Supreme Court E-Library

The said petition was remanded by this Court to the CA, and docketed therein as CA-G.R. SP No. 36500.

It bears stressing that the assailed Order dated May 6, 1999, did not amend or modify the Resolution of February 22, 1994, which had become final and executory. The assailed order merely clarified the interest rate prescribed in the earlier Resolution, which disposed of the case on the merits, to rectify a falsification of the copy of the said resolution appended to the original records. In the exercise of its supervisory powers over the execution of a final and executory judgment, special circumstances attending its execution impelled the trial court to issue the assailed order[14] clarifying the interest rate prescribed in the February 22, 1994 Resolution.

WHEREFORE, the petition is *DISMISSED* for lack of merit. With costs against the petitioner.

SO ORDERED.

Bellosillo (*Chairman*) and *Quisumbing, JJ.*, concur.

Austria-Martinez, J., on official leave.

EN BANC

[G.R. Nos. 139217-24. June 27, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NELSON ESPERANZA,** *appellant.*

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[14] *Santos vs. Land Bank of the Philippines*, 340 SCRA 59 (2000).

Supreme Court E-Library

SYNOPSIS

Appellant was convicted of eight counts of rape committed against his twelve-year old niece, Irma, and was sentenced to suffer the penalty of death. The informations in the cases merely allege that Irma is the "niece" of appellant. On appeal, he argued, among others, that Irma's testimony was obviously rehearsed, as shown by her identical answers as to the time, place and manner the rapes were committed. On one occasion, she merely stated that appellant mashed her breasts and vagina but failed to state that he had sexual intercourse with her.

The Supreme Court upheld his conviction on appeal, but only for seven (7) counts of simple rape, ruling: that the fact that the series of rape had been committed in almost the same manner and the same time, does not render Irma's testimony incredible; in rape cases, the lone testimony of the offended party, if free from serious contractions, is sufficient to convict; a minor's testimony deserves full credence, especially when the accusing words are directed against a close relative; the alleged incident on 17 June 1997 does not establish the commission of rape but merely constitutes acts of lasciviousness. The Court also held that the death penalty cannot be imposed because the special qualifying circumstance of relationship was not specifically alleged in the information, *i.e.*, that he is a "relative by consanguinity or affinity (as the case may be) within the third civil degree."

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURT ESPECIALLY ON THE CREDIBILITY OF THE WITNESSES ARE ACCORDED GREAT WEIGHT AND RESPECT AND WILL NOT BE DISTURBED ON APPEAL.**— Time and again we have held that the factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal. This rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued by the court, or where the trial court has acted arbitrarily in its appreciation of the facts.

Supreme Court E-Library

2. ID.; ID.; THE LONE TESTIMONY OF THE OFFENDED PARTY, IF FREE FROM SERIOUS AND MATERIAL CONTRADICTIONS, IS SUFFICIENT TO SUSTAIN A CONVICTION.— In rape cases, the lone testimony of the offended party, if free from serious and material contradictions, is sufficient to sustain a verdict of conviction. In the cases at bar, considering the age of the victim, it is unlikely that her narration is merely the product of a scheming and malicious mind. No woman would openly admit that she was raped and consequently subject herself to an examination of her private parts, undergo the trauma and humiliation of a public trial, and embarrass herself with the need to narrate in detail how she was raped, if she was not raped at all. This ruling especially holds true where the complainant is a minor, whose testimony deserves full credence. And such credibility is definitely enhanced when the accusing words, as in the instant cases, are directed against a close relative, like an uncle. It is thus unthinkable, if not completely preposterous, for Irma to falsely accuse her own uncle in wanton disregard of the unspeakable trauma and social stigma it may generate on her and the entire family.

3. CRIMINAL LAW; ACTS OF LASCIVIOUSNESS; PRESENT IN CASE AT BAR.— Every charge of rape is a distinct and separate crime and each must be proved beyond reasonable doubt. Irma's explanation that because of her nervousness during the direct examination she forgot to state that Nelson had sexual intercourse with her on 17 June 1997 deserves scant consideration. The absence of any detail on how the crime of rape was committed bars conviction for such crime. Thus, in the absence of any evidence showing that Nelson had carnal knowledge of Irma, aside from his mashing of Irma's breasts and vagina, the crime committed is merely acts of lasciviousness under Article 336 of the Revised Penal Code.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES; INCONSISTENCIES IN THE VICTIM'S TESTIMONY WHICH ARE INCONSEQUENTIAL DO NOT PUT TO NAUGHT HER RELIABILITY AND SINCERITY; CASE AT BAR.— The inconsistencies in the testimony of Irma pointed out by Nelson are inconsequential. Minor lapses in the memory of a rape victim can be expected. It is an understandable human frailty not to be able to recount

Supreme Court E-Library

with facility all the details of a dreadful and harrowing experience. Thus, the failure of Irma to respond properly to some questions propounded to her does not put to naught her reliability and sincerity.

