Supreme Court E-Library

FIRST DIVISION

[G.R. No. 141766. November 18, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROGER OSPIG,** *appellant.*

SYNOPSIS

Appellant herein was the boyfriend of Elizabeth, Gazelle's mother. Appellant and Elizabeth lived together, while the latter's common-law husband was working in Saudi Arabia. She has four children, including Gazelle, by her common-law husband. She worked on the night shift, while appellant stayed at home with her children. One night while Elizabeth was at work, appellant raped the 13-year old Gazelle. When Elizabeth learned about the rape she immediately went to the police station where an information for rape, was filed against the appellant. After trial, the court found the appellant guilty of rape and sentenced him to *reclusion perpetua*. In his appeal, appellant claimed that the trial court committed errors in the appreciation of the facts of the case.

The Supreme Court affirmed the conviction and the penalty imposed upon the appellant. According to the Court, the straightforward testimony of private complainant that she was raped by appellant was supported by the medico-legal report who examined the private complainant. The inconsistency alleged by the appellant did not detract from the fact that indeed he raped Gazelle, which was supported by medical evidence.

SYLLABUS

CRIMINAL LAW; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES.— The requisites for voluntary surrender are: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority, and (3) the surrender must be voluntary. Voluntary surrender must be spontaneous and the intent of the accused to surrender unconditionally to the authorities must be shown because he has acknowledged his guilt or he wished to save the authorities the trouble and expenses necessarily incurred in his search or capture.

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APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Faustino A. Olowan for accused-appelant.

D E C I S I O N

AZCUNA, *J.*:

Before us is an appeal from the decision of the Regional Trial Court, Branch 6, of Baguio City, in Criminal Case No. 16420-R, finding appellant Roger Ospig guilty beyond reasonable doubt of the crime of rape.

The Information[1] against appellant reads:

That on or about the 19th day of October, 1998, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of GAZELLE SALAZAR, a minor who is 13 years of age, against her will and consent.

When arraigned on April 19, 1999, appellant pleaded not guilty.[2] Trial ensued.

The Prosecution's Evidence

Private complainant Gazelle Salazar (Gazelle) is the 13-year-old daughter of Elizabeth Salazar (Elizabeth). Elizabeth is the common-law wife of Alejandro Salazar, who is working in Saudi Arabia. Aside from Gazelle, Elizabeth has three other children, namely, Gladys, Alejandro (J.R.) and Harold.[3]

Appellant Roger Ospig was the boyfriend of Elizabeth. In 1998, they lived together, without the benefit of marriage, at the boarding house of Elizabeth at Tam-awan, Quezon Hill,

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[1] Records, p. 1.

[2] Records, p. 23.

[3] TSN, August 24, 1999, pp. 2-3, 13; August 18, 1999, p. 6.

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Baguio City. Elizabeth's children were not aware of their relationship.[4]

The house of Elizabeth comprised of a living room and kitchen and one bedroom. The living room and bedroom were divided by a wooden wall, and the door was covered with a curtain. The children slept in the bedroom, which had two beds: one for the two boys and the other for the two girls. Appellant slept on a chair or a foam in the living room. Elizabeth slept with the children, particularly on the bed of the boys. When appellant was around and the children were still awake, Elizabeth would sleep in their room. After the children were asleep, Elizabeth would transfer to the living room and sleep with appellant. They had sexual intercourse only in the living room, unseen by the children.[5]

When appellant stayed with Elizabeth and her children, he helped wash the dishes and the clothes, he took care of the children and cooked for them. He also helped Gazelle and Gladys in their studies.[6]

At that time, Elizabeth was working as a production worker at the Bay-Sport Manufacturing Inc.[7] at the Export Processing Zone in Loakan, Baguio City.[8]

On October 18, 1998, Elizabeth worked on night shift, that is, from 7:00 p.m. of October 18 to 7:00 a.m. of the next day, October 19, as evidenced by her daily time record [9] and certificate of employment.[10] Gazelle testified that in the early morning of October 19, 1998, when her mother was still at work, she woke

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[4] TSN, August 24, 1999, pp. 3-5; November 11, 1999, pp. 15-16.

