeo, Jr., stayed with his mother-in-law, Primitiva Aggabao at Inatub, Quezon, Nueva Vizcaya. When his son started attending school in 1994, he brought him home to Bonfal. Accused-appellant described his daughter as a normal child who attended school at Bonfal Pilot Central School where she actively participated in their school activities. Accused-appellant further testified that in the beginning, he had a fine relationship with his mother-in-law until they had a little misunderstanding over a T.V. set which caused her mother in law to leave and went back to Inatub. When his wife came from abroad, accused-appellant and his mother-in-law had another misunderstanding concerning a parcel of land bought by his wife. Since then, they harboured ill-feelings towards each other.
>
> "As to the charges of three (3) counts of rape against him, accused-appellant testified that these could not be true because on June 11, 1994, Massachussette was then in Inatub and slept with her brother and grandmother. On the second charge of rape, accused-appellant testified that for the whole month of October, Massachussette had her own beddings while he slept with his son, Romeo, Jr. Likewise, he could not have raped his daughter on December 5, 1994 because at that time, they were all busy with the packages sent by his wife and finished arranging the same by midnight.
>
> "Accused-appellant testified that the charges of rape against him were all instigated by his mother-in-law who wanted him to be separated from his family and anticipated that he would be mortgaging the lot that his wife bought once the latter leave for abroad. He further testified that he loves his children very much and he did not know of any other reason why he was accused of such crime. (TSN, September 17, 1998, p. 2-16)."[6]

Appellant submits that the onus required of the prosecution to overcome the constitutional presumption of innocence accorded to every accused, as well as the legal mandate that the guilt of the accused must be proven beyond reasonable doubt, has not properly been discharged by the prosecution. Specifically, appellant contends that the medical findings do not tally with the testimony of complainant relied on by the trial court.

In the defense brief, appellant stressed:

> "Massachusette claimed that it was on December 30, 1994 when her grandmother allegedly noticed the 'yellowish stain' on her panty. It was at this point that she told her grandmother that she was raped by her father. Immediately the following day on December 31, 1994, she was subjected to a physical examination. Contrary to Massachussette's allegation, no secretion of any kind or color was found in her vagina. This prompted the medical officer to conduct internal examination by inserting a finger into Massachussette's vagina. It was found that there were some old lacerations therein, however, during cross examination, such laxities in the vagina of Massachusette may have been due to the fact that she has been a physically active child, having engaged herself into various sports. The medical officer even admitted that independently of the insertion of a blunt instrument, her physical activities could have caused the laxity.
>
> "While we adhere to the postulate that findings of the trial court are accorded great respect on the matter of the

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credibility of witnesses, it is our view that this case cannot come under said rule as the lower court misapplied some facts of weight and substance which, if only taken into account would have altered the result of the instant case. (People vs. Camay, 152 SCRA 401)

"Massachussette's testimony is hardly positive and convincing. Her so-called `harrowing experience' might solicit and win the sympathy of this Court but [it] does not mean that she could be telling the truth, especially when the records revealed that her grandmother and accused-appellant herein had a fight over a parcel of land. Be it noted that it was Massachussette's grandmother who allegedly noticed the `stain' in her underwear which proved to be non-existent as no secretion was found in her vagina during the physical examination."[7]

The Solicitor General, on his part, seconds the findings of the court a quo; he states:

"Private complainant, Massachusette Navarette filed a complaint for rape against her father, the accused, Romeo Navarette, for having molested her on three occasions, particularly on June 11, sometime in October, and December 5 of 1994 when she was about to be ten years having been born on September 29, 1984 as evidenced by her Certificate of Birth marked as Exh. 'A'.

"That the first incident happened on June 11, 1994 at Bonfal Proper, Bayombong, Nueva Vizcaya when at night, while Massachusette and her younger brother, Romeo, Jr., were asleep, Massachusette was awaken by the fact that the accused, who was only wearing an underwear, was on top of her. As she tried to fight, the accused held her hands upwards and spread her legs apart. Amidst her silent cries, her duster was put up and her panty was removed. And when the accused removed his underwear and did a pumping motion, which lasted for a few minutes, Massachusette felt pain in her vagina. After satisfying his bestial lust, accused warned her not to tell the incident to anybody. As she was afraid of her father for his cruelty, she did not report what happened. In October and on December 5, under the same circumstances, the incident was again repeated.

"It was only sometime on December 30, 1994, when Massachusette and her younger brother stayed with their grandmother, Primitiva Aggabao, during the Christmas vacation, that she first reported the incident. It so happened that the grandmother noticed the yellowish stain in her panty. Out of suspicion, Mrs. Aggabao asked Massachusette to spread her legs and there she saw that the lower portion of her labia majora had been slashed. When asked what it was all about, Massachusette confessed that she was raped by her father. On the following day, Mrs. Aggabao accompanied her granddaughter to the hospital for physical examination.