5. ID.; ID.; ID.; MOTIVE; NO MEMBER OF A RAPE VICTIM'S FAMILY WOULD DARE ENCOURAGE THE VICTIM TO PUBLICLY EXPOSE THE DISHONOR OF THE FAMILY UNLESS THE CRIME WAS IN FACT COMMITTED.— The imputation by Nelson of ill-motive on Ester hardly merits consideration. It is difficult to accept his claim that Ester manipulated Irma into filing the present case because of the on-going rift between her and Gina. No member of a rape victim's family would dare encourage the victim to publicly expose the dishonor of the family, more specifically if such accusation is against a member of the family, unless the crime was in fact committed.

6. ID.; ID.; ID.; POSITIVE TESTIMONY PREVAILS OVER BARE DENIAL AND ALIBI; CASE AT BAR.— In light of the positive testimony of Irma showing beyond doubt Nelson's accountability, the latter's bare denial and alibi must fail. As between a categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail. A mere denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.

7. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; MINORITY OF RAPE VICTIM AND HER RELATIONSHIP TO THE ACCUSED MUST BE ALLEGED WITH CERTAINTY IN THE INFORMATION AND DULY PROVED DURING TRIAL; CASE AT BAR. — Each of the informations charges Nelson with the crime of simple rape only because while it alleges that the victim was only 13 years of age at the time of the incident, there is no allegation that Nelson is her relative by consanguinity within the third civil degree. The twin circumstances of minority and relationship under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, are in the nature of qualifying circumstances because they alter the nature of the crime of rape and increase the penalty. As special qualifying circumstances they must be specifically

Supreme Court E-Library

pleaded or alleged with certainty in the information; otherwise, the death penalty cannot be imposed. In these cases, the allegation that Irma is Nelson's niece is not specific enough to satisfy the special qualifying circumstance of relationship. If the offender is merely a relation — not a parent, ascendant, step-parent, guardian, or common law spouse of the mother of the victim — the specific relationship must be alleged in the information, *i.e.*, that he is "a relative by consanguinity or affinity [as the case may be] within the third civil degree." The informations in these cases merely allege that Irma is the "niece" of Nelson. She could be a niece beyond the third civil degree either of consanguinity or affinity. Hence, the informations are fatally defective in this respect. And even granting that the relationship within the third civil degree either of consanguinity or affinity was duly proved during the trial, still such proof cannot be appreciated against Nelson to justify the imposition of the death penalty because he would thereby be denied of his constitutional and statutory right to be informed of the nature and cause of the accusation against him. Nelson cannot be charged with committing the crime of rape in its simple form and then be tried and convicted of rape in its qualified form.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; ACCUSED CHARGED WITH RAPE UNDER PAR. 1, ART. 335, REVISED PENAL CODE, CANNOT BE CONVICTED OF RAPE UNDER PARS. 2 OR 3 THEREOF; REASON.— We also take note of the fact that while the informations allege that Irma was 13 years old at the time she was raped, her birth certificate reveals that she was only 11 years old at the time, having been born on 29 November 1985. Thus, these cases could have been cases of statutory rape. But, Nelson cannot be convicted of statutory rapes. In *People vs. Moreno*, reiterated in *People v. Capinpin*, we ruled that an accused cannot be convicted under paragraphs 2 or 3 of Article 335 of the Revised Penal Code in an information charging him with rape under paragraph 1 (by using force or intimidation) because none of these modes of committing rape (*i.e.*, when the woman is deprived of reason or otherwise unconscious; or when the woman is under twelve years of age) were alleged in the information. The rationale for this rule is that "[t]o convict him under either of these statutory provisions is to deprive him of the constitutional right

Supreme Court E-Library

to be informed of the accusation against him." Section 14 (2), Article III of the 1987 Constitution provides that "[i]n all criminal prosecutions, the accused...shall enjoy the right ... to be informed of the nature and cause of the accusation against him."

9. CRIMINAL LAW; RAPE; MINORITY OF VICTIM, WHICH WAS PLEADED AND PROVED BY HER BIRTH CERTIFICATE, CONSIDERED AS AN AGGRAVATING CIRCUMSTANCE; PROPER PENALTY IN CASE AT BAR. —However, conformably with *People v. Bayya* and *People v. Escaño*, we may appreciate as an aggravating circumstance the victim's minority, which was pleaded in the informations and proved by her birth certificate. In those cases, we held that when either one of the twin special qualifying circumstances of relationship and minority is omitted or lacking, that which is pleaded in the information and proved by the evidence, like the complainant's minority in these cases, may be considered as an aggravating circumstance. Nonetheless, the presence of an aggravating circumstance cannot serve to raise the penalty to be imposed on Nelson. Since simple rape is punishable by the single indivisible penalty of *reclusion perpetua*, that penalty shall, pursuant to the first paragraph of Article 63 of the Revised Penal Code, be imposed regardless of any modifying circumstance that might have attended the commission of the crime.

10. ID.; ID.; ACTS OF LASCIVIOUSNESS; PENALTY.— For the crime of acts of lasciviousness under Article 336 of the Revised Penal Code, Nelson may be sentenced to suffer *prision correccional* in its medium period, there being no modifying circumstance that attended the commission thereof. Applying the Indeterminate Sentence Law, he may be meted an indeterminate penalty of three months of *arresto mayor* as minimum to three years of *prision correccional* as maximum.