[5] TSN, August 23, 1999, pp. 24-25; August 24, 1999, pp. 17-20; August 18, 1999; p. 9; November 11, 1999, p. 27.

[6] TSN, August 24, 1999, pp. 5-6.

[7] Exhibit "J", Folder of Exhibits, p. 19.

[8] TSN, August 24, 1999, p. 5.

[9] Exhibit "I", Folder of Exhibits, p. 18.

[10] Exhibits "J", Folder of Exhibits, p. 19.

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up and saw appellant beside her. Appellant kissed her and her nipples, and inserted his finger in her vagina. He had already removed her underwear. Gazelle resisted by turning around and lying down on her front. Appellant went out to the sala. Gazelle put back her underwear and went to sleep. Thereafter, appellant went back inside Gazelle's room and removed her shorts and underwear. Gazelle was not able to resist because appellant pinned her down with his hands. She did not shout because she was scared as he told her that he would kill her and her brothers and sister if she would shout. Appellant went on top of her, parted her legs and inserted his penis in her vagina and made an up and down movement. She felt pain. She kicked him as hard as she could. He got off her and went to the living room. She put on her shorts and underwear and went back to sleep. She told her 9-year-old sister, Gladys, about the incident. She did not inform her mother because every time they would approach her, appellant was around with a menacing look.[11]

On December 24, 1998, appellant left the house of Elizabeth because her common-law husband, Alejandro, was expected to arrive the next day, December 25. Alejandro stayed in the Philippines until January 1999.[12]

On February 10, 1999, Gladys went home at lunch time and told Elizabeth about the incident which Gazelle confided in her. Thereafter, Elizabeth fetched Gazelle in school. They went to the Department of Social Welfare and Development.[13] Gazelle executed a sworn statement[14] at the police station.

On February 15, 1999, upon referral by the Chief of the Women and Children Desk Section of the Baguio City Police Office, Dr. Vladimir V. Villasenor, regional chief of the PNP Crime Laboratory Service, Cordillera, examined Gazelle. He found that Gazelle's vagina exhibited deep healed lacerations at the 5:00 o' clock and 8:00 o'clock positions, and her labia

[11] TSN, August 18, 1999, pp. 7-13.

[12] TSN, August 23, 1999, pp. 22-23; August 24, 1999, p. 30.

[13] TSN, August 18, 1999, pp. 17-18.

[14] Exhibits "G-G-1", Records, pp. 7-8.

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majora was already gaping. According to Dr. Villasenor, the lacerations and gaping labia majora could have been caused by the insertion of a foreign object like a fully erect male genital organ. He also testified that the deep healed lacerations were compatible with the reported rape on or about October 19, 1998. Dr. Villasenor concluded that Gazelle was no longer a virgin.[15] He prepared a Medico-legal Report,[16] with the following findings:

xxx xxx xxx

General & Extra-genital:

Fairly nourished, fairly developed, coherent female child. Breast are conical with light brown areola and nipples from which no secretion could be pressed out. Abdomen is flat and tight.

Genital:

There is lanugo-type growth of pubic hair. Labia majora are full convex and gaping with the dark brown labia minora presenting in between. On separating the same, is disclosed an elastic and fleshy-type hymen with deep healed lacerations at 5 & 8 o' clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-size vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color & consistency.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of physical violence.

REMARKS:

Peri-urethral and vaginal smears are negative for gram (-) diplococci and for spermatozoa. xxx

During the trial, appellant wrote Elizabeth a letter[17] dated August 20, 1999, which he handed to her in court.[18] In said

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[15] TSN, August 10, 1999, pp. 2-12.

[16] Exhibit "E", Folder of Exhibits, p. 5.

[17] Exhibit "3", Folder of Exhibits, pp. 12-14.

[18] TSN, August 24, 1999, p. 7.

