Supreme Court E-Library

harassment in A.M. No. P-03-1699 and is accordingly DISMISSED from the service with prejudice to re-employment in any branch, agency, or instrumentality of the Government, including government-owned and controlled corporations.

He is likewise found Guilty of gross discourtesy and failure to issue an official receipt in A.M. No. P-03-1697 and is meted the penalty of suspension for a period of One (1) Month. Considering, however, that we already ordered his dismissal in A.M. No. P-03-1699, his suspension is moot.

SO ORDERED.

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

Azcuna, J., is on leave.

EN BANC

[G.R. Nos. 133066-67. October 1, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROMEO H. LAMBID,** *appellant.*

SYNOPSIS

Two separate complaints for rape were filed by 14-year old Lyzel against her father, herein appellant. Both incidents were witnessed by Mary Ann, the 13-year old sister of herein victim, who also testified on the witness stand against their father. The trial court found the appellant guilty of the crime of rape on two counts and sentenced him to two death penalties.

Supreme Court E-Library

According to the Supreme Court, in both cases the prosecution was able to establish by competent evidence that Lizel was 14 years old and appellant is her father. It was likewise established that the appellant raped his daughter Lyzel in full view of his daughter Mary Ann. However, the complaint/information failed to allege the minority of the victim and her relationship with the appellant. Consequently, appellant may be convicted only of simple rape. Hence, the trial court erred in imposing the death penalty in both cases. The appropriate penalty, which could be imposed on the appellant, is *reclusion perpetua* in each count.

SYLLABUS

1. **CRIMINAL LAW; RAPE; RECLASSIFIED FROM CRIME AGAINST CHASTITY INTO A CRIME AGAINST PERSONS; EFFECT THEREOF.** — At the outset, it is noted that since the crimes were committed on October 31, 1997 and November 1, 1997, the applicable law is R.A. 8353, otherwise known as "The Anti-Rape Law of 1997" which took effect on October 22, 1997. Under this law, rape has been reclassified from a private crime or crime against chastity into a crime against persons. Consequently, the prosecution for the crime of rape was removed from the ambit of Chapter Five, Title Eleven of the Revised Penal Code and Section 5, Rule 110 of the 1985 Rules on Criminal Procedure which required that in crimes against chastity, the complaint must be filed by the offended party, or her parents, godparents or guardian, as the case may be under the law. Thus, effective October 22, 1997, R.A. No. 8353, it is required that prosecution for the crime of rape, as in any other public crimes, is commenced in court by the filing of an information by the public prosecutor and no longer by a mere complaint filed by the offended party, parents, godparents or guardian.

2. **ID.; ID.; DEFECT IN THE FORM OF INDICTMENT DOES NOT INVALIDATE THE PROCEEDINGS IN THE TRIAL COURT.** — The apparent defect in the form of indictment, that is by way of a complaint by the offended party, is merely one of form which does not invalidate the proceedings had in the trial court. The certification converted the complaints into informations filed by the prosecutor. Moreover, under Section

Supreme Court E-Library

8, Rule 117 of the 1985 Rules of Criminal Procedure, the governing law at the time of the filing of the indictments, for his failure to move to quash the same prior to his arraignment, appellant was deemed to have waived his right to question the complaints filed by Lyzel on the ground that it is defective in form per Section 3(d), Rule 117 of the Rules of Court.

3. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF RAPE VICTIM; DISCREPANCIES IN DETAILS NOT RELEVANT TO THE ELEMENTS OF THE CRIME DOES NOT AFFECT CREDIBILITY; CASE AT BAR.** — It is a settled rule that discrepancies in details which are irrelevant to the elements of the crime, such as the exact time of the commission of the crime, are not grounds for acquittal. To be material, discrepancies in the testimony of the victim should refer to significant facts which are determinative of the guilt or innocence of the accused. In the present case, the mental lapse on the part of Lyzel in failing to accurately recall the exact days of the week when she was raped and the date of her mother's arrival from Leyte does not detract from her credibility. It only indicates that her account is spontaneous, neither rehearsed nor contrived. What is important is that she was able to clearly recall how she was raped and testify on this matter in a categorical and straightforward manner.