11. ID.; ID.; CIVIL LIABILITIES; CIVIL INDEMNITY; MORAL AND EXEMPLARY DAMAGES; CASE AT BAR.— On the civil liability of Nelson, we note that the trial court merely ordered the payment of civil indemnity in the sum of ₱50,000 in each case. It failed to award moral damages, which is mandatory upon a finding of rape. Thus, consistent with the current case law, moral damages in the amount of ₱50,000 is awarded in Criminal Cases Nos. 3680 and 3682-3687. Likewise, moral damages in the

Supreme Court E-Library

amount of ₱30,000 is proper in Criminal Case No. 3681 pursuant to Article 2219 of the Civil Code. In view of the presence of one aggravating circumstance, we award exemplary damages in the amount of ₱25,000 for each count of rape in accordance with Article 2230 of the Civil Code.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DAVIDE, JR., *C.J.*:

Before us for automatic review[1] is the consolidated decision[2] of 24 June 1999 of the Regional Trial Court, Branch 13, Ligao, Albay, in Criminal Cases Nos. 3680-3687, finding appellant Nelson Esperanza guilty beyond reasonable doubt of eight counts of rape committed against his 12-year-old niece Irma P. Esperanza and sentencing him in each count to suffer the penalty of *death* and to pay the amount of ₱50,000 for the "civil aspect" of the case.

The information in Criminal Case No. 3680[3] alleges that Nelson committed the crime of rape as follows:

That on June 16, 1997, at about 4:00 o'clock in the morning, at Brgy. Balinad, Municipality of Polangui, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named

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[1] Pursuant to Article 47 of the Revised Penal Code. as amended by Section 22 of Republic Act No. 7659, entitled *An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes.* which took effect on 31 December 1993 (*People v. Simon*, G.R. No. 93028, 29 July 1994, 234 SCRA 555).

[2] Original Record (OR) I, 272-287; *Rollo*, 26-40. Per Judge Jose S. Sañez.

[3] OR I, 18.

Supreme Court E-Library

accused, thru force and intimidation, and with lewd design, did then and there willfully, unlawfully and feloniously had sexual intercourse with his niece, IRMA P. ESPERANZA, who is of tender age, she being only 13-years old, against her will and consent, to her damage and prejudice.

ALL ACTS CONTRARY TO LAW.

The accusatory portions in the informations in Criminal Cases Nos. 3681,[4] 3682,[5] 3683,[6] 3684,[7] 3685,[8] 3686,[9] and 3687[10] are similarly worded as that in Criminal Case No. 3680 except as to the dates of the commission of the rapes which are, respectively, (a) 17 June 1997; (b) 18 June 1997; (c) 19 June 1997; (d) 20 June 1997; (e) 21 June 1997; (f) 22 June 1997; and (g) 23 June 1997.

The informations were based on the complaint subscribed and sworn to by Irma and her father Avelino Esperanza.[11]

The cases were consolidated. After Nelson entered a plea of not guilty in each case during his arraignment,[12] joint trial ensued.

The witnesses presented by the prosecution were Irma, Mary Jeynor Martinez, Teodora S. Salcedo, Ruben Brondial, Dr. Vivian Bustamante, and Avelino Esperanza.

Irma testified that she was born on 29 November 1985 to spouses Avelino Esperanza and Susan Pelonia.[13] When her

[4] OR II, 18.

[5] OR III, 18.

[6] OR IV, 18.

[7] OR V, 18.

[8] OR VI, 18.

[9] OR VII, 18.

[10] OR VIII, 18.

[11] OR I, 1.

[12] *Id.*, 39.

[13] Birth Certificate, Exhibit "E", OR I, 227.

Supreme Court E-Library

parents separated, she was entrusted to appellant Nelson, Avelino's full-blood brother, so that Irma could continue her studies at the Balinad Elementary School. Irma started living with appellant's family at *Barangay* Balinad, Polangui, Albay, on 2 June 1997. She slept at the only bedroom of the house with Jenelle, Nelson's only child; while Nelson and his wife Gina slept at the sala.[14]

On 14 June 1997, Gina left for Manila to attend to some business. After Gina left, Irma observed that although Nelson slept in the sala when she and Jenelle were about to sleep, she would later found him sleeping between her and Jenelle.[15]

At about 4:00 a.m. of 16 June 1997, Irma was awakened by the feeling that her breasts were being mashed and that something was being inserted into her vagina. Irma recognized that it was Nelson who was inserting his finger into her vagina. Irma struggled, removed his hands, and turned her back against Nelson. Nelson, however, turned her back to her original position. He then laid on top of her, undressed her, and forcefully inserted his penis into her vagina. Blood oozed from her private part. Nelson warned her not to tell anybody; otherwise, he would kill her.[16]

For seven successive days thereafter, or from 17 to 23 June 1997, at almost the same time, 4:00 a.m., Irma was awakened by Nelson's sexual advances, which culminated in sexual intercourse. In all those times, Irma could feel burning pain.[17]

It was only on 24 June 1997, when Gina arrived from Manila, that Irma found the courage to leave Nelson's house. Gina asked Irma why she was leaving. With Nelson's threat etched on her mind, Irma feigned the reason that she no longer wanted

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[14] TSN, 26 August 1998, 14-15; TSN, 30 October 1998, 19.