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letter, appellant explained what happened the night he and Elizabeth had an argument. He claimed that after their argument, he went home, drunk, and mistook Gazelle for Elizabeth as it was dark, and he embraced and kissed her. He, however, denied that he raped Gazelle. He asked for forgiveness.

The Defense's Evidence

Appellant Roger Ospig, 23 years old, single, a resident of Irisan, Baguio City, testified that beginning January 1998, he stayed in the residence of Elizabeth Salazar at Tam-awan, Baguio City, as her lover. Elizabeth told him that she was already separated from her husband.[19]

Appellant declared that on October 18, 1998, he was in the boarding house of Elizabeth the whole day. Elizabeth was scheduled to work from 7:00 p.m. to 7:00 a.m. the next day. When she was preparing to go to work, he asked her why she always arrived home late in the morning and told her that maybe she already found someone to replace him. Elizabeth got mad and shouted at him. She kept on shouting at him, so he left the house to avoid her. He drank with one Danny at the billiard hall. They stopped drinking between 10 p.m. to 11:00 p.m., and he went home, drunk. He knocked at the door of the boarding house, but nobody answered. When he leaned on the door, it suddenly opened. He entered the house and switched on the light, but there was no electricity. He went straight to the bedroom and lay down on the bed of Harold. He embraced a person lying there, thinking that she was Elizabeth. He kissed her and inserted his hand inside her underwear. He was surprised that he did not feel any pubic hair. When he was about to remove his hand, he felt a strong kick. It was Gazelle who kicked him. He fell down from the bed and Gazelle was spitting. He went out and washed his face, then slept in the sala. He did not inform Elizabeth about the incident. He stayed at Elizabeth's house until December 24, 1998 because Elizabeth's husband was expected to arrive.[20]

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[19] TSN, September 22, 1999, pp. 2, 10-11, 19.

[20] TSN, September 23, 1999, pp. 9-13, 21-22.

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Appellant was served a warrant of arrest when he was at his residence in Irisan, Baguio City. He voluntarily went with the person who served said warrant of arrest.[21]

He admitted that he personally handed a letter to Elizabeth in court. He was asked why he wrote a part of the letter, marked as Exhibit "I-6", which reads: "*Inamin ko na sa iyo ang pangyayari at kung mahatulan man ako ng death sentence ay wala akong magagawa. Patawarin ninyo na lang ako. Nagpapaliwanag lang ako. Hindi pa ito alam ng attorney ko kaya duda rin siya sa akin.*" Appellant explained that he wrote said part of the letter to tell them that he did not commit the rape. If he will be hanged, it will be in their conscience. He denied that he raped Gazelle.[22]

On January 12, 2000, the trial court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, the Court finds the accused Roger Ospig Guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Article 266-A in relation to Article 266-B of Republic Act 8353 as charged in the Information and hereby sentences him to the penalty of *Reclusion Perpetua*; to indemnify the victim Gazelle Salazar the amount of ₱50,000.00; and to pay the costs.

The accused Roger Ospig being a detention prisoner is entitled to be credited 4/5 of his preventive imprisonment in accordance with Article 29 of the Revised Penal Code in the service of his sentence.

SO ORDERED.[23]

Appellant raised this lone issue:

WHETHER OR NOT THE JUDGE COMMITTED ERRORS IN THE APPRECIATION OF THE FACTS OF THE CASE AND RENDER[ED] A DECISION CONTRARY TO LAW AND JURISPRUDENCE.[24]

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[21] TSN, September 23, 1999, p. 22.

[22] TSN, September 23, 1999, pp. 18-21; October 22, 1999, p. 5.

[23] *Rollo*, pp. 33-34.

[24] *Rollo*, p. 58.

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The Court's Ruling

Appellant contends that the trial court failed to appreciate the contents of the private complainant's diary dated October 18, 1998, which was partly written in coded symbols, wherein she stated that she was only nearly abused by appellant on the night her mother went to work and that the next day, appellant did not abuse her. Appellant claims that the diary would show that he did not commit the crime of consummated rape, but only acts of lasciviousness or attempted raped.

