PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO

G.R. Nos. 140642-46. August 07, 2002

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PER CURIAM:

This is an automatic review of the Decision[1] of the Regional Trial Court of the City of Marikina, Branch 272 in Criminal Case No. 97-1871-MK finding accused-appellant Eloy Miclat, Jr. guilty beyond reasonable doubt of the crime of rape and imposing upon him the supreme penalty of death.

The Information filed against accused-appellant reads:

> That on or about the 07th day of July, 1997 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats, force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with Mary Rose Bondoc y Sanchez, a girl of 11 years old, against her will and consent.
>
> Contrary to law."[2]

When arraigned, accused-appellant pleaded not guilty. Thereafter, trial ensued.

The facts are as follows:

Mary Rose Bondoc was born on December 20, 1985 to Corazon S. Bondoc,[3] the sister of appellant Eloy Miclat.[4] Mary Rose had not seen her father since birth and, with her mother living in Pampanga, she was shuttled from one relative to another.[5]

On July 7, 1997, when Mary Rose was eleven (11) years old, she was living with her maternal grandmother Vivencia Pascual at No. 16, Bantayog St., Concepcion, Marikina City. On that day, while she was playing outside their house, her uncle, appellant Eloy Miclat, called her. At first, she was hesitant to go near him for fear of being sexually molested again,[6] and so she continued playing. Moments later, appellant shouted at her. Afraid of him, Mary Rose approached appellant who lost no time in closing the door and window of the house and in telling her to lie down. He removed her panty. Mary Rose tried to put it on again but, with appellant preventing her from doing so, failed. Appellant put down his pants and masturbated in front of her. Right after a white substance came out of appellant's penis,[7] he pressed his sex organ against hers ("idinikit niya sa ari ko"). She felt his penis being inserted into her vagina after which he did the push and pull motion of a "struggling horse" ("nangangabayo").[8] Mary Rose did not shout for help for fear of being hurt by appellant the way he did in Tabon and Mabalacat, Pampanga where, as he was doing that "thing" to her then and she was noisy, he punched her stomach.[9] She told appellant to stop what he was doing; he did so only after she said that her grandmother might arrive.[10]

Mary Rose told her grandmother, Vivencia Pascual, that appellant raped her. Unfortunately, Vivencia did not believe her. Instead, Vivencia asked Mary Rose to buy cigarettes for appellant. When Mary Rose returned, Vivencia told her not to be too close to appellant; otherwise, she would send her away. When Mary Rose heard this, she cried.[11]

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After July 7, 1997, appellant once again “invited” Mary Rose. As she was near the door then, she ran towards the place where a bingo session was being held.[12]
On or about July 17, 1997, Mary Rose revealed the incident to her schoolmate who accompanied her to the house of her (schoolmate’s) aunt somewhere in La Colina, Parang, Marikina City. Her revelation of the sexual abuse she experienced in the hands of her uncle disturbed her friend’s aunt. Afraid of getting involved, her friend’s aunt called up Bantay Bata of ABS CBN Foundation Inc.[13] where her report was received by a social worker, Evelyn Valencia. At 8:30 in the evening, Sylvia Tolentino, another Bantay Bata social worker, went to the residence of the caller in La Colina. The caller introduced Sylvia to Mary Rose who agreed to go with Sylvia. From there, they went to the Marikina Police Substation II to register in the police blotter the fact that Mary Rose ran away from home and that Bantay Bata took her from the telephone caller. At around 10:25 in the evening, Marikina City policemen referred Mary Rose to the PNP Crime Laboratory Group in Camp Crame, Quezon City for a medical examination.[14] However, it was only on July 19, 1997 when Medico-Legal Officer Dennis D. Bellin examined Mary Rose. The Medico-Legal Report revealed the following findings:

> GENERAL AND EXTRAGENITAL:
>
> Fairly developed, fairly nourished and coherent female child. Breasts are conical with pinkish brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.
>
> GENITAL:
>
> There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed laceration at 3 o’clock and shallow healed lacerations at 6, 7 and 11 o’clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.
>
> CONCLUSION:
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> Subject is in non-virgin state physically. There are no external signs of application of any form of violence.
>
> REMARKS:
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> Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.[15]