[15] TSN, 30 October 1998, 19.

[16] *Id.*, 15-17.

[17] TSN, 30 October 1998, 17-21.

Supreme Court E-Library

to go to school. Gina accompanied Irma to the house of Irma's father in San Agustin, Libon, Albay. Irma was unable to tell her father about Nelson's abuses. The next day, she left for Balinad at about 9:00 a.m. and stayed with her aunt Ester and continued her studies.[18]

Mary Jeynor Martinez, 12 years old, testified that she is Irma's friend and former classmate. Sometime in February 1998, Irma revealed to her that Nelson fondled her breast, touched and fingered her vagina, and raped her. She advised Irma to seek the assistance of their teacher Mrs. Teodora Salcedo.[19]

Teodora Sarcia Salcedo, Irma's teacher, testified that on 10 March 1998 she called Irma's attention regarding her failure to pay her graduation fees. On that occasion, Irma told her that she was no longer staying with Nelson, but with her aunt Ester, because Nelson had been holding her private parts and kissing her lips. Mrs. Salcedo got shocked. As it was almost lunchtime, Mrs. Salcedo put temporarily the matter aside and dismissed her class. After lunch, Irma narrated to Mrs. Salcedo, in the presence of her other teachers and classmates, her horrifying experience at the hands of Nelson. Mrs. Salcedo referred the matter to their Barangay Captain, Ruben Brondial.[20]

Ruben Brondial testified that he came to know of the case of Irma when the latter, accompanied by Mrs. Salcedo, came to his office to report the abuses committed by Nelson against her. In the course of his investigation, he learned that Irma had been sexually abused by Nelson eight times. He then left for San Agustin, Libon, Albay, to inform Irma's father, Avelino, of what Nelson did to her. He and Avelino forthwith went to the Department of Social Welfare and Development and then to the police station.[21]

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[18] *Id.*, 7-14.

[19] TSN, 25 August 1998, 14-16.

[20] *Id.*, 4-9.

[21] TSN, 26 August 1998, 5-11.

Supreme Court E-Library

Avelino, father of Irma, testified that Nelson is his brother. He had entrusted the custody of Irma to Nelson. When he came to know of his brother's bestial acts through Irma's teacher, he filed a complaint for rape. He felt deeply hurt and humiliated by Nelson's odious deed.[22]

Dr. Vivian Bustamante, the Municipal Health Officer of Polangui, Albay, who examined Irma on 16 March 1998, testified that she found in Irma's hymen old healed lacerations at 7 and 8 o'clock positions.[23] She opined that those lacerations could have been caused by the insertion of a male organ.[24]

The first witness for the defense was Emeteria Esperanza, Nelson's mother. The announced purpose of her testimony was to establish that contrary to Irma's claim, it was Avelino who raped Irma. However, Emeteria had to be withdrawn from the witness stand during her open court testimony, as she could hardly speak and breathe. Emeteria was not recalled anymore to the witness stand.

For his part, Nelson denied the accusations against him, but admitted that sometime in the month of May 1997, Irma was entrusted to him by his brother Avelino. He accepted Irma because he thought that she could be a good companion of Jenelle, his only child. On 10 June 1997, he went to Barangay Bay, Ligao, Albay, to tend to his ducks. Barangay Bay could be reached from Barangay Banilad by a 45-minute bicycle ride. Irma was left to the care of either his wife Gina or his mother Emeteria. Whenever Gina would left for Manila, Nelson would fetch Emeteria to watch over Jenelle and Irma. Nelson pointed to the ongoing rift between his wife Gina and his sister Ester as the motive for the filing of the instant cases.[25]

Testifying on rebuttal, Irma branded as a lie Nelson's claim that he was at Barangay Bay, Ligao, Albay, from 16 to 23

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[22] TSN, 18 November 1998, 4-8.

[23] Exhibit "B", OR I, 2.

[24] TSN, 28 July 1998, 10-11.

[25] TSN, 13 April 1999, 4-5, 9-11.

Supreme Court E-Library

June 1997 tending his ducks. His ducks were raised at a nearby ricefield in Balinad about twelve meters away from his house. She likewise refuted his claim that he never molested her and that Emeteria stayed with them at his house.[26]

The trial court gave full faith and credence to Irma's testimony. It declared that Irma's inability to prevent the appellant from committing the crime by shouting or forcibly resisting could not be taken against her. Nelson, being her uncle, definitely exercised moral and physical ascendancy over her, which could be sufficient to cow her into submission to his bestial desire. It disregarded Nelson's defense of denial and alibi not only for being self-serving, but also for lack of proof of physical impossibility for him to be at the *locus criminis* at the time of its commission. It then convicted Nelson of eight counts of rape and imposed upon him the death penalty for each count, considering the relationship of Nelson as uncle within the third civil degree of consanguinity and the fact that Irma was only 12 years old at the time the rapes were committed.

