

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CIRILO MACABATA, APPELLANT.*G.R. Nos. 150493-95. October 23, 2003*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-150493-95/>**PER CURIAM:**

ON AUTOMATIC REVIEW by law is another sickening case of qualified rape; it is incestuous. Accused is CIRILO MACABATA; his victim, his twelve (12)-year old daughter, Ma. Christine.

For three (3) sexual assaults: first on 6 June 1996, second in July 1996, and the third, in August 1996, three (3) separate Informations dated 25 October 1996 were filed.[1] They invariably stated that in Barangay Malusak, Atimonan, Quezon, the accused, armed with knife and with lewd design, feloniously had carnal knowledge of Ma. Christine, his own daughter, a minor of twelve (12) years, against her will. They were docketed as Crim. Cases Nos. 5430-G, 5431-G and 5432-G, consolidated and then heard by the Regional Trial Court, Br. 61, Gumaga, Quezon.

The prosecution presented as evidence the testimonies of the victim Ma. Christine Mirando Macabata, the victim's mother Elsa Mirando and the examining physician, Dr. Geronimo B. Ayala.

According to Ma. Christine Mirando Macabata, on 6 June 1996 she was at their house in Barangay Malusak, Atimonan, Quezon, with her nine (9)-year-old sister Eloisa and her father, the accused Cirilo Macabata. At about seven o'clock in the evening, she was washing dishes when the accused pulled her by the hand and poked a veinte nueve knife at her right side just below her arm. While the knife was poked at her right side, her father removed her t-shirt, followed by her shorts, then her panty. She was lying down when the accused inserted his penis into her vagina. She felt pain in her vagina and cried. She did not shout because she was afraid of the knife. Accused threatened to kill her in case she told anyone what had just transpired. She kept the incident to herself.[2]

Sometime in July 1996, the accused raped Ma. Christine again. She could not recall the exact day because unlike the first time she did not write the date on a piece of paper. The lecherous act was perpetrated in their house at around midnight. Ma. Christine was sleeping together with her sister Eloisa when her father went to them. He removed Ma. Christine's clothes and went on top of her. He inserted his penis into her vagina while kissing her in the process. Extremely afraid of her father, Ma. Christine kept her silence. The following day, she went to school. Noticing her strange behavior, her teacher Mrs. Rosalieta Verastigue asked her what was wrong. Ma. Christine unburdened to her teacher the unfortunate event that happened the night before. Her teacher however told her not to inform anyone about the incident.[3]

In August 1996, she was raped by her father for the third time. Again she could not remember the exact date. It happened in their house. The accused inserted his penis into her vagina to consummate his lustful desires. The following day, she recounted to her teacher her painful ordeal at the hands of her incorrigible father. Taking pity on the child, Mrs. Verastigue brought her to the Principal's Office where she related to the principal, Mr. Arnulfo Amandy, that Ma. Christine's father had been raping her with impunity. Unfortunately, the principal advised them to keep the matter to themselves. Upon reaching their house that afternoon, her father made her drink a beverage

with a bitter taste. Earlier, her sister Eloisa told her father that Ma. Christine's monthly menstrual period had been delayed. The following day after drinking the bitter beverage, she experienced bleeding and subsequently failed to attend school. At the instance of her teacher, her classmates fetched her from the house. Once already in school, Ma. Christine felt dizzy and fainted that she had to be brought to the Doña Marta Memorial Hospital for treatment. Finally, in September 1996 Ma. Christine went to the police station accompanied by Ms. Lourdes C. Almeyda, a social worker, and filed a complaint against her father.[4]

Elsa Mirando narrated that she and her common-law husband Cirilo were living separately. Ma. Christine was her daughter with the accused. To prove the victim's age, Elsa presented the photostat copy of Ma. Christine's Certificate of Live Birth to which counsel to the defense interposed no objection after comparing it with her original Certificate of Live Birth it being "a faithful reproduction of the duplicate original" according to counsel.[5] When she registered the birth of Ma. Christine, she (Elsa) gave her own family name "Mirando" she not being married to accused Cirilo Macabata. The birth certificate of Ma. Christine shows she was born on 12 August 1984. Elsa acknowledged her signature appearing on the certificate as mother of Ma. Christine.[6]

Dr. Geronimo B. Ayala, Medical Officer of Doña Marta District Hospital, testified that on 17 September 1996 he was a resident physician on duty and that a patient by the name of Ma. Christine M. Macabata was brought to their hospital with vaginal bleeding reportedly due to rape. His examination showed that the hymen was not intact, the examining finger could easily penetrate the vaginal canal, and there was minimal blood oozing from the vaginal canal. There was also a lacerated wound at seven o'clock position. He requested a pregnancy test since the patient had no menstruation for two (2) months. The result however was negative.