On July 21, 1997, the Bantay Bata Rescue Team went back to the Marikina City police station where Mary Rose executed a Sinumpaang Salaysay[16] before P/INSP Ricardo N. Sto. Domingo, Jr. The team also requested police assistance in the verification of the reported rape incident. With Mary Rose in tow, the police and the Bantay Bata Rescue Team went to No. 16 Bantayog St., Concepcion, Marikina City at around 6:30 in the evening. They found appellant and his mother at home. Informed of the reported rape incident, appellant voluntarily went with the police. Along with his mother, appellant was brought to the barangay hall of Concepcion I where Enrique Cruz, the barangay tanod executive officer, gathered information about the complaint from appellant. Thereafter, they proceeded to the Criminal Investigation Division (CID) of Marikina City to which the police turned over the person of appellant.[17] Notably, during the inquest, social worker Evelyn Valencia heard appellant pleading with Mary Rose, “Patawarin mo na ako sa lahat ng nagawa ko."[18]

The following day, July 22, 1997, the Bantay Bata Rescue Team turned over the custody of Mary Rose to the Department of Social Welfare and Development (DSWD) Crisis Center in Marillac Hills, Alabang, Muntinlupa City. Cindy Mativo,[19] a social worker at the DSWD Crisis Center who was assigned to study the case of Mary Rose, referred her to their physician to monitor her activities and assess her physical condition. Mary Rose complained of vaginal itchiness that she surmised was due to appellant’s insertion of his fingers into her vagina.

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Mary Rose narrated all the sexual abuses she suffered from appellant from the time she was still living in Pampanga until the day she was raped in Marikina City on 7 July 1997. Mary Rose was crying as she narrated her sexual ordeal. On 14 November 1997, Cindy Mativo prepared a Social Case Study Report[20] which is part of the records of this case. The report states:

> V. Observations on Minor while at Marillac Hills:
>
> Upon admission, minor used to cry. She is unresponsive who only nod when ask of querries (sic). She had the difficulty for (sic) dealing with her co-wards and has no initiative to do her assignment. As days go by, minor has changed. She has new found friends in the cottage. She can now do her assignment with less supervision of the houseparent.
>
> x x x She has complain (sic) of vaginal itchiness since admission. Medication is being administered up to the present.[21]

According to Mary Rose, even before 7 July 1997, while she was still living with her maternal aunt, Erlinda Miclat, in Mabalacat, Pampanga, she already experienced the sexual abuses of her uncle, appellant Miclat.[22] There were times when her uncle would touch her genitalia, mash her breast or even insert his finger inside her vagina.[23] Mary Rose left the house of her maternal aunt and went to her mother who was then living with her second family somewhere in Pampanga, intending to live with her. However, her mother did not allow Mary Rose to do so.[24] Mary Rose thus took a ride to Dau where she roamed around. There was a time when she lived with a relative, Ermi da Ramirez, and another time, with her Tita Rouella and Tito Ogie in Montalban. One night, when she was asleep in her Tita Rouella's house, she was awakened by the embrace and touch of appellant. She stood up and left the room and when her Tita Rouella asked her why, she confessed everything to her, but not to her Tito Ogie, as she was ashamed to relate to him what had happened to her.[25] Sometime in 1996, Mary Rose started living with her maternal grandmother, Vivencia Pascual, at No. 16 Bantayog St., Concepcion, Marikina.[26] Thereafter, appellant joined his mother, Vivencia, his stepfather, and Mary Rose in that house. Their cohabitation in one tiny house culminated in the rape incident on 7 July 1997.

The defense interposed denial and alibi. Appellant asserted that Mary Rose concocted the charge of rape against him because he got mad at her on 15 July 1997 after his stepfather asked her to buy sardines and she sent somebody else to do the errand. Because not only he but also his mother and stepfather got mad at Mary Rose, the latter left his mother's house in Bantayog St., Concepcion, Marikina City.[27]

Appellant emphasized the improbability of his raping Mary Rose because their house was only a small room; when its door was opened, everything inside could be seen. In support of his claim, appellant presented four (4) photographs[28] of the house's interior.

