

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODOLFO JUNAS, APPELLANT.

G.R. Nos. 144972-73. September 12, 2003

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PER CURIAM:

On automatic review[1] is the Joint Decision[2] of Branch 8 of the Regional Trial Court of Aparri, Cagayan, in Criminal Cases Nos. 08-1074 and 08-1075 promulgated on 28 July 2000. In both cases, the trial court convicted appellant Rodolfo Junas ("appellant") of incestuous rape and sentenced him to suffer the death penalty in each case.

On 16 January 1998, the Office of the Provincial Prosecutor[3] of Cagayan filed two (2) separate Informations charging appellant with rape,[4] committed as follows:

Criminal Case No. 08-1074

That on or about March 26, 1997, in the municipality of Aparri, province of Cagayan, and within the jurisdiction of the Honorable Court, the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the herein offended party, his daughter, a woman under twelve (12) years of age, all against her will and consent.

Contrary to law.[5]

Criminal Case No. 08-1075

That on or about March 28, 1997, in the municipality of Aparri, province of Cagayan, and within the jurisdiction of the Honorable Court, the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the herein offended party, his daughter, a woman under twelve years of age, all against her will and consent.

Contrary to law.[6]

When arraigned, appellant, assisted by counsel, pleaded not guilty to both charges.[7] Trial on the merits ensued.

Rhoda Junas ("Rhoda") was then less than 11 years old and a grade 5 pupil at the Aparri Central School in Aparri, Cagayan. Rhoda lived in the house of her grandmother Herminia Ibañez, in Maura, Aparri, Cagayan, together with her father the appellant and her mother Estrella Ibañez, and her two brothers, Roland and Junjun. Rhoda was 2 years old when Estrella left for Qatar to work as a babysitter. In 1996, Estrella bought a house situated at the back of the Aparri School of Trade in Maura. Since then, appellant resided in that house with his brother, Romy Junas. As for Rhoda and her siblings, they continued to stay in their grandmother's house.[8]

In the evening of 26 March 1997, Rhoda, together with her aunt, Alma Ibañez, Uncle Joey, Roland, and Junjun, went to appellant's house to get mourning clothes for her grandmother. While Alma was looking for the clothes, Rhoda fell asleep. As soon as Alma found the clothes, she tried to awaken Rhoda but appellant told Alma just to leave his daughter with him. Alma thus left appellant's house with Joey, Roland, and Junjun. Appellant then

closed the door and the windows and positioned himself on top of Rhoda. This stirred Rhoda from her slumber. She managed to get up and run towards the door but her father pulled her back and dragged her to the folding bed located in the living room. While Rhoda was lying on the bed face up, appellant removed her duster. Then appellant took off his shorts. He pulled down Rhoda's underwear, raised her two legs, then mounted on top of her, face down. She begged him to stop but her cry went unheeded. He warned her to keep the incident to herself or he would kill her. He then rammed his penis into her vagina and made pumping motions, which caused severe pain in her genitalia. He kissed her face and lips and mashed her breasts. After appellant had his fill, he again warned Rhoda not to reveal to anyone what he had done to her. As Rhoda had an intense bleeding that night, appellant had to rush her to her grandmother's house the next morning. Upon learning of her granddaughter's condition, Herminia Ibañez told appellant that she would bring Rhoda to a doctor. Appellant answered that there was no need to consult a doctor because "coconut juice" could cure his child's ailment. When asked why Rhoda was bleeding and her urine was yellowish, appellant gave a reply which Rhoda could not comprehend.[9]

Rhoda did not tell anyone about her ordeal for fear that her father would make good his threat.[10]

The same incident took place on 28 March 1997. Appellant went to Herminia's house and fetched Rhoda. He said his daughter had to watch their house because he would go fishing. Rhoda slept in one bedroom of appellant's house. She locked the door of the room but appellant knocked on the door and demanded that she open it. After opening the door, Rhoda went back to bed and lied on her side. Appellant then laid down beside her, unzipped her short pants, and pulled it off together with her underwear. She resisted her father's lecherous attack but he aimed his hand to box her. Appellant succeeded again in ravishing her.[11]

