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[G.R. Nos. 138662-63. November 4, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROBERTO MADERA *y* AGRAVANTE,** *appellant.*

SYNOPSIS

Appellant was found guilty of two counts of incestuous rape, the victim being his 14-year old daughter, Jonalyn. He was sentenced to suffer the death penalty. On appeal, he argued that he could not have raped Jonalyn on May 8, 1998 because her mother and her siblings were not yet asleep as they were watching television in the next room. Appellant also claimed that the trial court erred in disbelieving his alibi with respect to the alleged second rape on June 1, 1998.

The Supreme Court affirmed his conviction on appeal, ruling: that the trial court's assessment on credibility is generally entitled to great weight, even finality, on appeal; that from Jonalyn's candid, categorical and straightforward sob-punctuated narration of the incidents, it is not difficult to believe that indeed the young girl was twice ravished by her father who was looked upon with fear as "he always hurt [her]"; that lust is no respecter of time, place or kinship; that alibi is inherently weak and unreliable; that intimidation must be viewed in light of the victim's perception at the time of the commission of the crime; and that at all events, as between a father and his daughter in an incestuous sexual assault, the former's moral ascendancy sufficiently substitutes for force and intimidation. The Supreme Court affirmed the death sentence because the victim's minority and relationship with the offender were alleged in the complaint or information and proved beyond reasonable doubt during the trial.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT THEREOF IS GENERALLY ENTITLED TO GREAT WEIGHT, EVEN FINALITY, ON APPEAL; EXCEPTIONS; CASE AT BAR. — The settled rule is that when the issue involves the credibility of a witness, the trial court's assessment is entitled to great weight, even finality, unless it

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is shown that it was tainted with arbitrariness or there was an oversight of some fact or circumstance of weight and influence. The reason is obvious — the trial court has the unique opportunity to observe the witness firsthand and note his or her demeanor and manner of testifying. The trial court found Jonalyn a credible witness and appreciated her clear and convincing testimony on how the rapes were committed. . . From [her] candid, categorical and straightforward sob-punctuated narration by Jonalyn of the incidents, it is not difficult to believe that indeed the young girl who had just metamorphosed into a teenager was twice ravished by her father who was looked upon with fear as "he always hurt [her]" as well as her 9 siblings and their mother by boxing and kicking them.

2. **ID.; ID.; ID.; LUST IS NO RESPECTER OF TIME, PLACE OR KINSHIP; CASE AT BAR.** — The argument that appellant could not have raped Jonalyn on May 8, 1998 because her mother and her siblings were not yet asleep as they were watching television in the next room and were aware that she had been summoned to massage him does not persuade. Lust is no respecter of time, place or kinship. Given the sound and the attention the television drew from the viewers, and the location of the door which was ajar, as reflected in Jonalyn's sketch — Exhibit "H" which shows such door to be *along the same side where the television was mounted,* the viewers could not have been aware of, seen or sensed what was happening inside the room where the molestation took place. Had the charge for the May 8, 1998 incident been concocted, Jonalyn could just have tailored her account by, *e. g.,* omitting that portion of her testimony regarding the presence of family members at the time of the incident and about the door being left ajar. Or she could have imputed some details that could render her account more in accordance with common experience, like appellant kissing her on parts of her body before having an intercourse. That she did not, thus making her tale appear improbable, reinforces her credibility. For that something improbable can happen is always possible.

3. **ID.; ID.; ID.; ALIBI; INHERENTLY A WEAK AND UNRELIABLE DEFENSE; CASE AT BAR.** — As for appellant's alibi with respect to the second case, — that he was on the afternoon of June 1, 1998 with his son Jobert tilling the farm of a certain Cipriano San Felipe which was located some two hundred meters away from his house, it is inherently weak and unreliable. For

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given that distance between the place where he was, and the scene of the crime, it was not physically impossible for him to be at the latter. That neither his son nor farm owner San Felipe came forward to corroborate his alibi all the more renders his alibi weak.

