

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MAXIMO IBARRIENTOS Y PERICO, APPELLANT.

G.R. Nos. 148063-64. June 17, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For automatic review is the joint judgment[1] dated January 15, 2001 of the Regional Trial Court of Pili, Camarines Sur, Branch 31, in Criminal Case Nos. P-2695 and P-2696. The RTC convicted appellant Maximo Ibarrientos,[2] of two counts of incestuous rape. In each case, he was sentenced to death and was ordered to pay P75,000 as indemnity, P50,000 moral damages, P50,000 exemplary damages, and the costs.

The information[3] in Criminal Case No. P-2695 reads:

That on or about August, 1996 in Barangay Sagurong, Pili, Camarines Sur, Philippines within the jurisdiction of the Honorable Court, the said accused who is the Uncle of the victim, LORILIE a.k.a. LORELIE I. BRILLO, then an eight (8) years (sic) old minor while in their house, did then and there, with lewd design willfully, unlawfully and feloniously lie and succeeded in having carnal knowledge of said Lorelie I. Brillo, who afterwards reported the incident to her Aunt, Imelda Ibarrientos, the wife of the accused, to her damage and prejudice.

ACTS CONTRARY TO LAW.

The information[4] in Criminal Case No. P-2696 reads:

That on or about 7:00 o'clock in the morning of February 11, 1998, in Barangay Sagurong, Municipality of Pili, Camarines Sur, Philippines and within the jurisdiction of this court, the above-named accused, being the father of and having parental authority, influence and moral ascendancy over victim JOAN IBARRIENTOS, his 7 year old daughter, while the latter was sick and sleeping in their bedroom, did then and there, with lewd design, willfully, unlawfully and feloniously lie on top of her and succeeded in having carnal knowledge of her which she reported immediately to her mother, Imelda, to her damage and prejudice.

ACTS CONTRARY TO LAW.

When arraigned, appellant pleaded not guilty to both charges.[5] Trial promptly ensued thereafter.

The prosecution presented six witnesses.

The first witness, LORELIE[6] I. BRILLO, testified that the appellant Maximo Ibarrientos is her maternal uncle.[7] She tearfully recounted that on August 19, 1996 at around 8 a.m., she was playing with the appellant's children outside his home[8] in Sagurong, Pili, Camarines Sur. Appellant beckoned her, "Be, madya." ("Be, come here.") [9] He handed a twenty-peso bill to his children, and ordered all of them to go buy cigarettes[10] in a store located far from the house.[11]

Thereafter, he told Lorelie to go inside the bedroom,[12] to lie down, and remove her shorts and underwear.[13]

Appellant undressed himself, lay on top of her, and inserted his penis into her vagina.[14] Lorelie testified that the penetration caused her pain.[15] When he withdrew, she saw blood come out of her private part which she wiped.[16] His lust satisfied, he told her to get out of the room. She said she was eight years old at the time of the incident.

According to Lorelie, her Aunt Imelda, who is the appellant's wife, soon arrived from the fields. Imelda saw Lorelie crying, and asked what was wrong. Lorelie did not answer.[17] But after several days had passed,[18] Lorelie related her ordeal to Imelda. Lorelie testified that this incident was not the first time that appellant raped her. She said she kept quiet because appellant warned her that if she told anyone what happened to her, he would bury her alive.[19]

The other private complainant, JOAN IBARRIENTOS, testified that appellant Maximo Ibarrientos is her father. According to her testimony, he raped her on February 11, 1998, at around 7 a.m. That day she was absent from school due to a fever. Her mother left her with her paternal grandmother[20] who lived thirty meters away from them.[21] While she was at her grandmother's place, appellant called her to come home. When she reached home, appellant whipped her for unknown reasons.[22] She then went to the bedroom and slept on the floormat next to her younger brother, Joseph,[23] who was asleep.[24]

But Joan said she was roused from her sleep by appellant. He was sitting on the floor with his legs outstretched, naked from the waist down.[25] He undressed her and made her sit on his lap, facing him. And, according to her testimony, he inserted his penis into her vagina. It caused her much pain[26] and made her scream.