"The medical and physical examination to which Massachusette underwent on December 31, 1994, as contained in the Medico-Legal Certification (Exhs. 'E', 'E-1' and 'E-2') issued by Dra. Marietta Anne Balbas, the attending physician, showed the following findings:

- menarche - (-)
- conscious, coherent, ambulatory, not in CR distress
- skin - no sign of physical injury
- Genitalia: External: Well-coaptated labia majora

IE: Vagina, admits 1 finger with ease
Hymen: (+) old, healed lacerations

(-) secretions

"Based on such findings, it appeared that the genitalia of the patient in its external findings has a well-coaptated labia majora which means that they were intact. However, in the internal examination of the vagina, it admits one finger with ease which is not usual, generally, for a ten-year old girl and such laxity of the vaginal mucosa could have been caused by the insertion of any blunt object or material, which may include a male organ, or involvement in strenuous physical activities. Likewise, the hymenal opening showed multiple old lacerations which could have been caused a few weeks, months or years back. There were negative secretions.

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> "Aprilyn Navarette, Massachusette's mother, who was then in Hongkong, was informed of the incident and immediately came home. As she was to leave again, it was Mrs. Aggabao who assisted Massachusette in filing the complaints before the police in Bayombong, Nueva Vizcaya. Three months after Aprilyn left, she died of cardio-respiratory arrest due to acute renal failure. The fact that Massachusette was raped and the untimely demise of Aprilyn caused hurt feelings to Mrs. Aggabao and since then became indifferent to the accused. Having found out about the complaints, the accused scolded and whipped Massachusette asking her what she had been telling to her grandmother. This made Massachusette very angry and felt extreme dislike to his father and since then had been staying with her grandmother. During the incarceration of the accused, the latter wrote a letter (Exhs. `H' and `H-1') to them asking for forgiveness.[8]

The Court, in carefully examining the records and reviewing the case has kept in mind the guiding principles in the evaluation of rape cases, i.e., that -

> "x x x (a) an accusation for rape can be made with facility; it is difficult to prove it but more difficult for the person accused, though innocent, to disprove it; (b) in view of the nature of the crime in which only two persons are involved, the testimony of complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense."[9]

In assailing the credibility of the complainant, appellant would call attention to the fact that the medical finding of Dr. Marietta Ann B. Balbas found no secretion in complainant's vagina. The yellowish substance, he argued, could have very well been there for a variety of causes or reasons. But the medical examination was conducted a day after the stain found in the victim's panty was discovered. At all events, the presence of either injury or secretions in the victim's genitalia would be unessential in the commission of, or a conviction[10] for, rape. The testimony alone of a victim of rape, if credible, is sufficient to convict an accused for such a crime.[11]

The complainant testified categorically and in great detail that she was raped by her father, viz:

> "Q
>
> Before June where does your father usually sleeps Madam Witness?
>
> "A
>
> He sleeps with us, sir.
>
> "Q
>
> Before you sleep on the night of June 11, 1994 what did you do with the main entrance door of your house Madam Witness?
>
> "A
>
> It was locked, sir.
>
> "Q
>
> Does it have a key?
>
> "A

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Yes, sir.

"Q

Who holds this key?

"A

My father, sir.

"Q

What happened after you slept on June 11, 1994 Madam Witness?

"A

I was raped by my father, sir.

"Q

Where was your brother, Romeo Navarette, Jr. when you slept Madam Witness?

"A

He was beside me, sir.

"Q

You said your father raped you Madam Witness, what was your bedroom attire on the night of June 11, 1994?

"A

I was in a house dress, sir. (duster)

"Q

When for the first time did you notice that your father was present or inside the room?

"A

When he was on top of me, sir.

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"Q

How old were you then Madam Witness, on June 11, 1994?

"A

I can not remember, sir.

"COURT:

How old you are, or how old were you at that time?

"A

Almost ten years old, sir.

"Q

How about your brother?

"A

Eight, sir.

"ATTY. BAQUIRAN:

"Q

You said he was on top of you, will you tell the Honorable Court how was your father on top of you?

"COURT:

You demonstrate. You to act as your father and the interpreter to act as you. How was your position that time?

"A

I was lying on my back, sir. My father was on top of me like this. (The victim on top of the Interpreter with lap astride and holding the hands of the Interpreter above her head).

"ATTY BAQUIRAN:

We make it of record that the witness is crying.