4. ID.; ID.; ID.; INTIMIDATION MUST BE VIEWED IN LIGHT OF THE VICTIM'S PERCEPTION AT THE TIME OF COMMISSION OF THE CRIME; CASE AT BAR. — While, as reflected in Jonalyn's testimony she offered no physical resistance nor attempted to shout, she explained that she was intimidated and threatened into silence, appellant having readily instilled fear in her when he threatened "that all of us would be killed" if she shouted. Intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. It suffices that the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of appellant, the threat would be carried out. Jonalyn's explanation is not difficult to appreciate, given her claim that appellant had been cruel and often maltreated her, her siblings and her mother, which claim was confirmed at the witness stand by her mother Dominga Cadores Agravante who added that they could not get back at appellant because "if he had with him a bolo, he unsheathed his bolo."

5. CRIMINAL LAW; QUALIFIED RAPE; A FATHER'S MORAL ASCENDANCY AND INFLUENCE OVER HIS DAUGHTER IN AN INCESTUOUS SEXUAL ASSAULT SUBSTITUTES FOR FORCE AND INTIMIDATION. — At all events, as between a father and his daughter in an incestuous sexual assault, this Court has upheld the view that the former's *moral ascendancy and influence over the latter sufficiently substitutes for force and intimidation.*

6. ID.; ID.; SPECIAL QUALIFYING CIRCUMSTANCES; MINORITY OF VICTIM AND RELATIONSHIP; PENALTY; DEATH SENTENCE PROPER WHERE VICTIM'S MINORITY AND RELATIONSHIP TO ACCUSED WAS ALLEGED AND PROVED DURING TRIAL; MISSPELLED LETTER OF VICTIM'S NAME IN HER BIRTH CERTIFICATE, DISREGARDED; CASE AT BAR. — To justify the imposition of the death penalty in a case for qualified rape, the victim's minority and relationship with the offender must be alleged in the complaint or information, as they

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have been in the informations filed against appellant. And relationship and minority as qualifying circumstances of rape must be proved beyond reasonable doubt, just as the crime itself. The prosecution presented a birth certificate to establish Jonalyn's minority and relationship to appellant. The name appearing in the certification issued by the Office of the Civil Registrar of Milaor and in the Certificate of Live Birth is *Jomalyn* C. Madera. The two informations alleged that the victim is *Jonalyn* C. Madera. Jonalyn's mother Dominga Madera testified, however, that there was a misspelling of Jonalyn's name in the Certificate of Live Birth, a typographical error. Except for the misspelling of the letter n which appears as "m" in Jonalyn, all the entries in Jonalyn's Birth Certificate are undisputed. Thus it shows that she was born on February 16, 1985 to Dominga Lormeda Cadores and herein appellant Roberto Agravante Madera, and that the couple got married on December 27, 1967 at Minalabac, Camarines Sur. Relation and minority having been alleged and proved, the imposition by the trial court of the death penalty in both cases must thus be affirmed.

7. ID.; ID.; PROPER AWARD OF DAMAGES; CASE AT BAR. — Conformably with prevailing jurisprudence, the decision on the civil aspect of the case must be modified such that Jonalyn is awarded civil indemnity of ₱75,000.00 for each count of rape, moral damages of ₱75,000.00 also for each count, and exemplary damages of ₱25,000.00, also for each count.

APPEARANCES OF COUNSEL

Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

***PER CURIAM*:**

For automatic review is the May 11, 1999 decision[1] of the Regional Trial Court, Branch 25, Naga City finding appellant Roberto Madera *y* Agravante guilty beyond reasonable doubt of two counts of incestuous rape.

[1] *Rollo* at 13-21.

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The two informations dated December 8, 1998 charging accused-appellant read as follows:

Criminal Case No. RTC 98-7309

That on or about 8:00 o'clock in the evening of May 8, 1998 in Barangay Dalipay, Municipality of Milaor, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with grave abuse of confidence, *the victim being his daughter*, by means of force and intimidation, with lewd designs, did then and there willfully, unlawfully and feloniously succeed in having carnal intercourse with one *Jonalyn C. Madera,* a *14 year old girl,* against her will and without her consent and said carnal knowledge resulted in the pregnancy of the latter to her damage and prejudice in such amount as shall be proven in court.

