

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSEPH ORILLA, APPELLANT.

G.R. Nos. 148939-40. February 13, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before this Court for automatic review is the Decision[1] dated 7 May 2001 of the Regional Trial Court, First Judicial Region, Branch 54, Alaminos City, Province of Pangasinan. Remilyn Orilla, the 15-year old sister of appellant Joseph Orilla (“appellant”), accused appellant of raping her twice. The criminal cases were docketed as Criminal Cases Nos. 3219-A and 3220-A. The trial court found appellant guilty of only one crime of qualified rape and imposed on him the death penalty in Criminal Case No. 3219-A. Instead of dismissing the second case, Criminal Case No. 3220-A, the trial court considered it as a qualifying circumstance for the purpose of imposing the death penalty in Criminal Case No. 3219-A.

The Charge

The Amended Informations for Criminal Case Nos. 3219-A and 3220-A are identical. The allegations read:

That on or about the dawn of September 12, 1996 at Brgy. Masidem, municipality of Bani, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-accused, by means of force or intimidation, armed with a knife, did then and there willfully, unlawfully and feloniously have sexual intercourse with REMILYN R. ORILLA, younger sister of accused against her will and consent, to her damage and prejudice.

CONTRARY to Article 335 of the Revised Penal Code.[2]

Arraignment and Plea

On 3 January 1997, appellant assisted by his counsel de officio, pleaded not guilty to the two charges.[3]

The Trial

Version of the Prosecution

The prosecution presented three witnesses: (1) Remilyn, the complainant and sister of the appellant, (2) SPO1 Clarence de Vera, a member of the Philippine National Police of Bani, Pangasinan, who entered in the police blotter the complaint of Remilyn, and (3) Dr. Lynette Valencerina-Caburnay (“Dr. Valencerina-Caburnay”), a resident physician of the Western Pangasinan District Hospital, who conducted the medico-legal examination of Remilyn.

The prosecution's version of the rapes as summarized by the Solicitor General is as follows:

On September 12, 1996, around 3:00 o'clock in the morning, fifteen-year old Remilyn Orilla was sound asleep inside one of the rooms of their house located at Masidem, Bani, Pangasinan when she was suddenly awakened by a heavy weight pressing on her body and found appellant Joseph Orilla on top of her. (p. 18, TSN, April 15, 1997)

Remilyn Orilla noticed that she was naked from waist down (pp. 17-18, *ibid*). Appellant continuously pinned down Remilyn Orilla's body with his own. She struggled to free herself from appellant but her efforts proved futile. (p. 7, TSN, April 15, 1997)

Appellant held both hands of Remilyn Orilla with one hand holding a knife with his other hand. He then forced Remilyn Orilla's legs apart and inserted his penis into her vagina. Remilyn Orilla felt pain. She also felt "some warm matter enter" her vagina (p. 8, *ibid*). Appellant remained on top of Remilyn Orilla and, after a few minutes, she again felt the same "substance enter" her vagina (*ibid*). With a knife pointed at her, Remilyn Orilla was powerless. Appellant warned her not to make a noise. Frightened, Remilyn Orilla just kept silent. (pp. 8-9, 18-19, *ibid*.)

Around 9:00 o'clock in the morning of that same day, Remilyn Orilla reported to her sister, Evelyn Catabay, what appellant did to her. Immediately, they went to the Municipal Hall of Bani to report the incident. Unfortunately, the investigator assigned that day was absent. (p. 22, *ibid*.)

On September 19, 1996, around 2:30 in the afternoon, Remilyn Orilla arrived at the Bani Police Station, Bani, Pangasinan and executed her sworn statement relative to the incident in question. She recounted the incident to SPO1 Clarence P. de Vera who entered the same in the Police Blotter (p. 2, TSN, June 11, 1997).

Later, or around 3:30 in the afternoon, Remilyn Orilla and her sister went to the Western Pangasinan District Hospital in Alaminos, Pangasinan. Remilyn Orilla was examined by Dr. Lynette D. Valencerina whose findings are contained in the Medico-Legal Certificate dated September 20, 1996 (Exhibit A) which she issued: MENSTRUAL HISTORY: Menarche at age 13 years old, occurring monthly, of 3-7 days duration, consuming around 2 napkins per day not accompanied by hypoglycemia.

LMP – August 9-14, 1996

PMP – July 12-16, 1996

INTERNAL EXAMINATION: With old hymenal laceration at 3, 6 and 9 o'clock position vaginal introitus admits 2 fingers with ease, Cervix close, uterus small;

(-) adnexal mass/tenderness

(+) whitish vaginal discharge

Pregnancy Test – negative

Negative for the presence of spermatozoa

(p. 8, Record)

Accordingly, appellant was arrested. However, he escaped while detained at the provincial jail. After a month of hiding, appellant was re-arrested. (pp. 12-13, TSN, September 28, 1999).

On the other hand, Remilyn Orilla is now under the care of the Department of Social Welfare and Development. (p. 12, TSN, April 15, 1997).[4]

Version of the Defense

The defense presented three witnesses: (1) appellant, (2) Crispin Orilla ("Crispin"), brother of appellant and

Remilyn, and (3) Beverly Cabuburac (“Beverly”), sister of appellant and Remilyn.

Appellant and Remilyn are siblings. Remilyn is the youngest in a brood of nine. The parents of appellant and Remilyn are already dead. Remilyn was then staying in a house commonly owned by the siblings in Barangay Masidem, Bani, Pangasinan. Adjacent to Remilyn’s house is the house of appellant where he and his own family lived.