"COURT:

Let us have a recess for five minutes.

"(Session in this case was suspended for five minutes and resumed at 11:05 a.m.)

"COURT:

You may proceed.

"ATTY. BAQUIRAN:

"Q

Now, you noticed your father on top of you which you demonstrated while ago. Now Madam Witness, what did you do?

"A

I was fighting him sir, when he was on top of me. (Witness demonstrating her arms in upward position.)

"ATTY. BAQUIRAN:

May we put on record the physical built of the accused. Since the filing of this case, he is on the plump side.

"Q

How did you father smell?

"A

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He smelled of liquor, sir.

"Q

He was on top of you and your legs spread and your hands upwards, then what did he do?

"A

He put up my duster sir.

"Q

How about your brother, you said he was sleeping with you, he was beside you? What was he doing then?

"A

He was sleeping, sir.

"COURT:

Aside from putting your arms against your father, what else did you do to protect the attack of your father?

"A

I was crying then, sir.

"ATTY. BAQUlRAN:

"Q

When your father lifted your duster, what next did he do?

"A

He pulled down my panty, sir.

"Q

What did you observe relative to his attire, then, Madam Witness?

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"A

He was just wearing brief, sir.

"Q

After taking off your panty . . .

"COURT:

At that time that he was lifting your panty, what did you do?

"A

I was just crying, sir. Then he removed his brief, sir.

"ATTY. BAQUIRAN:

"Q

After removing his brief, what did he do?

"A

He raped me, sir.

"Q

Was his legs still spread? What was your position?

"A

He had my legs spread, sir.

"Q

And what did you feel then?

"A

I felt pain, sir.

"Q

What part of your body did you feel pain?

"A

My vagina, sir.

"COURT:

How long a time was your father on top of you and the time your father was on top of you and the time you felt pain on your vagina?

"A

It was for a long time.

"Q

Approximately how many minutes?

"A

Maybe less than ten minutes.

"Q

More than five minutes?

"A

Maybe sir.

"xxx xxx xxx

"Q

Sometime October 1994, in the evening Madam Witness, where were you?

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"A

I was at home, sir.

"Q

And who was your companion?

"A

My younger brother also, sir.

"Q

Do you recall any unusual incident again on October 24, 1994, in the evening?

"A

Yes, sir.

"Q

And what was that?

"A

I was raped again, sir.

"Q

By whom?

"A

My father, sir.

"COURT:

About what time did the accused, your father raped you again on October 4, 1994?

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"A

Like the first time, sir, nighttime.

"Q

Where?

"A

In our house in Bonfal Proper.

"Q

What part in your house?

"A

In the same room upstairs, sir.

"Q

Where was your brother then?

"A

He was just beside me sleeping, sir.

"xxx xxx xxx

"Q

On December 5, you said you were at home with your brother, any unusual incident that happened?

"A

Yes, there is, sir.

"Q

Tell the Honorable Court what is that unusual incident?

"A

I was raped again sir.

"Q

By whom?

"A

By my father, sir.

"Q

What time on December 5, 1994 did your father raped you?

"A

The same as the first and second time, sir.

"Q

In the incident of October 4, 1994 and December 5, 1994 while your father was on top of you, what did you feel?

"A

It was very painful and I felt disgusted. (mar-mariekak kanya na)

"Q

When your father was on top of you and you felt pain what was the motion of his hip?

"A

The motion of his hip is going up and down like pumping, sir. He is in pumping motion.

"Q

Why did you feel pain on the part of your vagina?

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"A

Because he inserted his penis inside my vagina, sir.

"Q

This was June, October and November of 1994?

"A

Yes, sir.

"Q

Madam Witness, what time of the day do you usually take a bath?

"A

Before I go to school, sir. Before 7:00 o'clock, sir.

"Q

The day after June 11, 1994, the day before October 1994 and the day of December 5, 1994, what if any did you observe was present in your panty?

"A

It had blood, sir.

"Q

Did you report this to anyone, Madam Witness?

"A

No, sir.

"Q

Why so Madam Witness?

"A

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I was afraid of him, sir. (Mabutengak kania na.)

"Q

Why are you afraid of your father despite the fact that he assaulted your honor?

"A

Because he was cruel sir. (Naranggas isu na.)"[12]

"CROSS EXAMINATION BY ATTY. GUILBERT:

"Q

Do you remember where were you on June 11 , 1994?

"A

I was at home, sir.

"Q

You are very certain that you are at home and not at your grandmother's house in Inatub?

"A

Yes, sir.

"Q

Who were the persons present in your house on June 11, 1994 particularly at night?

"A

My brother, my father and me, sir.