Rhoda returned to her grandmother's house the next morning but did not report her misfortune to her grandmother because of fear. Appellant's threats deterred her from divulging the rapes.[12]

Rhoda finally mustered enough courage to disclose the sexual assaults on 23 June 1997 when her aunt, Gloria Dabbay, arrived from Pangasinan. She confided to her how appellant had ravaged her. She revealed to her aunt what her father had done to her because she could not bear it anymore. She wanted to leave Aparri and go with her aunt to Pangasinan.[13]

Together with Gloria, Rhoda went to barangay tanod Jose Bautista who then accompanied them to the Aparri Police Headquarters. The police advised them to go to the hospital in Toran, Aparri and submit Rhoda to a medical examination. Rhoda and Gloria proceeded to the hospital where Dr. Robert H. Ogalino examined Rhoda.[14] Upon physical examination, Dr. Ogalino concluded that Rhoda had been sexually abused.[15] The medico-legal examination conducted on Rhoda yielded the following results:

- Hymen not intact.
- Positive healed lacerations at 7 & 11 o'clock position.
- Vagina admits 1 finger with ease.[16]

Appellant set up the defense of denial and alibi. He claimed he was in another place at the time of the commission of the rapes. Appellant recalled that on the night of 26 March 1997, he was in his house with his brother, Romy Junas. His three children were then in the house of their grandmother, Herminia Ibañez. Appellant declared that it was not true that he and Rhoda were alone in his house on the night in question.[17]

On the second accusation of rape, appellant proffered another alibi. He claimed that at around nine o'clock in the morning of 28 March 1997, he visited his children at the house of Herminia Ibañez. He had a drinking spree with his in-laws and left the place at past twelve noon. In the evening, he had another drinking session with Martin Castro at the latter's house. On that same night, he was arrested by a barangay tanod because he quarreled with a

neighbor. He could not remember where he slept that evening, as he was dead drunk. When he woke up the next morning, he was at the terrace of his house. Only he and his brother were there.[18]

Appellant avowed that he had been a good father to Rhoda. He could not think of any reason why his daughter would charge him of molesting her.[19]

After trial on the merits, the trial court found that appellant had sexually abused his daughter Rhoda. The trial court held that Rhoda's "testimony in court shows that it was given in a straightforward and convincing manner, and not rehearsed or coached." The trial court added that the victim "narrated in detail how she was ravished by her own father on those two (2) fateful nights and lost her innocence." [20] The trial court found appellant guilty of two (2) counts of qualified rape. The dispositive portion [21] of the trial court's decision reads:

WHEREFORE, the court hereby renders judgment finding the accused Rodolfo Junas GUILTY beyond reasonable doubt of the crime of rape in both cases for sexually abusing his own daughter Rhoda Junas, who was below twelve (12) years of age at the time of the incidents, on two (2) separate occasions, and sentencing him to...

1 - suffer the supreme penalty of death in each case, or two (2) death penalties;

2 - indemnify the victim Rhoda Junas in the amounts of:

2.1 - P75,000.00 - as civil indemnity in each case, or a total of P150,000.00;

2.2 - 50,000.00 - as moral damages in each case, or a total of P100,000.00;

2.3 - 25,000.00 - as exemplary damages in each case, or a total of P50,000.00.

3 - pay the costs of litigation.

SO ORDERED.

Hence, this automatic review.

Appellant raises the following assignment of errors:

I

THE TRIAL COURT ERRED IN PARTICIPATING DIRECTLY AND ACTIVELY IN THE PRESENTATION AND RECEPTION OF THE PROSECUTION'S EVIDENCE THEREBY FAILING TO UPHOLD THE 'COLD NEUTRALITY OF AN IMPARTIAL JUDGE'.

II

THE TRIAL COURT ERRED IN RELYING HEAVILY ON THE TESTIMONY OF PRIVATE COMPLAINANT AND IN DECLARING THE LATTER'S NARRATION OF THE SUBJECT INCIDENTS IN QUESTION AS FIRM, CATEGORICAL, STRAIGHTFORWARD AND CONVINCING.