Acts contrary to law.[2] (Italics supplied)

Criminal Case No. RTC 98-7310

That on or about 3:00 o'clock in the afternoon of June 1, 1998 in Barangay Dalipay, Municipality of Milaor, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with grave abuse of confidence, *the victim being his daughter,* by means of force and intimidation, with lewd designs, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with one *Jonalyn C. Madera*, a *14 year old girl,* against her will and without her consent and of which carnal knowledge resulted in the pregnancy of the latter to her damage and prejudice in such amount as shall be proven in court.

Acts contrary to law.[3] (Italics supplied)

The prosecution established the following facts:

The victim, Jonalyn, the seventh of ten children of appellant and his wife Dominga Madera, was born on February 10, 1985.[4]

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[2] Records, Vol. 1 at 1.

[3] Records, Vol. 2 at 1.

[4] Exhibits "A" and "B", Records, Vol. 1 at 42 and 43, respectively. During direct examination, Dominga Madera testified that Jonalyn's name was misspelled as Jomalyn Cadores Madera in the Certificate of Live Birth, and that Jomalyn and Jonalyn are one and the same person (TSN, March 2, 1999 at 8).

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At around 8:00 p.m. of May 8, 1998, the eve of the *barangay* fiesta at Dalipay, Milaor, Camarines Sur, appellant, after drinking liquor with his friends in the porch of his three-bedroom[5] house at said *barangay*, repaired to his bedroom. He thereupon summoned the then more than 13 years old Jonalyn, who obliged and went to his room upon which "he closed the door but there is a small opening."[6] On appellant's request, Jonalyn massaged him in the course of which he took off her shorts and panty, after which he also took off his shorts and brief, and laid down on top of her, spread her thighs and inserted his penis into her vagina.[7] She felt pain but was too afraid to complain or ask why he was doing that to her because he threatened to kill all of them in the family if she shouted[8] and she feared he would do it as he had often maltreated her and her siblings as well as her mother.[9]

On June 1, 1998, at around 3:00 p.m., while Jonalyn's mother was in the fields and her brothers and sisters were playing at a chapel some 150 meters away from their house, appellant entered Jonalyn's room as she was about to sleep on a mat placed on the cemented floor. Again appellant had sexual intercourse with Jonalyn,[10] without her shouting for help because he told her that he would kill all of them if she shouted.[11]

More than three months after the June 1, 1998 sexual intercourse, or on September 27, 1998, Jonalyn related to her sister Josephine the two sexual molestations committed on her by appellant.[12] The following day or on September 28, 1998, Dr. Ma. Linda Llaguno, Municipal Health Officer of Milaor, Camarines Sur, examined Jonalyn and found her to be pregnant.

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[5] TSN March 4, 1999 at 23-24.

[6] *Id.* at 25.

[7] *Id.* at 22-27.

[8] *Id.* at 46.

[9] *Id.* at 22.

[10] *Id.* at 28-32.

[11] *Id.* at 51-52.

[12] Exhibit "G". Records, Vol. I at 4.

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More than seven months after the sexual molestation committed on May 8, 1998, or on December 25, 1998, Jonalyn gave birth to a baby girl.[13]

Appellant, the sole witness for the defense, denied the charges[14] and gave the following version:

On May 8, 1998, he was cooking food for the fiesta to be celebrated on the next day. With him were his wife's relatives who were there for the next day's festivities. His older children Joseph, Jobert, Juvy and Jonalyn had gone to the dance hall, while his younger children stayed at home. He finished cooking at 10:00 p.m., and at around 10:30 p.m., he went with his brothers-in-law Dante and Roger to the dance hall but he did not see Jonalyn there.[15]

On June 1, 2002, he and his son Jobert harrowed the more than 2-hectare field of one Cipriano San Felipe, some 200 meters away from his house.[16] He started working at 8:00 a.m. and stopped at 4:00 p.m., and neither he nor his son went home for lunch as they partook of it at the house of Cipriano's son-in-law.[17] After working in the fields, he pastured his carabao and returned home only at 6:00 p.m.[18]