According to appellant, Mary Rose just wanted to be independent. This was shown by her living with whoever would take care of her but not with her mother.[29] Mary Rose was a liar; there was a time when she made up stories that caused a rift between himself and his sister-in-law, Erlinda Miclat.[30] Notwithstanding that Mary Rose concocted the charge of rape against him, appellant was confident that the truth would come out in the end. Hence, there was no need for him to file a counter charge against Mary Rose.[31]

Raising the defense of alibi, appellant claimed that on July 7, 1997, he reported for work at the Governor's Place in Shaw Boulevard as a stay-in painter. He was then painting a basement traffic sign.[32] In support of his claim, he presented a copy of his pay slip for the period 5-11 July 1997 with the following notations: (1) number of working days - six (6), and (2) net pay – seven hundred fifty six pesos and twenty five centavos (P756.25) with a handwritten notation of "plus pondo July 12–150."[33] Appellant further claimed that he stayed in said workplace even during weekends; that he went to his mother's house in Bantayog St., Concepcion, Marikina City on July

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15, 1997 to give his mother money to redeem their Karaoke unit; that he reported for work at Coring Supermarket on July 16 to 17, 1997; and that he went to his mother's house on July 21, 1997 to get some news from her.[34] His alibi was supported by the testimonies of Jimmy Navarro, the project-in-charge of the painting works at Bill Sanchez and Associates, Inc., and Henry Padilla, a foreman of the same company.

In substance, Navarro testified that appellant worked as a stay-in painter of Bill Sanchez and Associates, Inc. at the Governor's Place in Shaw Boulevard from January 13, 1997 until July 12, 1997;[35] that Miclat reported for work on July 7, 1997 as substantiated by Miclat's signature[36] on the photocopy of the company's daily time record[37] that its timekeeper, Ryan Cecil, prepared;[38] and that it was impossible for him to leave his workplace because three foremen, namely, Henry Padilla, Greg Tan and Eddie Danganan, were supervising him, and he risked dismissal from employment should the paint dry up.

One of the three foremen, Henry Padilla, testified that he saw appellant six (6) times on that fateful day, particularly at 8:00 o'clock in the morning when he told him to make the sample traffic sign; at 10:00 o'clock in the morning during break time; at noon; at 1:00 o'clock in the afternoon; at 3:00 o'clock in the afternoon when appellant took his snack, and at 6:00 o'clock in the afternoon when appellant was about to log out. Moreover, it would take approximately three hours to travel from Marikina to Shaw Boulevard.[39]

Appellant's stepfather, Mariano Pascual,[40] and his mother, Vivencia Pascual,[41] were united in testifying that they did not see appellant in their house at No. 16 Bantayog St., Concepcion, Marikina City on 7 July 1997, the alleged date when Mary Rose was raped, and that it was impossible for appellant to rape Mary Rose in their house on account of its small area.

On November 24, 1998, the trial court rendered a Decision against the appellant, the dispositive portion of which reads:

> WHEREFORE, in the light of the foregoing, accused ELOY MICLAT, JR. y SANCHEZ is found GUILTY beyond reasonable doubt of the crime of Statutory Rape penalized under Paragraph 3, Article 335 of the Revised penal Code, as amended by RA 7659 and is sentenced to suffer the extreme penalty of DEATH.
>
> The accused is further ordered to pay the private complainant the amount of PhP 50,000.00 as civil indemnity in consonance with prevailing jurisprudence (PP Vs. Obejas, 229 SCRA 549; PP vs. Ibay, 233 SCRA 15, PP V. Malunes, GR #114692, 14 Aug. 95) and to indemnify the private complainant the amount of PhP 20,000.00 as exemplary damages so as to serve as deterrent to this disturbing trend, and the costs of the suit.
>
> SO ORDERED.[42]

Appellant ascribes to the trial court the following errors:

> I
>
> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE, THE EVIDENCE OF THE PROSECUTION SHOWS THAT ACCUSED-APPELLANT COMMITTED ATTEMPTED RAPE ONLY;
>
> II
>
> THE TRIAL COURT ERRED IN PENALIZING THE ACCUSED-APPELLANT WITH THE EXTREME PENALTY OF DEATH, RA 7659 IS NOT APPLICABLE TO HIM INASMUCH AS HIS RELATIONSHIP WITH THE COMPLAINANT HAS NOT BEEN ALLEGED IN THE INFORMATION.[43]

Appellant insists that there are inconsistencies in the testimony of Mary Rose during the direct and cross-examinations. Mary Rose testified that after he allegedly removed her panty, he waited for a white

substance to come out before he pressed his organ against hers.[44] This contravenes her testimony on cross-examination that "the penis itself turns soft" after the white substance comes out of it.[45] Appellant posits that "it is a natural fact that after man's masturbation, his penis becomes soft and small." Logically, it follows that a penis cannot become erect immediately after masturbation. Thus, at most, his penis only touched her vagina and, with no erection, penetration is impossible. On account of these, he should be guilty only of attempted rape.[46]

On the other hand, the Office of the Solicitor General insists that appellant is liable for consummated statutory rape as the briefest of contact of the male and female sex organs under circumstances of force, intimidation or unconsciousness, even without the rupture of hymen, constitutes consummated rape. It suffices that there is proof of the entrance of the male organ within the labia of the pudendum of the female organ, a situation firmly testified to by Mary Rose.[47]

We agree with the trial court and the Solicitor General that appellant is guilty of consummated statutory rape.

Art. 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, 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:
>
> 1. By using force or intimidation;
>
> 2. When the woman is deprived of reason or otherwise unconscious; and
>
> 3. When the woman is under twelve years of age or is demented.
>
> The crime of rape shall be punished by reclusion perpetua.

Since the private complainant was only eleven (11) years old at the time the crime was committed, only carnal knowledge has to be proved to establish rape.[48] Carnal knowledge is defined as the act of a man having sexual intercourse or sexual bodily connection with a woman.[49] Well-entrenched is the doctrine which is founded on reason and experience that when the victim testifies that she has been raped, and her testimony is credible, such testimony may be the sole basis of conviction.[50] The trial court observed that Mary Rose testified in a "detailed and straightforward manner" that it was convinced that she passed the test of credibility.[51] The trial court, which had the opportunity to observe the conduct and demeanor of the witnesses when they testified in court, found private complainant's testimony, and not appellant's version, credible and trustworthy. The trial courts findings on the credibility of the witnesses carry great weight and respect, and will be sustained by the appellate courts unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case.[52] After a careful review of the records of the case, we find no cogent reason to disturb the findings of the trial court.

Mary Rose consistently testified that appellant raped her on 7 July 1997, thus:

> Q: On the afternoon of July 7, 1997, was your uncle able to ask you to go near him?
> A: Yes, Ma'am.
>
> Q: After you have approached him, what happened next?
> A: He closed the door and the window and he told me to lie down.
>
> Q: What is this place where you said your uncle locked the door and the windows?
> A: In No. 16 Bantayog St., Concepcion, Marikina.
>
> ATTY. BAUTISTA

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Q: I understand that is your lola's house, what part of the house is this?
A: There was a divider which is used for clothes.

Q: After your uncle closed the door and the windows, what happened next?
A: He told me to lie down and he removed my panty.

Q: What did you do when he was removing your panty?
A: I was trying to put it on again but he was trying to pull it down.

Q: Did he succeed in removing your panty?
A: Yes, ma'am.

Q: After your panty had been removed, what happened next?
A: At first he waited for the white substance to come out before he "idikit niya sa ari ko."

ATTY. BAUTISTA

We would like to manifest that while witness was testifying [that] he was waiting for a white substance to come out, she was demonstrating an act similar to a male masturbation.

ATTY. BAUTISTA

Q: After the white substance came out of the penis of your uncle, what did he do next?
A: He place it on top of my vagina, genital and I felt something was inserted in me.

Q: What was [it] that you felt [was] inserted inside your vagina?
A: It was painful.

Q: What was it?
A: His penis, ma'am.

Q: Will you please describe to this court the movements of your uncle when he was inserting his organ to your organ?
A: After he masturbated and right after the white substance went out, he placed it on top of my vagina.