"Q

What time did you go to sleep on June 11, 1994?"

"A

Around 8:00, sir.

"Q

You mentioned during direct examination that your father was a tricycle driver, would he normally go out at night to get passengers?

"A

What I know is that he only drive the tricycle in the morning, sir.

"Q

Until what time does your father drive the tricycle?

"A

Until 5:00 to 6:00 in the evening, sir.

"Q

After 6:00 he never goes out to get passengers, is that what you are saying?

"A

No, sir.

"Q

On that night of June 11 your father was not there?

"A

Yes, sir.

"Q

How many rooms is your House?

"A

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Two, sir.

"Q

And who are the persons occupying your house?

"A

My brother, my father and I, sir.

"Q

Where is your room located?

"A

Upper part, sir.

"Q

And you share one bed with your father and brother?

"A

We don't have a bed, just the floor, sir.

"Q

How big is that room, your approximation?

"A

Around 4 x 4, sir.

"Q

You used floor mat?

"A

Yes, sir.

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"Q

And you sleep beside your brothers?

"A

Yes, sir.

"Q

When you sleep your father also share your mat?

"A

Yes, sir.

"Q

On what side does your father sleep?

"A

Right side, sir.

"Q

Your brother also sleep on the left side?

"A

Yes, sir

"Q

Before going to bed on June 11, 1994 did you lock the front door of your house?

"A

Yes, sir.

"Q

How about the back door?

"A

Yes, sir.

"Q

And who has keys to your house?

"A

My father, sir.

"Q

Who else who has access to your house?

"A

It is only my father who has keys, sir.

"Q

How about you?

"A

I don't have, sir.

"Q

Now during your direct examination. . . I withdraw. When you sleep you have your light on?

"A

It is only the light downstairs, sir.

"COURT:

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How about in the room, do you sleep with the lights on?

"A

No, sir.

ATTY. GUILBERT:

"Q

You felt the presence of your father when he was already on top of you?

"A

Yes, sir.

"Q

What time was that?

"A

I don't know the time, I was not aware, sir.

"Q

Since the room was dark you cannot see?

"A

You can see because of the light from downstairs, sir.

"Q

What light emanates from downstairs?"

A

Fluorescent, sir.

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"Q

How many watts?

"A

I don't know that watt, sir.

"Q

Will you describe the room, was it enclosed by a door?

"A

It has a door, it was just open, it was only the door downstairs that was locked, sir.

"Q

When you sleep your brother also sleep beside you?

"A

Yes, sir.

"Q

When you notice a person on top of you, what was your reaction?

"A

I was shocked at first I knew it was my father, sir.

"Q

Did you say anything to your father?

"A

None, sir.

"Q

And the whole time that your father allegedly abused and molested you he did not say anything?

"A

He told me not to tell it to anybody sir.

"Q

How far was your brother from you?

"A

About this far, sir.

(Witness showing a distance of around 18 inches.)

"Q

And you did not try to give a warning to your brother that your father is molesting you?

"A

I was moving but he was still asleep, sir.

"Q

Did you try to hold his hands?

"A

No, sir.

"Q

Did you cry out for help?

"A

No, sir.

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"Q

What did you do when you noticed a person was on top of you?

"A

He got hold on my both hands, sir.

"Q

And what was your reaction when he held both of your hands?

"A

I fought and I was crying silently, sir.

"Q

How long was your father on top of you?

"A

That was for sometime, it was a little bit long, sir.

"Q

And what was your father wearing the first time?

"A

He was already in brief, sir.

"Q

What color?

"A

White, sir.

"Q

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You mentioned . . . I withdraw that question, your Honor.

Did your father say anything when he abused or molested you?

"A

Just a warning not to tell to anybody, sir.

"Q

During your direct examination, you said you were abused thrice, when was the second time?

"A

I don't know the date in October but in December it was December 5, sir.

"Q

What made you recall that the first was on June 11, 1994?

"A

I did not marked it in the calendar but it is on my mind, sir.

"Q

And the third time was on December 5?

"A

Yes, sir.

"Q

Because you also put that on your mind?"

A

Yes, sir.

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"Q

How about the second time?

"A

I don't remember, sir.

"Q

Was it on the first week?

"A

I don't know, sir.

"Q

Second week.

"A

Maybe on the second week, sir.

"Q

Was it on October 8, 1994?

"A

No, sir.

"Q

Was it on October 9, 1994?

"A

No, sir.

"Q

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October 10, 1994?

"A

I really don't recall, sir.

"ATTY. GUILBERT:

I am trying to refresh your mind.