Only the accused testified for his defense. He said he was a copra maker and resident of Barangay Malusak, Atimonan, Quezon. On 6 June 1996 he was working at Fabella, Mandaluyong, in the construction of a house. At that time, his children resided at their house in Barangay Malusak, Atimonan, Quezon. A widower, he has three (3) children from a previous marriage. With Elsa, his common-law spouse, he only has two (2) children, Ma. Christine and Eloisa.

The accused denied having raped Ma. Christine on any of the occasions alleged in the three (3) Informations and interposed alibi as his defense. His version: he left his house in Atimonan, Quezon, for Manila on 1 June and returned home on 15 June. He said that he would return home every fifteen (15) days. Prior to 6 June 1996, his relationship with Ma. Christine was good. He claimed that he was the one supporting his five (5) children. His eldest child, Rosalie, took care of the household since Elsa left them to live with a younger man. He said that the reason why his daughter accused him of rape was that she wanted to be with her mother but he would not allow her.[7]

On 1 July 1996 the accused claimed he was in Manila and remained there until the next day. He only returned home to Barangay Malusak, after the second week of July. He proceeded to their house and whenever he was home all his children would be there. The longest day that he stayed in their house was two (2) days after which he would go back to Manila.

On 1 August 1996 the accused averred that he was in their house in Barangay Malusak resting. He stayed there for two (2) days because he attended the town fiesta but went back to Manila after that. Every time he was home Ma. Christine would always be out gallivanting around. Some days she would go home; on other days, she would not. When he asked Ma. Christine why she was not always in their house she would not answer him. The area of his house in Malusak is 120 square feet and there is a partition where his children would sleep while he would stay in the balcony.[8]

On 3 September 2001, Judge Aurora V. Maqueda-Roman rendered the assailed Decision finding the accused

guilty of three (3) counts of rape under Art. 335 of The Revised Penal Code, as amended by RA 7659, and imposing upon him the extreme penalty of death in each case. The accused was also ordered to pay the offended party P50,000.00 for civil indemnity, another P50,000.00 for moral damages and P25,000.00 for exemplary damages in each case.[9]

In seeking his acquittal, appellant contends that the trial court gravely erred in giving weight and credence to the testimony of Ma. Christine, in finding him guilty beyond reasonable doubt as charged, and in imposing the penalty of death.

With regard to the first incident of rape on 6 June 1996, appellant avers that it was impossible for the crime of rape to have taken place. While Ma. Christine was washing dishes, her nine (9)-year old sister was with her, and it was therefore impossible for appellant to have raped her. If she was indeed ravished, why did her younger sister not step forward to bolster her testimony?

As for the July and August 1996 incidents, appellant argues that Ma. Christine could not remember the dates she was allegedly raped. While it is true that time is not an element of the crime, her failure to testify as to the dates when she was abused casts serious doubt on her credibility. Since she could not remember the details of her supposed ordeal her allegations could only be mere fabrications.

After a careful assessment of the evidence, we are inevitably drawn to the conclusion that appellant Cirilo Macabata willfully and feloniously raped his own minor daughter Ma. Christine at knifepoint in the evening of 6 June 1996 and sometime in July and August of the same year. The court a quo was correct in giving due weight and credence to the testimony of Ma. Christine as she was, according to the court, frank, sincere and consistent, and did not waver in her testimony amidst the intense and lengthy interrogation which comprised both her direct and cross examinations.

Under the Law on Rape at the time of the commission of the offenses,[10] the following elements must be present to warrant conviction: (a) The offender had carnal knowledge of a woman; (b) The act was accomplished under any of the following circumstances: (1) By using force or intimidation, or (2) When the woman was deprived of reason or otherwise unconscious, or (3) When the woman was under twelve years of age or was demented.