Appellant claimed that from 2 August 1996 to 14 September 1996, he was in Sitio Olo, Barangay Masidem, Bani, Pangasinan rushing the work on the dikes of a fishpond. He was not able to go home to his house in Barangay Masidem on 12 September 1996, the date the crimes charged allegedly occurred.

Appellant’s house in Barangay Masidem is five to six meters away from the house of Remilyn. However, the place where appellant was staying in Sitio Olo is two kilometers away from Barangay Masidem. One can negotiate the distance between Sitio Olo and Barangay Masidem by walking. However, one must cross a river before reaching Barangay Masidem. A motorboat service is available to cross the river and the ride can last for an hour. Crossing the river on foot will take about three hours.

Appellant worked in the fishpond of Lindel Onofre who is married to another sister of appellant. At the time appellant was working in the fishpond, his companion was his brother, Reneboy Orilla (“Reneboy”). The persons left in appellant’s house while he was in Sitio Olo were his wife, five children and his wife’s grandmother. When appellant left Barangay Masidem on 2 August 1996 for Sitio Olo, the persons who were with Remilyn in her house were Crispin, Beverly and her three children.

Appellant described Remilyn as “matampuhin” or emotional. Remilyn was always frowning and sometimes she would be happy. When Remilyn would get irritable she would just leave the house for weeks without telling appellant or their other siblings where she was going. Appellant claimed that he had a good relationship with Remilyn although he would sometimes scold her because she would leave the house without permission. Appellant does not know why Remilyn accused him of rape. Appellant assumed that it was because he often scolded Remilyn.

Crispin testified that on 11 September 1996, he and his sister Beverly and her husband slept in the living room of their house while Remilyn slept in the small room with Beverly’s daughter. The next day, 12 September 1996, Crispin woke up around 5:00 a.m. and noticed that Remilyn was still asleep. During that time, his brother Joseph was working in Barangay Ulo, Bani, Pangasinan.

Beverly testified that on 11 September 1996, she was in Masidem with her children and her siblings, Crispin, Reneboy, and Remilyn. At 6:00 a.m. of the next day, she, together with her husband and children, left for Manila. She denied having any knowledge that her brother Joseph raped their sister Remilyn.

The Trial Court’s Judgment

The trial court ruled that Remilyn positively identified appellant as the one who raped her. True, no electric light or kerosene lamp lit the room where the rape took place. However, since it was already 3:00 a.m., a ray of light from the eastern horizon enabled Remilyn to recognize appellant. When appellant threatened and ordered Remilyn not to shout, or else he would kill her, Remilyn was able to recognize appellant’s voice. The trial court concluded that even if appellant attacked Remilyn during “the darkest portion of the night,”[5] appellant’s voice alone could have made it known to Remilyn that her attacker was appellant, her own brother.

The trial court rejected appellant’s defense of alibi. One can negotiate the distance between Sitio Olo and Barangay Masidem by riding passenger jeepneys and tricycles and by riding a motorboat to cross the river.

Appellant failed to demonstrate that it was physically impossible for him to have access to the place where the crime happened.

The trial court gave credence to Remilyn's testimony because her testimony was very "natural and convincing." [6] In contrast, the testimony of the defense witnesses failed to convince the trial court. Defense witness Crispin's demeanor in court prompted the trial court to remark that he appeared "crafty, cunning, unfair and unreliable." [7] Beverly's testimony failed to support appellant's alibi because she testified that she left Barangay Masidem on 12 September 1996 and she learned of the rape only on her return sometime in January of 1997.

The trial court held that the presence of old lacerations at 3, 6 and 9 o'clock vaginal positions indicates that Remilyn had previous sexual experience contrary to Remilyn's claim that the rape was her first sexual experience. The trial court nonetheless ruled that a woman who is unchaste or impure could still be raped.

Thus, the trial court held appellant guilty of qualified rape in Criminal Case No. 3219-A. The trial court ruled that since Remilyn was only 15 years old at the time appellant raped her, the death penalty must be imposed on appellant, the victim's brother. Appellant committed only one count of rape because while appellant ejaculated twice in Remilyn's vagina, the first and second ejaculations occurred during "one single body connection." [8] The trial court considered Criminal Case No. 3220-A involving the second count of rape as a qualifying circumstance for the purpose of imposing the death penalty in Criminal Case No. 3219-A.

The judgment of the trial court reads:

WHEREFORE, in consideration of the foregoing premises, judgment is hereby rendered, finding the accused GUILTY beyond reasonable doubt of the crime of RAPE in Criminal Case No. 3219-A and considering that the offended party is under 18 years of age, and the offender is the brother of the victim (relative by consanguinity within the third civil degree) the accused is therefore sentenced to suffer the SUPREME PENALTY OF DEATH by lethal injection but in the event that upon automatic review by the Honorable Supreme Court, that the penalty of Death is not imposed but that of Reclusion Perpetua, this Honorable Court recommends that accused should not be granted pardon within the period of thirty (30) years and that he is further condemned to pay in favor of the offended party in the sum of ONE HUNDRED THOUSAND PESOS (P100,000.00) as civil indemnity.

That Criminal Case No. 3220-A is considered merely as a qualifying circumstance in the imposition of the death penalty, as the Court submits the view that there is only one crime of rape committed although there were two ejaculations done on the person of the offended party.

The Provincial Warden of the Province of Pangasinan at Lingayen is ordered to commit the living body of the accused to the National Penitentiary at Muntinlupa City within a period of three (3) days from receipt of this Decision considering that in the past the accused have (sic) tendency to escape his Jailer.

IT IS SO ORDERED.[9]

The Issues

Appellant submits for our review the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE APPELLANT GUILTY OF THE CRIME CHARGED DESPITE COMPLAINANT'S DUBIOUS IDENTIFICATION OF APPELLANT AS THE PERPETRATOR OF THE ALLEGED RAPE.