Joan said that during this time, Joseph was sleeping.[27] But her scream was loud enough for her older brother, Jonnie, who was playing outside the house, to hear. Jonnie immediately rushed into the bedroom. However, according to Joan, he could do nothing except look, because appellant was armed with a balisong (knife).[28]

When he was finished with her, Joan said, appellant threatened her and Jonnie to keep quiet otherwise he would kill their mother.[29] Appellant immediately left. Meanwhile, Joan saw a white sticky substance and some blood in her vagina. With a yamit (piece of cloth), she wiped the substances off her private part.[30]

Despite appellant's warning, however, Joan told her mother of her defilement. She showed the yamit to her mother. As soon as he arrived home, her mother confronted appellant and they quarreled. Joan and her mother left for Cadlan, where Joan stayed with her maternal grandmother.[31] She has transferred to a new school and had not returned to live in Sagurong since the incident.[32]

IMELDA F. IBARRIENTOS testified that she is legally married to appellant,[33] and that Joan is her daughter, while Lorelie is her niece. Imelda explained that when she first learned about what happened to Lorelie, she told appellant's mother, Eugenia T. Ibarrientos. However, Eugenia even chastised her for believing the tales of the children. She was told not to meddle.[34] Thus, she kept silent until she learned of her own daughter's rape two years later.[35]

Imelda recalled that Joan told her about the incident the very afternoon when it occurred. Enraged, she confronted her husband as soon as he arrived. She cried, "You animal, why did you do this to your daughter?" She remembered he did not mind her, and even increased the volume of the television set he was watching.

Imelda testified that the day after the incident, she brought both Joan and Lorelie to the Department of Social Welfare and Development[36] where they related the incident to Rosa Bona, the social worker on duty.[37] In her interview, Imelda admitted that it was only on March 11, 1998, a month after Joan was defiled and over one and a half years after Lorelie was raped, that she sought the assistance of the National Bureau of Investigation (NBI), and it was only then that she had the girls examined by a doctor.[38]

Prosecution witness ROSA C. BONA testified that she is a social worker of the DSWD assigned in Pili, Camarines Sur.[39] She recalled that on March 12, 1998, Imelda Ibarrientos came to their office to complain about the appellant's rape of Joan and Lorelie. She interviewed Joan, Lorelie and Imelda, and afterwards accompanied them to the NBI for investigation, documentation, and medical examination.[40] Afterwards, she made social case study reports[41] on her findings which the prosecution formally offered as part of the evidence.[42]

For the defense, five witnesses were presented.

Appellant MAXIMO IBARRIENTOS, denied the charges against him, claiming an alibi. According to appellant, on the day that he alleged raped Lorelie, he was actually at the Camarines Sur State Agricultural College at San Jose, Pili, which is 500 meters away. He said he was engaged in tilling the land of a certain Aniano Remiter.[43] Appellant added that his work required him to be at the site almost everyday before 7 a.m. to around 5 p.m.[44] Aside from that he also worked on his parents' farm.[45] He claimed he could not have raped Lorelie, considering his work schedule. According to him, his niece accused him because of the instigation of his wife, Imelda, who was at odds with his parents who believed she was having an affair with another man.[46]

Appellant also denied raping his daughter, Joan. He said he was not at his parents' house on February 11, 1998. He recalled that he left home early to get skates and an engine to transport the electric posts needed in their area. The work lasted the whole day from around 6 a.m. until around 5 p.m. He remembered he saw his daughter for the first time that day, when he reached home. He repeated that it was his wife who plotted to charge him with rape of his daughter.

Witness ANIANO F. REMITER corroborated the story of appellant that appellant had been working in his farm since 1975 to August 1996. However, on cross-examination, he admitted that the farm was located only some 500 meters away from the scene of the alleged rape and that the appellant worked in his farm for only one week in August of 1996.[47]

Another witness for the defense, EUGENIA P. IBARRIENTOS, testified that she is appellant's mother,[48] and that Joan and Lorelie are her granddaughters. She claimed that the charges against appellant are false. She added that the only reason her daughter-in-law charged the appellant was to continue her illicit relations with another man.[49]

Eugenia said that Joan stayed in her house on the day of the alleged rape incident from 6 a.m. to 5 p.m. to nurse her fever. She said that she left Joan in the house at 2 p.m. but when she returned at 5 p.m., Joan had already left.[50] She corroborated appellant's story and said that he dropped by at 6 a.m. but left immediately to go with his father, Maximo Sr., to get the electric posts.[51] She claimed her son did not return to the house that day. Eugenia concluded that Lorelie's complaint, like Joan's, was also untrue.[52]