III

THE TRIAL COURT ERRED IN NOT RENDERING A VERDICT OF ACQUITTAL IN AS MUCH AS THE TESTIMONY OF PRIVATE COMPLAINANT WAS, INSTEAD, HIGHLY INCREDIBLE, NAY IN COMPLETE VARIANCE WITH HER OTHER STATEMENTS ANENT THE CRIMES CHARGED.[22]

Appellant contends that the trial judge showed manifest bias against him by acting as a virtual prosecutor. He points to the trial judge's alleged leading questions propounded to Rhoda during her direct examination as an indication of the judge's partiality for the prosecution.

To prop up his theory of bias, appellant brings us to Rhoda's testimony on cross-examination where the judge allegedly assumed the role of a prosecutor by objecting to the question of appellant's counsel on two occasions.

Q -

Miss witness, you said that your mother went abroad when you were still 2 years old, did I get you right?

A -

Yes, sir.

Q -

And from that time you have your two brothers as well as your father xxx staying at the house of your grandmother in Maura, Aparri, Cagayan?

COURT:

That is misleading. The witness testified from thereon she stayed in her grandmother's house while her father and two brothers stayed in their house.

x x x

Q -

Do you remember when xxx your mother went abroad in August, 1996?

A -

No, sir.

Q -

Was there any occasion for you to drop by your mother at the airport in Manila?

COURT:

That is immaterial.

ATTY. BRAVO:

Because he is the father.

PROSECUTOR CORTES:

Well, we do not see any materiality.

COURT:

You mean to say on that occasion she was also with the father and the father did not rape her at the time.

ATTY. BRAVO:

We will be able to show the

COURT:

Yes. As far as we were concerned this is immaterial.[23]

The judge did not have to wait for an objection from opposing counsel to bar immaterial questions. If the opposing counsel does not object to such questions, the judge cannot stand idly by and allow the examining counsel to propound endless questions that are clearly irrelevant, immaterial, improper, or tend to be repetitious. A judge may examine or cross-examine a witness. He may propound clarificatory questions to test the credibility of the witness and to extract the truth. It will be a distorted concept of due process if in pursuing such a valid objective, the trial judge is stigmatized as a biased judge.[24]

After an exhaustive examination of the transcript of stenographic notes, we find that the trial judge was more than equitable in presiding over the hearings of this case. There is no showing that the judge had an interest, personal or otherwise, in the prosecution of the case. In *Ventura v. Judge Yatco*, [25] we declared:

About the active part that the judge took in the trial, the court finds that said active part was for the purpose of expediting the trial and directing the course thereof in accordance with the issues. While judges should as much as possible refrain from showing partiality to one party and hostility to another, it does not mean that a trial judge should keep mum throughout the trial and allow parties to ask the questions that they desire, on issues which they think are the important issues, when the former are improper and the latter, immaterial. If trials are to be expedited, judges must take a leading part therein, by directing counsel to submit the evidence on the facts in dispute by asking clarifying questions, and by showing an interest in a fast and fair trial. Judges are not mere referees like those of a boxing bout, only to watch and decide the results of a game; they should

have as much interest as counsel in the orderly and expeditious presentation of evidence, calling attention of counsel to points at issue that are overlooked, directing them to ask the question that would elicit the facts on the issues involved, clarifying ambiguous remarks by witnesses, etc. Unless they take an active part in trials in the above form and manner, and allow counsel to ask questions whether pertinent or impertinent, material or immaterial, the speedy administration of justice which is the aim of the Government and of the people cannot be attained. Counsel should, therefore, not resent any interest that the judge takes in the conduct of the trial, they should be glad that a trial judge takes such interest and help in the determination of truth.

Contrary to appellant's posture, the fact that the judge who penned the decision was not the one who heard the testimony of the complaining victim does not automatically taint the trial court's decision or ipso facto render it erroneous.[26] Appellant argues that since the judge who wrote the assailed decision was not the one who presided over the actual trial and observed Rhoda's demeanor, "his findings on the credibility of the private complainant are not binding upon the appellate courts." Appellant stresses that "the trial court erred in completely believing the testimony of private complainant."

We do not agree.