We are not persuaded.

The entry referred to by appellant in private complainant's diary,[25] which is dated October 18, 1998, and marked as Exhibit "F-1", reads:

6:50 [p.m.]
Sunday 101898

You know what now only that I know that Tikay is pregnant. Mommy went to work and Kuya Roger went home (that's what I know). You know what when he nearly (coded symbols) me (coded symbols) I (coded symbols) the next day he did not already (coded symbols) I'm really so smart. Last day (coded symbols) gave me ₱20.00 but that (coded symbols) get it for the rice daw (dirty finger) him. You know what Tikay is just like hard up to breathe.

Private complainant sufficiently explained the meaning of the aforequoted entry, and clarified that there was penile insertion by appellant which justified the complaint of rape, thus:

xxx xxx xxx

Atty. Andres:

Q Ms. Witness, what did the accused do to you for you to write this in Exh. F-1?

A He inserted his penis Ma'am.

Q And what did you feel?

A Pain.

[25] Exhibit "F", Folder of Exhibits, p. 6.

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Q Now, you likewise testified that the accused inserted both his fingers in your vagina?

A Yes Ma'am.

Q And what did you feel when he did that to you?

A Painful also.[26]

The Court is not convinced by appellant's allegation that his initial attempt to have sex with private complainant was not followed by a subsequent consummated act as private complainant testified in a straightforward manner, thus:

xxx xxx xxx

ATTY. ANDRES:

Q On that specific morning of October 19, 1998, you said you were sleeping. What happened, if any?

A I woke up and then I saw him beside me.

Q Who are you referring to as "he"?

A Roger Ospig.

Q And what was he doing?

A He was kissing me, my nipples and inserting his finger in my vagina.

Q When he was doing that, what did you do?

A I turned around.

Q Why, what was your position at that time?

A I was lying on my back.

Q Now, you said that he was inserting his finger in your vagina. Why, at that time weren't you wearing any underpants?

A He removed it already, ma'am.

Q So, at that time that you woke up you were already naked waist down?

A Yes, ma'am.

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[26] TSN, August 23, 1999, p. 27.

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Q And when you turned your back, to what direction did you turn your back?

A I slept on my front.

Q And what did he do afterwards?

A He got out.

xxx xxx xxx

Q Now, after he went out after that specific incident, what did you do?

A I went back to sleep.

xxx xxx xxx

Q At that time you said you were no longer wearing your underwear. Did you put it back?

A I put it back.

Q And then you went back to sleep?

A Yes, ma'am.

Q And thereafter, was there any other unusual incident that transpired?

A After that I thought he was sleeping already. Then he went back inside. Then he removed my clothes.

Q Which clothes?

A My shorts and my panty.

Q Did you resist him at that time?

A No, because he was holding me like that (witness demonstrating with her two hands raised up to her shoulders).

Q What do you mean he was holding you like that?

A He was pinning me at that position.

Q With the use of what?

A His hands.

Q And did you not scream?

A I did not because I was scared and he told me that he will kill me and my brothers and sister if I shout.

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xxx xxx xxx

Q And when he was pinning you down, what did he do, if any?

A He inserted his penis in my vagina.

xxx xxx xxx

Q And, Ms. Witness, when he did that, how did you feel?

A I felt pain.

Q And did you do anything to resist him?

A Yes, ma'am.

Q What did you do?

A I kicked him as hard as I could.

xxx xxx xxx

Q Now, thereafter, Ms. Witness, after kicking him as hard as you [could] as you said, what happened?

A He came down and walked towards the sala.

Q How about you? What did you do afterwards?

A I rolled back although I am not fond of that position, and I slept.

Q What about your clothings, what did you do about it considering that your shorts and panty were removed already?

A I put them back.[27]

The straightforward testimony of private complainant that she was raped by appellant was supported by the Medico-legal Report[28] of Dr. Vladimir Villasenor who examined the private complainant. Dr. Villasenor testified, thus:

xxx xxx xxx

[27] TSN, August 18, 1999, pp. 8-12.

