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[G.R. Nos. 133796-97. August 12, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BERNANDINO ALAJAY** *y* **MANGHINAYON**, *appellant.*

SYNOPSIS

On automatic review is the joint decision of the RTC finding appellant guilty of the separate crimes of murder of one Dorotheo Gabilan and rape of Jennylyn Israel and imposing upon him the penalty of death for each crime. For the rape of Jennylyn, the trial court imposed the death penalty on the ground that a homicide was committed by reason and on the occasion of the rape of Jennylyn.

The Supreme Court affirmed appellant's conviction for the separate crimes of murder and simple rape, with modifications. For the crime of murder, the trial court should have imposed the lesser penalty of *reclusion perpetua* as prescribed by Article 63 (2)of the Revised Penal Code and not death because there was no other modifying circumstance in the commission of murder other than treachery. For the crime of simple rape, although the trial court referred to the crime committed as only simple rape, the trial court convicted and penalized appellant for the special complex crime of rape with homicide under Art. 335 of the RPC . Having been charged only of simple rape, he can only be properly convicted of the said crime or of any crime necessarily included in the information filed against him. The penalty for simple rape is *reclusion perpetua,* and not death.

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS THEREOF.— There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without

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risk to himself arising from the defense which the offended party might make. Two elements must therefore concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) that said means of execution were deliberately or consciously adopted by the assailant.

2. **ID.; ID.; ID.; ID.;ID.; PRESENT IN CASE AT BAR.** — Evidence does not show that Dorotheo was forewarned of appellant's attack. It can be gathered from the testimony of Jennylyn that the piece of wood that was used by appellant in hitting Dorotheo was not seen by them the two times they noticed appellant. Jennylyn merely saw appellant approach them with his hands behind his back. There was no apparent reason for Jennylyn and Dorotheo to think that they would be viciously attacked. Appellant suddenly hit Dorotheo twice at the back of his head with a piece of wood after the latter refused to give Jennylyn to appellant and when the latter was facing Jennylyn with his back towards the appellant. At this point, Dorotheo was absolutely caught by surprise. He was not in a position to defend himself; more so, when appellant hit him again while he was already lying on the ground after being rendered helpless and had no means to defend himself or to retaliate. In addition, the fact that appellant had concealed the weapon he was clutching is evidence to show that he consciously adopted his means of attacking Dorotheo to prevent the latter to protect himself from the attack. Hence, the elements of treachery are present in the killing of Dorotheo.

3. **ID.; ID.; ID.; EVIDENT PREMEDITATION; REQUISITES THEREOF; NOT PRESENT IN CASE AT BAR.** — To constitute evident premeditation, the following requisites must be proven: (1) the time when the accused decided to commit the crime; (2) the overt act manifestly indicating that he clung to his determination; (3) a sufficient lapse of time between the decision and the execution, allowing the accused to reflect upon the consequences of his act. . . In the present case, there is no evidence to show when appellant decided to kill Dorotheo. Neither is there proof that sufficient time had elapsed before the plan was executed so as to enable appellant to reflect upon the consequences of his act. We find that the prosecution failed to establish the presence of the qualifying circumstance of evident premeditation.

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4. ID.; ID.; MURDER; PROPER PENALTY THEREFOR WHERE NO OTHER MODIFYING CIRCUMSTANCE ATTENDED THE COMMISSION OF THE CRIME OTHER THAN TREACHERY; CASE AT BAR. – Article 248 of the Revised Penal Code, as amended, provides that murder is punishable by *reclusion perpetua* to death. In the absence of modifying circumstances in the commission of the crime other than the qualifying circumstance of treachery, appellant should have been sentenced to the lesser penalty, or *reclusion perpetua*, as prescribed by Article 63(2) of the same Code.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; ACCUSED CHARGED WITH SIMPLE RAPE CANNOT BE CONVICTED OF RAPE WITH HOMICIDE; CASE AT BAR. – The complaint against appellant clearly shows that he was charged only of the crime of simple rape. Nowhere in the complaint is it alleged that the killing of Dorotheo Gabilan was committed by reason or on the occasion of the rape of Jennylyn. Instead, appellant was charged with murder in a separate information for the killing of Dorotheo. However, the trial court imposed the penalty of death on appellant on the ground that a homicide was committed by reason and on the occasion of the rape of Jennylyn . . . From the foregoing, it is clear that although the trial court referred to the crime committed as only a simple rape, appellant was convicted of and penalized for the special complex crime of rape with homicide as defined and punished under Article 335 of the Revised Penal Code. . . Having been charged only of the crime of simple rape, he can only be properly convicted of the said crime or of any crime necessarily included in the information filed against him. In the present case, appellant is only guilty of simple rape and the penalty therefor, at the time of the commission of the crime, is *reclusion perpetua.*

APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

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DECISION

AUSTRIA-MARTINEZ, *J.*:

Before us on automatic review is the joint decision[1] dated February 27, 1998 of the Regional Trial Court of Cagayan De Oro City (Branch 37)[2] finding Bernandino Alajay *y* Manghinayon guilty beyond reasonable doubt of the separate crimes of murder and rape and imposing upon him the penalty of death for each crime.

The facts of the case as established by the prosecution are as follows:

Around 8:30 in the evening of January 29, 1994, lovers Jennylyn Israel and Dorotheo Gabilan were promenading in the premises of the Nestle Philippines factory at Purok 7, Tablon Cagayan de Oro City. While they were sitting in a place within the vicinity of the factory compound, Jennylyn saw a male individual wearing maong pants without any shirt on looking at them with his hands at his back. Jennylyn saw the face of the individual when the latter was walking towards them because of the lighted electric post that illuminated the place. After five minutes, Jennylyn and Dorotheo walked farther away as they noticed said man looking at them. Having settled in the place where they transferred, Dorotheo and Jennylyn started to engage in romantic interlude by kissing each other. While kissing, they again noticed the same male individual approach them. They stood up. The man went near them and then demanded that Dorotheo hand Jennylyn over to him but Dorotheo refused. When Dorotheo faced Jennylyn, the man suddenly struck him twice with a piece of wood hitting him on the back of his head. Dorotheo embraced Jennylyn and they both fell to the ground. Dorotheo was rendered unconscious by the impact of the blows on his head. While Dorotheo and Jennylyn were lying on the ground, the man again hit Dorotheo on the back of his head. Thereafter, he grabbed Jennylyn and pulled her up. Jennylyn fought back. She shouted and tried to box the man but the latter choked her causing her to lose consciousness. When she regained consciousness, the man was already on top of her. He

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[1] In Crim. Cases Nos. 94-311 and 94-312.

[2] Penned by Judge Jose L. Escobido.

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was kissing her on the lips and was holding her breast. He forced open her thighs. Jennylyn tried to kick him but found it difficult to struggle because of the weight of the man pinning her down. The man then pulled her left leg up and placed it on his shoulder; after which, he inserted his penis in her vagina. After having carnal knowledge with Jennylyn, the man stood up and warned her not to scream because he will be leaving. After the man left, Jennylyn ran and asked for help. Dorotheo was brought to the hospital where he died four days later, or on February 2, 1994. On the same date, Jennylyn went to the police authorities to seek help. A subsequent surveillance conducted by the police with the help of Jennylyn led to the arrest of appellant.[3]

On February 17, 1994, appellant was formally charged for the murder of Dorotheo Gabilan under an Information which reads:

"The undersigned Asst. City Prosecutor II accuses BERNANDINO ALAJAY *y* MANGHINAYON (Detained) of the crime of MURDER, committed as follows:

> That on or about January 30, 1994 at more or less 1:30 o'clock early dawn at Riverside Purok 7, Tablon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with treachery and evident premeditation, and with intent to kill with the use of a 2X2 cocolumber, 95 centimeters long, which he was then conveniently provided with, did then and there willfully, unlawfully and feloniously attack, assault and struck the head of the victim Dorotheo Gabilan twice with the said cocolumber thereby inflicting serious and mortal wound or injuries upon the latter which is the direct and immediate cause of his death, to the great damage and prejudice of his heirs.
>
> Contrary to and in Violation of Article 248 of the Revised Penal Code.
>
> City of Cagayan de Oro, February 16, 1994.
>
> MANUEL A. NOLASCO
>
> Prosecutor II[4]

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[3] TSN, March 20, 1995, pp. 3–21, 29.