He did not know why his wife and Jonalyn, whom he suspected has a boyfriend named Boboy, would charge him with rape, except perhaps because he and his wife were always quarreling.[19]

The trial court, finding for the prosecution, convicted appellant of two counts of rape by the decision on review, the dispositive portion of which reads:

WHEREFORE, premises considered, this court finds the accused ROBERTO MADERA *y* AGRAVANTE *GUILTY* beyond reasonable

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[13] Exhibit "D", Records, Vol. 1 at 45.

[14] Records, Vol. 1 at 23.

[15] TSN, March 22, 1999 at 3-6, 12-13.

[16] *Id.* at 6-7.

[17] *Id.* at 14-16.

[18] *Id.* at 6-8, 17.

[19] *Id.* at 18-19.

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doubt of two counts of the crime of *RAPE*, defined and penalized under Article 355 of the Revised Penal Code, as amended by Republic Act Nos. 7659 and 8353 in Criminal Cases Nos. 98-7309 and 98-7310 and hereby sentences the said accused to suffer the penalty of *DEATH* for each of the offense committed. Accused Roberto Madera *y* Agravante is hereby ordered to pay the victim Jonalyn Cadores Madera the amount of *₱50,000.00 for each offense by way of moral damages* and to serve as a deterrent and warning to fathers who may have bestial desire against their daughter, said accused is also ordered to pay the sum of *₱50,000.00 as exemplary damages.* For having impregnated his own daughter resulting to giving birth to a child who is facing an unsecured future and for the traumatic experience suffered by the victim, the accused is further ordered to pay *₱100,000.00 by way of consequential damages* and to pay the costs.[20]

SO ORDERED. (Italics supplied)

In his brief, appellant raises the following assigned errors, quoted *verbatim*:

I

THE TRIAL COURT ERRED IN GIVING UNDUE IMPORTANCE TO THE *INCREDIBLE, UNRELIABLE AND UNWORTHY* STANCE OF PRIVATE COMPLAINANT ANENT THE ALLEGED SEXUAL ACTS COMPLAINED OF

II

THE TRIAL COURT ERRED IN NOT CONSIDERING THE FACT THAT *PROSECUTION WITNESS DOMINGA MADERA WAS ACTUATED BY ILL WILL* IN TESTIFYING AGAINST ACCUSED-APPELLANT

III

THE TRIAL COURT ERRED IN *NOT GIVING FULL FAITH AND CREDENCE TO THE DEFENSE INTERPOSED BY ACCUSED-APPELLANT*

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[20] *Rollo* at 21.

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IV

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF TWO (2) COUNTS OF RAPE DESPITE THE FACT THAT *HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.*

The settled rule is that when the issue involves the credibility of a witness, the trial court's assessment is entitled to great weight, even finality, unless it is shown that it was tainted with arbitrariness or there was an oversight of some fact or circumstance of weight and influence. The reason is obvious — the trial court has the unique opportunity to observe the witness firsthand and note his or her demeanor and manner of testifying.[21]

The trial court found Jonalyn a credible witness and appreciated her clear and convincing testimony on how the rapes were committed. Thus, after identifying her father in open court by pointing to him during which she was crying,[22] she, a month and 14 years of age when she testified on March 4, 1999, declared as follows, quoted *verbatim*:

Pros. Escaro:

x x x x x x x x x

Q : Tell us, the accused being your father did you observe the accused, your father, discipline you and your other brother and sisters?

A : *He kicked and boxed my brothers. and sisters.*

Q : What about you, how does your father discipline you?

A : *I was also boxed and kicked by my father.*

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[21] *People v. Sabalan*, G.R. No. 134529, February 26, 2001, 352 SCRA 701, 705.

[22] TSN, March 4, 1999 at 19.

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Q : Do you also observe whenever your father and your mother quarrel, what did you observe?

A : We were hurt whenever our mother and father quarreled.