Q: What was he doing?
A: None, ma'am. He was "nangangabayo."

Q: You mean to say he would place himself on top of you and would perform an act similar to that of struggling a horse?
A: Yes, ma'am.

Q: And all this time his penis was inserted in your vagina?
A: Yes, ma'am.

ATTY. LARRACAS

Objection, there was no mention that the private organ of the accused was inserted.

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There was. After the white substance came out from him, he suddenly inserted it."[53]

When the defense tried to destroy the credibility of Mary Rose by asking repetitive questions on cross-examination, still, she consistently stated that there was penetration of her vagina. She testified emphatically in this wise:

> Q: Now you claim that on July 7, 1997, you have seen that white substance coming out from the penis of your uncle. Now my question is, at that time that white substance came out of his penis, the penis is still outside your vagina, is it not?
>
> WITNESS:
>
> When something was coming out, he pressed it on my vagina.
>
> ATTY. LARRACAS
>
> Q: At that time, he was masturbating, what was your position?
> A: I was on the bed with the pillow.
>
> Q: You were just lying down?
> A: Yes, ma'am.
>
> Q: How about your uncle, where was he at that time he was masturbating in relation to you?
> A: In front of me, he was lying face down and when something started to come out from his penis, he pressed it against me."[54]

Based on the above testimony, appellant inserted his penis into private complainant's vagina right after a white substance came out from his sex organ. It is well-settled that penetration, no matter how slight, or the mere introduction of the male organ into the labia of the pudendum constitutes carnal knowledge.[55] "Carnal knowledge," unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured.[56] In most cases of statutory rape where total penetration of the victim's organ is improbable due to the smallness of the vaginal opening, it has been held that actual penetration of the victim's organ or the rupture of the hymen is not required.[57] The mere touching by the male organ or an instrument of sex of the labia of the pudendum of the woman's private parts is sufficient to consummate rape.[58] In People v. Monfero,[59] the appellant was convicted of rape on a mere finding that complainant felt appellant's penis touch her vagina although she was unsure whether there was penetration or not. Significantly, in this case, Mary Rose's testimony that she was raped by appellant is supported by the medical evidence.[60] On record showing her non-virgin state.

Indeed, private complainant's testimony reflects nothing but the truth considering her relationship with the person who violated her sexually. In a number of cases, this Court has held that a victim's testimony is entitled to greater weight when the accusing words are directed against a close relative.[61] It is highly inconceivable that complainant would impute a crime as serious as rape against her own maternal uncle, if this were not the plain truth.[62] No young and decent Filipina would publicly admit that she was ravished unless that is the truth for it is her natural instinct to protect her honor.[63] It defies reason why an eleven-year-old girl would concoct a story of defloration, allow the examination of her private parts, publicly disclose that she has been sexually abused if her motive were other than to fight for her honor and bring to justice the person who defiled her.[64]

Worth noting is the case study,[65] made by a DSWD social worker, which states that "upon admission Mary Rose used to cry." The emotional condition of Mary Rose bolsters the veracity of the sexual ordeal that she experienced and, consequently, the charge of rape against appellant. Complainant's spontaneous emotional breakdowns that could only be occasioned by the forced recollection of the sexual violations she experienced at such a tender age and quite offensive to her memory established her credibility beyond reproach.[66]

For lack of probative value, this Court rejects appellant's allegations that private complainant was merely impelled by revenge in filing the case against him because he got mad at her on 15 July 1997 and that complainant is a liar who would usually cause family disagreements. Family resentment, revenge or feud have

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never swayed the Court from lending full credence to the testimony of a rape complainant, especially a minor, who remained steadfast throughout her direct and cross-examinations[67] that she was sexually abused.