The judge who was not present at the trial can rely on the evidence on record including the transcript of stenographic notes taken during the hearings of the case.[27] Here, the judge who penned the decision found that Rhoda's testimony was given in "a straightforward and convincing manner, and not rehearsed or coached." It was noted in the transcript of stenographic notes that Rhoda cried while testifying. When asked to identify her attacker, she pointed to appellant, then burst into tears. This caused the trial court to call a recess to allow the victim to regain her composure and recollection.[28]

On cross-examination, appellant's counsel asked Rhoda why she cried when she testified during her direct examination. Rhoda answered that "she does not want to see appellant because whenever she sees him, she can remember all that he had done to her." [29] Such actuation demonstrates her sincerity and spontaneity, and the truthfulness of what she was narrating. The crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.[30]

Rhoda's narration of the rapes was vivid enough; anything more would be asking too much from her. We quote the transcript of stenographic notes:

Pros. Cortes:

Q -

Now, that evening of March 26, 1997, you stated that you went to the house of your father together with your aunt Alma Ibañez, your two brothers and your uncle, how long did you stay there that night?

A -

Quite long time, sir.

Q -

Did you sleep in the house of your father that night?

A -

Yes, sir.

Q -

While you were sleeping that night of March 26, 1997 do you recall if anything unusual took place?

A -

There was, sir.

Q -

What was that?

A -

When my aunt left already my father closed the door and the windows then he went on top of me and that was the time I was awakened, sir.

Court:

Q -

Now, is the Court made to understand that when your Aunt Alma Ibañez left, you were already asleep?

A -

Yes, sir. I was already sleeping because my father told to my aunt to just leave me alone and sleep.

Pros. Cortes:

Q -

By the way, before you slept that night in the house of your father what was your father doing?

A -

They were having a drinking spree, sir.

Q -

With whom?

A -

My uncle Joey, sir.

Q -

They were drinking what?

A -

San Miguel gin, sir.

Q -

Now, you stated earlier that when you were awakened your father was already on top of you, after waking up what did you do?

A -

I was able to get a chance and that was the time I ran towards the door, sir.

Q -

And after you ran away towards the door what did your father do?

A -

He pulled me, sir, and brought me to the folding bed.

Q -

What folding bed is that?

A -

A folding bed, sir.

Court:

Q -

Is it made of canvass or steel?

A -

Made of steel, sir.

Pros. Cortes:

Q -

And where is this bed situated in the house of your father?

A -

It is located in the living room, sir.

Q -

Is this also the same bed where you slept?

A -

No, sir.

Q -

When your father pulled you and brought you to that folding bed what happened next?

A -

He lowered my panty, sir.

Court:

Q -

Okey [sic], let's exclude the public now. Everybody, except the mother, aunt and the accused.

Pros. Cortes:

Q -

After lowering your panty what did your father do?

A -

He inserted his penis into my vagina, sir.

Court:

Q -

What was your position at the time?

A -

I was then lying, sir.

Q -

And he[,] what was his position?

A -

He was also lying, sir.

Q -

Lying beside you or what?

A -

He was lying on top of me facing down, sir.

Q -

And how were you lying will you demonstrate?

Interpreter:

The witness was lying facing up.

Court:

Q -

And your father was on top of you?

A -

Yes, sir.

Q -

What were his hands doing?

A -

He lowered my panty then he raised my two legs and that was the time he inserted his penis, sir.

Q -

Was his body between your legs?

A -

Yes, sir.

Q -

How were you dressed at that time?

A -

I was then using a daster [sic], sir.

Q -

Now, what hand did he use in removing your panty?

A -

His two hands, sir.

Q -

While he was removing your panty how was his body position[ed]?

A -

He was kneeling in front of me while he raised both my legs and pulled down my panty with his two hands, sir.

Q -

Now, what did you do while he was doing this?

A -

I begged from him not to continue, sir, but he did not accede.

Q -

Did you not shout?

A -

I shouted, sir, but he threatened me.

Q -

In what way did he threaten you?

A -

He said, 'If you will reveal this matter I will kill you,' sir.

Q -

Now, when he removed your panty what was he wearing?

A -

He was wearing shortpants, sir.

Q -

And how did he remove his shortpants?

A -

He removed it, sir.

Q -

What kind of panty were you using then?

A -

A white panty, sir.

Q -

Is it the ordinary panty or what?