4. **ID.; ID.; ID.; CREDIBLE EVEN WHEN THE VICTIM DID NOTHING TO EVADE THE RAPE THE SECOND TIME.** — Lyzel very clearly testified that in the first incident, she tried to resist the sexual advances of appellant by kicking him and by trying to move her body but when appellant threatened to kill her, she, who was only fourteen years old, was easily cowed into submitting herself to appellant's carnal desire. When appellant raped her the following day, her fear of her father and of the previous threat that he would kill her still pervaded causing her to do nothing the second time. Her harrowing experience the day before in the hands of her father coupled with a threat on her life was sufficient to envelop her with fear and paralyze her into submission even if appellant merely stared at her when he raped her again the following morning. Lyzel's failure to shout or offer tenacious resistance during the second incident does not demolish her claim that she was raped. Appellant further questions the credibility of Lyzel in enabling him to rape her in two successive days. He contends

Supreme Court E-Library

that after Lyzel was raped for the first time on October 31, 1997, her logical reaction should have been to immediately seek the help of other people; that despite her opportunity to do so, she did not. We are not persuaded. It is a settled rule that the workings of the human mind under emotional stress are unpredictable and there is no standard form of behavior when one is confronted by a shocking incident. Verily, under emotional stress, the human mind is not expected to follow a predictable path. Indeed, Lyzel must have been shocked and utterly confused by the fact that her own father, committed such an act of bestiality against her. More importantly, it is established by competent evidence that appellant threatened to kill Lyzel if she told anybody about the rape. That alone is sufficient explanation why she did not make known to other people the first time that she was raped by her father.

5. **CRIMINAL LAW; RAPE; DEATH PENALTY MAY BE IMPOSED ONLY WHEN THE QUALIFYING CIRCUMSTANCES OF MINORITY OF THE VICTIM AND HER RELATIONSHIP WITH THE OFFENDER WERE ALLEGED IN THE INFORMATION AND THE EVIDENCE HAS PROVEN BOTH QUALIFYING CIRCUMSTANCES BY THE QUANTUM OF PROOF REQUIRED FOR CONVICTION.** — However, the complaints/informations in those two cases fail to allege Lyzel's minority or appellant's relationship to her. Section 9, Rule 110 of the Revised Rules of Criminal Procedure, requires that both qualifying and aggravating circumstances must be stated in the complaint or information. Existing jurisprudence instructs that the death penalty may be imposed only if the complaint or information has alleged and the evidence has proven both the minority of the victim and her relationship to the offender by the quantum of proof required for conviction. In the present case, not only were the minority of the complainant and her relationship with appellant not alleged in the two complaints/informations filed against appellant, but, also, the aggravating/qualifying circumstance that the second rape was committed in full view of appellant's daughter. Consequently, appellant may be convicted only of simple rape; hence, the trial court erred in imposing death penalty in both cases. The appropriate penalty which could be imposed on the appellant is *reclusion perpetua* in each count.

Supreme Court E-Library

6. **REMEDIAL LAW; CRIMINAL PROCEDURE; EFFECT OF APPEAL UPON THE CASE.** — It is a settled rule that an appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of the appellate court to *correct an error as may be found in the appealed judgment*, whether or not it is made the subject of assignment of errors.

7. **CRIMINAL LAW; RAPE; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY DISTINCT FROM MORAL DAMAGES.** — While the trial court correctly awarded moral damages in the amount of ₱50,000.00, it failed to award civil indemnity. Civil indemnity is distinct from moral damages as it is based on different jural foundations and assessed by the court in the exercise of its sound discretion. The award of civil indemnity is mandatory upon the finding of fact of rape. Based on existing jurisprudence, the civil indemnity for the victim in simple rape shall not be less than ₱50,000.00.