In his Appellant's Brief, Nelson attributes to the trial court the following errors:

I

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE OBVIOUSLY REHEARSED AND EQUALLY INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT ANENT THE CRIMES CHARGED.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF EIGHT (8) COUNTS OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT ERRED IN NOT FINDING HIM LIABLE FOR THE LESSER OFFENSE OF ACTS OF LASCIVIOUSNESS.

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[26] TSN, 11 May 1999, 3-10.

Supreme Court E-Library

IV

ON THE ASSUMPTION FURTHER THAT THE ACCUSED-APPELLANT IS GUILTY AS CHARGED, THE TRIAL COURT ERRED IN NOT IMPOSING UPON HIM THE PENALTY OF *RECLUSION PERPETUA* IN CRIMINAL CASE NOS. 3680 TO 3687.[27]

In support thereof, Nelson argues that Irma's testimony should not be given weight for being obviously rehearsed, as shown by her identical answers as to the time, place, and manner the rapes were committed. He also asserts that Irma's testimony bore several inconsistencies. Irma flip-flopped as to (a) when she left his house; (b) whether he raped her on 17 June 1997; and (c) whether he did insert his penis into her, considering her admission that the room was dimly lit and he had previously inserted his finger into her private part.

Finally, Nelson asserts that granting without admitting that he did commit the alleged rapes, the trial court erred in imposing the supreme penalty of death. While the informations alleged that Irma was 13 years old at the time the rapes were committed, they did not allege that Nelson is a relative of Irma within the third civil degree of consanguinity. With this infirmity, Nelson should have been meted the penalty of *reclusion perpetua.*

The Office of the Solicitor General (OSG) maintains that the trial court did not err in giving credence to the testimony of Irma. Her testimony established beyond reasonable doubt that from 16 to 23 June 1997, Nelson, her paternal uncle, had carnal knowledge of her. As for the identical manner of the commission of the eight counts of rape, the OSG argues that a series of rapes committed in almost the same manner is nothing extraordinary and does not necessarily render the complainant's testimony incredible. The OSG further argues that the lapses in the testimony of Irma were inconsequential and do not affect her credibility.

The OSG adds that the alibi posed by Nelson cannot prevail over the positive and credible testimony of Irma, who had no

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[27] *Rollo*, 91.

Supreme Court E-Library

ill-motive against him. Moreover, Nelson did not prove that it was physically impossible for him to be at the scene of the crime at the time of its commission.

As to the penalty, the OSG maintains that the trial court correctly imposed the death penalty. All the eight informations contain the description that Nelson is Irma's paternal uncle. However, the OSG prays that the indemnity be increased from ₱50,000 to ₱75,000 in line with prevailing jurisprudence and that Nelson be ordered to pay for each count of rape moral damages of ₱50,000 and exemplary damages of ₱25,000.

We affirm Nelson's conviction.

Time and again we have held that the factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal.[28] This rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued by the court, or where the trial court has acted arbitrarily in its appreciation of the facts.[29]

In the cases at bar, we give full weight to the trial court's finding that Irma was sexually ravished by Nelson. This Court, however, finds that the prosecution was able to prove only seven counts of rape:

1. The rape on 16 June 1997:

Q Now, when was the first time your uncle raped you?
A June 16, 1997.

Q At about what time on June 16, 1997 were you raped?
A Early morning at 4:00 o'clock.

Q Where were you raped?
A In the house.

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[28] *People v. Abella*, G.R. No. 127803, 28 August 2000, 339 SCRA 129, 144; *People v. Bertulfo*, G.R. No. 143790, 7 May 2002.

[29] *People v. Quejada*, G.R. Nos. 97309-10, 3 June 1993, 223 SCRA 77, 86.

Supreme Court E-Library

Q Where particularly, where in the house?
A In the bedroom.

Q What were you doing on June 16, 1997 at about 4:00 o'clock in the morning?
A During that time I was sleeping.

Q While sleeping what happened?
A I was awakened because he was mashing my breasts, my vagina and then inserted his finger inside my vagina, laid on top of me, undressed me and then *inserted his penis inside my vagina.*

Q Who was this person who mashed your breasts, inserted his finger and penis into your vagina?
A Uncle Nelson.

Q Now, after your Uncle Nelson inserted his male organ into your female organ, what else did he do to you, if any?
A He kissed my lips.

Q What else?
A Sucking my breasts.

Q What else?
A After that he did nothing anymore. But in the morning he told me that I should not tell anybody about what happened not even to Jenelle or his wife because if I do that he [would] kill me.[30]

2. The rape on 18 June 1997:

Q When was the third time that you were sexually abused?
A June 18, 1997.

Q What time were you sexually abused on June 18, 1997?
A Again about 4:00 o'clock early morning.

Q Where?
A In their house.

Q What were you doing at that time?
A Sleeping.

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[30] TSN, 26 August 1998, 15-16.