Witness VIRGINIA S. SAÑO testified that on February 11, 1998, the appellant dropped by her house, which is approximately one kilometer away from his home,[53] to get some skates for transporting electric posts. On direct examination she said that the appellant dropped by her house at around 6 a.m.,[54] but on cross and re-direct examination she clarified he picked up the skates at around 8 a.m.[55]

The fifth witness for the defense, DOLORES B. BOLO, an aunt of the appellant,[56] corroborated Eugenia's testimony that Joan's complaint was false. She stated that on the day Joan claimed to have been raped, she was with Joan in Eugenia's house and she stayed from early in the morning until around 4:30 p.m.[57] She never took her sight off Joan as she observed her play. She noticed she was a bit weak due to fever.[58]

Dr. Wilson C. Moll Lee, the medico-legal officer of the NBI, medically examined both private complainants. His

report on Lorelie disclosed the following:

GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora and minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, short, thin, intact. Hymenal orifice, measures 1.5 cm in diameter. Vaginal walls and Rugosities, cannot be reached by the examining finger.

CONCLUSIONS:

- No evident sign of extragenital physical injury noted on the body of the subject at the time of examination.
- Hymen, intact, and its orifice small (1.5 cm in diameter) as to preclude complete penetration by an average-sized, adult, Filipino male organ in full erection without producing any genital injury.[59]

His report on Joan revealed the following:

GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora and minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, short, thin, intact. Hymenal orifice, measure 1.0 cm in diameter. Vaginal walls and Rugosities, cannot be reached by the examining finger.

CONCLUSIONS:

- No evident sign of extragenital physical injury noted on the body of the subject at the time of examination.
- Hymen, intact and its orifice small (1.0 cm in diameter) as to preclude complete penetration by an average-sized, adult, Filipino male organ in full erection without producing any genital injury.[60]

Dr. Lee testified, however, that it was possible there had been no complete penetration in these cases. While the orifice of both victims were 1.0 and 1.5 cm. in diameter, the normal size of an adult Filipino male's organ was 2.5 cm. in diameter. Thus, there might have been penetration of the labia and pudendum, but not the hymen, as the reports stated that the victims' hymens were intact. He concluded that whatever external injuries and bruises the victims may have sustained would have healed after a month from the time of the incident.[61]

The trial court found that the appellant was guilty beyond reasonable doubt on both counts of rape, and sentenced him to death. Its decision in its decretal portion reads:

WHEREFORE, in the light of the foregoing, joint judgment in these two (2) cases is hereby rendered as follows:

- In Criminal Case No. P-2695, finding the herein accused MAXIMO IBARRIENTOS a.k.a. MAXIMO IBARRIENTOS, JR. guilty beyond reasonable doubt of the offense of RAPE defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 and hereby sentencing him to suffer the supreme penalty of DEATH. As civil liability he is ordered to pay the offended party Lorilie/Lorelie I. Brillo, the amount of Fifty Thousand (P50,000.00) Pesos as moral damages, another Fifty Thousand (P50,000.00) Pesos as exemplary damages and the amount of Seventy-Five Thousand (P75,000.00) Pesos, as rape indemnity or a total of ONE HUNDRED SEVENTY FIVE THOUSAND (P175,000.00) PESOS, Philippine Currency;
- In Criminal Case No. P-2696, again finding the same accused MAXIMO IBARRIENTOS a.k.a. MAXIMO IBARRIENTOS, JR., guilty beyond reasonable doubt of the offense of RAPE defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 in relation to Republic Act No. 8353 and hereby sentencing him to suffer another penalty of DEATH. As civil liability, he is also ordered to pay the offended party Joan Ibarrientos c/o her mother Imelda F. Ibarrientos, the amounts of Fifty Thousand

(P50,000.00) Pesos, as moral damages, another Fifty Thousand (P50,000.00) Pesos as exemplary damages and Seventy-Five Thousand (P75,000.00) Pesos as rape indemnity or a total of ONE HUNDRED SEVENTY FIVE THOUSAND (P175,000.00) PESOS, Philippine Currency and to pay the costs in both instances.