Q : What does your father do to your mother whenever they quarrel, if you know?

A : *He also kicked and boxed my mother.*

Q : Now, tell us, Miss Witness, *on May 8, 1998*, at about 8:00 o'clock in the evening, tell the Court, where were you?

A : I was in our house, sir.

Q : Where is your house?

A : At Dalipay, sir.

Q : Alright, where were your brothers and sisters as well as your father and mother at that time?

A : They were viewing TV, sir.

Q : And while you were there at your house, where was your father?

A : He was also in the house, sir.

Q : Were you also viewing the TV?

A : Yes, sir.

Q : Now, while you were viewing the TV on that particular date and time, what happened, if any?

A : While viewing the TV, I was called by my father to massage him.

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Q : Where was your father when you were called to massage him?

A : In the room, sir.

Q : By the way, *tell us, from where did your father c[o]me from before he went to your house, if you know?*

A : *At our porch, drinking.*

Q : *With whom, if you know?*

A : *With his friends, sir.*

Court :

Drinking what?

A Gin, your honor.

Pros. Escaro: Now, do you know when did your father and his friends stop drinking wine?

A : Yes, sir.

Q : What time?

A : Around 8:00 o'clock, sir.

Q : *So, after your father stopped drinking with his friends, do you know where he went?*

A : *Yes, sir.*

Q : Where?

A : *Inside the room, sir.*

Q : Is that room also occupied by you or your other siblings?

A : *It is the room of my Papa and Mama.*

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x x x x x x x x x

Q : Now, you mentioned to the Court that on May 8, 1998, you were called by your father to the room to massage him, when you were called to the room to massage him, what did he do?

A : *While I was massaging him, he undressed me.*

Q : *When you went to the room, by the way, is there a door in that room?*

A : *Yes, sir, there is.*

Q : *Was it closed by your father after you entered?*

A : *Yes, sir. He closed the door, but there is a small opening.*

Q : Tell us, when he ordered you to massage him, what was he wearing then?

A : He was wearing shorts.

Q : What was he wearing on his upper body?

A : He was wearing [a] t-shirt.

Q : Did you obey him in massaging him when he ordered you to massage him?

A : Yes, sir.

Q : Tell us, what were you then wearing when you were told by your father to massage him?

A : I was also wearing shorts and t-shirt.

x x x x x x x x x

Q : Alright, when he undressed you, was he able to remove your clothes?

A : No, sir.

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Q : What was removed from you?

A : My shorts together with my panty.

x x x x x x x x x

Q : Now, after your father undressed you, what happened next?

A : After he undressed me, he also removed his shorts.

x x x x x x x x x

Q : After your father removed his brief, what happened next?

A : *After he removed his brief, he lied (sic) on top of me.*

Q : Alright, when he lied (*sic*) on top of you, what happened, what did he do, if any, when he lied (*sic*) on top of you?

A : *He spread my thighs, sir.*

Q : And after he spread you[r] thighs, what did he do next, if any?

A : *After spreading my thighs, he inserted his penis into my vagina.*

Q : Where did the accused insert his penis?

A : *He inserted his penis into my vagina, sir.*

Q : Tell us, what did you feel while your father was inserting his penis into your vagina and made a push and pull motion?

A : *I felt so much pain, sir.*

Q : Alright, after your father made a push and pull motion, what happened next?

A : After the push and pull movement of my father, I was told to wear my panty and short pants.

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Q : When your father undressed you, when your father was about to undress you, *did you not complain to your father or asked your father why he is undressing you?*

A : *No, sir.*

Q *Why, tell us?*

A : *I was afraid because he might again box me.*

Pros. Escaro : *We also make it of record that the private complaining witness is about to cry, in fact, crying now.*

Court :

Place that on record.

Pros. Escaro : *Did it occur to your mind to tell your mother on (sic) what happened on May 8, 1998?*

A *No, sir.*

Q : Why, tell the Court?

A : *Because if I report the matter to my mother, he will kill all of us.*

Q : Now, tell us, *on June 1, 1998*, at about 3:00 o'clock in the afternoon, tell the Court, where were you?