Supreme Court E-Library

Q And while sleeping, what happened?
A I was then sleeping when I was awakened while he removed my panty then he laid on top of me and *inserted his penis into my vagina.*

Q What did you feel when your uncle Nelson Esperanza inserted his penis into your vagina?
A Painful.[31]

3. The rape on 19 June 1997:

Q Now, when was the fourth time that your uncle sexually abused you?
A June 19, 1997.

Q Where were you sexually abused by your uncle?
A In their house.

Q The same place where you were first, second, third time abused?
A Yes, sir.

Q At about what time were you sexually abused on June 19, 1997?
A Again about 4:00 o'clock in the early morning.

Q What were you doing at that time?
A Sleeping.

Q And while sleeping what happened?
A I was awakened while he was kissing my lips but I tried to remove my lips from his and he got irked (*naudit*).

Q What else happened?
A After that I tried to move to my side, I turned to my side but he made me lie on my back again removed my panty and then *inserted his penis into my vagina.*[32]

4. The rape on 20 June 1997:

Q Now, when was the next time after June 19, 1997 when you were again sexually abused?
A. June 20, 1997.

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[31] TSN, 26 August 1998, 18-19.

[32] *Id.*, 19.

Supreme Court E-Library

Q At about what time?
A Again in the early morning about 4:00 o'clock.

Q Where were you sexually abused on that date?
A In their house.

Q What were you doing at 4:00 o'clock in the morning of June 20, 1997?
A Sleeping.

Q And while sleeping, what happened if any?
A I was awakened because he was undressing me. After he was able to he again *inserted his penis into my vagina.*

Q What did you feel when your uncle inserted his penis into your vagina on June 20, 1997?
A Painful.[33]

5. The rape on 21 June 1997:

Q Now, after June 20, 1997, when did your uncle again abuse you?
A June 21, 1997.

Q About what time were you sexually abused?
A Again early morning of 4:00 o'clock.

Q What did your uncle do to you?
A He mashed my breasts, removed my panty, laid on top of me and then *inserted his penis into my vagina.*

Q Where did this happen?
A In Balinad.

Q Where in Balinad?
A Polangui, Albay.

Q At the same place where you were first abused?
A Yes, sir.

Q What did you feel when your uncle inserted his penis into your vagina on the 21st of June 1997?
A Painful.[34]

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[33] TSN, 26 August 1998, 19-20.

[34] *Id.*, 20.

Supreme Court E-Library

6. The rape on 22 June 1997:

Q When did your uncle abuse you after June 21, 1997?
A June 22, 1997.

Q At about what time?
A Again about 4:00 o'clock in the early morning.

Q Where did this happen?
A In Balinad, Polangui, Albay.

Q Where in Balinad?
A In their house.

Q What were you doing on June 22, 1997 at about 4:00 o'clock in the morning?
A Sleeping.

Q And while sleeping what happened?
A I was awakened because he was removing my panty and after that he laid on top of me and again he *inserted his penis into my vagina.*

Q What did you feel after your uncle inserted his penis into your vagina?
A Painful.[35]

7. The rape on 23 June 1997:

Q When was the last time when you were sexually abused by your uncle?
A June 23, 1997.

Q Where?
A In Balinad, Polangui, Albay.

Q Particularly where in Balinad, Polangui, Albay?
A Their house.

Q At what time were you abused on June 23, 1997?
A Again about 4:00 o'clock in the early morning.

Q What were you doing at 4:00 o'clock in the morning of June 23, 1997?
A Sleeping.

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[35] TSN, 26 August 1998, 20-21.

Supreme Court E-Library

Q What happened while you were sleeping?
A Again I was awakened while he was removing my panty then he laid on top of me and again he *inserted his penis into my vagina.*

Q What did you feel when your uncle inserted his penis into your vagina?
A Painful.[36]

The fact that the series of rape had been committed in almost the same manner and the same time is nothing extraordinary and does not necessarily render the testimony of Irma incredible.[37] In rape cases, the lone testimony of the offended party, if free from serious and material contradictions, is sufficient to sustain a verdict of conviction. In the cases at bar, considering the age of the victim, it is unlikely that her narration is merely the product of a scheming and malicious mind. No woman would openly admit that she was raped and consequently subject herself to an examination of her private parts, undergo the trauma and humiliation of a public trial, and embarrass herself with the need to narrate in detail how she was raped, if she was not raped at all.[38] This ruling especially holds true where the complainant is a minor, whose testimony deserves full credence.[39] And such credibility is definitely enhanced when the accusing words, as in the instant cases, are directed against a close relative, like an uncle.[40] It is thus unthinkable, if not completely preposterous, for Irma to falsely accuse her own uncle in wanton disregard of the unspeakable trauma and social stigma it may generate on her and the entire family.

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[36] *Id.*, 21.

[37] *People v. Villaraza*, G.R. Nos. 131848-50, 5 September 2000, 339 SCRA 666, 680.

[38] *People v. Abrecinoz*, 346 Phil. 37, 51 (1997); *People v. Arofo*, G.R. No. 139433, 11 April 2002.

[39] *People v. Leotorio*, 332 Phil. 668, 678 (1996); *People v. Aloro*, G.R. No. 129208, 14 September 2000, 340 SCRA 346, 355.