A -

Ordinary panty, sir.

Q -

By that you mean this panty with garter?

A -

Yes, sir.

Court:

Okey [sic], proceed.

Pros. Cortes:

Q -

You stated that after he removed your panty your father inserted his penis into your vagina aside from that what else did your father do to you?

A -

He made pumping motions, sir.

Q -

And did you feel whether the penis penetrated your vagina or not?

A -

Yes, sir.

Q -

Aside from inserting his penis what other sexual act did he perform?

A -

He still sexually abused me, sir.

Q -

What do you mean by he sexually abused you?

A -

He also kissed me several times, sir.

Court:

Q -

Kiss what?

A -

My face, sir.

Court:

Continue.

Pros. Cortes:

Q -

Not your lips?

A -

He also kiss [sic] my lips, sir.

Q -

What about your breast?

A -

He only smashed it, sir.

Q -

He did not kiss it?

A -

No, sir.

Q -

How did he smash your breast?

A -

He pressed it, sir.

Interpreter:

The witness demonstrated by pressing her breast.

Court:

Q -

Did he kiss your nipple?

A -

No, sir.

Q -

Did he removed [sic] your daster [sic]?

A -

Yes, sir.

Q -

So you were completely naked?

A -

Yes, sir.

Court:

Continue.

Pros. Cortes:

Q -

What did you feel when your father inserted his penis into your vagina?

A -

It was painful, sir.

Q -

And what did you feel also when your father smashed your breast?

A -

It was also painful, sir.

Q -

And how did you react while your father was sexually abusing you?

A -

I was crying, sir.

Q -

After your father was through abusing you what did he tell you if any?

A -

He said, 'We must keep it secret what had happened between us only,' sir.

Court:

Q -

Did you enjoy having sex with your father?

A -

No, sir.

Court:

Continue.

Pros. Cortes:

Q -

Now, in the evening of March 28, 1997 where did you sleep?

A -

In our house, sir.

Q -

Why did you sleep in the house of your father when according to you you were staying in the house of your grandmother?

A -

He came to fetch me sir, and told me to guard our house because he will go fishing.

Q -

In what part of your house did you sleep that night?

A -

In our bedroom, sir.

x x x.

Pros. Cortes:

Q -

Did you locked [sic] the door of that bedroom where you slept?

A -

Yes, sir.

Q -

And while you were there inside that bedroom what did your father do?

A -

He came and knocked at the door, sir, and told me to unlock the door.

Q -

And after that what happened?

A -

While I was then sleeping, sir, he came to lie down beside me.

Q -

And what did your father do?

A -

He lowered my panty, sir.

Q -

And he again abused you?

A -

Yes, sir.

Q -

He performed the same sexual act like what he did on March 26, 1997?

A -

Yes, sir.

Q -

And how did you react to that sexual abuse?

A -

I was crying, sir.

Q -

After that sexual assault what did your father tell you?

A -

The same as what he told me, sir, the first time he abused me that I will not reveal.

x x x.

Pros. Cortes:

Q -

You said that your father again abused you on March 28, 1997 will you demonstrate how he abused you?

Interpreter:

The witness is demonstrating by lying down facing up.

Court:

Q -

While you were lying down you said your father knocked at the door, is that correct?

A -

Yes, sir.

Q -

And what did you do?

A -

I went to open the door, sir.

Q -

And what did you do after opening the door?

A -

After opening the door, sir, he told me not to lock the door.

Q -

So after that what did you do?

A -

I went back to bed, sir.

Q -

And were you able to sleep?-

A -

Yes, sir.

Q -

So what happened after that?

A -

My father came and lay down beside me, sir.

Q -

So when he came and lay down beside you what did you do?

A -

When my father came beside me, sir, I was surprised why he came beside me.

Q -

And what did he tell you?

A -

He told me, sir, 'Do not reveal this to anybody, only the two of us knew [sic].'

Q -

And what did he do?

A -

He again lowered my panty, sir.

Q -

Now, what was your position at the time?

A -

After opening the door I went back to bed and I was lying on my side and that was the time my father came and lay beside me and let me lie facing up, sir, and then he lowered my panty.

Q -

What dress were you wearing at the time?

