

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ORLANDO LIMIO Y QUEBRAL, APPELLANT.

G.R. Nos. 148804-06. May 27, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

By itself, the fact that the offended party in a rape case is a mental retardate does not call for the imposition of the death penalty, unless knowledge by the offender of such mental disability is specifically alleged and adequately proved by the prosecution.

For the Anti-Rape Law of 1997, now embodied in Article 266-B of the Revised Penal Code (RPC), expressly provides that the death penalty shall also be imposed if the crime of rape is committed with the qualifying circumstance of “(10) when the offender knew of the mental disability,* emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.” Said knowledge, in our view, qualifies rape as a heinous offense. Absent said circumstance, which must be proved by the prosecution beyond reasonable doubt, the conviction of appellant for qualified rape under Art. 266-B (10), RPC, could not be sustained, although the offender may be held liable for simple rape and sentenced to reclusion perpetua.

In the present case, subject of our automatic review, there is no specific allegation in the information that the appellant knew* of the victim’s mental retardation. Furthermore, there is no adequate proof presented by the prosecution to establish such knowledge as a qualifying circumstance. Hence, the judgment[1] of conviction of the appellant for violation of Article 266-B (10), RPC, and the imposition by the trial court of the death penalty on appellant is erroneous, and ought to be modified accordingly.

The facts of this case are culled from the records.

Appellant herein is married, a carpenter by trade, and a resident of San Vicente, Sacobia, Bamban, Tarlac. In November 1998, when the rape incidents allegedly happened, the appellant was 48 years old.

The private complainant in Crim. Cases Nos. 1333-34, Digna B. Limio, is one of appellant’s five children by his lawful spouse, Delia Bayan. At the time of the alleged rapes, Digna was twenty (20) years old, but had only reached Grade IV due to mental retardation.

In Criminal Case No. 1335, the private complainant is Myline[2] B. Limio, the youngest child of the appellant. In November 1998, when she was allegedly raped, Myline was fifteen (15) years old. Like her older sister, Digna, she was reportedly suffering from some form of mental retardation.

On March 22, 1999, the Office of the Provincial Prosecutor of Tarlac charged appellant of three counts of rape committed against his daughters. The accusatory portions of the informations respectively read as follows:

Criminal Case No. 1333

That on or about November 15, 1998, in the morning, in the Municipality of Bamban, Province of Tarlac,

Philippines and within the jurisdiction of this Honorable Court, the above named accused by means of force and intimidation, did then and there wilfully unlawfully and feloniously succeed in having sexual intercourse with her [sic] daughter Digna B. Limio, 20 years old and mentally retarded.

CONTRARY TO LAW.[3]

Criminal Case No. 1334:

That on or about November 18, 1998, in the morning, in the Municipality of Bamban, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above named accused by means of force and intimidation, did then and there wilfully unlawfully and feloniously succeed in having sexual intercourse with her [sic] daughter Digna B. Limio, 20 years old and mentally retarded.

CONTRARY TO LAW.[4]

Criminal Case No. 1335

That on or about November 1998 early in the morning, in the Municipality of Bamban, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above named accused by means of force, and intimidation did then and there wilfully, unlawfully and feloniously succeed in having sexual intercourse with his daughter Myline B. Limio, a minor 15 years old and mentally retarded.

CONTRARY TO LAW.[5]

Before the appellant could be arraigned, the trial court, on motion of the prosecution, ordered Digna and Myline to be referred to a psychiatrist to determine their respective mental capabilities.[6] On January 25, 2000, or when the trial was already well under way, Dr. Reena Soriano-Boquiren, a psychiatrist at the Tarlac Provincial Hospital, examined the Limio sisters to determine if they were indeed mentally incapacitated. Dr. Boquiren diagnosed both Digna and Myline to be suffering from “mental retardation.” In her diagnostic reports, Dr. Boquiren made the identical remarks that both “could answer questions during interviews but [the questioning] should be done slowly and in a simple manner.”[7] The diagnostic reports prepared by Dr. Boquiren were submitted to the trial court and were noted in an Order dated February 9, 2000.[8] However, the prosecution did not formally offer the reports in evidence, and did not present Dr. Boquiren to testify as an expert witness.