8. **ID.; ID.; ID.; PRESENCE OF AN AGGRAVATING CIRCUMSTANCE JUSTIFIES AN AWARD FOR EXEMPLARY DAMAGES.** — It is settled that the presence of an aggravating circumstance justifies an award for exemplary damages under Article 2230 of the Civil Code even in the absence of an allegation of the aggravating circumstance in the Information. The award of exemplary damages should serve to deter other fathers with perverse tendencies and aberrant sexual behavior from preying upon and sexually abusing their daughters. Thus, exemplary damages in the amount of ₱25,000.00 for each count of rape should be awarded to the victim in view of the presence of the aggravating circumstances of relationship and dwelling.

APPEARANCES OF COUNSEL

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

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

On automatic review is the joint decision of the Regional Trial Court of Cebu City, Branch 18, in Criminal Cases Nos.

Supreme Court E-Library

CBU-45672 and CBU-45673 finding Romeo H. Lambid guilty beyond reasonable doubt of two counts of qualified rape and sentencing him to suffer the penalty of death for each count.[1]

In her two separate Complaints dated November 4, 1997 and November 5, 1997, complainant Lyzel S. Lambid, accuses Romeo H. Lambid of raping her, as follows:

In Criminal Case No. CBU-45672:

The undersigned complainant, LYZEL S. LAMBID, after having been duly sworn to in accordance with law, hereby accuses ROMEO H. LAMBID of the crime of Rape, committed as follows:

> That on or about the 31st day of October, 1997, at about 5:00 A.M., and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation upon undersigned complainant to wit, by forcibly placing himself on top of the victim, and at the same time threat her with death if she would shout, then removed her panty, did then and there have carnal knowledge of the undersigned against her will.
>
> CONTRARY TO LAW.[2]

In Criminal Case No. CBU-45673:

The undersigned complainant, LYZEL S. LAMBID, after having been duly sworn to in accordance with law, hereby accuses ROMEO H. LAMBID of the crime of Rape, committed as follows:

> That on or about the 1st day of November, 1997, at about 5:00 A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation upon undersigned complainant to wit, by forcibly placing himself on top of the victim, and at the same time threat her with death if she would shout, then removed her panty, did then and there have carnal knowledge of the undersigned against her will.
>
> CONTRARY TO LAW.[3]

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[1] Original Records, pp. 61–71.

[2] Exhibit "A", OR, p. 1.

[3] Exhibit "C", OR, p. 3.

Supreme Court E-Library

Upon his arraignment, appellant pleaded not guilty to both charges. The cases were consolidated and tried jointly.

The prosecution presented three witnesses: Lyzel Lambid, the complainant; Mary Ann Lambid, a sister of Lyzel; and Dr. Aster Khosravibabadi, the physician who conducted a physical examination on the complainant.

The facts established by the prosecution are as follows:

On October 31, 1997, 14-year old Lyzel was sleeping in their house located at Inayawan, Cebu City together with her father, herein appellant, and two sisters. Around 5:00 in the morning, she woke up and noticed her father lying beside her. Then, her father started removing her panty at the same time warning her not to tell her mother what he was doing. After her father succeeded in removing her panty, he went on top of her and started inserting his penis into her vagina. She initially tried to resist the sexual advances of her father by kicking him and by moving her body from left to right and vice versa. She stopped resisting when her father stared hard at her and threatened to kill her (Lyzel). Her father succeeded in inserting his penis into her vagina. The following day, November 1, 1997, she was again roused from her sleep and noticed her father lying beside her. Repeating what he did the previous day, her father removed her panty. Thereafter, he successfully inserted his penis into her vagina. Lyzel did nothing out of fear. She did not tell anybody about these two incidents.[4]

However, her sister, Mary Ann, aged 13, witnessed both incidents. She was awakened around 5:00 in the morning of October 31, 1997 when she heard their father say to her sister Lyzel: "Don't tell this to your mother or else I will kill you." Their father was then lying beside Lyzel. Afterwards, she saw him stand up and go to urinate. About 5:00 in the morning of the succeeding day, November 1, 1997, she was sleeping beside her sister Lyzel. She was awakened while their father was pulling her blanket. Suspicious of their father's actuation, she kicked him. After kicking him, she laid near the foot of her sister Lyzel.