[4] Records of Crim. Case No. 94-311, p. 3.

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and for the rape of Jennylyn Israel on the basis of a Complaint, to wit:

The undersigned Complainant, after having been duly sworn to an oath, hereby accuses BERNANDINO ALAJAY *y* MANGHINAYON (Detained) of the crime of RAPE, committed as follows:

That on or about January 30, 1994, at more or less 1:30 o'clock early dawn at Riverside Purok 7, Tablon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with the use of force and violence did then and there willfully, unlawfully and feloniously have carnal knowledge or sexual intercourse with complainant-victim, Jennylyn L. Israel, a 16 year old minor, against her will.

Contrary to and in Violation of Article 335 of the Revised Penal Code.

City of Cagayan de Oro, February 16, 1994.

Jennylyn L. Israel

Complainant

ASSISTED BY:

BIENVENIDA ISRAEL

Mother[5]

Appellant was arraigned on September 5, 1994 and pleaded not guilty to both charges.[6]

After a joint trial, the court *a quo* rendered a decision dated February 27, 1998, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, this Court finds the accused Bernandino Alajay guilty beyond reasonable doubt of the two crimes of murder and rape defined and penalized under Arts. 248 and 335 of the Revised Penal Code, as amended, and said accused is hereby sentenced to suffer the penalty of death in Criminal Case No. 94-311

[5] Records of Crim. Case No. 94-312, p. 3.

[6] Records of Crim. Case No. 94-311, p. 32; Records of Crim. Case No 94-312, p. 30.

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for the murder of Dorotheo Gabilan and said accused is also hereby sentenced to suffer the penalty of death in Criminal Case No. 94-312 for the rape of Jennylyn Israel.

In addition, in Criminal Case No. 94-311 for murder, the accused is hereby sentenced to pay the heirs of the victim Dorotheo Gabilan (a) the sum of Fifty Thousand Pesos (₱50,000.00) by way of Civil indemnity; (b) the sum of Sixty Thousand Pesos (₱60,000.00) as actual or compensatory damages; and (c) the sum of One Hundred Thousand Pesos (₱100,000.00) as moral damages.

In Criminal Case No. 94-312 for rape, the accused is further sentenced to pay the parents of the victim Jennylyn Israel the sum of Fifty Thousand Pesos (₱50,000.00) as moral damages and to pay to the said victim the sum of One Hundred Thousand Pesos (₱100,000.00) also as moral damages.

In accordance with the law, let the records of the two cases, including the exhibits and the transcripts of the stenographic notes of the witnesses be transmitted and elevated to the Supreme Court for the automatic review of this Decision.

SO ORDERED.[7]

In his Brief, appellant does not assail his conviction but merely questions the penalties imposed on him by the trial court, thus:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT TREACHERY AND EVIDENT PREMEDITATION ATTENDED THE COMMISSION OF THE OFFENSE (CRIMINAL CASE NO. 94-311) THUS QUALIFYING THE CRIME CHARGED TO MURDER.

II

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE EXTREME PENALTY OF DEATH ON THE APPELLANT WHEN THE INFORMATION UNDER CONSIDERATION (CRIMINAL CASE NO. 94-312) CHARGES ONLY A CRIME OF SIMPLE RAPE PUNISHABLE BY *RECLUSION PERPETUA*.[8]

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[7] Records of Crim. Case No. 94-311, pp. 512–513.

[8] Brief for the Accused-Appellant, *Rollo*, p. 180.

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which boil down to the following issues: (1) whether or not in Criminal Case No. 94-311, the qualifying circumstance of treachery and evident premeditation attended the killing of Dorotheo Gabilan; and (2) whether or not in Criminal Case No. 94-312, the crime committed is simple rape.

Before proceeding to resolve the issues raised by appellant, it behooves us to determine, at the outset, whether or not the trial court erred in finding appellant guilty beyond reasonable doubt of the separate crimes of murder and rape and in disregarding appellant's defense of alibi. This is consistent with the principle that an automatic appeal of a death sentence opens the entire record open for review.[9]

We have examined the records of the case and we find no cogent reason to disturb the finding of the trial court that appellant is guilty beyond reasonable doubt of the separate crimes of murder and rape. Victim Jennylyn positively and categorically identified appellant as the person who dealt the fatal blows on the head of Dorotheo and as the one who raped her. Absent any evidence of ill motive on the part of Jennylyn, the trial court did not err in giving her testimony the full faith and credit it rightfully deserves.