[28] Exhibit "E", Folder of Exhibits, p. 5.

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Q And after that examination, what was the next step that you have undertaken?

A I proceeded to examine the private organ of the victim,

Q What was your finding?

A I noted down that the organ of the victim exhibits deep healed laceration which are located at 5 and 8 o' clock position.

Q Aside from the deep healed lacerations, what else did you find out in the genital organ of Gazelle Salazar?

A The labia majora of the victim was already gaping at the time of the examination.

Q And what else did you find out?

A I also took smears but these were negative for gram diplococci and for spermatozoa.

Q You mentioned having found a deep healed laceration at 5 and 8 o' clock position. How do we understand this 5 and 8 o' clock position?

A Comparing the hymen to the face of a watch and we refer the location of the deep healed lacerations on the 5 o' clock position of the watch as well as the 8:00 o' clock position of a watch.

Q And what could have caused this hymenal laceration of Gazelle Salazar?

A This can be caused by the insertion of a foreign object, sir.

Q Like what?

A Like a fully erect male genital organ, sir.

Q Now, these lacerations appear to be deep healed lacerations, your examination of February 15, 1999, would this be compatible with the complaint of Gazelle Salazar for rape which reportedly happened on or about October 19, 1998?

A Yes, it is still compatible.

xxx xxx xxx

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Q Now, what was your conclusion in your examination of Gazelle Salazar?

A I concluded that the subject is no longer a virgin or in a non-virgin state physically sir.[29]

Appellant also contends that his testimony would show that he mistook private complainant for her mother, who is his live-in partner, since they had no electricity that time, and that his acts of embracing and kissing her, and inserting his hand in her underwear do not amount to rape.

The contention is untenable.

The trial court correctly ruled, thus:

" . . . [E]ven assuming that initially there was a mistake on the part of the accused, the complainant Gazelle herself testified that on the very same occasion when accused first kissed her and inserted his finger in her vagina, she immediately resisted him by turning away from him and so accused went out to the sala. Thus he already realized by then that it was the young girl Gazelle and not the mother who was on the bed. But the incident did not end there. The accused went back after a few minutes when Gazelle fell asleep again. And this time he forced himself upon her and consummated sexual intercourse with her despite her resistance and struggle and kicking him. There is no more excuse therefore of any mistaken identity. This simply means he wanted to satisfy his beastly desire to ravage the young girl.[30]

Appellant further attacks the credibility of private complainant for her inconsistent testimony. Appellant asserts that private complainant testified on direct examination (August 18, 1999) that he inserted his penis in her vagina only when he returned the second time, while on rebuttal (November 11, 1999), she testified that he inserted his penis in her vagina the first time he went to her bed and also when he returned in the early morning of the next day.

We are, again, not persuaded.

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[29] TSN, August 10, 1999, pp. 10-12.

[30] *Rollo*, pp. 31-32.

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The alleged inconsistency does not detract from the fact that appellant indeed raped private complainant, which was supported by medical evidence.

Moreover, the trial court's finding on the credibility of witnesses carry great weight and respect and will be sustained by the appellate courts unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. [31] We have carefully reviewed the records of this case and found no reason to disturb the findings of the trial court.

In addition, appellant contends that the trial court failed to consider the mitigating circumstance of voluntary surrender in his favor.

We disagree.

The requisites for voluntary surrender are: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority, and (3) the surrender must be voluntary. [32] Voluntary surrender must be spontaneous and the intent of the accused to surrender unconditionally to the authorities must be shown because he has acknowledged his guilt or he wished to save the authorities the trouble and expenses necessarily incurred in his search or capture.[33]

Appellant wants the Court to consider as voluntary surrender the fact that he voluntarily went with the person who served him a warrant of arrest when he was at home.[34] The records show that members of the PNP Criminal Investigation and Detection Group of Baguio City arrested appellant at about 6:00 p.m. of April 9, 1999 at his residence by virtue of a warrant

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[31] *People v. Viajedor*, G.R. No. 148138, April 11, 2003, citing *People v. Banela*, 301 SCRA 84, 90-91 (1999).