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[4] TSN, December 5, 1997, pp. 4–7; December 10, 1997, pp. 3–8.

Supreme Court E-Library

Their father then covered her with a blanket but she peeped through the blanket. She saw their father who was only wearing an underwear place himself on top of Lyzel. Her father covered himself and Lyzel with a blanket, after which Mary Ann saw their father's whole body shake and heard him breathing hard. She again heard their father warn Lyzel not to relate the incident to their mother, otherwise he will kill her (Lyzel).

On November 2, 1997, Mary Ann informed three of their neighbors about the incidents she witnessed. Their neighbors brought her to the president of their local association for assistance and on that same day their father was arrested.[5]

Dr. Aster Khosravibabadi conducted a physical examination of Lyzel on November 3, 1997 and found that Lyzel's vagina had "new hymenal lacerations with raw edges at 5 o'clock position." The doctor asserted that Lyzel might have sustained the lacerations within six days prior to her examination. The test for the presence of spermatozoa yielded negative results.[6]

The defense presented appellant as its lone witness. On the witness stand, when asked about the truth of her daughter's complaint, appellant simply stated that if he had committed the crimes of rape against his daughter, he asks for forgiveness because during that time he was drunk. He asked the court to impose upon him a lesser penalty considering that his children are still under his care.[7]

The trial court rendered judgment, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Court finds the accused Romeo H. Lambid guilty beyond reasonable doubt of the crime of rape, defined and penalized by Article 335 of the Revised Penal Code and Republic Act No. 7659 known as the Death Penalty Law and sentences him to suffer two supreme penalties of Death for the two (2) crimes of rape committed against her own daughter Lyzel

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[5] TSN, November 18, 1997, pp. 4–8.

[6] TSN, December 12, 1997, pp. 4–7.

[7] TSN, December 16, 1997, p. 3.

Supreme Court E-Library

Lambid, with inherent accessory penalties provided by law; to indemnify the victim the sum of ₱100,000.00 as moral damages and to pay the costs.

SO ORDERED.[8]

Hence, the present automatic review pursuant to Article 47 of the Revised Penal Code, as amended.

Appellant raises the following Assignment of Errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED BASED ON REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO ALLEGE THE AGE AND RELATIONSHIP OF THE VICTIM AND THE ACCUSED-APPELLANT.[9]

At the outset, it is noted that since the crimes were committed on October 31, 1997 and November 1, 1997, the applicable law is R.A. 8353, otherwise known as "The Anti-Rape Law of 1997"[10] which took effect on October 22, 1997.[11] Under this law, rape has been reclassified from a private crime or crime against chastity into a crime against persons. Consequently, the prosecution for the crime of rape was removed from the ambit of Chapter Five, Title Eleven of the Revised Penal Code and Section 5, Rule 110 of the 1985 Rules on Criminal Procedure which required that in crimes against chastity, the complaint must be filed by the offended party, or her parents, godparents

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[8] OR, p. 71.

[9] Appellant's Brief, *Rollo*, p. 45.

[10] Incorporated in the Revised Penal Code as Articles 266-A, 266-B, 266-C and 266-D.

[11] *People vs. Dela Cerna*, G.R. Nos. 136899-904, October 9, 2002; *People vs. Nicolas*, G.R. No. 135877, August 22, 2002.

Supreme Court E-Library

or guardian, as the case may be under the law. Thus, effective October 22, 1997, R.A. No. 8353, it is required that prosecution for the crime of rape, as in any other public crimes, is commenced in court by the filing of an information by the public prosecutor and no longer by a mere complaint filed by the offended party, parents, godparents or guardian.

In the present cases, the indictments charging appellant with the crimes of rape were each captioned as a "Complaint" signed by Lyzel herself; but, there is a Certification on the second page of each of the complaints by the investigating prosecutor treating the complaint as an information, to wit:

In Criminal Case No. CBU-45672:

CERTIFICATION

I hereby certify that the foregoing information is filed pursuant to Sec. 7, Rule 112 of the 1985 Rules on Criminal Procedure, as amended, the accused not having opted to avail of his right to a preliminary investigation and not having executed a waiver pursuant to Art. 125 of the Revised Penal Code. *I further certify that this information is being filed with the prior authority of the City Prosecutor.*

Cebu City, Philippines, November 4, 1997.