After promulgation, let the entire records of these two (2) cases be elevated immediately to the Honorable Supreme Court for automatic review pursuant to Section 22, of Republic Act No. 7659, amending Article 47 of the Revised Penal Code.

SO ORDERED.[62]

Hence, this automatic review. Before us, appellant assigns the following errors allegedly committed by the trial court:

I

THE COURT A-QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE COURT A-QUO GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE SUPREME PENALTY OF DEATH WHEN THE AGE OF THE PRIVATE COMPLAINANTS AND THEIR RELATIONSHIP WITH THE ACCUSED-APPELLANT, ALTHOUGH STATED IN THE INFORMATION, WERE NOT ALLEGED WITH SPECIFICITY AS QUALIFYING CIRCUMSTANCES.[63]

Simply put, there are two issues for our resolution: (1) Whether appellant is guilty of rape in these two cases beyond reasonable doubt. (2) Whether in each case the penalty of death has been properly imposed.

On the first issue, appellant contends that no hard evidence was presented by the prosecution in order to substantiate the offenses charged. Although appellant's defense of denial and alibi may seem weak, he asserts that the trial court should not precipitately disregard it for it could really be the truth. According to him, his defense was corroborated by two disinterested witnesses, namely Aniano Remiter and Virginia Saño. Hence, he insists the paramount duty of the prosecution is to prove appellant's guilt on the strength of its own evidence, and not just rely on the weakness of the evidence presented by the defense.[64]

For appellee, the Office of the Solicitor General (OSG) counters that appellant's defense of alibi lacks one vital element, that it was physically impossible for him to be at the locus criminis at the time of the alleged crime. Moreover, said the OSG, a bare denial cannot overcome the positive identification of appellant by the victims that he was indeed their ravisher. The OSG concludes that ultimately the issue boils down to the credibility of the witnesses, which is best left to the judgment of the trial court for it had the opportunity to observe the deportment of the witnesses on the stand.[65]

In these two cases of rape, the alleged victims were presented by the prosecution and subjected to prolonged cross-examination by the defense. Both victims Lorelie and Joan, stood pat in their accusation against appellant that he abused them sexually. Despite their tender age, the private complainants withstood the grueling direct and cross-examinations with their credibility intact. Rape victims, especially those who are of tender age, would not normally concoct a story of defloration, allow an examination of their private parts and undergo a public trial, if they were not motivated solely by the desire to have their ravishers apprehended and punished. As long as their testimony meets the test of credibility, the accused-appellant may be convicted on that sole basis.[66]

Both victims cried when they testified. As found by the trial court:

And as they were relating their traumatic experiences in open Court, both of these minor-victims were observed by the Court to be quite stressful, tense and hardly able to fully answer and explain all the other consequential details, and every now and then breaking into tears as they re-lived what to them must have been quite excruciating pain and anguish specially since their violator was a close kin to Lorelie and the very own father of Joan who should have rightly been their protector and shield from these reprehensible and horrendous offenses, not himself the perpetrator.

In the case of Joan, she even graphically demonstrated how her father ravished her when she re-enacted the deed showing how naked, she was made to sit on his likewise naked lap until he was able to ejaculate.[67]

Private complainants' testimonies deserve full faith and credence.[68] In a similar case we held that "at such tender years, they were still unfamiliar with and naïve in the ways of the world that it is quite unbelievable that they could fabricate such a sordid story of personal defloration. Their testimonies therefore cannot be disregarded." [69]

We note that the physical examination of the victims took place more than one month after the incidents subject of the complaints. Although the victims bore no evident sign of extragenital injury, and that the hymen of each victim was intact, Dr. Lee of the NBI did not rule out the commission of rape. As the law now stands, penetration of the victim's organ is not required for the commission of rape. A torn hymen is not an essential element of rape, not even when the victim is an innocent child. Medical research also shows negative findings after physical examination of the victims are of no significance, since the hymen may not be torn despite repeated coitus. In fact, many cases of pregnancy have been reported in women with unruptured hymens.[70] In a previous case we also ruled that rape occurred despite repeated intercourse over a period of four years, the complainant still retained an intact hymen without signs of injury.[71]

We cannot accept appellant's defense of alibi. In *People v. Francisco*, [72] a case involving the sexual abuses on a child victim by a relative, we did not give credence to the defense of denial and alibi interposed by accused-appellant. We said that these defenses are inherently weak. It is elementary that for alibi to prosper, the accused must not only prove his presence in another place at the time of the commission of the offense, but he must also demonstrate that it would be physically impossible for him to be at the locus criminis at the time of the commission of the crime.[73]

In *Crim. Case No. P-2695*, appellant himself admitted that the place where he was at the time of the alleged rape of Lorelie was a short walking distance from the place where the offense was committed. He testified that the distance between the two places would take around thirty minutes' walk but definitely would not take more than one hour.[74] Moreover, appellant himself admitted during his testimony that one witness for the defense, Virginia Saño, is his cousin,[75] and therefore biased in his favor.