[32] *People v. Javier*, 377 SCRA 300, 311 (2002); *People v. Caber, Sr.*, 346 SCRA 166, 176 (2000).

[33] *People v. Javier, supra.*

[34] TSN, September 23, 1999, p. 22.

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of arrest.[35] He was brought to the police department for documentation and subsequently turned over to the Baguio City Jail. Hence, the mitigating circumstance of voluntary surrender cannot be considered against appellant since he was actually arrested by the police and he merely submitted himself to their authority. In *People v. Baybado*,[36] the Court held that there can be no voluntary surrender if the warrant of arrest showed that the defendant was in fact arrested.

Appellant also contends that his explanation about what really transpired during the incident in his letter to the mother of private complainant should be credited as a mitigating circumstance of voluntary confession of guilt before the court prior to the presentation of evidence for the prosecution. Appellant pointed out that the prosecution had not rested its case when said letter was presented in court, and it was marked as evidence by both the prosecution and the defense.

The contention is without merit.

We cannot consider in appellant's favor the mitigating circumstance of voluntary confession of guilt before the court prior to the presentation of evidence for the prosecution since the said letter was a denial of the rape charge, appellant entered a plea of "not guilty," and the letter was presented by the prosecution, not the defense, after two prosecution witnesses had testified before the court.

The Offense and the Penalty

Article 266-A and Article 266-B of Republic Act 8353, which are the applicable provisions of law at the time of the commission of the offense, provide:

Article 266-A. *Rape; when and how committed.* — Rape is committed —

1) By a man who has carnal knowledge of a woman under any of the following circumstances:

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[35] Records, p. 15.

[36] 335 SCRA 712, 727 (2000).

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a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. xxx

Article 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. xxx

Appellant raped private complainant through force, threat or intimidation. Private complainant testified that appellant returned to her in the early morning of October 19, 1998 and succeeded in having sexual intercourse with her by pinning her down and threatening to kill her and her brothers and sister if she shouted for help.[37] Appellant thus committed the crime of simple rape against private complainant for which the trial court correctly imposed the penalty of *reclusion perpetua*.

Damages

The trial court correctly awarded the private complainant civil indemnity in the amount of ₱50,000. This is in the nature of actual or compensatory damages, and is mandatory upon a conviction for rape.[38]

In addition, private complainant is entitled to moral damages in the amount of ₱50,000 pursuant to Article 2219 of the Civil Code,[39] without the necessity of additional pleading or proof other than the fact of rape.[40] Moral damages is granted in

[37] TSN, August 18, 1999, p. 10.

[38] *People v. Viajedor, supra*, note 31.

[39] Civil Code, Art. 2219. Moral damages may be recovered in the following and analogous cases: (1) A criminal offense resulting in physical injuries; (2) Quasi-delicts causing physical injuries; (3) Seduction, abduction, rape, or other lascivious acts xxx.

[40] *People v. Viajedor, supra*, note 31.

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recognition of the victim's injury necessarily resulting from the odious crime of rape.[41]

WHEREFORE, the decision of the Regional Trial Court, Branch 6, of Baguio City, in Criminal Case No. 16420-R, finding appellant Roger Ospig guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer *reclusion perpetua* and to pay civil indemnity in the amount of Fifty Thousand Pesos (₱50,000) is *AFFIRMED* with the modification that appellant is further ordered to pay private complainant Gazelle Salazar moral damages in the amount of Fifty Thousand Pesos (₱50,000).

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J. (Chairman), *Panganiban, Ynares-Santiago,* and *Carpio, JJ.*, concur.

THIRD DIVISION

[G.R. No. 142532. November 18, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOHNNY M. QUIZON,** *appellant*.

SYNOPSIS

Appellant herein was suspected of killing and robbing his own aunt because someone from an adjacent office to where the crime was committed was able to pinpoint him as the last person she saw who came out of the said office. The appellant was charged of robbery with homicide. He was found guilty

[41] *Ibid.*