A -

Shortpants, sir.

Q -

How did he lower your panty when you were wearing shortpants? How was he able to lower your panty with your shortpants?

A -

He unzipped my shortpants and lowered it together with my panty, sir.

Q -

Did you do it willingly?

A -

No, sir, in fact I was then resisting but he was aiming his hand to box me.

Court:

Continue.

Pros. Cortes:

Q -

And after lowering your panty what did your father do?

A -

The same thing that happened when he first abused me, sir.

Q -

So he also inserted his penis inside your vagina?

A -

Yes, sir.

Q -

And he also kissed you?

A -

Yes, sir.

Q -

On your lips?

A -

Yes, sir.

Q -

And he also smashed your breasts?

A -

Yes, sir.

Q -

And what did you feel when your father inserted his penis for the second time?

A -

It was painful, sir.[31]

Appellant failed to rebut the clear and positive testimony of Rhoda. No woman, especially one of tender age like Rhoda, would undergo the humiliation of a public trial and testify on the details of her ordeal, unless motivated by a desire to have the offender apprehended and punished.[32] Considering that Rhoda was not shown to have been ill-motivated in imputing such a grave offense against her own father, we find no reason to disbelieve her.[33]

Appellant also claims that several inconsistencies cast serious doubt on the reliability of Rhoda's testimony. Rhoda declared in her affidavit that after appellant closed the door and the windows, he went on top of her. During the preliminary investigation, Rhoda declared that after closing the door and the windows, appellant started to kiss her. In her affidavit, Rhoda stated that on 26 March 1997, she went to appellant's house with her aunt, a brother, a cousin, and an uncle. During the preliminary investigation, Rhoda said she was then with appellant and her aunt. At the trial, Rhoda omitted her cousin as one of her companions. In her affidavit, Rhoda declared that after she reported the rapes to her aunt, they went to the barangay captain and then to the police. During the preliminary investigation, Rhoda declared that the rapes were first reported to the police.

These discrepancies pointed out by appellant refer to trivial matters. They are inconsequential as they have nothing to do with the essential fact in the crime of rape which is carnal knowledge.[34] Discrepancies between sworn statements and testimonies given in open court do not necessarily discredit a witness especially when they refer to minor matters that have no substantial effect on the nature of the offense.[35]

We have ruled that testimonial evidence commands greater weight than sworn statements because testimonies given during trial are more exact and elaborate.[36] Sworn statements are often executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which transpired.[37] Rhoda's credibility was tested on the witness stand. Under rigorous cross-examination, Rhoda never wavered in her assertion that appellant raped her on 26 March 1997 and 28 March 1997. On the other hand, statements made during preliminary investigations will not always disclose all the facts of the occurrence narrated. Preliminary investigations are commonly summary or truncated in nature. They are designed simply for the determination of probable cause prior to the filing of an information in court.[38]

Appellant harps on Rhoda's failure to disclose immediately to her grandmother or even the police the sexual assaults committed against her. He contends that this failure, together with the fact that the barangay hall was near Rhoda's residence, makes her allegation of having been raped incredible. Appellant added that even if there were threats against Rhoda's life, "her movements were not restricted at all." She had all the time to expose the alleged rape incidents.

We do not consider the delay fatal. Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of a witness if the delay is satisfactorily explained.[39]

The records show that Rhoda did not immediately reveal the rapes because of the fear that her father's death

threats had caused her.[40] It is common for a young girl at the tender age of a little less than 11 years to be intimidated into silence even by the mildest threat against her life and thus conceal for some time the violation of her dignity.[41] At that young age and with the naiveté and innocence that comes with provincial upbringing, Rhoda was undoubtedly under her father's moral authority and influence. With appellant's ascendancy over Rhoda, coupled with his threats on her, Rhoda could not possibly be expected to come out in the open. It took her almost 3 months to gather enough courage to reveal her ordeal. It is settled that delay in reporting a rape case due to threats is justified.[42] Here, appellant threatened complainant with death.