The imputation of ill motive on the part of appellant's wife, Imelda Ibarrientos, would not necessarily detract from the weight of the victims' testimonies. That Imelda had a lover, and she would like to get rid of appellant by filing the charges against him, deserves scant consideration. From one viewpoint, the minor victims would not fabricate a tale so heinous if only to please Imelda or to punish her husband. Despite their tender ages, the private complainants would not expose themselves to public ridicule and the ordeal of a trial just to please a mother or an aunt, as the case may be, if the victims were not bent on pursuing a just and compelling cause.

From another perspective, we have previously held that no mother in her right mind would expose her daughter to the trauma resulting from a court case unless she is truly motivated by a desire to penalize the person responsible for her daughter's defilement.[76] It is unnatural for a mother to use her daughter as an engine of malice, especially if it will subject her child to embarrassment and lifelong stigma. A mother would not sacrifice the honor of her daughter to give vent to a grudge that would tarnish the latter's reputation forever.[77] These

principles are applicable in the present case, which involves not only the daughter of Imelda Ibarrientos but her niece as well.

As to the second issue, the appellant asserts that the ages and relationships of the victims were stated in the informations but were not alleged with specificity as qualifying circumstances. He invokes Sections 8 and 9, Rule 110 of the Revised Rules of Criminal Procedure[78] and *People v. Alba*[79] and *People v. Manlansing*,[80] to support his stance that the two circumstances cannot be treated as qualifying circumstances but merely generic aggravating circumstances. The appellant submits that assuming he is found to be the perpetrator of the felonies, he should be found guilty of two counts of simple rape, not qualified rape.[81]

The OSG insists that the circumstances should be appreciated as qualifying circumstances. It cites *People v. Aquino*,[82] which explained how aggravating and qualifying circumstances should be alleged as required under Sec. 8, Rule 110 of the Revised Rules of Criminal Procedure. Following *Aquino*, the allegation of circumstances in the information need not be preceded by the word “qualified”, since it is sufficient that the circumstances be specified in the information to apprise the appellant of the charges against him.[83]

We agree with the OSG. The *Aquino* case settled already the issue on the proper allegation of circumstances. What properly informs the accused of the nature of the crime charged is the specific allegation of the circumstances mentioned in the law that raise the crime to a higher category.

The new Rules on Criminal Procedure require the qualifying circumstances to be specifically alleged in the information, in order to comply with the constitutional right of the accused to be properly informed of the nature and cause of the accusation against him. The purpose is to allow the accused to prepare fully for his defense to prevent surprises during the trial.[84] This requirement is satisfied as long as the circumstances are alleged in the information, even if these are not specified as aggravating or qualifying circumstances.

In the present two cases of rape, however, the death penalty imposed on appellant is improper and erroneous.

Article 266-B of the Revised Penal Code states that the death penalty shall be imposed when “the victim is under eighteen years of age and the offender is a parent, ascendant, descendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.”

This is a special qualifying circumstance which must be specifically alleged with certainty in the information, otherwise the death penalty cannot be imposed. The allegation in the information of Criminal Case No. P-2695, that the appellant is an uncle of the victim, is not specific enough to satisfy the special qualifying circumstance of relationship. We have previously ruled, and now we reiterate, that it is necessary to spell out in an Information for rape that the accused is a “relative within the third degree of consanguinity or affinity” as stated in Article 266-B.[85] Without such averment, the Information in Criminal Case No. P-2695 falls short of the statutory requirement for the imposition of capital punishment on the offender. Factual allegations in the information do not need to be referred to as “qualifying circumstances”, in order to appreciate them as such and raise the penalty. However, these factual allegations must be specified completely, in order to fully inform the accused of the circumstances which warrant the imposition of a higher penalty. Otherwise, such circumstances cannot be appreciated to qualify the offense. Since the Information in Criminal Case No. P-2695 only states that the appellant “is the Uncle of the victim”, without stating that he is a “relative within the third degree of consanguinity or affinity,” the qualifying circumstance of relationship cannot be appreciated without offending settled law and doctrine of this Court. As such the appellant can be held liable only for statutory rape.