The prosecution had established that appellant committed the crimes around 1:30 in the early morning of January 30, 1994 within the premises of the Nestle factory located at Purok 7, Tablon, Cagayan de Oro City.

In raising the defense of alibi, appellant testified that he arrived at his house around 11:30 in the evening of January 29, 1994 and that he immediately went to bed and slept until 7:00 the following morning.[10] He admitted that his house is located in the same Purok 7.[11]

For the defense of alibi to prosper, the following must be established: the presence of the appellant in another place at

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[9] *People vs. Boco*, 309 SCRA 42, 67 (1999).

[10] TSN, June 28, 1996, p. 8.

[11] TSN, June 28, 1996, pp. 8 and 18.

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the time of the commission of the crime and the physical impossibility for him to be at the scene of the crime at the time of its commission.[12] As his residence is located in the same Purok 7, appellant's alibi fails. Weak as it is, alibi becomes all the more ineffectual when the accused fails to demonstrate that it was physically impossible for him to be at the scene of the crime at the time it was committed.[13]

Moreover, it is a well-settled rule that positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law.[14]

Thus, in the face of the positive identification of appellant by Jennylyn which was categorical and consistent, and absent any showing of ill motive on her part in testifying on the matter, her testimony prevails over the alibi of appellant which was not substantiated by clear and convincing evidence. Appellant failed to present clear and convincing evidence to prove his claim that he never left his house between the hours of 11:30 in the evening of July 29, 1994 and 7:00 in the morning of July 30, 1994.

And even if corroborated, it is axiomatic that an alibi cannot stand in the face of the positive identification of an eyewitness, who is not shown to have any ill motive for testifying falsely against the accused.[15]

Thus, the trial court is correct in brushing aside appellant's defense of alibi.

We now come to the issues raised by appellant.

Is there treachery in Criminal Case No. 94-311?

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[12] *People vs. Moralde*, G.R. No. 131860, January 16, 2003.

[13] *People vs. Muyco*, 331 SCRA 192, 199 (2000).

[14] *Id.*, pp. 8 and 18.

[15] *People vs. Dulot*, 300 SCRA 591 (2001).

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There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make.[16] Two elements must therefore concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) that said means of execution were deliberately or consciously adopted by the assailant.[17]

After a careful examination of the evidence presented, we find that the trial court did not err in appreciating the qualifying circumstance of treachery. The elements of treachery are present in the instant case.

Jennylyn recounted that when appellant approached them for the second time, he went near them and demanded that Dorotheo hand Jennylyn over to him.[18] At this point, Jennylyn sensed fear and held on to her boyfriend, Dorotheo.[19] However, evidence does not show that Dorotheo was forewarned of appellant's attack. It can be gathered from the testimony of Jennylyn that the piece of wood that was used by appellant in hitting Dorotheo was not seen by them the two times they noticed appellant. Jennylyn merely saw appellant approach them with his hands behind his back. There was no apparent reason for Jennylyn and Dorotheo to think that they would be viciously attacked. Appellant suddenly hit Dorotheo twice at the back of his head with a piece of wood after the latter refused to give Jennylyn to appellant and when the latter was facing Jennylyn with his back towards the appellant. At this point, Dorotheo was absolutely caught by surprise. He was not in a position to defend himself; more so, when appellant hit him again while he was already lying on the ground after being rendered helpless

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[16] Article 14 (16), Revised Penal Code; *People vs. Caraig*, G.R. Nos. 116224-27, March 28, 2003.

[17] *People vs. Samolde*, 336 SCRA 632, 652–653 (2000).

[18] TSN, Testimony of Jennylyn Israel, March 20, 1995, pp. 13–14; August 30, 1995, p. 22.

[19] TSN, Testimony of Jennylyn Israel, August 30, 1995, p. 23.

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and had no means to defend himself or to retaliate.[20] In addition, the fact that appellant had concealed the weapon he was clutching is evidence to show that he consciously adopted his means of attacking Dorotheo to prevent the latter to protect himself from the attack. Hence, the elements of treachery are present in the killing of Dorotheo.