During the arraignment appellant, with the assistance of counsel de oficio, pleaded not guilty to all the charges. The case was then set for pre-trial conference. At the pre-trial conference, the parties did not present any exhibits for marking. Neither did they make any stipulations of facts or admissions except as to (1) the identity of the accused, and (2) the victims being the accused’s daughters, living with the accused in the same house. On that admission, the pre-trial conference was terminated, and trial commenced. [9] Only Crim. Cases Nos. 1333 and 1334 were jointly heard until completion. The public prosecutor had to withdraw Crim. Case No. 1335 when the private complainant, Myline Limio, refused to take the witness stand. Hence, we are now concerned in this review only with Crim. Cases Nos. 1333 and 1334, involving complainant Digna Limio.

The prosecution’s version, as synthesized by the Office of the Solicitor General, is as follows:

Sometime in the month of November 1998, while Digna Limio was inside the room of their house, her father, Orlando Limio, approached her. There were no other persons present in their house at that time except the two of them since her mother, Delia Limio, was out selling vegetables. Similarly, her sister Mylene was also out because the latter went to their neighbor’s house.

Appellant thereafter removed her dress and panty as well as his own pants. He then laid on top of her and succeeded in inserting his penis into her vagina two (2) times. He also held her breasts. While these beastly acts were being done to her, Digna was in pain. However, she could not do anything as her father had warned

her not to report the incident to anyone.

Subsequently, Delia Limio was working in the kitchen on the night of November 22, 1998 when her daughter Mylene asked her permission to watch television. She allowed her to go upstairs where their television set was located. However, the volume of the television was loud and so she went upstairs to tone it down. She was surprised to see her husband, appellant in this case, kneeling down in front of Mylene and sucking her breasts....

Delia was mad at her husband. The latter immediately asked for her forgiveness but she told him that she could not tolerate what he did to his own daughter. She went downstairs as she was also afraid of him. After this, she talked to her other daughter, Digna, who revealed to her that she was likewise sexually molested by her father on November 15 and 18, 1998.

On that same night of November 22, 1998, Delia asked Digna to call her sister-in-law, Imelda Limio, who later arrived in their house together with Maruha Quebral, her mother-in-law. She told them what she witnessed that night. Through the help of Imelda, police authorities arrived at their house the following day. Consequently, all of them were brought to the police station together with appellant and the Barangay Captain for the purpose of investigation. After this, the police station issued a letter-request addressed to the Tarlac Provincial Hospital to conduct a medical examination of the two (2) victims.

After the medical examination, a Medico-Legal Certificate was issued by Dr. Leah Rochelle G. Vergara. The said certificate shows the following findings with respect to Digna Limio:

“GENITALIA: pubic hair well distributed, curly & blackish.

V-shaped fourchette

= Labia majora gaping exposing partially the labia minora.

= (+) hymenal lacerations, healed & old at the 3 o'clock, 9 o'clock & 11 o'clock.”

“GENITALIA: pubic hair well distributed, curly & blackish. V-shaped fourchette = Labia majora gaping exposing partially the labia minora. = (+) hymenal lacerations, healed & old at the 3 o'clock, 9 o'clock & 11 o'clock.”[10]

On the witness stand, Dr. Leah Rochelle G. Vergara, Chief Resident Physician of the OB-Gynecology Department of the Tarlac Provincial Hospital, testified that the lacerations she found in Digna's hymen might have been caused by sexual abuse.[11] Dr. Vergara also stated that Digna had convulsive seizures, as reported by her own mother. Dr. Vergara further testified that while Digna was twenty (20) years old at the time she examined her, Digna's level of intelligence appeared to be that of a 12-year-old child.[12]