As for Criminal Case No. P-2696, we find the information is sufficient to inform the appellant of the qualifying circumstances present in the offense. The information properly alleged that the victim is his daughter. Moreover,

it is a well-settled rule that a victim's minority may become a qualifying circumstance which could raise the penalty to death. But the victim's age must be proved with equal certainty and clearness as the crime itself. It must be established with certainty that the victim was a minor at the time of the commission of the crime of incestuous rape as defined and penalized under Republic Act No. 8353, amending Art. 266 of the Revised Penal Code as follows:

ART. 266-B.

...

The death penalty shall be imposed if the crime is committed with any of the following aggravating/qualifying 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.

...

Circumstances that qualify a crime and increase its penalty to death cannot be the subject of speculation. The appellant cannot be condemned to suffer the extreme penalty of death on the basis of stipulations or admissions. This strict rule is warranted by the gravity and irreversibility of capital punishment. Proof of the age of the victim cannot consist merely of testimony. Neither can a stipulation of the parties with respect to the victim's age be considered sufficient proof of minority.[86]

The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.[87] We stress that the severity of the death penalty, especially its irreversible and final nature once carried out, makes the decision making process in capital offenses aptly subject to nothing less than the most exacting rules of procedure and evidence.[88]

In the instant case, no authentic document was presented as evidence of the victim's age other than a poor photocopy of what is claimed to be Lorelie's birth certificate. The prosecution failed to present an original or certified true copy of the certificate of live birth. Neither was it shown that these were lost, destroyed or unavailable at the time of trial. Thus, secondary evidence is inadmissible to prove the age of the victim in Crim. Case No. P-2696. The testimonies tending to prove the victim's age cannot be accepted as adequate proof thereof.[89]

Much as we abhor child abuse, nevertheless, we are constrained to hold that capital punishment cannot be imposed on appellant in these two cases. Even if we agree that the victims are indeed minors below 12 years old, at most, appellant is liable only for statutory rape in Crim. Case No. P-2696 as well as in Crim. Case No. P-2695. As well understood, statutory rape is defined by law in Art. 266-A Revised Penal Code, as follows:

"Rape is committed—(1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

...

(d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present."

Otherwise, there being no adequate proof regarding the age of the victims in each case, the offense committed is only simple rape. Noteworthy, under Art. 266-B of the Revised Penal Code, rape – whether simple or statutory – is punishable only by reclusion perpetua, and not death.

WHEREFORE, the assailed decision of the Regional Trial Court of Pili, Camarines Sur, Branch 31, in Criminal

Cases Nos. P-2695 and P-2696, is AFFIRMED with MODIFICATION. Appellant MAXIMO IBARRIENTOS is found GUILTY of two counts of rape, and for each count he is hereby sentenced to suffer the penalty of reclusion perpetua. He is also ORDERED to pay the victim in each case the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages. Costs de oficio.

SO ORDERED.

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

[1] Rollo, pp. 37-49.

[2] Also referred to as “Maximo Abarrientos” and “Maximo Ibarrientos, Jr.” in some parts of the records.

[3] Rollo, p. 22.

[4] Id. at 23.

[5] Records, Volume 1, pp. 24 & 28.

[6] Sometimes “Lorilie” in some parts of the records and TSNs.

[7] TSN, 18 November 1999, p. 5.

[8] Id. at 16.

[9] Id. at 18.

[10] Ibid.

[11] Id. at 20.

[12] Rollo, p. 38.

[13] Supra, note 7 at 7.

[14] Ibid.

[15] Id. at 27.

[16] Id. at 11.

[17] Id. at 7-8.

[18] Id. at 8.

[19] Id. at 25-26.

[20] TSN, 2 December 1999, pp. 6-7.

[21] Id. at 24.

[22] Id. at 7.

[23] Also referred to as “Nonoy” in the TSN.