(signed)
JOSE R. PEDROSA
Prosecutor II, Cebu City[12]
(Italics supplied)

In Criminal Case No. CBU-45673:

CERTIFICATION

I hereby certify that the foregoing information is filed pursuant to Sec. 7, Rule 112 of the 1985 Rules on Criminal Procedure, as amended, the accused having opted to avail of his right to a preliminary investigation and having executed a waiver pursuant to Art. 125 of the Revised Penal Code. *I further certify that this information is being filed with the prior authority of the City Prosecutor.*

Cebu City, Philippines, November 5, 1997.

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[12] OR, p. 2.

Supreme Court E-Library

(signed)
JOSE R. PEDROSA
Prosecutor II, Cebu City[13]

The apparent defect in the form of indictment, that is by way of a complaint by the offended party, is merely one of form which does not invalidate the proceedings had in the trial court. The certification converted the complaints into informations filed by the prosecutor.

Moreover, under Section 8, Rule 117 of the 1985 Rules of Criminal Procedure,[14] the governing law at the time of the filing of the indictments, for his failure to move to quash the same prior to his arraignment, appellant was deemed to have waived his right to question the complaints filed by Lyzel on the ground that it is defective in form per Section 3(d), Rule 117 of the Rules of Court.[15]

Coming to the merits of the case, appellant, in support of the first assigned error, attacks the credibility of the complainant. He harps upon the fact that although Lyzel was sure of the dates when appellant raped her, she failed to recall the days of the week upon which these dates fell. Appellant also points out the apparent inconsistency as to the date Lyzel's mother arrived from Leyte and the date she accompanied Lyzel to report the incident to the police authorities.

We agree with the contention of the Office of the Solicitor General (OSG) that the failure of complainant to correctly pinpoint the day of the week when she was raped and to recall the exact date of her mother's arrival from Leyte are inconsequential matters. It is a settled rule that discrepancies in details which are irrelevant to the elements of the crime, such as the exact

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[13] OR, p. 4.

[14] Now Section 9, Rule 117 of the Revised Rules of Criminal Procedure, effective December 1, 2000; *People vs. Lumilan*, 323 SCRA 170, 185; *People vs. Dimapilis*, 300 SCRA 279, 291; *People vs. Garcia*, 218 SCRA 463, 472.

[15] Now Section 3(e), Rule 117 of the 2000 Revised Rules of Criminal Procedure.

Supreme Court E-Library

time of the commission of the crime, are not grounds for acquittal.[16] To be material, discrepancies in the testimony of the victim should refer to significant facts which are determinative of the guilt or innocence of the accused.[17] In the present case, the mental lapse on the part of Lyzel in failing to accurately recall the exact days of the week when she was raped and the date of her mother's arrival from Leyte does not detract from her credibility. It only indicates that her account is spontaneous, neither rehearsed nor contrived.[18] What is important is that she was able to clearly recall how she was raped and testify on this matter in a categorical and straightforward manner.

Moreover, Lyzel's testimony is strongly corroborated by her sister Mary Ann[19] and buttressed by physical evidence. The physician's findings on her physical examination conducted on November 3, 1997 indicated the presence of fresh lacerations on her hymen. Laceration of the hymen, whether fresh or healed, is the best physical evidence of defloration.[20] In the present case, the doctor estimated that the lacerations could have been sustained by Lyzel within six days prior to the date of her examination.[21] This estimate is consistent with Lyzel's claim that she was raped on October 31, 1997 and November 1, 1997.

Under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by R.A. No. 8353, rape is committed by a man who shall have carnal knowledge of a woman through fear, threat or intimidation.

Appellant would have us to believe that if he had carnal knowledge with her daughter Lyzel, it was done without force and intimidation, citing her testimony that she did nothing while she was supposedly being sexually abused by him.