A : I was in our house, sir.

x x x x x x x x x

Q : Tell us, where were your mother, brothers and sisters at that time while you were at your house on June 1, 1998 at 3:00 o'clock in the afternoon?

A : My mother at that time was in the farm planting; while my brothers and sisters were playing at the chapel.

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Q : Tell us, how far is that chapel from your house, if you know, from where you are seated right now, can you tell us the distance?

A : The distance is from the place where I am sitting now to that City Hall Building which is almost one hundred fifty meters.

Q : While you were at your house on that particular date and time, tell us, where was your father, Roberto Madera?

A : My father was in the house, sir.

x x x x x x x x x

Q : *You and your father were inside the house at that time, am I correct?*

A : *Yes, that is correct, sir.*

Q : Which part of your house were you then at that time?

A : Inside the room [which she shared with her two small brothers and sisters],[23] sir.

x x x x x x x x x

Q : While you were there at your room of your house, what happened, if any?

A : *While I was inside the room, about to sleep, my father entered the room.*

x x x x x x x x x

Q : When your father entered the room, what happened next, if any?

A : After he entered the room, *he again undressed me and he also removed his shorts and brief and lied (sic) on top of me.*

[23] *Vide* TSN, March 4, 1999 at 24.

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Q : I[n] that room you are occupying, is there a bed?

A : None, sir, only cemented floor.

Q : *Where were you then lying?*

A : *On a mat [o]n the cemented floor.*

Q : By the way, what were you then wearing at that time, Miss Witness?

A : I was wearing shorts, sir.

Q : And were you wearing any underwear?

A : Yes, sir.

Q : Are you wearing panty?

A : Yes, sir.

Q : What about bra?

A : Yes, I have a bra, sir.

Q : *When your father entered the room, you said he removed your clothing, what did he remove from your clothing?*

A : *Only shorts and my panty, sir.*

x x x x x x x x x

Q : *After he removed his shorts and brief and you were undressed, what happened next?*

A : *He again spread my thighs, sir.*

Q : What was your position when your father spread your thighs?

A : I was lying, sir, facing upwards.

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x x x x x x x x x

Q : And after you lied (*sic*) down, facing upwards, what did he do next, if any?

A : He again inserted his penis into my vagina.

Q : When he inserted his penis into your vagina, what did he do next?

A : *He again made a push and pull movement.*

Q : *Did he kiss you in your other parts of your body?*

A : *No, sir.*

Q : Now, tell us, did you enjoy what he did to you?

A : No, sir.

Q : *Now, tell us, did it occur to your mind to scratch your father, to bite him in order to avoid him from raping you?*

A : *No, sir.*

Q : *Why, tell us?*

A : *I could not do that, sir, because he always hurt me.*[24] (Italics supplied)

x x x x x x x x x

Atty. Cariño:

Q : When your father started to remove your shorts and your panty, you did not at all scream?

A : No, Ma'am.

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[24] TSN, March 4, 1999 at 22-32.

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Q : Even if you know that if somebody is removing your shorts and your panty, something bad will happen to you?

A : *No, Ma'am, I was not able to shout because he threatened. According to my father, if I will shout, he would kill all of us.*

Q : *Did he tell you at that time that he was undressing you?*

A : *Yes. Ma'am.*

Pros. Escaro: *May I make of record, your honor, that the witness is crying as she is testifying on that point.*

Atty. Cariño:
Q : But at that time, Jonalyn, you can still shout, is it not?

A : *I could not shout because he threatened me that all of us would be killed if I shout.*[25]

x x x x x x x x x

Q : Since on May 8, 1998, that was the same procedure, that was the same thing that your father did to you when your father started to remove your short pants and panty, did you not do anything?

A : *I have not done anything, Ma'am.*

Q : *But you would know, Jonalyn, that your father will do something wrong to you again, is it not?*

A : *Yes, I know that, Ma'am.*

Q *So, you could have shouted or struggled with your father at that time?*

A *I could not do that, Ma'am, because he would kill all of us. (italics and emphasis supplied)*[26]

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[25] *Id.* at 46.