II

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING APPELLANT'S DEFENSE OF ALIBI DESPITE COMPLAINANT'S DOUBTFUL IDENTIFICATION OF APPELLANT AS THE AUTHOR OF THE CRIME CHARGED.

III

ASSUMING ARGUENDO THAT APPELLANT IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN CONSIDERING CRIMINAL CASE NO. 3220-A AS A "QUALIFYING CIRCUMSTANCE" IN THE IMPOSITION OF THE DEATH PENALTY AGAINST THE APPELLANT IN CRIMINAL CASE NO. 3219-A, SINCE THE CONSIDERATION OF SUCH QUALIFYING CIRCUMSTANCE IS WITHOUT ANY LEGAL BASIS.

IV

ASSUMING ARGUENDO, THAT APPELLANT IS GUILTY, THE TRIAL COURT GRAVELY ERRED IN IMPOSING ON HIM THE DEATH PENALTY, DESPITE THE FACT THAT THE INFORMATION NEVER ALLEGED THE QUALIFYING CIRCUMSTANCE OF COMPLAINANT'S AGE, AND THE EXACT DEGREE OF CONSANGUINITY ANENT THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP.[10]

The Court's Ruling

Appellant is guilty of rape as charged in Criminal Case No. 3219-A but the proper penalty is reclusion perpetua, not death. Since appellant committed only one count of rape, Criminal Case No. 3220-A must be dismissed.

Appellant insists that it was impossible for Remilyn to have identified the person who raped her because the room where the crime took place was pitch black, as it had no window and no source of light. Appellant asks the Court to take judicial notice of the fact that on 12 September 1996, a Thursday, the approximate time of sunrise in the Philippines was at 5:45 a.m., or a good two hours and forty-five minutes from 3:00 a.m. Appellant argues that if the rape took place at 3:00 a.m., then there could have been no early morning sunlight to aid Remilyn in identifying appellant.

We are not persuaded. Crispin, the brother of Remilyn and appellant and a witness for the defense, testified that the wall of the house where the rape happened was made of buri[11] and the flooring of the house was made of "splitted (sic) bamboo." [12] Buri is a leaf that is dried and woven together to form panels used as walls in the construction of houses. A panel of buri is not compact as it has small holes in it allowing light to filter through the woven material. The slats on the floor and the elevation of the floor from the ground by two feet[13] also make it possible for light to pass through the floor.

While the approximate time of sunrise in the Philippines on 12 September 1996 was at 5:45 a.m. and not at 3:00 a.m., what is controlling is Remilyn's declaration that the "horizon coming from the east" enabled her to identify appellant. Remilyn categorically declared that "there was a little light, sir, that is why I recognized him." [14] Remilyn's declaration that there was a "little light" is consistent with her statement that the room was not fully illuminated but the amount of light that sneaked through her room was sufficient to enable her to recognize her own brother.

The time mentioned by Remilyn, that is 3:00 a.m., is at most an estimate. We must bear in mind that appellant roused Remilyn from sleep when he forced himself on her. Remilyn could not have known the exact time as appellant's act abruptly and rudely awakened her. Remilyn's estimate of the time while not precise tends to

strengthen the impression that her testimony is unrehearsed. Moreover, no one expects rape victims to remember with precision every detail of the crime. A mis-estimation of time is too immaterial to discredit the testimony of a witness especially where time is not an essential element or has no substantial bearing on the fact of the commission of the offense.[15] What is decisive in a rape charge is the complainant's positive identification of the accused as the malefactor.[16]

Appellant insists that the trial court erred in declaring that Remilyn identified him through his voice. Appellant maintains that Remilyn was not able to identify him at all. Appellant's contention is without basis. Remilyn's testimony is as follows:

Q: And during the time that the accused was on top of you, what did you do, if any?

A: I cannot move and fight because he threatened me not to shout, sir.

Q: And what was the word of the accused when he threatened you?

A: He told me not to shout and move and according to him he will kill me, sir.

PROS. RABINA:

Q: And because of those threatened words of the accused you mean to inform the Honorable Court that you did not shout for help?

A:

No, sir, because I was afraid.[17]

Based on the foregoing testimony, there was nothing to prevent the trial court from properly concluding that Remilyn identified appellant through voice recognition. A person's voice is an acceptable means of identification where there is proof that the witness and the accused knew each other personally and closely for a number of years.[18] Appellant is no stranger to Remilyn for she had known him with much familiarity. Appellant is Remilyn's own brother. Thus, when appellant threatened Remilyn not to shout and move, or else he would kill her, the trial court logically inferred that Remilyn recognized appellant through his voice.

We have thoroughly examined the transcript of the testimonies of the witnesses and we agree with the trial court's assessment of the credibility of the witnesses. The trial court was meticulous in judging the witnesses' credibility. The trial court even took note of the witnesses' demeanor in court. Unless appellant can show that the trial court overlooked, misunderstood, or misapplied some fact or circumstance of weight or substance that would otherwise affect the result of the case, the Court will not disturb the trial court's findings on appeal.[19] None of the grounds to overturn the trial court's ruling on the witnesses' credibility is present in this case.