In his defense, appellant interposed denial and alibi. Taking the stand as the sole witness for the defense, he contended that he could not have raped Digna on November 15, 1998, as he was then in Batangas in the company of one “Jonie,” a faith healer.[13] He claimed that they left for Batangas at around six o'clock in the evening of November 14, 1998, and arrived in Bamban at around ten o'clock in the evening of November 15, 1998.[14] As it was already late, he proceeded to the house of a friend, some 500 meters away from his house, and spent the night there. It was only on the morning of November 16, 1998, that he went home. But even then, he stayed home only for a short while because he rejoined “Jonie” in another healing session.

Appellant likewise asserted that he could not have possibly raped Digna on November 18, 1998, as he was then in Dau, Mabalacat, Pampanga.[15]

On cross-examination, appellant testified that he had been going out on daily faith-healing sessions with “Jonie” since he stopped working as carpenter in July 1998.[16] According to him, he would only go home to change his clothing.[17] He declared that he provided for his family only when he could earn something or when he received money from his parents or siblings.[18] Appellant claimed that it was his wife who instigated his daughters into filing the rape charges against him to make him stop going out with “Jonie,” the faith healer.[19]

The trial court disbelieved appellant’s bare denial and alibi. Accepting as sufficient the prosecution’s evidence only in regard to only one count of incestuous rape, the trial court accordingly rendered its judgment on May 17, 2001, disposing as follows:

WHEREFORE, in view of all the foregoing, and finding accused Orlando Q. Limio GUILTY beyond reasonable doubt for the crime of rape (one count), against his own daughter Digna, in violation of Article 266-B, (10) of the Anti-Rape Law of 1997, judgment is hereby rendered sentencing him to suffer the supreme penalty of death by LETHAL INJECTION.

Accused is also ordered to indemnify private complainant in the amount of P75,000.00.

SO ORDERED.[20]

In convicting the appellant of one count of qualified rape, the trial court observed that while the prosecution charged appellant with twice having carnal knowledge of the mentally deficient Digna, there was no clear showing that she was indeed ravished on two separate occasions. According to the trial court, the prosecution’s evidence was categorical as to one incident of rape, allegedly in November 1998; hence, the appellant could be held accountable for only one count of rape, qualified by Digna’s mental condition.

In this automatic review, appellant assigns to the trial court the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED- APPELLANT AND SENTENCING HIM WITH THE SUPREME PENALTY OF DEATH DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THAT THE VICTIM WAS A MENTAL RETARDATE.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED- APPELLANT WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[21]

In sum, the issues for our resolution concern: (1) the sufficiency of the prosecution’s evidence to prove the appellant’s guilt beyond reasonable doubt, and (2) the propriety of the imposition of the death penalty on appellant.

On the first issue, the appellant assails the testimony of the private complainant for being unreliable and possibly concocted at his wife’s instance. He argues that assuming, without admitting, that Digna was indeed a mental retardate, the trial court should have been more circumspect before swallowing her unsubstantiated claims hook, line, and sinker. According to him, mentally deficient persons are easily influenced by suggestions. He adds that they are susceptible to coercion and are vulnerable to exploitation by others, as shown by clinical studies. He concedes that the trial court should have considered these factors in weighing his claim that it was his wife who instigated his own daughters to file false charges of rape against him.

For the appellee, the Office of the Solicitor General (OSG) counters that Digna’s simple and straightforward testimony reveals that she was forced to give in to appellant’s bestial lust. Digna’s mental condition, the OSG maintains, should not be taken against her, for surely a woman with the mental age of a 12-year-old child could not possibly concoct such a serious accusation against her own flesh and blood. As to appellant’s claim that it was

his wife who insisted on filing rape charges because she did not like his being with the faith healer constantly, the OSG points out that appellant failed to explain why his wife did not want him to go with the faith healer—a fatal failure that rendered his claim unbelievable, if not preposterous. According to the OSG, no wife would file a charge of rape against her own husband and place him in jeopardy of facing possible capital punishment, unless she honestly believed that he had committed a grave crime against their very own daughter.