Appellant also alleged that private complainant filed the charge against him because she was no longer a virgin. His sister Veronica Maglalang, a former DSWD social worker, told him that Mary Rose was raped by the brother of her classmate.[68] However, such allegation is merely hearsay, considering that Veronica Maglalang never testified as a defense witness. Testimonial or documentary evidence is hearsay if it is based not on the personal knowledge of the witness but on the knowledge of some other person not on the witness stand. Consequently, hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exception to the hearsay evidence rule under the Rules of Court. It is precluded from admissibility as evidence because the party against whom it is presented is deprived of his right and opportunity to cross-examine the person to whom the statements or writings are attributed.[69]

Moreover, whether the victim was a virgin or not at the time of the rape is irrelevant. Virginity is not an element of rape.[70] Any prior sexual encounter (other than that with the alleged rapist), which could have resulted in hymenal lacerations or obliterations of the vaginal rugosities, is entirely immaterial.[71] Even a prostitute or a married woman can be a victim of rape.

Further, appellant's assertion that rape could not have been committed in their very small abode does not persuade. Rape has been committed regardless of the possibility of being observed as the brutish act is being committed. Thus, in People v. Escala,[72] where the appellant raised "environmental circumstances" that allegedly deterred the commission of rape, the Court said:

> x x x The crime of rape, unfortunately for appellant, has been known to be possible of commission even when the rapist and the victim are not alone considering that, given the concomitant anxiety, the act can take only a short time to consummate. The Court has thus held that a conviction for rape could still be proper despite the fact that it is alleged to have been perpetrated in the same room with the rapist's spouse or where other family members also sleep. Somehow, copulation does not seem to be a problem even when living in cramp quarters. Lust, it has been said before, is apparently no respecter of time and place.

Appellant's defense of alibi must also fail. Alibi is one of the weakest defenses, because it is easy to fabricate and difficult to disprove.[73] For alibi to prosper, the accused-appellant must prove not only that he was somewhere else when the crime was committed but he must likewise demonstrate that it was physically impossible for him to be at the scene of the crime at the time of its commission.[74]

In the case at bar, defense witness Henry Padilla testified that the work place at Shaw Boulevard is only about three (3) hours away from Marikina, the scene of the crime.[75] Due to the short distance and travel time from the scene of the crime to appellant's workplace, it is highly probable and still possible for him to have committed the crime of rape on 07 July 1997 at Marikina and thereafter leave the said place for Shaw Boulevard. Considering the available means of transportation in the metropolis, there is no physical impossibility for appellant to be at the locus criminis; hence, the second requisite for alibi to prosper is absent.
More importantly, the appellant's defense of denial and alibi, even if supported by the testimonies of his relatives, friends and superiors, deserves the barest consideration, and cannot prevail over his positive identification by the private complainant, who is found to have no untoward motive to falsely testify against him.[76]

The trial court, however, erred in imposing the death penalty on the appellant. Republic Act No. 7659 has introduced in Article 335 of the Revised Penal Code seven other special qualifying circumstances,[77] the attendance of which in the commission of the crime of rape would warrant the imposition of the death penalty. One of the seven qualifying circumstances is when the rape victim is under eighteen (18) years of age and the

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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.[78] The concurrence of the minority of the victim and her relationship to the offender constitutes one special qualifying circumstance which must be both alleged and proved with certainty otherwise the death penalty cannot be imposed.[79] Unlike a generic aggravating circumstance which may be proved even if not alleged, a qualifying circumstance cannot be proved as such unless alleged in the information although it may be proved as a generic aggravating circumstance if so included among those enumerated in the Code. [80]

In the case at bar, the prosecution successfully proved that appellant is the maternal uncle of the private complainant, which relationship falls within the purview of the qualifying circumstance of "relative by consanguinity within the third civil degree of the victim." By a twist of fate, appellant is fortunate that the relationship he abused was the very same relationship that would save him from the death penalty simply because of a prosecutorial lapse – the prosecution failed to allege the same in the information. The prosecution alleged in the information only the minority of the victim[81] notwithstanding that the law requires allegation therein of both the victim's age and her relationship with appellant, and proof of both circumstances beyond reasonable doubt at the trial. Hence, appellant can only be held liable for simple rape and the death penalty imposed by the trial court must be reduced to reclusion perpetua.[82]