Remilyn's narration of how appellant ravished her meets the test of credibility. When a woman says that the accused raped her, in effect, she says all that is necessary to show that the accused raped her, and if her testimony meets the test of credibility, the court may convict the accused on that basis.[20]

Remilyn had no reason to fabricate the serious charges against her own brother whose life could hang in the balance in case he is found guilty of qualified rape. With the filing of the criminal cases, Remilyn had to face the ire of her other siblings, two of whom have even testified against her. Remilyn is now under the custody of the Department of Social Welfare and Development in Lingayen, Pangasinan. An incestuous sexual assault is a

psycho-social deviance that inflicts a stigma, not only on the victim but also on their whole family.[21] Even in ordinary rape cases, the sole testimony of a credible victim may seal the fate of the rapist.[22]

Appellant failed to establish convincingly his alibi. The distance between Sitio Olo, where appellant claimed he was, and Barangay Masidem, where the rape happened, is only two kilometers. Appellant himself admitted that public vehicles were available to transport passengers from Sitio Olo to Barangay Masidem, including a motorboat that could ferry the passengers to Barrio Masidem in just about an hour. It was not physically impossible for appellant to have gone to Barangay Masidem on the day he committed the rape. None of his witnesses could even corroborate his alibi.

Appellant's alibi and denial cannot prevail over Remilyn's positive and categorical testimony. Alibi is an inherently weak defense and courts must receive it with caution because one can easily fabricate an alibi.[23] For alibi to prosper, it is not enough that the accused show he was at some other place at the time of the commission of the crime.[24] The accused must prove by clear and convincing evidence that it was impossible for him to be at the scene of the crime at the time of its commission.[25] Appellant failed to do this. Moreover, appellant's escape from detention does not help his cause since escape is evidence of guilt.[26]

We must correct the trial court's opinion that prior to the rape, Remilyn already had past sexual experience because her hymen had healed lacerations. The trial court reached this conclusion despite Remilyn's assertion that she had no sexual experience at all before the rape and despite the absence of such a finding by Dr. Valencerina-Caburnay, the medico- legal who examined Remilyn.

Dr. Valencerina-Caburnay conducted Remilyn's physical examination on 19 September 1996 or seven days after the rape. Dr. Valencerina-Caburnay was not certain what exactly caused the healed lacerations. Dr. Valencerina-Caburnay testified that an object, probably a penis, could have caused the lacerations, or even a fall could have caused them.[27] Dr.Valencerina-Caburnay did not attribute the healed lacerations to a sexual experience prior to the rape.

The presence of old lacerations per se does not imply that the lacerations were the result of previous sexual experience and not by the rape.[28] Thus, the trial court had no basis in ruling that Remilyn was no longer a virgin when appellant raped her. The trial court must be careful not to cast aspersions on the reputation of a woman, especially so when she is still a minor.

The absence of fresh lacerations in Remilyn's hymen does not prove that appellant did not rape her. A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape.[29] In addition, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case.[30] The credible disclosure of a minor that the accused raped her is the most important proof of the sexual abuse.[31]

The gravamen of the crime of rape is carnal knowledge of a woman against her will.[32] Remilyn's straightforward narration on how appellant forcibly ravished her proves beyond reasonable doubt that appellant is guilty of the crime of rape as charged in Criminal Case No. 3219-A. However, appellant committed only one count of rape. Remilyn's own account of the rape proves this, thus:

Q: And after accused pointed you (sic) knife, can you tell the Court what else did he do after that?

A: He had sexual intercourse with me to (sic) times at the same time, sir.

COURT:

Q: Two times at the same time?

WITNESS

A: Yes, sir.

PROS. RABINA:

Q: And when he had sexual intercourse with you for two times as you said on that same day, what was your feeling when he inserted his penis into your vagina?

A: It is painful, sir, and I felt some warm matter to my vagina.

Q: And can you tell the Honorable Court how long was the accused stayed (sic) on top of you before he ejaculated into your vagina?

A: About thirty (30) minutes, sir.

xxx

Q: Now, you said that the accused was on top of you for at least a period of thirty minutes, do you mean to inform the Honorable Court that the two sexual intercourse that he allegedly committed on your person, he stayed on top of you for a period of thirty minutes, is that what you mean?

Q: And for the first time that he ejaculated a warm substance inside your vagina, did accused get out on top of you?

A: No, sir.

COURT:

Q: You mean to tell the Court that it is a case of double shoot in the sense that after ejaculating he is still on top of you but then after that he did it again while he was still on top of your body?

WITNESS:

A: Yes, sir.[33]

Remilyn testified that appellant's penis penetrated her genitalia. At that point, appellant had already consummated the rape. The mere introduction of the penis into the labia majora of the victim's genitalia engenders the crime of rape.[34] Hence, it is the "touching" or "entry" of the penis into the labia majora or the labia minora of the pudendum of the victim's genitalia that consummates rape.[35]

Appellant ejaculated twice during the time that he consummated the rape. Appellant did not withdraw his penis to insert it again into the vagina or to "touch" the labia majora or the labia minora when he ejaculated the second

time. It is not the number of times that appellant ejaculated but the penetration or “touching” that determines the consummation of the sexual act.[36] Thus, appellant committed only one count of rape.

The trial court erred when it did not dismiss outright Criminal Case No. 3220-A and instead considered it as a qualifying circumstance for the purpose of imposing the death penalty in Criminal Case No. 3219-A. In short, the trial court considered the second ejaculation by the accused as a qualifying circumstance to raise the penalty to death. This has no basis in law.

Article 335[37] of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659[38] (“RA 7659”) was the law then applicable at the time of the rape. RA 7659 provides for the penalty of reclusion perpetua for the carnal knowledge of a woman procured through force or intimidation and without any other attendant circumstance. The death penalty is imposed if the victim is under eighteen 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. When the information specifically alleges the twin qualifying circumstances of relationship and minority of the victim, and the prosecution proves the same in court, the imposable penalty is no longer reclusion perpetua but death.[39]

The trial court convicted appellant of qualified rape in Criminal Case No. 3219-A because appellant is Remilyn’s brother and she was a minor being only 15 years old at the time that appellant raped her. A reading of the Amended Information, however, does not justify the elevation of the crime of simple rape to qualified rape.