[40] *People v. Gonzales*, G.R. No. 133859, 24 August 2000, 338 SCRA 678.

Supreme Court E-Library

Anent the alleged incident on 17 June 1997, the following testimony of Irma does not establish the commission of rape.

Q When was the second time when you were abused by your uncle?
A June 17, 1997.

Q Where were you sexually abused?
A In their house.

Q The same place where you were raped for the first time?
A Yes, sir.

Q What time was it when you were abused for the second time?
A Around 4:00 o'clock.

Q How did your uncle sexually abuse you?
A During that time that I was again sleeping when *I was awakened while he was mashing my breasts and also my vagina.*

Q After mashing your breasts and your vagina, what followed next?
A I tried to remove his hand.

Q What else did your uncle do to you?
A No more after that but the following morning he told me that he was just testing me.[41]

Every charge of rape is a distinct and separate crime and each must be proved beyond reasonable doubt.[42] Irma's explanation that because of her nervousness during the direct examination she forgot to state that Nelson had sexual intercourse with her on 17 June 1997[43] deserves scant consideration. The absence of any detail on how the crime of rape was committed bars conviction for such crime. Thus, in the absence of any evidence showing that Nelson had carnal knowledge of Irma, aside from his mashing of Irma's breasts and vagina, the crime committed is merely acts of lasciviousness under Article 336 of the Revised Penal Code which reads:

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[41] TSN. 26 August 1998. 17-18.

[42] *People v. Guardian.* G.R. No. 142900. 7 August 2002.

[43] TSN. 30 October 1998. 22-23.

Supreme Court E-Library

Article 336. *Acts of lasciviousness.*— Any person who shall commit any act of lasciviousness upon other persons of either sex under any of the circumstances mentioned in the preceding article shall be punished by *prision correccional.*

Nelson could be convicted of acts of lasciviousness because the latter is necessarily included in the crime of rape.[44] Section 4, Rule 120 of the Rules of Court states:

Sec. 4. *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved.

The inconsistencies in the testimony of Irma pointed out by Nelson are inconsequential. Minor lapses in the memory of a rape victim can be expected. It is an understandable human frailty not to be able to recount with facility all the details of a dreadful and harrowing experience.[45] Thus, the failure of Irma to respond properly to some questions propounded to her does not put to naught her reliability and sincerity.

We cannot yield to the contention of Nelson that the darkness of the room made it impossible for Irma to declare with certainty that sexual intercourse took place, as she could not have been sure that it was his penis that penetrated her and not his finger. Irma categorically declared that Nelson inserted his penis after he inserted his finger into her vagina.

The imputation by Nelson of ill-motive on Ester hardly merits consideration. It is difficult to accept his claim that Ester manipulated Irma into filing the present case because of the on-going rift between her and Gina. No member of a rape victim's family would dare encourage the victim to publicly expose the dishonor of the family, more specifically if such accusation is

[44] *Dulla v. Court of Appeals*, G.R. No. 123164, 18 February 2000, 326 SCRA 32, 47.

[45] *People v. Villaraza, supra* note 37, at 681.

Supreme Court E-Library

against a member of the family, unless the crime was in fact committed.[46]

In light of the positive testimony of Irma showing beyond doubt Nelson's accountability, the latter's bare denial and alibi must fail. As between a categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail. A mere denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[47]

Having found that the appellant committed rape in Criminal Cases Nos. 3680 and 3682-3687, and acts of lasciviousness in Criminal Case No. 3681, we shall proceed to determine the penalties to be imposed on him.

With respect to Criminal Cases Nos. 3680 and 3682-3687, we cannot impose the penalty of death. Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, which is the law applicable in these cases, provides, *inter alia,* that the death penalty shall be imposed if the rape victim is under eighteen years of age and the offender is a relative by consanguinity within the third civil degree.

Each of the informations charges Nelson with the crime of simple rape only because while it alleges that the victim was only 13 years of age at the time of the incident, there is no allegation that Nelson is her relative by consanguinity within the third civil degree.

The twin circumstances of minority and relationship under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, are in the nature of qualifying circumstances because they alter the nature of the crime of rape and increase the penalty. As special qualifying circumstances they must be

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[46] *People vs. Villanueva, supra* note 46, at 501.

[47] *People v. Alvero*, G.R. Nos. 134536-38, 5 April 2000, 329 SCRA 737, 756; *People v. Ugang*, G. R. No. 144036, 7 May 2002.