Is there evident premeditation in Criminal Case No. 94-311?

To constitute evident premeditation, the following requisites must be proven: (1) the time when the accused decided to commit the crime; (2) the overt act manifestly indicating that he clung to his determination; (3) a sufficient lapse of time between the decision and the execution, allowing the accused to reflect upon the consequences of his act.[21]

In *People vs. Biso,* we held that:

"The prosecution is burdened to prove that the malefactors had decided to commit a crime and performed an 'act manifestly indicating that the offender had clung' to a previous determination to kill. It must be shown that there was a period sufficient to afford full opportunity for meditation and reflection, a time adequate to allow the conscience to overcome the resolution of the will, as well as outward acts showing the intent to kill. The premeditation to kill must be plain and notorious. In the absence of clear and positive evidence proving this aggravating circumstance, mere presumptions and inferences thereon, no matter how logical or probable, would not be enough."[22]

Hence, for the aggravating circumstance of evident premeditation to be appreciated, there must be evidence to prove that the crime committed was a result of meditation, calculation, reflection or persistent attempt.

In the present case, there is no evidence to show when appellant decided to kill Dorotheo. Neither is there proof that sufficient time had elapsed before the plan was executed so as to enable

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[20] *People vs. Riglos*, 339 SCRA 562, 577 (2000).

[21] *People vs. Go*, G.R. No. 140897, February 19, 2003.

[22] G.R. Nos. 111098-99, April 3, 2003.

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appellant to reflect upon the consequences of his act. We find that the prosecution failed to establish the presence of the qualifying circumstance of evident premeditation.

Thus, the trial court erred in imposing the death penalty. Article 248 of the Revised Penal Code, as amended, provides that murder is punishable by *reclusion perpetua* to death. In the absence of modifying circumstances in the commission of the crime other than the qualifying circumstance of treachery, appellant should have been sentenced to the lesser penalty, or *reclusion perpetua*, as prescribed by Article 63(2) of the same Code, to wit:

> ART. 63. *Rules for the application of indivisible penalties.* —. . .
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> 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:
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> . . . . . .
>
> 2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
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> . . . . . .

As to the second assigned error, we agree with the contention of the appellant and the Office of the Solicitor General that the trial court erred in imposing the penalty of death on appellant for the rape of Jennylyn Israel. The complaint against appellant clearly shows that he was charged only of the crime of simple rape. Nowhere in the complaint is it alleged that the killing of Dorotheo Gabilan was committed by reason or on the occasion of the rape of Jennylyn. Instead, appellant was charged with murder in a separate information for the killing of Dorotheo. However, the trial court imposed the penalty of death on appellant on the ground that a homicide was committed by reason and on the occasion of the rape of Jennylyn, ratiocinating thus:

> Article 335 of the Revised Penal Code, as amended, provides that the penalty for rape is *reclusion perpetua*. However, when by reason or on the occasion of rape a homicide is committed, the penalty shall

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be death. In the case at bar, a homicide was committed *by reason* of rape because the accused had to kill Gabilan in order for him to rape Jennylyn because Gabilan was an obstacle to the raping of Jennylyn. The rape could not be committed with Gabilan around so the accused had to terminate Gabilan with extreme prejudice. A homicide was therefore committed *by reason* of rape. Moreover, a homicide was committed *on the occasion* of rape because when the accused raped Jennylyn, *on that occasion* the accused killed Gabilan. A homicide was therefore committed on the occasion of the rape of Jennylyn by the accused. . . .

From the foregoing, it is clear that although the trial court referred to the crime committed as only a simple rape, appellant was convicted of and penalized for the special complex crime of rape with homicide as defined and punished under Article 335 of the Revised Penal Code. In *People vs. Manalili*, we held that:

"The hornbook doctrine in our jurisdiction is that an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be violative of this constitutional right. Indeed, the accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the information filed against him."[23]

Appellant was never charged of the special complex crime of rape with homicide. He should not have been convicted thereof and meted out the penalty of death. Having been charged only of the crime of simple rape, he can only be properly convicted of the said crime or of any crime necessarily included in the information filed against him. In the present case, appellant is only guilty of simple rape and the penalty therefor, at the time of the commission of the crime, is *reclusion perpetua*.