The prosecution went through the trouble of amending the Information to allege that Remilyn is the “younger sister” of appellant to emphasize the qualified nature of the rape. However, the Amended Information did not allege Remilyn’s minor age. The prosecution’s failure to allege specifically Remilyn’s minor age prevents the transformation of the crime to its qualified form.

The facts stated in the body of the information determine the crime of which the accused stands charged and for which he must be tried.[40] The information must allege every element of the offense to enable the accused to prepare properly for his defense.[41] The law assumes that the accused has no independent knowledge of the facts that constitute the offense.[42] Since the Amended Information failed to inform appellant that the prosecution was accusing him of qualified rape, the court can convict appellant only for simple rape and the proper penalty is reclusion perpetua and not death.

The Solicitor General concedes that the trial court erred in imposing the death penalty based on the twin circumstances of relationship and minority considering that the Amended Information failed to allege specifically Remilyn’s age. What justifies the imposition of the death penalty, the Solicitor General argues, is the fact that appellant used a knife in committing the rape and appellant perpetrated the rape against his own sister. According to the Solicitor General, Article 335 as amended by RA 7659 provides that the use of a deadly weapon in the commission of rape results in the imposition of the penalty of reclusion perpetua to death. Applying Article 63 of the Revised Penal Code, the presence of an aggravating circumstance warrants the imposition of the higher penalty of death. The Solicitor General points out that relationship in this case is an aggravating circumstance based on Article 15[43] of the Revised Penal Code as applied in *People v. Baldino*. [44]

Appellant on the other hand argues that the allegation in the Amended Information that he was “armed with a knife” does not comply with Sections 8 and 9 of Rule 110 of the 2000 Revised Rules of Criminal Procedure. The allegation in the Amended Information that the accused was “armed with a knife” is not in any way equivalent to “use of a deadly weapon.” The “knife” could simply be a “butter knife,” a harmless knife. Appellant opines that the Amended Information should have stated that accused was “armed with a deadly knife, which is a deadly weapon.”

We have held in several cases that the allegation “armed with a knife” is sufficient to inform the accused of the nature of the accusation against him.[45] The prosecution also proved during the trial appellant’s use of a deadly weapon. Remilyn testified that she was not able to shout because appellant pointed an eight-inch kitchen knife at her throat.[46]

We, however, do not agree with the Solicitor General’s opinion that relationship should be appreciated as an aggravating circumstance for the purpose of imposing the death penalty. *People v. Baldino*, the case invoked by the Solicitor General, appreciated relationship as an aggravating circumstance but only for the purpose of assessing exemplary damages against the accused and not for the purpose of imposing the death penalty. Two recent cases, *People v. Sagarino*[47] and *People v. Umba×ja*,[48] squarely address the issue raised by the Solicitor General.

In *People v. Sagarino*[49] and *People v. Umba×ja*,[50] the information specifically alleged the use of a deadly weapon and the prosecution proved the same. The information also specifically alleged relationship between the accused and the victim, and the prosecution proved the same: son and mother in *People v. Sagarino*, and father and daughter in *People v. Umba×ja*. However, these two cases did not impose the death penalty. *People v. Umba×ja* repeated our explanation in *People v. Sagarino*. We quote this pertinent portion in *People v. Umba×ja*:

We agree with appellant that *People vs. Sagarino* finds application in the case at bar. We there stated:

We now come to the propriety of the penalties imposed on appellant. Section 11 of Republic Act 7659, which amended article 335 of the Revised Penal Code, imposes the penalty of reclusion perpetua when the rape was committed with force and intimidation. But the imposable penalty becomes reclusion perpetua to death whenever the rape is committed with the use of a deadly weapon. Such is the situation in Criminal Case Nos. 98-551 and 98-552 because the use of a knife or a bladed weapon by appellant in the consummation of the two rapes has been alleged and proved.

However, we are unable to sustain the death penalty imposed on appellant in both cases. As provided in Section 8 of Rule 110 of the Rules of Criminal Procedure, effective December 1, 2000, but applicable to these cases now, the complaint or information must not only state the designation of the offense given by statute and aver the acts or omissions constituting the offense, but also “specify its qualifying and aggravating circumstances.” But here the informations against appellant in both cases show no specification of circumstances that aggravate the offenses charged. Note that the close relationship between the victim and the offender (mother and son) is alleged, but nothing is stated in the informations concerning pertinent circumstances (such as disregard of the filial respect due the victim by reason of her age, sex and rank) that could aggravate the crimes and justify imposing the death sentence. Thus, absent any aggravating circumstance specifically alleged and proved in the two rape cases, the penalty imposable on appellant for each offense is not death but only the lesser penalty of reclusion perpetua.

Article 266-B of the Revised Penal Code states the specific aggravating/qualifying circumstances. Other than the use of a deadly weapon, which is already taken into account to raise the penalty to reclusion perpetua to death, not one of these circumstances was alleged or proved in the case at bar. Hence, the penalty imposable is only reclusion perpetua. (Emphasis ours)

The “circumstances pertinent” to the relationship mentioned in *People v. Sagarino* and *People v. Umba×ja* must be alleged in the information and duly proven in the trial. In the present case, the Amended Information did not allege the “circumstances pertinent” to the relationship of appellant and Remilyn and the prosecution did not prove these circumstances during the trial.