Supreme Court E-Library

specifically pleaded or alleged with certainty in the information; otherwise, the death penalty cannot be imposed. In these cases, the allegation that Irma is Nelson's niece is not specific enough to satisfy the special qualifying circumstance of relationship. If the offender is merely a relation — not a parent, ascendant, step-parent, guardian, or common law spouse of the mother of the victim — the specific relationship must be alleged in the information, *i.e.*, that he is "a relative by consanguinity or affinity [as the case may be] within the third civil degree." The informations in these cases merely allege that Irma is the "niece" of Nelson. She could be a niece beyond the third civil degree either of consanguinity or affinity. Hence, the informations are fatally defective in this respect.[48]

And even granting that the relationship within the third civil degree either of consanguinity or affinity was duly proved during the trial, still such proof cannot be appreciated against Nelson to justify the imposition of the death penalty because he would thereby be denied of his constitutional and statutory right to be informed of the nature and cause of the accusation against him. Nelson cannot be charged with committing the crime of rape in its simple form and then be tried and convicted of rape in its qualified form.[49]

We also take note of the fact that while the informations allege that Irma was 13 years old at the time she was raped, her birth certificate reveals that she was only 11 years old at the time, having been born on 29 November 1985. Thus, these cases could have been cases of statutory rape. But, Nelson cannot be convicted of statutory rapes. In *People vs. Moreno*,[50] reiterated in *People v. Capinpin*,[51] we ruled that an accused cannot be convicted under paragraphs 2 or 3 of Article 335 of the Revised Penal Code in an information charging him with rape under paragraph 1 (by using force or intimidation) because

[48] *People v. Ferolino*, G.R. Nos. 131730-31, 5 April 2000, 329 SCRA 719, 735.

[49] *People vs. Bonghanoy*, 367 Phil. 662, 672-673 (1999).

[50] G.R. No. 126921, 28 August 1998, 294 SCRA 728, 737.

[51] G.R. No. 118608, 30 October 2000, 344 SCRA 420, 429.

Supreme Court E-Library

none of these modes of committing rape (*i.e.*, when the woman is deprived of reason or otherwise unconscious; or when the woman is under twelve years of age) were alleged in the information. The rationale for this rule is that "[t]o convict him under either of these statutory provisions is to deprive him of the constitutional right to be informed of the accusation against him." Section 14 (2), Article III of the 1987 Constitution provides that "[i]n all criminal prosecutions, the accused . . . shall enjoy the right . . . to be informed of the nature and cause of the accusation against him."

However, conformably with *People v. Bayya*[52] and *People v. Escaño*,[53] we may appreciate as an aggravating circumstance the victim's minority, which was pleaded in the informations and proved by her birth certificate. In those cases, we held that when either one of the twin special qualifying circumstances of relationship and minority is omitted or lacking, that which is pleaded in the information and proved by the evidence, like the complainant's minority in these cases, may be considered as an aggravating circumstance. Nonetheless, the presence of an aggravating circumstance cannot serve to raise the penalty to be imposed on Nelson. Since simple rape is punishable by the single indivisible penalty of *reclusion perpetua*, that penalty shall, pursuant to the first paragraph of Article 63 of the Revised Penal Code, be imposed regardless of any modifying circumstance that might have attended the commission of the crime.

For the crime of acts of lasciviousness under Article 336 of the Revised Penal Code, Nelson may be sentenced to suffer *prision correccional* in its medium period, there being no modifying circumstance that attended the commission thereof. Applying the Indeterminate Sentence Law, he may be meted an indeterminate penalty of three months of *arresto mayor* as minimum to three years of *prision correccional* as maximum.

On the civil liability of Nelson, we note that the trial court merely ordered the payment of civil indemnity in the sum of

[52] G.R. No. 127845, 10 March 2000, 327 SCRA 771, 779.

[53] G.R. Nos. 140218-23, 13 February 2002.

Supreme Court E-Library

₱50,000 in each case. It failed to award moral damages, which is mandatory upon a finding of rape.[54] Thus, consistent with the current case law, moral damages in the amount of ₱50,000[55] is awarded in Criminal Cases Nos. 3680 and 3682-3687. Likewise, moral damages in the amount of ₱30,000 is proper in Criminal Case No. 3681 pursuant to Article 2219 of the Civil Code. In view of the presence of one aggravating circumstance, we award exemplary damages in the amount of ₱25,000 for each count of rape in accordance with Article 2230 of the Civil Code.

WHEREFORE, the assailed decision of the Regional Trial Court of Ligao, Albay, Branch 13, in Criminal Cases Nos. 3680-3687, inclusive, is *AFFIRMED* with *MODIFICATIONS*.

In Criminal Cases Nos. 3680 and 3682-3687, appellant NELSON ESPERANZA is hereby found guilty beyond reasonable doubt as principal of the crime of simple rape under Article 335 of the Revised Penal Code, as amended, and sentenced to suffer the penalty of *reclusion perpetua* in each case. He is also ordered in each case to pay the victim Irma P. Esperanza ₱50,000 as civil indemnity; ₱50,000 as moral damages; and ₱25,000 as exemplary damages.

In Criminal Case No. 3681, the appellant is hereby found guilty beyond reasonable doubt of the crime of acts of lasciviousness and sentenced to suffer an indeterminate penalty of three (3) months of *arresto mayor*, as minimum, to three (3) years of *prision correccional*, as maximum, and to pay the victim the amount of ₱30,000 as moral damages.

Costs *de oficio*.

SO ORDERED.

Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Callejo Sr., and Azcuna, JJ., concur.

Austria-Martinez, J., on official leave.

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[54] *People v. Arofo, supra* note 38.

[55] *Id.; People v. Ardon*, G.R. Nos. 137753-56, 16 March 2001, 354 SCRA 609, 625.