In rape cases, it has been held repeatedly to the point of being doctrinal, an accused may be convicted on the sole testimony of the victim if such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.[22] A credible witness and a credible testimony are the two essential elements in determining the weight of a particular testimony.[23] In the present case, complainant Digna Limio testified that one day in November 1998, her father removed her dress and panty, had her lie down, and then inserted his private part twice into her genitals. She felt pain but did not cry.[24] At the time of the incident, her mother was out selling vegetables while her younger sister, Myline, was at a neighbor's house.[25] After ravishing her, her father warned her not to report the incident to anyone, a warning that she obeyed.[26] She further testified that she believed in God and that God would get mad at her if she told a lie, so she decided she would only tell the truth before the court.[27]

Despite her low intelligence, we entertain no doubt concerning Digna's testimony. It categorically shows that she had been subjected to a harrowing, unspeakable experience, which left an indelible impression in her mind. The shock to a woman of an unwelcome penile invasion is unimaginable, [28] more so where the ravisher is the woman's own father. Here the victim is a simple rural lass whose highest educational attainment, due to what her own mother described as "mental retardation," is Grade IV. The doctor who examined her estimated her mental age to be that of a 12-year-old child. It has been noted that in rural areas of this country, young ladies, by custom and tradition, act with circumspection and prudence, and great caution is observed so that their reputation remains untarnished.[29] The records are bereft of any showing that the complainant is lacking in this traditional Filipina modesty. It is difficult to believe that an unsophisticated girl such as the offended party would brazenly impute a crime so serious as rape against any man, let alone her own father, if the charge were not true. Her willingness to face police investigation as well as suffer the embarrassment of the stigma of allowing the examination of her private parts, together with the humiliation and trouble she underwent in having to testify in open court on the painful details of her degrading experience effectively rule out a false accusation of rape. Her simple account of her ordeal evinces sincerity and truthfulness. Indeed, in this instance we agree that when the victim of rape says she has been violated, she says in effect all that is necessary to show that rape has been committed.[30]

Hymenal lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.[31] In this case, Dr. Vergara's medical findings, as presented to the court at the trial, corroborate the offended party's claim of sexual violation by appellant. Digna's hymen showed the healed lacerations at the 3 o'clock, 9 o'clock, and 11 o'clock positions. As Dr. Vergara testified, they could have resulted from sexual intercourse. When the consistent and forthright testimony of a rape victim is consistent with the medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.[32]

Appellant contends that the victim's mental retardation rendered her so susceptible to her mother's control and influence that she was coerced into filing fabricated rape charges against him. This contention is difficult to accept on its face. First, we note that appellant's stand on the complainant's mental condition is, to say the least, equivocal. On the one hand, he faults the prosecution for its failure to present expert medical evidence to prove beyond question her state of mental retardation. On the other, he characterizes her as mentally retarded and hence, highly subject to manipulation by her irate mother. His shifting views do not aid his cause. Second, his declaration that his wife bore him a grudge for his going out with his friend, the faith healer, appears to us less than

convincing as a reason to accuse him falsely of so grave a crime as incestuous rape. No mother would expose a daughter to the shame and scandal of having undergone such a debasing defilement of her chastity if she did not believe the charges were true.[33] It is contrary to all human experience for a mother to use her daughter as an instrument of malice, especially if she will have to put her daughter in a position of shame and embarrassment, and cause her daughter a life-long stigma.