Appellant employed threats and intimidation in having carnal knowledge with Rhoda. Rhoda was only 10 years and 11 months old at the time appellant raped her, making such carnal knowledge a statutory rape under Article 335(3)[43] of the Revised Penal Code. Thus, in the present case, threat or intimidation is not even an essential element to hold appellant liable for the crime of rape.[44]

There being proof beyond reasonable doubt that appellant committed the crimes as charged, we affirm his conviction.

Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, which was the law in force at the time of the commission of the crimes, states in part:

Art. 335. When and how rape is committed. -- x x x

x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

- 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.

Under this provision, both circumstances of the victim's minority and her relationship to the offender must be alleged in the information and proven during the trial to warrant the imposition of the death penalty.[45]

The complainant's minority and her relationship with appellant were sufficiently proved during the trial upon presentation in evidence of complainant's birth certificate.[46] The document clearly states that Rhoda was born on 5 May 1986 and that appellant is her father.[47] Thus, the Informations correctly alleged that at the time of the commission of the rapes in 1997, Rhoda was "under twelve (12) years of age" and that she is appellant's own daughter. Appellant himself categorically admitted his relationship with complainant in his testimony.[48] The trial court, therefore, did not err in sentencing appellant to death.[49]

We have ruled that if rape is qualified by any of the circumstances warranting the imposition of the death penalty, the civil indemnity for the victim shall be increased to P75,000.[50] The award of P75,000 as civil indemnity is thus proper in the present case.

Pursuant to current jurisprudence, additional awards of P50,000 as moral damages and P25,000 as exemplary damages in Rhoda's favor are in order. Moral damages are automatically granted in rape cases without need of further proof other than the commission of the crime because it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.[51] Exemplary damages of P25,000 should be awarded to private complainant in view of the proven father-daughter relationship of the parties.[52]

WHEREFORE, we AFFIRM the Joint Decision of the Regional Trial Court of Aparri, Cagayan, Branch 8, in Criminal Cases Nos. 08-1074 and 08-1075, finding appellant Rodolfo Junas GUILTY beyond reasonable doubt of

qualified Rape, and sentencing him in each case to suffer the DEATH penalty and to pay the victim Rhoda Junas P75,000 as civil indemnity, P50,000 as moral damages, and P25,000 as exemplary damages.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of R.A. No. 7659, upon finality of this decision, let certified true copies of the records of these cases be forwarded forthwith to the President of the Philippines for the possible exercise of the pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Tinga, JJ., concur.
Puno, and Azcuna, JJ., on official leave.

[1] Pursuant to Article 47 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659.

[2] Penned by Judge Antonio N. Laggui.

[3] Filed by First Assistant Provincial Prosecutor Romeo B. Saquing.

[4] Defined and penalized under Article 335, paragraph 3 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659. Under the Anti-Rape Law of 1997 (R.A. No. 8353), which took effect on 22 October 1997, Article 335 is now Articles 266-A to 266-D of the Revised Penal Code under Crimes Against Persons.

[5] Records, p. 2.

[6] Ibid., p. 3.

[7] Ibid., p. 38.

[8] TSN, 12 August 1998, pp. 3-6; 13 August 1998, pp. 3, 6.

[9] TSN, 12 August 1998, pp. 6-15; 13 August 1998, pp. 7-8.

[10] TSN, 12 August 1998, p. 18; 13 August 1998, p. 10.

[11] TSN, 12 August 1998, pp. 13-14, 16-18.

[12] Ibid., p. 18.

[13] Ibid., pp. 18-19.

[14] Ibid., pp. 19-20.

[15] TSN, 12 May 1999, p. 10.

[16] Records, Exhibit "C," p. 11.

[17] TSN, 22 June 2000, pp. 4-6.

[18] Ibid., pp. 7-11.

[19] Ibid., p. 11.

[20] Records, p. 139.

[21] Ibid., p. 149.

[22] Rollo, pp. 54-55.

[23] TSN, 13 August 1998, pp. 2, 5-6.

[24] *People v. Ugang*, G.R. No. 144036, 7 May, 2002; *People v. Basquez*, 418 Phil. 426 (2001); *People v. Rivera*, 414 Phil. 430 (2001); *People v. Zheng Bai Hui*, G.R. No. 127580, 22 August 2000, 338 SCRA 420.

[25] 105 Phil. 287 (1959).