- [24] Id. at 25-27.
- [25] Id. at 33.
- [26] Id. at 30-32.
- [27] Id. at 27-28.
- [28] Id. at 28-29.
- [29] Id. at 29.
- [30] Id. at 8-9, 35.
- [31] Id. at 11-13.
- [32] Id. at 15-16, 36.
- [33] See Records, Vol. 2, Exh. B, p. 55.
- [34] TSN, 24 September 1998, pp. 26, 36-37.
- [35] Id. at 36.
- [36] Id. at 25.
- [37] Id. at 10-11.
- [38] Id. at 38.
- [39] TSN, 16 October 1998, p. 4.
- [40] Id. at 7.
- [41] See Records, Vol. 2, Exh. D, pp. 57-58. See Records, Vol. 1, Exh. G, pp. 94-95.
- [42] See Records, Vol. 1, p. 90, Vol. 2, p. 53.
- [43] TSN, 31 August 2000, pp. 3-4.
- [44] Id. at 5.
- [45] Id. at 7.
- [46] Id. at 23.
- [47] TSN, 3 July 2000, pp. 10-11.
- [48] TSN, 22 March 2000, p. 4.
- [49] Id. at 10.
- [50] Id. at 7-9.
- [51] Id. at 5-6.
- [52] Id. at 16-17.
- [53] TSN, 23 May 2000, pp. 6-7.
- [54] Id. at 4.

[55] Id. at 8.

[56] TSN, 20 June 2000, p. 4.

[57] Id. at 8.

[58] Id. at 11-12.

[59] Records, Vol. 1, Exh. E, p. 93.

[60] Records, Vol. 2, Exh. D, p. 56.

[61] TSN, 20 November 1998, pp. 18-28.

[62] Rollo, pp. 48-49.

[63] Id. at 65-66.

[64] Id. at 72-74.

[65] Id. at 115-119.

[66] *People v. Mendoza*, G.R. Nos. 143844-46, 19 November 2002, 392 SCRA 240, 260-261.

[67] Rollo, p. 46.

[68] *People v. Delos Santos*, G.R. No. 134525, 28 February 2003, 398 SCRA 436, 445.

[69] *Ibid.*

[70] *People v. Ballesterol*, G.R. No. 145503, 20 August 2002, 387 SCRA 466, 473.

[71] *Ibid.*

[72] G.R. Nos. 134566-67, 22 January 2001, 350 SCRA 55, 66.

[73] *Ibid.* citing *People v. Barellano*, G.R. No. 121204, 2 December 1999, 319 SCRA 567, 586; *People v. Fuertes*, G.R. No. 126285, 29 September 1998, 296 SCRA 602, 612 and *People v. Alcantara*, G.R. Nos. 112858-59, 6 March 1996, 254 SCRA 384, 395.

[74] TSN, 15 February 2000, p. 24.

[75] *Ibid.*

[76] *People v. Sambrano*, G.R. No. 143708, 24 February 2003, 398 SCRA 106, 115.

[77] *People v. Mendoza*, G.R. Nos. 143844-46, 19 November 2002, 392 SCRA 240, 266.

[78] SEC. 8. Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

SEC. 9. Cause of the accusation. – The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

- [79] G.R. No. 130523, 29 January 2002, 375 SCRA 69.
- [80] G.R. Nos. 131736-37, 11 March 2002, 378 SCRA 685.
- [81] Rollo, pp. 74-77.
- [82] G.R. Nos. 144340-42, 6 August 2002, 386 SCRA 391.
- [83] Rollo, pp. 124-127.
- [84] Supra, note 82 at 397-398.
- [85] People v. Ramos, G.R. No. 142577, 27 December 2002, 394 SCRA 452, 470 citing People v. Libo-on, G.R. No. 136737, 23 May 2001, 358 SCRA 152, 174-176.
- [86] People v. Sitao, G.R. No. 146790, 22 August 2002, 387 SCRA 701, 707.
- [87] People v. Sambrano, G.R. No. 143708, 24 February 2003, 398 SCRA 106, 116.
- [88] People v. Mirante, Sr., G.R. No. 147606, 14 January 2003, 395 SCRA 224, 230 citing People v. Pruna, G.R. No 138471, 10 October 2002, 390 SCRA 577, 606.
- [89] See People v. Gavino, G.R. No. 142749, 18 March 2003, 399 SCRA 285, 295.

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