In stark contrast to the simple but clear declarations of the private complainant, all that the appellant stresses in his defense is alibi. An alibi is inherently weak and easily fabricated. If not substantiated by clear and convincing proof, alibi constitutes self-serving evidence undeserving of weight in law.[34] For alibi to prosper, the appellant must not only prove that he was somewhere else when the crime was committed, he must also convincingly demonstrate the physical impossibility of his presence at the locus criminis at the time of the incident. [35]

In this case, all we have is the appellant's bare assertion that he was with a faith healer named "Jonie" in Batangas on November 15, 1998, and in Dau, Mabalacat, Pampanga, on November 18, 1998, and thus, could not have raped the complainant on either date. Note that the appellant could not even present "Jonie" to corroborate his tale of a trip to Batangas on November 15, 1998. But even more damaging to his cause is his own statement that he returned to Capas, Tarlac, on the night of November 15, 1998, and spent the night in the house of a friend only some 500 meters away from his own house. As to his claim that he was in Mabalacat, Pampanga, on November 18, 1998, we take judicial notice that Mabalacat, Pampanga, is separated from Capas, Tarlac, only by the town of Bamban, Tarlac. The distance between Mabalacat and Capas can be traversed by public transportation in less than an hour. In short, the appellant failed to show that it was physically impossible for him to be in Capas, Tarlac, on the dates when the complainant claimed she was raped.

It is true that the prosecution's evidence did not establish the exact dates of the commission of the rapes for which the appellant stands accused. All that it could show is that the appellant raped the offended party in November 1998. Nonetheless, the date of the incident is not an essential element of the offense of rape and the proof need not correspond exactly to the allegation in the information as long as the offense was committed within the period of the statute of limitations and before the commencement of the action.[36] In the face of the positive identification made by the complainant of the appellant as her ravisher, appellant's defense simply crumbles. When the evidence convincingly connects the crime and culprit, the probative value of denial and alibi is negligible.[37]

While the record does not show that the appellant used force or intimidation in getting his victim to submit to his bestial urges, still we are unable to agree that the victim had consented to the sexual congress. In cases of rape committed by a father or a person recognized by the person as her father, the former's moral ascendancy and influence over the latter substitutes for violence and intimidation.[38] No further proof need be shown to prove lack of the daughter's consent to her own defilement.

On the second issue, appellant argues that the trial court erred in imposing the death penalty upon him since the prosecution failed to establish the victim's mental retardation. He stresses that it was error for the trial court to consider Dr. Vergara's testimony regarding the victim's mental condition because Dr. Vergara is not an expert in either psychiatry or psychology. He likewise points out that the basis for her evaluation leaves much to be desired as she relied mainly on the statements made by the victim's mother during the medical examination. He relies on our ruling in *People v. Cartuano, Jr.*, [39] that a competent clinical evaluation is necessary where a diagnosis of mental retardation can be made.

For appellee, the Office of the Solicitor General points out that under Art. 266-B (10)[40] of the Revised Penal Code, what qualifies the crime of rape and allows for the imposition of the death penalty is the malefactor's

knowledge of the mental disability of his daughter at the time of the rape. According to the OSG, being the complainant's father, appellant could not deny being aware of his daughter's mental disability. Since her childhood, said the OSG, Digna had experienced convulsive seizures that caused her mental retardation. Surely, the appellant is personally aware of the mental disability of his own daughter.

The OSG also points out that appellant's reliance on *People v. Cartuano, Jr.*, will not advance his cause since it is settled that the victim's mental disability may be proven by evidence other than medical evidence. Moreover, the OSG stresses the failure of the appellant to challenge or object to the testimonies of his wife and Dr. Vergara regarding complainant's mental deficiency. For this procedural lapse, the appellant can no longer be allowed to raise this issue for the first time on appeal, concludes the OSG.

In sentencing appellant to death, the trial court applied Art. 266-B (10) of the Revised Penal Code and held that "being the father of the victim, accused undoubtedly is aware of his daughter's mental disability, emotional disorder, and/or her physical handicap at the time he raped her." [41] On this vital point, we have to differ from the trial court's ratiocination.