The “circumstances pertinent” to the relationship cited in *People v. Sagarino* and *People v. Umba×ja* are aggravating circumstances listed in paragraph 3 of Article 14 of the Revised Penal Code. Article 14 of the

Revised Penal Code enumerates the aggravating circumstances. Unlike mitigating circumstances under Article 13 of the Revised Penal Code, Article 14 does not include circumstances “similar in nature” or analogous to those mentioned in paragraphs 1 to 21 of Article 14. The term “aggravating circumstances” is strictly construed, not only because what is involved is a criminal statute, but also because its application could result in the imposition of the death penalty. The list of aggravating circumstances in Article 14 of the Revised Penal Code is thus exclusive^[51] for the purpose of raising a crime to its qualified form.

Article 14 does not include relationship as an aggravating circumstance. Relationship is an alternative circumstance under Article 15 of the Revised Penal Code:

Art. 15. Their concept. — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and other conditions attending its commission. They are relationship, intoxication, and degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degree of the offender.

Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and other conditions attending its commission. Based on a strict interpretation, alternative circumstances are thus not aggravating circumstances per se.

The Revised Penal Code is silent as to when relationship is mitigating and when it is aggravating.^[52] Jurisprudence considers relationship as an aggravating circumstance in crimes against chastity.^[53] However, rape is no longer a crime against chastity for it is now classified as a crime against persons.^[54] The determination of whether an alternative circumstance is aggravating or not to warrant the death penalty cannot be left on a case-by-case basis. The law must declare unequivocally an attendant circumstance as qualifying to warrant the imposition of the death penalty. The Constitution expressly provides that the death penalty may only be imposed for crimes defined as heinous by Congress.^[55] Any attendant circumstance that qualifies a crime as heinous must be expressly so prescribed by Congress.

When the accused commits rape with the use of a deadly weapon, the penalty is not death but the range of two indivisible penalties of reclusion perpetua to death. To determine the proper penalty, we apply Article 63 of the Revised Penal Code. It provides that:

ART. 63. Rules for the application of indivisible penalties.— In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

xxx

Article 63 states that the greater penalty, which is death, will be applied when in the commission of rape there is present one aggravating circumstance. We hold that the aggravating circumstance that is sufficient to warrant the imposition of the graver penalty of death must be that specifically enumerated in Article 14 of the Revised Penal Code. Since it is only relationship that is alleged and proven in this case, and it is not an aggravating circumstance per se, the proper penalty is the lower penalty of reclusion perpetua.

Even for the purpose of awarding exemplary damages, there was “lingering doubt” whether the alternative circumstance of relationship should be considered an aggravating circumstance to justify such an award. *People v. Catubig*[56] settled the “lingering doubt” in this manner:

The attendance of aggravating circumstances in the perpetration of the crime serves to increase the penalty (the criminal liability aspect), as well as to justify an award of exemplary or corrective damages (the civil liability aspect), moored on the greater perversity of the offender manifested in the commission of the felony such as may be shown by (1) the motivating power itself, (2) the place of commission, (3) the means and ways employed, (4) the time, or (5) the personal circumstances of the offender or the offended party or both. There are various types of aggravating circumstances, among them, the ordinary and the qualifying. Relationship is an alternative circumstance under Article 15 of the Revised Penal Code.

“Art. 15. Their concept. —Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and other conditions attending its commission. They are relationship, intoxication, and degree of instruction and education of the offender.”

“The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degree of the offender.”

As a rule, relationship is held to be aggravating in crimes against chastity, such as rape and acts of lasciviousness, whether the offender is a higher or a lower degree relative of the offended party.

Under Section 11 of Republic Act No. 7659, amending Article 335 of the Revised Penal Code, the death penalty is to be imposed in rape cases “when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.” The Court has since held that the circumstances enumerated by the amendatory law are to be regarded as special qualifying (aggravating) circumstances. Somehow doubts linger on whether relationship may then be considered to warrant an award for exemplary damages where it is used to qualify rape as a heinous crime, thereby becoming an element thereof, as would subject the offender to the penalty of death. Heretofore, the Court has not categorically laid down a specific rule, preferring instead to treat the issue on a case to case basis.

In *People vs. Fundano*, *People vs. Ramos*, *People vs. Medina*, *People vs. Dimapilis*, *People vs. Calayca*, *People vs. Tabion*, *People vs. Bayona*, *People vs. Bayya*, and *People vs. Nuñez*, along with still other cases, the Court has almost invariably appreciated relationship as an ordinary aggravating circumstance in simple rape and thereby imposed exemplary damages upon the offender whether or not the offense has been committed prior to or after the effectivity of Republic Act No. 7659. Exceptionally, as in *People vs. Decena*, *People vs. Perez*, and *People vs. Ambray*, the Court has denied the award of exemplary damages following the effectivity of that law. In qualified rape cases, such as in *People vs. Magdato*, *People vs. Arizapa*, and *People vs. Alicante*, the Court decreed the payment of exemplary damages to the offended party but it did not so do as in *People vs. Alba*, *People vs. Mengote*, and *People vs. Maglente*.

It may be time for the Court to abandon its pro hac vice stance and provide, for the guidance of the bar and the bench, a kind of standard on the matter.

Also known as “punitive” or “vindictive” damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant - associated with such

circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud- that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.

The term “aggravating circumstances” used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code. (Emphasis supplied)

In *People v. Catubig*, we held that the alternative circumstance of relationship serves as basis for an award of exemplary damages because the term “aggravating circumstances” must be understood in its broad or generic sense. However, this interpretation is only applicable to the civil aspect, not the criminal aspect of rape, which involves the imposition of the proper penalty. When the penalty to be imposed on the accused is teetering between reclusion perpetua and death, the term “aggravating circumstance” in Article 63 of the Revised Penal Code must be understood in the strictest sense. The “aggravating circumstance” that would spell the difference between life and death for the accused must be that specifically listed in Article 14 of the Revised Penal Code.