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[16] *People vs. Escaño*, G.R. Nos. 140218-23, February 13, 2002.

[17] *People vs. Gopio*, 346 SCRA 408, 430 (2000).

[18] *People vs. Mauricio*, 353 SCRA 114, 121–122 (2001).

[19] TSN, November 18, 1997.

[20] *People vs. Sambrano*, G.R. No. 143708, February 24, 2003.

[21] TSN, December 12, 1997, pp. 5–7.

Supreme Court E-Library

We are not convinced in the light of Lyzel's testimony, pertinent portions of which we quote verbatim, as follows:

Q At about 5:00 o'clock in the morning of *October 31, 1997* can you recall of any unusual incident that transpired inside the house where you were residing?

A Yes there was sir.

Q Please tell the Court Lyzel what was the unusual incident?

A While I was still asleep I was awaken when my father sleep beside me.

Q If your father was laying beside you did he do anything?

A There was sir.

Q What did your father do to you?

A He remove my panty.

Q And after your father remove your panty what did he do?

A He lift out his penis and let it enter into my vagina.

Q And did your father succeeded in inserting his penis into your vagina?

A Yes, sir.

Q What did you do when your father was still removing your panty and before he placed himself on top of you and inserted his penis into your vagina?

A He told me not to reveal to my mother what he did

x x x x x x x x x

COURT:

Q What did you do when your father was doing all these things that you have told to us?

A Nothing.

FISCAL LABORTE:

Q Why?

A I was entertaining fear considering that he stared his eyes towards me.

Q *Aside from staring at you what else if any did your father do to in staring on you?*

Supreme Court E-Library

A *He said as follows: "Don't tell anybody, if you still somebody I would kill you."*

COURT:

Q Did you not move your body away from him so that he would not succeed in doing such thing to you?

A I moved my body but he kept on holding me.

FISCAL LABORTE:

Q On the following day Lyzel *November 1, 1997* where did you sleep?

A At our house sir.

Q The same house where you sleep the day before?

A Yes, sir.

COURT:

Q Why did you still sleep in that house after that experienced you had with your father the preceding night. Why did you not run away from that house?

A Because he will be looking for me, Your Honor.

FISCAL LABORTE:

Q And again Lyzel who were your companions if any on November 1, 1997 at your house when you were sleeping?

A My two younger sister sir.

Q Who else if any?

A My father.

Q At about the same time on November 1, 1997 at about 5:00 o'clock in the morning was there anything unusual that happened inside your house?

A There was.

Q Now. Please tell this Honorable Court what unusual incident happened on that particular date and time.

A While I was still asleep there was somebody lying beside me I thought it was my sister but when I was awaken it was my father.

Supreme Court E-Library

Q And while your father was lying beside you did he do anything?
A Yes.

Q Please tell the Court Lyzel what did your father do to you?
A He removed my panty sir.

Q And after your father removed your panty what did he do next?
A He lift out his penis and inserted into my vagina.

x x x x x x x x x

FISCAL LABORTE:

Q Did your father succeed in inserting his penis into your vagina?
A Yes.

Q Now what did you do when your father inserted his penis into your vagina?
A Nothing.

Q Why?
A Because I was entertaining fear.

COURT:

Q Why were you afraid of your father?
A Because his eyes were starring at me.

Q Was his bolo was still there?
A Yes, Your Honor.

FISCAL LABORTE:

Q Did you tell somebody Lyzel on what your father did to you on October 31, 1997 as well as on November 1, 1997?
A No, sir.

Q Why did you not tell anybody about what your father did to you?
A Because I was entertaining fear all the time.[22] (Italics supplied)

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[22] TSN, December 5, 1997, pp. 4–7.

Supreme Court E-Library

On cross-examination, Lyzel further testified:

ATTY. GUBALANE:

Q How long did it take by your father in removing your panty on October 31, 1997?

A About one minute sir.

Q Do your remember what were your wearing on October 31, 1997?

A Yes I remember sir.

Q What were you wearing then?

A Short pants sir.

Q When you noticed your father on October 31, 1997 sleep beside you and before he remove your panty why did you not shout for help?