The trial court found that the testimonies of the victim's mother and Dr. Vergara established that the complainant was suffering from some form of mental retardation. It is also concluded that it was unnecessary for the prosecution to submit a medical report on Digna's condition and present the examining psychiatrist. Mental abnormality may be established by evidence other than medical evidence or psychiatric evaluation; it may be established by the testimonies of witnesses. [42] However, in our view, the mere fact that the rape victim is a mental retardate does not automatically merit the imposition of the death penalty. Under Article 266-B (10) of the Revised Penal Code, knowledge by the offender of the mental disability, emotional disorder, or physical handicap at the time of the commission of the rape is the qualifying circumstance that sanctions the imposition of the death penalty. As such this circumstance must be formally alleged in the information and duly proved by the prosecution.

Rule 110 [43] of the 2000 Rules of Criminal Procedure requires both qualifying and aggravating circumstances to be alleged with specificity in the information. While the rape complained of took place in November 1998, we should give retroactive application to Sections 8 and 9 of the said Rule as they are favorable to the accused. In this case, the information merely states that Digna is a mental retardate. It does not specifically state that the appellant knew of her mental disability at the time of the commission of the rape. Even if we accept that Digna's feeble mental condition was alleged and proven, appellant's knowledge of her mental disability was not satisfactorily established as a qualifying circumstance of the offense. It is the burden of the prosecution to prove with certainty this qualifying circumstance as well as the basic elements of the crime charged. That the offender knew of the mental disability of the victim at the time the rape was committed was merely assumed. This much is clear from the OSG's submission that he should know her mental condition because he was the father. But in the absence of a specific or particular allegation in the information that the appellant knew of her mental disability or retardation, as well as lack of adequate proof that appellant knew of this fact, Article 266-B (10), RPC, could not be properly applied and the death penalty cannot be validly imposed.

Hence, the appellant can only be convicted of simple rape, [44] as defined under Article 266-A (1) of the Rev. Penal Code, for which the imposable penalty is reclusion perpetua. [45]

Conformably with prevailing jurisprudence, the amount of civil indemnity as well as moral damages awarded by the trial court should be reduced to P50,000 only. [46] But in addition, exemplary damages in the amount of P25,000 should be awarded to the complainant by way of example for the public good and to deter other fathers with perverse tendencies and aberrant sexual behavior from taking advantage of their own daughters. [47]

WHEREFORE, the judgment dated May 17, 2001, of the Regional Trial Court of Capas, Tarlac, Branch 66, finding the appellant Orlando Limio y Quebral GUILTY beyond reasonable doubt of one (1) count of rape is AFFIRMED with MODIFICATION. Appellant's sentence is hereby reduced to reclusion perpetua with all its accessory penalties. Appellant is further ORDERED to pay the offended party, Digna B. Limio, P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages. Costs de oficio.

SO ORDERED.

Vitug, (Acting Chief Justice), Panganiban, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna and Tinga, JJ., concur.

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

Puno, J., on official leave. Ynares-Santiago, J., see separate dissenting opinion.

Sandoval-Gutierrez, J., concurs with J. Santiago. Appellant should beconvicted.

[1] Records, pp. 139-148. Judgment dated May 17, 2001, of the Regional Trial Court of Capas, Tarlac, Branch 66, in Criminal Cases Nos. 1333-35.

[2] Also Mylene in some parts of the records.

[3] Id. at 1.

[4] Id. at 14.

[5] Id. at 15.

[6] Id. at 28.

[7] Id. at 63-64.

[8] Id. at 70.

[9] Id. at 43.

[10] Rollo, pp. 73-76.

[11] TSN, 28 September 2000, p. 13.

[12] Id. at 9.

[13] TSN, 11 January 2001, p. 4.

[14] Id. at 5.

[15] Id. at 8.

[16] Id. at 11, 13.

[17] Id. at 13.

[18] Id. at 14.

[19] Id. at 9, 15.

[20] Records, p. 148.

[21] Rollo, p. 38.

[22] *People v. Delos Santos*, G.R. No. 134525, 28 February 2003, 398 SCRA 436, 444 citing *People v. Calimlim*, G.R. No. 123980, 30 August 2001, 364 SCRA 45, 55.