Death is an irrevocable penalty. Thus, the rule on strict interpretation of criminal statutes applies with greater force when the law defines the offense as a heinous crime punishable by death.

However, we resort to the strict interpretation of the term “aggravating circumstance” only for the purpose of imposing the death penalty. When the penalty to be imposed is a range of penalties where the maximum penalty is death and the appreciation of an aggravating circumstance would call for the imposition of the maximum penalty, which is death, the term “aggravating circumstance” must be strictly construed. The aggravating circumstance sufficient to justify the imposition of the death penalty must not only be duly alleged and proven it must be one of those enumerated in Article 14 of the Revised Penal Code or that specified by law. In all other cases where the maximum penalty is not death, the term “aggravating circumstance” must be interpreted in its broad or generic sense so as to include the alternative circumstances under Article 15 of the Revised Penal Code.

We cannot consider dwelling as a generic aggravating circumstance because the Amended Information did not allege dwelling. The 2000 Revised Rules of Criminal Procedure, which applies retroactively in this case, now explicitly mandates that the information must state in ordinary and concise language the qualifying and aggravating circumstances.[57] When the law or rules specify certain circumstances that can aggravate an offense or qualify an offense to warrant a greater penalty, the information must allege such circumstances and the prosecution must prove the same to justify the imposition of the increased penalty.[58]

Relationship in this case serves to justify the award of exemplary damages to Remilyn of P25,000.[59] Remilyn is also entitled to P50,000 moral damages and P50,000 civil indemnity. Case law requires the automatic award of

moral damages to a rape victim without need of proof because from the nature of the crime it can be assumed that she has suffered moral injuries entitling her to such award.[60] Such award is separate and distinct from civil indemnity, which case law also automatically awards upon proof of the commission of the crime by the offender.[61]

The trial court was so revolted by the perversity of appellant's crime that it was moved to include this proposal in the dispositive portion of its decision:

xxx in the event that upon automatic review by the Honorable Supreme Court, that the penalty of Death is not imposed but that of Reclusion Perpetua, this Honorable Court recommends that accused should not be granted pardon within the period of thirty (30) years.

Incestuous rape is indeed reprehensible. It deserves our full condemnation. However, the recommendation by the trial court is improper.[62] It is the President's prerogative whether or not to grant a pardon subject to the limitations imposed by the Constitution.[63]

WHEREFORE, the Decision of the Regional Trial Court, First Judicial Region, Branch 54, Alaminos City, Pangasinan, is AFFIRMED insofar as it finds appellant Joseph Orilla GUILTY of one count of rape in Criminal Case No. 3219-A with the MODIFICATION that the death sentence imposed is reduced to reclusion perpetua, and the amount of civil indemnity is reduced to P50,000. In addition, appellant is further ordered to pay Remilyn Orilla P50,000 moral damages and P25,000 exemplary damages. Criminal Case No. 3220-A is dismissed. The provision recommending the disqualification of appellant from executive clemency is deleted. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Carpio-Morales, Azcuna, and Tinga, JJ., concur.

Puno, and Vitug, JJ., in the result.

Corona, J., joins the dissent of J. Callejo, Sr.

Callejo, Sr., J., see dissenting opinion.

[1] Penned by Judge Jules A. Mejia.

[2] Records, pp. 23, 58.

[3] Ibid., p. 26.

[4] Rollo, pp. 101-105.

[5] Rollo, p. 28.

[6] Ibid., p. 29.

[7] Ibid.

[8] Ibid., p. 27.

[9] Rollo, p. 31.

[10] Ibid., p. 46.

- [11] TSN, 1 September 1998, p. 8.
- [12] Ibid., p. 7.
- [13] Ibid., p. 8.
- [14] TSN, 15 April 1997, p. 7.
- [15] *People v. Quilatan*, G.R. No. 132725, 28 September 2000, 341 SCRA 247.
- [16] Ibid.
- [17] TSN, 15 April 1997, pp. 8-9.
- [18] *People v. Besmonte*, G.R. Nos. 137278-79, 17 February 2003.
- [19] *People v. Brigildo*, G.R. No. 124129, 28 January 2000, 323 SCRA 631.
- [20] *People vs. Docena*, G.R. Nos. 131894-98, 20 January 2000, 322 SCRA 820.
- [21] *People v. Burce*, 336 Phil. 283 (1997).
- [22] Ibid.
- [23] *People v. Penaso*, G.R. No. 121980, 23 February 2000, 326 SCRA 311.
- [24] Ibid.
- [25] Ibid.
- [26] *People v. Aringue*, 347 Phil. 571 (1997).
- [27] TSN, 21 February 1997, p. 8.
- [28] See *People v. Llamo*, G.R. No. 132138, 28 January 2000, 323 SCRA 791.
- [29] *People v. Aguiluz*, G.R. No. 133480, 15 March 2001, 354 SCRA 465.
- [30] *People v. Bohol*, G.R. Nos. 141712-13, 22 August 2001, 363 SCRA 510.
- [31] Ibid.
- [32] *People v. Dela Cruz*, G.R. Nos. 131167-68, 23 August 2000, 338 SCRA 582.
- [33] TSN, 15 April 2000, pp. 8-9.
- [34] *People v. Basquez*, G.R. No. 144035, 27 September 2001, 366 SCRA 154.
- [35] Ibid.
- [36] *People v. Ferrer*, G.R. No. 142662, 14 August 2001, 778 SCRA 362.
- [37] Now Article 266-A and 266-B of the Revised Penal Code as amended by Republic Act No. 8353, "The Anti-Rape Law of 1997," which took effect on 22 October 1997.
- [38] Took effect on 31 December 1993.
- [39] *People v. Perez*, 357 Phil. 17 (1998).
- [40] *People v. Ramos*, 357 Phil. 559 (1998).