We now come to the civil liabilities of appellant.

In Criminal Case No. 94-311, for the death of Dorotheo Gabilan, the trial court correctly ordered appellant to pay the

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[23] *People vs. Manalili*, 294 SCRA 220, 252 (1998).

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heirs of the deceased, the sum of ₱50,000.00 as civil indemnity; and, ₱60,000.00 for actual damages stipulated upon by the parties.[24] The heirs are also entitled to ₱25,000.00 as exemplary damages considering the qualifying circumstance of treachery.[25] However, the amount of ₱100,000.00 awarded by way of moral damages should be reduced to ₱50,000.00 in accordance with recent case law.[26]

In Criminal Case No. 94-312, the trial court awarded moral damages in favor of the parents of Jennylyn in view of the testimony of her mother, Bienvenida Israel, that she spent "sleepless nights, shame and worries" by reason of the rape of her daughter.[27] However, the prevailing jurisprudence is that the award of moral damages should be granted jointly to both the victim *and* her parents.[28] Stated differently, the parents are not entitled to a separate award of moral damages. Accordingly, the award of moral damages awarded by the trial court in favor of the parents of Jennylyn should be deleted. The amount of ₱100,000.00 awarded to Jennylyn should be reduced to ₱50,000.00 in line with prevailing jurisprudence.[29] However, Jennylyn is also entitled to civil indemnity in the amount of ₱50,000.00.[30]

As to exemplary damages, it is settled that this kind of damages may be awarded in criminal cases as part of civil liability if the crime was committed with one or more aggravating circumstances. We find no basis to award exemplary damages in favor of the heirs of the deceased Dorotheo and Jennylyn as the prosecution failed to prove the presence of any aggravating circumstance.

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[24] TSN, Testimony of Errico Gabilan, September 5, 1995, pp. 10–13.

[25] *People vs. Astudillo*, G.R. No. 141518, April 9, 2003.

[26] *People vs. Caloza, Jr.*, G.R. Nos. 138404-06, January 28, 2003; *People vs. Delim*, G.R. No. 142773, January 28, 2003.

[27] TSN, September 6, 1995, p. 11.

[28] *People vs. Funesto*, G.R. No. 143432, April 9, 2003 citing *People vs. Tagun*, G.R. No. 137745, February 15, 2002 and *People vs. Oarga*, 259 SCRA 90 (1996); *People vs. Fontanilla*, 23 SCRA 1227, 1248 (1968).

[29] *People vs. Cañete*, G.R. No. 142930, March 28, 2003.

[30] *People vs. Metin*, G.R. No. 140781, May 8, 2003; *People vs. Corral*, G.R. Nos. 145172-74, February 28, 2003.

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While the minority of Jennylyn was alleged in the Information, such minority was not established by competent evidence. The prosecution failed to present her birth certificate, baptismal certificate, school records or any other document to prove her date of birth. Neither do we find any clear and categorical statement of Jennylyn's age in her own testimony or that of her mother. Putting it further, even granting that Jennylyn's minority was duly proved, the same may not be considered as a generic aggravating circumstance under Article 14(3) of the Revised Penal Code because there is no showing that appellant deliberately intended to offend or insult Jennylyn or disregard the respect due her on account of her age.

WHEREFORE, the Decision of the Regional Trial Court of Cagayan de Oro City (Branch 37) in Criminal Cases Nos. 94-311 and 94-312 finding appellant Bernandino Alajay *y* Manghinayon *GUILTY* beyond reasonable doubt of the separate crimes of murder and simple rape are *AFFIRMED* with modifications.

In Criminal Case No. 94-311, appellant is sentenced to suffer the penalty of *reclusion perpetua.* He is ordered to indemnify the heirs of Dorotheo Gabilan the amounts of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Sixty Thousand Pesos (₱60,000.00) as actual damages, Fifty Thousand Pesos (₱50,000.00) by way of moral damages, and Twenty Five Thousand Pesos (₱25,000.00) as exemplary damages.

In Criminal Case No. 94-312, appellant is meted the penalty of *reclusion perpetua.* Appellant is ordered to pay private complainant Jennylyn Israel the amounts of Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) by way of moral damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C. J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Azcuna, and *Tinga, JJ.*, concur.

Callejo, Sr., J., on leave.