"COURT:

Precisely, she cannot remember, why do you insist?"[13]

The trial court has found the complainant's testimony to be straightforward and credible.[14] The assignment of values to the testimony of witnesses is virtually left to the trial court and its conclusion on the matter of credibility of witnesses is accorded great weight and respect,[15] it being in a good position to assess these matters.[16]The insinuation made by appellant that the filing of rape charges against him had been motivated by the victim's grandmother with whom appellant allegedly had a misunderstanding over a piece of land was debunked by the former who, on cross-examination, said that prior to the rape incidents she never disliked nor resented her son-in-law. As the trial court so objectively explained -

> "It is likewise highly improbable that the imputation of so grave a crime such as rape could have been motivated by a mere misunderstanding between the accused and her mother-in-law over a parcel of land as the accused would like to impress. No grandmother would be so apathetic to instigate her 10-year old granddaughter to file a rape case against her own father simply on account of her alleged interest over a residential lot. The plain denial and uncorroborated testimony of the accused cannot prevail over the affirmative testimonies of prosecution witnesses not only by reason of its inherent weakness but for its being simply without substantive merit."[17]

It might not be amiss to state that appellant even sent letters to his mother-in-law, Primitiva Aggabao, while he was in detention, asking for forgiveness and begging for the withdrawal of the criminal complaints against him.[18]

Regrettably, the Court, in sum, cannot sustain the urgings of appellant. The facts narrated by the trial court in its decision are amply sustained by the transcript of stenographic notes, the exhibits and records forwarded to this Court.

Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, in part, provides:

> "ART. 335. When and how rape is committed. Rape is committed by having carnal knowledge of a woman under any of the following circumstances."
>
> xxx xxx xxx

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> "The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> "1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree. or the common-law spouse of the parent of the victim."

The minority of the victim and her relationship with her father, herein appellant, have both been alleged in the information. These qualifying circumstances have been testified to and attested by the Certificate of Birth[19] of "Massachusette Navarette," herein complainant, issued by the Office of the Local Civil Registrar of Quezon, Nueva Vizcaya, indicating her date of birth, 29 September 1984, and her filiation to appellant. This official document has been formally offered and properly marked during the hearing of 20 August 1998. The trial court has thus aptly imposed the penalty of DEATH for each of the crimes committed.

In line with prevailing jurisprudence, the award of P50,000.00 civil liability ex delicto must be increased to P75,000.00, the standard amount awarded to the offended party when rape is effectively qualified under Republic Act No. 7659.[20] The award of P25,000.00 exemplary damages is warranted and in line with our pronouncement in People vs. Catubig[21] just recently decided.[22] In addition and conformably with prevailing jurisprudence, the Court likewise awards the amount of P50,000.00 by way of moral damages to the victim.[23]

WHEREFORE, judgment is hereby rendered AFFIRMING the decision of the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 28 in Criminal Cases No. 2901, No. 2902 and No. 2903 finding accused-appellant Romeo Navarette y Aquino guilty beyond reasonable doubt of the crime of rape on 3 counts, and imposing upon him the penalty of death in each of the three cases. Appellant is likewise ordered to indemnify the victim, Massachusette Navarette the amount of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages also in each of the three cases, or a grand total of P450,000.00.

Under Republic Act No. 7659, when, by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.[24] Four Justices of the Supreme Court maintain their position that the law, insofar as it prescribes the death penalty, is unconstitutional; nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty could thereby be imposed.In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of the pardoning power.

SO ORDERED.

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

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[1] Rollo, p. 10.

[2] Rollo, p. 12.

[3] Rollo, p. 14.[4] Rollo, p. 56.

[5] Rollo, p. 43.[6] Rollo, pp. 42-43.

[7] Rollo, pp. 46-47.[8] Rollo, pp. 29-30.[9] People vs. Manggasin, 306 SCRA 228, 239.[10] People vs. Zaballero, 274 SCRA 627.

[11] People vs. Cura, 240 SCRA 234.

[12] TSN, 14 January 1998, pp. 8-20.[13] TSN, 18 February 1998, pp. 2-7.

[14] People vs. Guamos, 241 SCRA 528.[15] People vs. Cura, 240 SCRA 234.

[16] People vs. de Roxas, 241 SCRA 369.[17] Rollo, pp. 32-33.

[18] See People vs. Garcia, 281 SCRA 463.[19] Records, p. 100.[20] People vs. Victor, 292 SCRA 186; People vs. Flores, 311 SCRA 170.

[21] G.R. No. 137842, 23 August 2001.

[22] 306 SCRA 546.[23] People vs. Prades, 293 SCRA 411; People vs. Flores, 311 SCRA 170.

[24] Section 11, Republic Act No. 7659.

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