[41] Ibid.

[42] Ibid.

[43] Art. 15. Their concept. — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and other conditions attending its commission. They are relationship, intoxication, and degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degree of the offender.

[44] G.R. No. 137269, 13 October 2000, 343 SCRA 141.

[45] See *People v. Buates*, G.R. Nos. 140868-69, 5 August 2003; *People v. Gutierrez*, G.R. Nos. 147656-58, 9 May 2003; *People v. Manalo*, G.R. Nos. 144989-90, 31 January 2003; *People v. Escario*, G.R. Nos. 140218-23, 13 February 2002, 376 SCRA 670.

[46] TSN, 15 April 1997, pp. 7-8.

[47] G.R. Nos. 135356-58, 4 September 2001, 364 SCRA 438.

[48] G.R. Nos. 146862-64, 30 April 2003.

[49] *Supra*, note 47.

[50] *Supra*, note 48.

[51] *People v. Villaver*, 206 Phil. 102 (1983).

[52] LUIS B. REYES, THE REVISED PENAL CODE, BOOK ONE, 461 (1998 REV. ED.).

[53] *People v. Catubig*, G.R. No. 137842, 23 August 2001, 363 SCRA 621.

[54] Republic Act No. 8353.

[55] The second sentence of Section 19(1), Article III, of the Constitution provides: “x x x. Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. x x x.”

[56] *Supra*, note 53.

[57] *People v. Corral*, G.R. Nos. 145172-74, 28 February 2003.

[58] Ibid.

[59] *People v. Umbaja*, *supra*, note 48.

[60] *People v. Pagsanjan*, G.R. No. 139694, 27 December 2002.

[61] Ibid.

[62] See *People v. Dela Cruz*, G.R. No. 118967, 14 July 2000, 335 SCRA 620.

[63] Ibid.

CONCURRING AND DISSENTING OPINION

CALLEJO, SR., J.:

I concur with the majority opinion in finding the appellant guilty beyond reasonable doubt of rape with the use of a deadly weapon, the imposable penalty for which is reclusion perpetua to death. However, I dissent from the majority opinion sentencing the appellant to reclusion perpetua simply and merely because the alternative aggravating circumstance of relationship under Article 15 of the Revised Penal Code is not one of the aggravating circumstances listed in Article 14 of the Revised Penal Code. The opinion of the majority that only those aggravating circumstances enumerated in Article 14 of the Revised Penal Code are covered by Article 63 of the Revised Penal Code has no legal basis.

Article 14 of the Revised Penal Code is not the repository of all the aggravating circumstance covered by Article 63 of the Revised Penal Code. Absent any provision in Article 63 of the Revised Penal Code, excluding the alternative aggravating circumstances under Article 15 of the Revised Penal Code from the application thereof, such alternative aggravating circumstances must be considered in graduating the penalty for quasi-heinous crimes. It cannot be argued that simply because Article 14 of the Revised Penal Code does not contain any provision similar to Article 13, paragraph 10 of the Revised Penal Code, no other aggravating circumstances exist in the Revised Penal Code. Article 14 of the Revised Penal Code must be considered in relation to and not independent of Article 15 of the Revised Penal Code. Indeed, under Article 10, paragraph 1 of the Spanish Penal Code, relationship is listed as an alternative aggravating circumstance:

Son circunstancias agravantes: 1. Ser el agraviado cónyuge o ascendiente, desdendiente, hermano legítimo, natural o adoptivo, o afín en mismos grados del ofensor.

Esta circunstancia la tomarán en consideración los tribunales para aplicarla como agravante o atenuante, según la naturaleza y los efectos del delito.[1]

Article 10 of the Spanish Penal Code enumerates the aggravating circumstances including alternative circumstances. Article 81 of the Spanish Penal Code which is Article 63 of the Revised Penal Code applies to all the circumstances enumerated in Article 10 of the Spanish Penal Code.

The Philippines did not adopt, in toto, in the Revised Penal Code, Spanish Article 10 of the Spanish Penal Code but deviated from it by providing for a separate provision for alternative circumstances, which is Article 15 of the Revised Penal Code, precisely because: (a) aside from relationship, intoxication and lack of intention are considered either aggravating or mitigating as alternative circumstances; (b) there is a need to specify therein when such circumstances are aggravating or mitigating. The Philippines did not adopt the rather vague basis in Article 10, paragraph 1 of the Spanish Penal Code for determining whether relationship is aggravating or mitigating – the nature and effects of the felony charged. Article 15 of the Revised Penal Code was never intended to exclude the alternative aggravating circumstances listed therein from the application of Article 63 of the Revised Penal Code but to complement the latter provision.

I disagree with the submission of the ponente that “the aggravating circumstance is strictly interpreted against the prosecution only for the purpose of imposing the death penalty” implying that the law may be liberally construed for the prosecution for the purpose of imposing lower penalties. Such as elastic application of the law, to my mind, has no legal basis. Article 63, paragraph 1 of the Revised Penal Code mandates the Court to impose the greater penalty, in this case, the death penalty, when in the commission of the deed there is present an aggravating circumstance. The use of the word “shall” in the law demonstrates the mandatory nature of the duty of the Court.

I vote to sentence the appellant to suffer the death penalty as mandated by law.

[1] Supra.

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