It is well settled in this jurisdiction that certain guidelines must be observed in deciding rape cases: (a) Accusing a man of rape is easy, but disproving the accusation is difficult even if the accused be innocent; (b) Since rape usually involves only two (2) persons, the testimony of the complainant must be examined with extreme caution; and, (c) The evidence for the prosecution must stand or fall on its own merit and should not draw strength from the weakness of the evidence for the defense.[11]

As stressed by the court a quo, Ma. Christine was a credible witness; her testimony deserved the highest credence. Although we have of late practically jettisoned this long standing rule that when a woman testifies that she has been raped she says in effect all that is necessary to constitute the commission of this crime, we are persuaded to apply this rule with even more vigor in the instant case when the culprit is a close relative,[12] the victim no less than the minor daughter of the accused. More so when even in ordinary rape cases the sole testimony of the victim may seal the fate of her ravisher provided that she and her testimony are worthy of belief.[13]

The examining physician has corroborated the substantial fact that the rape has been committed when he testified that the hymen of Ma. Christine was no longer intact which could be caused by a hard object penetrating the vaginal canal and that two (2) fingers could easily penetrate the same. He further reported that there was a lacerated wound at the seven o'clock position in Ma. Christine's vagina indicating force. His medical conclusion supporting the victim's testimony is more than adequate to establish the requisites that indeed Ma. Christine had

been sexually violated.[14]

As to the first incident of rape on 6 June 1996, it was not impossible for appellant to commit sexual assault under the prevailing circumstances when the younger daughter was with the victim washing dishes. We take judicial notice of the fact, which may be considered of public knowledge, that the situs of the rape is not always or necessarily isolated or secluded.[15] It can be committed even in places where people congregate, in parks along the roadside, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many would appear unlikely and highly risky venues for its commission. There is no rule that rape can be committed only in seclusion.[16]

In rape, the credibility of the witnesses is often brought to the fore. If the lone testimony of the victim is credible, convincing and consistent with human nature and the normal course of things, it is competent to establish the guilt of the accused beyond reasonable doubt. Minor discrepancies in the testimony of the victim are disregarded where the testimony taken as a whole clearly and convincingly points to the accused as the perpetrator of the crime.

As to the second and third incidents of rape which occurred in July and August 1996, the victim's inability to recall the precise dates when the sexual assaults occurred is not an indication of false testimony,[17] for even discrepancies regarding the exact dates of sexual abuses are inconsequential and immaterial and cannot discredit the credibility of the victim as a witness.[18]

In sustaining the view that the exact date of commission of the rape is immaterial, this Court further held in *People v. Purazo*: [19]

We have ruled, time and again that the date is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman. As such, the time or place of commission in rape cases need not be accurately stated. As early as 1908, we already held that where the time or place or any other fact alleged is not an essential element of the crime charged, conviction may be had on proof of the commission of the crime, even if it appears that the crime was not committed at the precise time or place alleged, or if the proof fails to sustain the existence of some immaterial fact set out in the complaint, provided it appears that the specific crime charged was in fact committed prior to the date of the filing of the complaint or Information within the period of the statute of limitations and at a place within the jurisdiction of the court.

This Court has upheld complaints and informations in prosecutions for rape which merely alleged that a rape has been committed "sometime in the month of April 1993," for a rape committed sometime in 1993; [20] "on or about May 1998," for a rape committed sometime in the first week of May 1998; [21] and "sometime in the month of September 1998," for a rape committed on an evening in September 1998. [22] There is no cogent reason to deviate from these precedents. Thus, the allegations in the Informations which stated that two (2) incidents of rape were committed in July and August 1996 are sufficient to sustain the conviction of appellant therefor.

Appellant's bare allegation that he did not abuse his daughter must fail. The defense of denial is weak and must certainly fall when placed astride the victim's positive assertions. Being evidence that is negative and self-serving in nature, disavowals cannot secure more worthiness than the testimonies of prosecution witnesses who testified on clear and positive evidence. [23]

Likewise, appellant's alibi is untenable. In his testimony, he claimed that on 6 June 1996 he was in Fabella, Mandaluyong, working at a house construction site and would return home to Barangay Malusak, Atimonan, Quezon on the 15th of every month. On 30 June 1996, he left for Manila and went back to Malusak after the second week. He could no longer remember the exact date. [24] On the first day of August 1996, he was allegedly in their house in Barangay Malusak, Atimonan, Quezon for he took a rest and stayed there. After two (2) days following the town fiesta, he left for Fabella, Mandaluyong. He returned home on 14 August 1996 to Barangay

Malusak and left again for Manila on 17 August 1996, returning home the following week of the same month.[25]

To establish alibi, it is not only incumbent upon the accused to show that he was present at some other place about the time of the alleged crime, but also that he was at such other place for so long a time that it was impossible for him to have been at the locus criminis when the crime was committed.[26] When asked for proof if he really worked at a house construction site in June, July and August 1996 as he claimed, appellant could not show anything.[27] His alibi quickly collapsed.