The trial court correctly awarded private complainant civil indemnity in the amount of Fifty Thousand Pesos (P50,000.00) and exemplary damages in the amount of Twenty Thousand Pesos (P20,000.00). Civil Indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon a finding of the fact of rape. The award of civil indemnity in the amount of Fifty Thousand Pesos (P50,000.00) is in accordance with the latest jurisprudence for rape not effectively qualified by any circumstance under which death penalty is authorized by the present amended law.[83] Exemplary damages may be awarded in criminal cases as part of civil liability if the crime was committed with one or more aggravating circumstances.[84] Considering that private complainant was sexually abused by her own uncle, relationship should be appreciated as an aggravating circumstance prescribed by Article 15 of the Revised Penal Code.[85] Parenthetically, although the presence of the aggravating circumstance of relationship warrants the award of exemplary damages, it may not alter the single indivisible penalty of reclusion perpetua imposed for the crime of simple rape. Where the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.[86]

However, the trial court erred in not awarding moral damages, which is separate and distinct from the civil indemnity awarded to rape victims.[87] Private complainant is entitled to recover moral damages in the amount of Fifty Thousand Pesos (P50,000.00) pursuant to Article 2219 of the Civil Code[88] without the necessity of additional pleading or proof other than the fact of rape.[89] Moral damages is granted in recognition of the victim's injury as being inherently concomitant with and necessarily resulting from the odious crime of rape, especially where the rape victim is an innocent child whose life is forever taunted by a foul and traumatic experience. [90]

WHEREFORE, the assailed Decision of the Regional Trial Court, Marikina City, Branch 272 in Criminal Case No. 97-1871-MK finding appellant ELOY S. MICLAT guilty beyond reasonable doubt of the crime of rape and ordering him to pay to the offended party, MARY ROSE BONDOC, the amounts of Fifty Thousand Pesos (P50,000.00) as civil indemnity and Twenty Thousand Pesos (P20,000.00) as exemplary damages is AFFIRMED with the MODIFICATION that the death penalty imposed is reduced to reclusion perpetua, and appellant is further ordered to pay the offended party the sum of Fifty Thousand Pesos (P50,000.00) as moral damages. Costs against appellant.

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SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

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[1] Penned by Judge Reuben P. De la Cruz, Rollo, pp. 127-174.
[2] Id., at 5.
[3] Exhs. “F” and “F-1,” Folder of Exhibits, p. 6.
[4] TSN, 17 August 1998, pp. 32-33.
[5] TSN, 11 November 1997, p. 28.
[6] Id., at 6.
[7] Id., at 8-9.
[8] Id., at 1-10.
[9] Id., at 10-11.
[10] Id., at 10.
[11] Id., at 13-15.
[12] Id., at 16.
[13] Id., at 16-18.
[14] TSN, 5 November 1997, pp. 30-31.
[15] Exh. “D,” Folder of Documentary Exhibits, p. 5.
[16] Id., at 7.
[17] TSN, 13 October 1997, pp. 8-13.
[18] TSN, 5 November 1997, p. 24.
[19] Referred to as “Cindy Matugo” in the TSN of 17 November 1997.
[20] Exhs. “H,” “H-1,” Folder of Exhibits, pp. 8-10.
[21] Id., Exh. “H,” p. 9.
[22] Id., at 8.
[23] TSN, 11 November 1997, p. 7.
[24] Id., at 11.
[25] Id., at 12-13.
[26] Exh. “H,” Folder of Exhibits, p. 8.
[27] TSN, 17 June 1998, pp. 5-6.
[28] Exhs. “11 to 11-C,” Folder of Exhibits, pp. 35-37.
[29] TSN, 17 June 1998, p. 5-9.
[30] Id., at 6-7.
[31] Id., at 10-11.
[32] Id., at 3-6; TSN, March 19, 1998, p. 5.
[33] Exh.” 2,” Folder of Exhibits, p. 14.
[34] TSN, 17 June 1998, pp. 23-24.
[35] TSN, 18 March 1998, p.13.
[36] Entry No. 15 marked as Exh. “1-B,” Folder of Exhibits, p. 12.
[37] Exhs. “1 to 1-A,” Folder of Exhibits, p. 12,
[38] Exh. “1-D,” Folder of Exhibits, p. 12.
[39] TSN, 30 March 1998, pp. 1-22.
[40] TSN, 17 August 1998, pp. 1-19.