[26] *Id.* at 51-52.

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From the foregoing candid, categorical and straightforward sob-punctuated narration by Jonalyn of the incidents, it is not difficult to believe that indeed the young girl who had just metamorphosed into a teenager was twice ravished by her father who was looked upon with fear as "he always hurt [her]" as well as her 9 siblings and their mother by boxing and kicking them.

The argument that appellant could not have raped Jonalyn on May 8, 1998 because her mother and her siblings were not yet asleep as they were watching television in the next room and were aware that she had been summoned to massage him does not persuade. Lust is no respecter of time, place or kinship.[27] Given the sound and the attention the television drew from the viewers, and the location of the door which was ajar, as reflected in Jonalyn's sketch — Exhibit "H"[28] which shows such door to be along the same side where the television was mounted, the viewers could not have been aware of, seen or sensed what was happening inside the room where the molestation took place.

Had the charge for the May 8, 1998 incident been concocted, Jonalyn could just have tailored her account by, e.g., omitting that portion of her testimony regarding the presence of family members at the time of the incident and about the door being left ajar. Or she could have imputed some details that could render her account more in accordance with common experience, like appellant kissing her on parts of her body before having an intercourse. That she did not, thus making her tale appear improbable, reinforces her credibility. For that something improbable can happen is always possible.[29]

As for appellant's alibi with respect to the second case, — that he was on the afternoon of June 1, 1998 with his son Jobert tilling the farm of a certain Cipriano San Felipe which was

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[27] *People v. Umayam*, G.R. No. 147033. April 30, 2003, citations omitted.

[28] Records, Vol. 1 at 46.

[29] *People v. Sanglil*, G.R. No. 113689, July 31, 1997, 276 SCRA 532, 539.

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located some two hundred meters away from his house,[30] it is inherently weak and unreliable. For given that distance between the place where he was, and the scene of the crime,[31] it was not physically impossible for him to be at the latter. That neither his son nor farm owner San Felipe came forward to corroborate his alibi all the more renders his alibi weak.

While, as reflected in Jonalyn's testimony she offered no physical resistance nor attempted to shout, she explained that she was intimidated and threatened into silence, appellant having readily instilled fear in her when he threatened "that all of us would be killed" if she shouted.

Intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. It suffices that the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of appellant, the threat would be carried out.[32] Jonalyn's explanation is not difficult to appreciate, given her claim that appellant had been cruel and often maltreated her, her siblings and her mother, which claim was confirmed at the witness stand by her mother Dominga Cadores Agravante[33] who added that they could not get back at appellant because "if he had with him a bolo, he unsheathed his bolo."

At any rate, in Jonalyn's sworn statement[34] executed on September 28, 1998 before SPO3 Willie C. Miraflores at the office of the Chief of Police of Milaor Municipal Police Station and subscribed and sworn to before Camaligan, Camarines Sur Municipal Circuit Trial Court Judge Jose P. Nacional, she declared

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[30] TSN, March 22, 1999 at 6-8; 14-17.

[31] *People v. Viernes*, G.R. Nos. 136733-35, December 13, 2001, 372 SCRA 231, 250.

[32] *People v. Sabalan, supra* note 21.

[33] *Vide* TSN, March 2, 1999 at 11, 20, 21.

[34] Exhibit "G", Records at 4.

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that appellant "forcibly" had sexual intercourse with her both on May 8, 1998 and June 1, 1998. Thus she declared:

Q : Why are you here in this office and giving this statement?

A : To testify and file a formal complaint against my father Roberto Madera *y* Doe for Rape.

Q : When and where [did] this incident happe[n]?

A : It transpired on or about 8:00 o'clock in the evening of May 8, 1997 (*sic*) and on June 1, 1998 inside our house at barangay Dalipay, this municipality.

Q : How did it happen [o]n the night of May 8, 1998?