[23] *People v. Sorongon*, G.R. No. 142416, 11 February 2003, 397 SCRA 264, 267.

[24] TSN, 3 December 1999, pp. 7-9.

[25] *Id.* at 8.

[26] *Id.* at 10.

[27] *Id.* at 11-12.

[28] *People v. Villarama*, G.R. No. 139211, 12 February 2003, 397 SCRA 306, 317.

[29] *People v. De la Cruz*, G.R. No. 136158, 6 August 2002, 386 SCRA 276, 289 citing *People v. Caratay*, G.R. Nos. 119418, 119436-37, 5 October 1999, 316 SCRA 251, 268.

[30] *People v. Marahay*, G.R. Nos. 120625-29, 28 January 2003, 396 SCRA 129, 141 citing *People v. Dumaguing*, G.R. No. 135516, 20 September 2000, 340 SCRA 701, 709-710.

[31] *People v. Luna*, G.R. No. 135241, 22 January 2003, 395 SCRA 647, 666 citing *People v. Bayona*, G.R. Nos. 133343-44, 2 March 2000, 327 SCRA 190, 199-200.

[32] *People v. Esperida*, G.R. Nos. 139637-38, 22 January 2003, 395 SCRA 679, 686 citing *People v. Somodio*, G.R. Nos. 134139-40, 15 February 2002, 377 SCRA 129, 142.

[33] *People v. Monteron*, G.R. No. 130709, 6 March 2002, 378 SCRA 340, 348 citing *People v. Batoon*, G.R. No. 134194, 26 October 1999, 317 SCRA 545, 554.

[34] *People v. Moralde*, G.R. No. 131860, 16 January 2003, 395 SCRA 286, 296.

[35] *People v. Besmonte*, G.R. Nos. 137278-79, 17 February 2003, 397 SCRA 513, 527 citing *People v. Lachica*, G.R. No. 143677, 9 May 2002, 382 SCRA 162, 176.

[36] *People v. Roque*, G.R. Nos. 130659 & 144002, 14 August 2002, 387 SCRA 274, 287-288.

[37] *People v. Sarazan*, G.R. Nos. 123269-72 & 131243, 22 January 2003, 395 SCRA 611, 622 citing *People v. Baroy*, G.R. Nos. 137520-22, 9 May 2002, 382 SCRA 56, 68.

[38] *People v. Dulay*, G.R. Nos. 144082-83, 18 April 2002, 381 SCRA 346, 352.

[39] G.R. Nos. 112457-58, 29 March 1996, 255 SCRA 403.

[40] ART. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion perpetua to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

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

aggravating/qualifying circumstances:

...

(10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

[41] Rollo, pp. 56-57.

[42] *People v. Ugang*, G.R. No. 144036, 7 May 2002, 381 SCRA 775, 783 citing *People v. Almacin*, G.R. No. 113253, 19 February 1999, 303 SCRA 399, 408; *People v. Romua*, G.R. No. 126175, 29 May 1997, 272 SCRA 818, 829; See also *People v. Nguyen Dinh Nhan*, G.R. No. 93433, 5 August 1991, 200 SCRA 292, 297.

[43] 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.

[44] ART. 266-A. Rape, When and How Committed. – Rape is committed –

(1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

(a) Through force and intimidation;

(b) When the offended party is deprived of reason or otherwise unconscious;

(c) By means of fraudulent machination or grave abuse of authority; and

(d) When the offended party is...demented, even though none of the circumstances mentioned above be present.

[45] ART. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua. (See also *People v. Gallano*, No. L-51565, 23 October 1981, 108 SCRA 405; and *People v. Sunga*, No. L-45083, 24 June 1985, 137 SCRA 130.)

[46] *People v. Legaspi*, G.R. No. 137283, 17 February 2003, 397 SCRA 531,548.

[47] *People v. Alvarado*, G.R. No. 145730, 19 March 2002, 379 SCRA 475, 489.

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