We now address the propriety of the death penalty imposed on appellant. Appellant insists this is error. Article 335 of The Revised Penal Code, as amended, provides inter alia that the death penalty shall be imposed if the crime of rape is committed 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. Pursuant thereto, the qualifying circumstances must be alleged in the Information and proved during the trial. As these circumstances raise the penalty to death, extreme care must be taken in their evaluation.[28]

In the case at bar, appellant has admitted that he is the father of the victim Ma. Christine.[29] This admission in open court is sufficient and hence conclusive upon this Court to prove relationship with the victim. The birth certificate of Ma. Christine supports the allegation that she was a minor born on 12 August 1984, and by admission of appellant, his daughter Ma. Christine was only eleven (11) years old on 6 June 1996.[30] This was also confirmed, aside from Ma. Christine, by Elsa Mirando who testified that the victim was born on 12 August 1984,[31] which would make her eleven (11) years, nine (9) months and twenty-five (25) days of age [she turned twelve (12) on 12 August 1996] on 6 June 1996, the date of the first rape.

For appellant to be convicted of qualified rape and sentenced to suffer the capital punishment, it must be established with moral certainty that Ma. Christine was below eighteen (18) years of age or that she was of minority age when she was abused. With the testimonies of the victim and her mother, as well as the admission of appellant in his direct testimony, there is only one factual and logical conclusion that can be drawn: Ma. Christine was below eighteen (18) years of age at the time of the three (3) sexual assaults.

Ironically, the coup de grace was delivered by the appellant himself during his testimony on direct examination conducted by the defense counsel, Atty. Hasim, in a bizarre colloquy that sounded the death knell for his client:

ATTY. HASIM: (DIRECT EXAMINATION)

xxxx

Q:

And what are the names of your children?

A:

Rosalie Macabata, Magtanggol Macabata, Mercedita Macabata, Cirilo Macabata, Jr., Christine Macabata and Eloisa Macabata, sir.

Q:

How many children do you have on June 6, 1996?

A:

They are five (5), sir.

xxxx

ATTY. HASIM:

Q:

Mr. Witness, I am asking you, where is your wife living on June 6, 1996?

A:

Living with another man, sir.

Q:

What is the name of your wife who according to you is living with another man on June 6, 1996?

A:

Elsa Mirando, sir x x x x

Q:

Now, this Ma. Christine is how old on June 6, 1996?

A:

Eleven (11), sir.[32]

By his own answers to the questions propounded by his own counsel, appellant categorically admitted and established the special qualifying circumstances of relationship and minority. Verily, there is moral certainty that he committed incestuous rape against his daughter of minority age on three (3) separate occasions from June to August 1996.

The contention of appellant that the birth certificate of Ma. Christine should not be given due weight and credence cannot be sustained. The purported erroneous entries in the victim's birth certificate are immaterial to the determination of the special qualifying circumstances.[33] The only material entry in the said birth certificate is the date of birth of the victim, which is indicated as August 12, 1984.[34] This entry sufficiently corroborates both the testimonies of Elsa and Ma. Christine as to the age of the latter.

Consequently, we sustain the trial court's imposition of the death penalty. The relationship of appellant to the victim and her minority were sufficiently alleged and proved with moral certainty.

As to appellant's civil liability for qualified rape, civil indemnity ex delicto in the amount of P75,000.00,[35] moral damages in the amount of P75,000.00[36] and exemplary damages in the amount of P25,000.00[37] should be awarded in light of existing jurisprudence for convictions in qualified rape.