[41] Id., at 20-35.
[42] Original Records, pp. 173-174.
[43] Rollo, pp. 83-84.
[44] TSN, 11 November 1997, pp. 7-9.
[45] Memorandum of Appellant, Rollo, pp. 84-87.
[46] Rollo, pp. 86-87.
[47] Rollo, pp. 164-165.
[48] People v. Domantay, 307 SCRA 1, 21 (1999).
[49] Id.
[50] People v. Bolatete, 303 SCRA 709, 729 (1999); People v. Ambray, 303 SCRA 697, 704-705 (1999); People v. Vaynaco, 305 SCRA 93, 99 (1999).
[51] Original Records, p. 172.
[52] People v. Banela, 301 SCRA 84, 90-91 (1999).
[53] TSN, 11 November 1997, pp. 7-10.
[54] Id., at 25-26.
[55] People v. Ablog, 309 SCRA 222,230 (1999), citing People v. De la Peña, 276 SCRA 558, 562 (1997).
[56] People v. Quiñanola, 306 SCRA 710, 731 (1999).
[57] People v. Quinagoran, 315 SCRA 508, 517-518 (1999).
[58] People v. Puertollano, 308 SCRA 356, 365 (1999); People v. Monfero, 308 SCRA 396, 409 (1999) and People v. Ablog, 309 SCRA 222, 230 (1999).
[59] Supra.
[60] Exh. “D,” Folder of Documentary Exhibits, p. 5.
[61] People v. Sacapaño, 313 SCRA 650, 660 (1999).
[62] Italics supplied, People v. Javier, 311 SCRA 122, 133 (1999).
[63] People v. Silvano, 309 SCRA 362, 395 (1999).
[64] People v. Rosales, 313 SCRA 757, 764 (1999).
[65] Exh. “H,” Folder of Exhibits, p. 9.
[66] People v. Ramos, 312 SCRA 137, 147 (1999).
[67] People v. Batoon, 317 SCRA 545, 554 (1999).
[68] TSN, 17 June 1998, pp. 9-10.
[69] People v. Sacapaño, supra at 661-662.
[70] People v. Batoon, supra at 554.
[71] People v. Sacapaño, supra at 663.
[72] 292 SCRA 98, 59-60 (1998).
[73] People v. Reduca, 301 SCRA 516, 534 (1999).
[74] People v. Banela, supra at 93; People v. Baniel, 275 SCRA 472, 483 (1997).
[75] TSN, 30 March 1998, p. 20.
[76] People v. Dadles, 278 SCRA 393, 404-405 (1997).
[77] R.A. No. 7659, Section 11. Article 335 of the same Code is hereby amended to read as follows:

xxx xxx xxx

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

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parent of the victim.

2. When the victim is under the custody of the police or military authorities.

3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity. '

4. When the victim is a religious or a child below seven (7) years old.

5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

[78] People v. Carullo, 311 SCRA 680, 692 (1999).
[79] People v. Acala, 307 SCRA 330, 359-360 (1999); People v. Nuñez, 310 SCRA 168, 183 (1999); People v. Sacapaño, supra at 665, citing People v. Cantos, Sr., 305 SCRA 786, 798 (1999).
[80] People v. Poñado, 311 SCRA 529, 545 (1999), citing People v. Dimapilis, 300 SCRA 279, 309 (1998).
[81] “x x x a girl of eleven years old”.
[82] People v. Dimapilis, 300 SCRA 279, 309 (1998).
[83] People v. Dizon, supra at 690.
[84] Art. 2230, Civil Code.
[85] People v. Batoon, supra at 556.
[86] Art. 63, Revised Penal Code.
[87] People v. Bañago, 309 SCRA 417, 423 (1999).
[88] Moral Damages may be recovered in the following analogous cases:

x x x

(3) seduction, abduction, rape or other lascivious acts; x x x”

[89] People v. Quezada, G.R. No. 135557-58, January 30, 2002.
[90] People v. Garcia, 341 SCRA 502, 518 (2000).

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