A : That on the said date at about 8:00 o'clock in the evening we were watching TV in the sala with my mother, brothers and sisters while my father was having a drinking spree with his intimates in the terrace (*balcon*). Afterwards, my father g[o]t inside the house and he told [me] to foll[ow] him inside the room for he has something to tell me. Once inside, he *forcibly* let me lay on the bed and pulled down my underwear and have a sexual intercourse with me.

Q : Why did you not shout nor ask an (*sic*) assistance from your mother and others who were in the sala?

A : It is because my father threatens me in a low voice to be killed if I shout (*sic*).

Q : What happened on June 1, 1998 at about 3:00 o'clock in the afternoon?

A : That on the said time and date, my mother was away from the house and my brothers and sisters were playing in the other place. I am in the house with my father and the latter forcibly have another sexual intercourse with me. (Italics supplied)

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The sworn statement was offered[35] and admitted[36] in evidence during Jonalyn's direct examination during which she affirmed the truth thereof.[37]

At all events, as between a father and his daughter in an incestuous sexual assault, this Court has upheld the view that the former's *moral ascendancy and influence over the latter sufficiently substitutes for force and intimidation.*[38]

To justify the imposition of the death penalty in a case for qualified rape, the victim's minority and relationship with the offender must be alleged in the complaint or information, as they have been in the informations filed against appellant.

And relationship and minority as qualifying circumstances of rape must be proved beyond reasonable doubt, just as the crime itself.[39]

The prosecution presented a birth certificate to establish Jonalyn's minority and relationship to appellant. The name appearing in the certification[40] issued by the Office of the Civil Registrar of Milaor and in the Certificate of Live Birth[41] is *Jomalyn C. Madera.* The two informations alleged that the victim is *Jonalyn C. Madera.*

Jonalyn's mother Dominga Madera testified, however, that there was a misspelling of Jonalyn's name in the Certificate of Live Birth, a typographical error.[42]

Except for the misspelling of the letter n which appears as "m" in Jonalyn, all the entries in Jonalyn's Birth Certificate are undisputed. Thus it shows that she was born on February 16,

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[35] Records, Vol. 1 at 40-41.

[36] Records, Vol. 1 at 51.

[37] TSN, March 4, 1999 at 34-35; *People v. Servano,* G.R. No. 143002-03, July 17, 2003.

[38] *Id.* at 10 (Two members of this Court dissented in the case).

[39] *Vide People v. Tabanggay,* G.R. No. 130504, June 29, 2000, 334 SCRA 575, 600; *People v. Ramos,* G.R. No. 142577, December 27, 2002.

[40] Exhibit "A", Records, Vol. 1 at 42.

[41] Exhibit "B", *id.* at 43.

[42] TSN, March 2, 1999 at 8.

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1985 to Domingo Lormeda Cadores and herein appellant Roberto Agravante Madera, and that the couple got married on December 27, 1967 at Minalabac, Camarines Sur.

Relation and minority having been alleged and proved, the imposition by the trial court of the death penalty in both cases must thus be affirmed.

Conformably with prevailing jurisprudence, the decision on the civil aspect of the case must be modified such that Jonalyn is awarded civil indemnity of ₱75,000.00 for each count of rape, moral damages of ₱75,000.00 also for each count, and exemplary damages of ₱25,000.00, also for each count.

WHEREFORE, the decision of the Regional Trial Court of Naga, Branch 25, finding appellant Roberto Madera y Agravante guilty beyond reasonable doubt of Qualified Rape and sentencing him to death in both cases is *AFFIRMED*. The civil aspect of the case is *MODIFIED* by awarding to private complainant Jonalyn Madera the amounts of ₱75,000.00 as civil liability, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages for each count of rape.

Three justices of the Court, however, continue to maintain the unconstitutionality of R.A. 7659 insofar as it prescribes the death penalty. Nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty can be lawfully imposed in the cases at bar.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of R.A. 7659, upon finality of this Decision, let the records of these cases be forwarded to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

*Davide, Jr., C. J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcu*na, and *Tinga, JJ.*, concur.

Ynares-Santiago, J., on official leave.