Three (3) Justices of this Court maintain their position that RA 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the Majority that the law is constitutional, and that the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the Judgment of the Regional Trial Court, Branch 61, Gumaca, Quezon, convicting appellant Cirilo Macabata of three (3) counts of qualified rape (in Crim. Cases Nos. 5430-G, 5431-G and 5432-G) and sentencing him to suffer the capital penalty of DEATH for each count is AFFIRMED with the MODIFICATION that appellant is ordered to pay the victim Ma. Christine Mirando Macabata the amounts of P75,000.00 for civil indemnity, another P75,000.00 for moral damages and P25,000.00 for exemplary damages for each count of

qualified rape.

Upon the finality of this Decision and pursuant to Art. 83 of the Revised Penal Code, as amended by Sec. 25 of RA 7659, let the records of this case be forthwith forwarded to the President of the Philippines for the possible exercise of the pardoning power.

Costs de oficio.

SO ORDERED.

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

[1] Original Records, vols. I, II and III, p. 2.

[2] TSN, 31 July 1997, pp. 4-10.

[3] Id., pp. 10-12.

[4] Id., pp. 12-21.

[5] TSN, 18 September 1997, p. 3; Exhs. "D," "D-1" and "D-3."

[6] Id., pp. 3-4.

[7] TSN, 19 April 2001, pp. 5-6.

[8] Id., pp. 9-11.

[9] Original Records, vol. 1, pp. 223-242; Rollo, pp. 19-38.

[10] Art. 335, RPC, as amended by RA 7659, constituted the governing law at the time of the commission of the crimes from June to August 1996. This has been repealed by RA 8353, the "Anti-Rape Law of 1997," which took effect 22 October 1997.

[11] *People v. Santos y Cruz*, G.R. No. 145305, 26 June 2003; *People v. Flores*, G.R. No. 141782, 14 December 2001, 372 SCRA 421.

[12] *People v. Matrimonio*, G.R. Nos. 82223-24, 13 November 1992, 215 SCRA 632; *People v. Esperanza*, G.R. Nos. 139217-24, 27 June 2003.

[13] *People v. Gagto*, G.R. No. 113345, 9 February 1996, 253 SCRA 455.

[14] TSN, 4 November 1997, pp. 4-7; see also Exhs. "E," "E-1," "E-2," List of Exhibits, p. 5.

[15] *People v. Lilo*, G.R. Nos. 140736-39, 4 February 2003, citing *People v. Daganio*, G.R. No. 137385, 23 January 2002.

[16] *People v. Castillo*, G.R. No. 130205, 5 July 2000, 335 SCRA 100, 110-111.

[17] See Note 15, citing *People v. Dizon*, G.R. No. 128889, 20 August 1999, 312 SCRA 712, 720.

[18] *People v. Matugas*, G.R. Nos. 139698-726, 20 February 2002.

[19] G.R. No. 133189, 5 May 2003.

- [20] *People v. Aspuria*, G.R. Nos. 139240-43, 12 November 2002.
- [21] *People v. Morfi*, G.R. Nos. 145449-50, 1 August 2002.
- [22] *People v. Abellano*, G.R. No. 146468, 13 November 2002.
- [23] *People v. Nicolas*, G.R. Nos. 125125-27, 4 February 2000, 324 SCRA 754.
- [24] TSN, 19 April 2001, pp. 4-7.
- [25] *Id.*, pp. 9-10.
- [26] *People v. Magdato*, G.R. Nos. G.R. Nos.134122-27, 7 February 2000, 324 SCRA 798.
- [27] TSN, 19 April 2001, p. 13.
- [28] *People v. Padilla*, G.R. No. 137648, 30 March 2001, 355 SCRA 741.
- [29] TSN, 19 April 2001, p. 4.
- [30] *Ibid.*
- [31] TSN, 31 July 1997, p. 4; TSN, 18 September 1997, p. 4.
- [32] See Note 29.
- [33] The erroneous entries referred to place of birth of Ma. Christine and the "hilot" who actually assisted during her birth.
- [34] Original Records, List of Exhibits, p. 4.
- [35] *People v. Escano*, G.R. Nos. 140218-23, 13 February 2002.
- [36] *People v. Sambrano*, G.R. No. 143708, 24 February 2003; *People v. Soriano*, G.R. Nos. 142779-95, 29 August 2002.
- [37] *People v. Biong*, G.R. Nos. 144445-47, 30 April 2003, *People v. Montemayor*, G.R. Nos. 124474 and 139972-78, 28 January 2003.

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