[26] *People v. Sanahon*, G.R. No. 132724, 19 November 2001, 369 SCRA 343.

[27] *People v. Hapa*, 413 Phil. 679 (2001); *People v. Salimbago*, 373 Phil. 56 (1999).

[28] TSN, 12 August 1998, p. 7.

[29] TSN, 13 August 1998, p. 9.

[30] *People v. Lima*, G.R. No. 128289, 23 April 2002; *People v. Mijano*, G.R. No. 129112, 23 July 1999, 311 SCRA 81; *People v. Alquizalas*, 364 Phil. 858 (1999).

[31] TSN, 12 August 1998, pp. 8-14, 16-18.

[32] *People v. Cana*, G.R. No. 139229, 22 April 2002; *People v. Caratay*, 374 Phil. 590 (1999); *People v. Ayo*, 365 Phil. 88 (1999).

[33] *People v. Hernandez*, G.R. Nos. 134449-50, 25 October 2001, 368 SCRA 247.

[34] *People v. Santos*, G.R. No. 137993, 11 April 2002; *People v. Siao*, 383 Phil. 988 (2000).

[35] *People v. Rivera*, 414 Phil. 430 (2001); *People v. Mangat*, 369 Phil. 347 (1999); *People v. Reduca*, 361 Phil. 444 (1999).

[36] *People v. Tamsi*, G.R. Nos. 142928-29, 11 September 2002; *People v. Garcia*, G.R. No. 139753, 7 May 2002; *People v. Matic*, G.R. No. 133650, 19 February 2002.

[37] *People v. Lee*, G.R. No. 139070, 29 May 2002; *People v. Nerio*, 418 Phil. 311 (2001); *People v. Empleo*, G.R. No. 96009, 15 September 1993, 226 SCRA 454.

[38] *People v. Balderama*, G.R. Nos. 89597-98, 17 September 1993, 226 SCRA 537; *People v. Villanueva*, G.R. No. 96469, 21 October 1992, 215 SCRA 22.

[39] *People v. Sinoro*, G. R. Nos. 138650-58, 22 April 2003; *People v. Edem*, G.R. No. 130970, 27 February 2002.

[40] TSN, 12 August 1998, pp. 11, 13, 14, & 17; 13 August 1998, p. 10.

[41] *People v. Pagurayan, Jr.*, G.R. No. 143658, 17 April 2002; *People v. Bea, Jr.*, 366 Phil. 334 (1999).

[42] *People v. Bertulfo*, G.R. No. 143790, 7 May 2002; *People v. Catubig*, 416 Phil. 102 (2001).

[43] Article 335(3) of the Revised Penal Code provides as follows: "When and how rape is committed.-

(3) When the woman is under twelve years of age x x x." This is now Article 266-A, (1) (d) of the Revised Penal Code.

[44] *People v. Jalosjos*, G.R. Nos. 132875-76, 16 November 2001, 369 SCRA 179; *People v. Castillo*, G.R. No. 130205, 5 July 2000, 335 SCRA 100.

[45] People v. Romero, G.R. Nos. 137037-38, 5 August 2002; People v. Juntilla, 373 Phil. 351 (1999).

[46] TSN, 12 August 1998, pp. 3-4.

[47] Records, Exhibit "A," p. 5.

[48] TSN, 22 June 2000, p. 4.

[49] While three members of the Court maintain their position that R.A. No. 7659, insofar as it prescribes the death penalty, is unconstitutional, they submit to the ruling of the Court, by majority vote, that the law is constitutional. The imposition of the death penalty is accordingly in order.

[50] People v. Reyes, G.R. Nos. 140642-46, 7 August 2002; People v. Rodavia, G.R. No. 133008, 6 February 2002.

[51] People v. Degamo, G.R. No. 121211, 30 April 2003; People v. Patanayan, Jr., G.R. Nos. 141189-141202, 23 July 2002; People v. Lachica, G.R. No. 143677, 9 May 2002.

[52] People v. Rabago, G.R. No. 149893, 2 April 2003; People v. Calderon, G.R. Nos. 145343-46, 3 December 2002; People v. Abellano, G.R. No. 146468, 13 November 2002; People v. Catubig, 416 Phil. 102 (2001).

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