A Because I was entertaining fear sir.

COURT:

Q Fear of what?

A Entertaining fear to my father, Your Honor.

ATTY. GUBALANE:

Q Is it not true then that Mary Ann is sleeping beside you at your foot?

A That's correct sir.

Q Did you not kick you father?

A I kicked him sir.

Q How many times did you kick your father?

A Two times.

Q But you did not shout?

A *No, sir.*

Q Because of fear?

A That's right sir.

Q Inspite your fear you managed to kick your father two times?

A That's right sir.

Supreme Court E-Library

COURT:

Q You kick for two times, did you do this on the first rape or on the second rape?

A The first rape, Your Honor.

Q Why did you not kick him any more in the second time?

A Because he stared his eyes towards me (*gisigahan ko sa iyang mata*).[23] (Italics supplied)

Lyzel very clearly testified that in the first incident, she tried to resist the sexual advances of appellant by kicking him and by trying to move her body but when appellant threatened to kill her, she, who was only fourteen years old, was easily cowed into submitting herself to appellant's carnal desire. When appellant raped her the following day, her fear of her father and of the previous threat that he would kill her still pervaded causing her to do nothing the second time. Her harrowing experience the day before in the hands of her father coupled with a threat on her life was sufficient to envelop her with fear and paralyze her into submission even if appellant merely stared at her when he raped her again the following morning. Lyzel's failure to shout or offer tenacious resistance during the second incident does not demolish her claim that she was raped. As we have held in *People vs. Rodriguez*:

> The defense argument that the accused has not employed force upon his daughter in order to have sex with him does not at all persuade. The force or violence necessary in rape is a relative term that depends not only on the age, size, and strength of the persons involved but also on their relationship to each other. In a rape committed by a father against his own daughter, the former's parental authority and moral ascendancy over the latter substitutes for violence or intimidation who, expectedly, would just cower in fear and resign to the father's wicked deeds. It would be plain fallacy to say that the failure to shout or to offer tenacious resistance makes voluntary the victim's submission to the criminal act of the offender.[24]

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[23] TSN, December 10, 1997, pp. 5–6.

[24] G.R. No. 133984, January 30, 2002, 375 SCRA 224, 233; reiterated in *People vs. Viajedor*, G.R. No. 148138, April 11, 2003.

Supreme Court E-Library

and in *People vs. Flores*, to wit:

> Intimidation must be viewed in the light of the perception of the victim at the time of the commission of the crime, not by any hard and fast rule; it is therefore enough that it produced fear — fear that if she did not yield to the bestial demands of her revisher, some evil could happen to her at that moment or even thereafter.
>
> The fact that complainant bore no physical evidence of any force used against her person is of no moment. The absence of any external sign of injury does not necessarily negate the occurrence of rape, proof of injury not being an essential element of the crime. What is important is that because of force and intimidation, the victim was made to submit to the will of appellant. As stated in *People vs. Maglente*, the test is whether the treat or intimidation produces fear in the mind of a reasonable person — that if one resists or does not yield to the desires of the accused, the threat would be carried out.[25]

Besides, no less than Lyzel's younger sister Mary Ann positively testified that she heard her father threaten Lyzel's life on both occasions. Appellant's threat on the life of his 14-year old child and the fear it instilled in her clearly repudiate his claim that there was no force or intimidation employed against her in both occasions.

Appellant further questions the credibility of Lyzel in enabling him to rape her in two successive days. He contends that after Lyzel was raped for the first time on October 31, 1997, her logical reaction should have been to immediately seek the help of other people; that despite her opportunity to do so, she did not. We are not persuaded. It is a settled rule that the workings of the human mind under emotional stress are unpredictable and there is no standard form of behavior when one is confronted by a shocking incident.[26] Verily, under emotional stress, the human mind is not expected to follow a predictable path.[27] Indeed,

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[25] 327 SCRA 421, 431.

[26] *People vs. Terrible*, G.R. No. 140635, November 18, 2002.

[27] *People vs. Reyes*, G.R. Nos. 140642-646, August 7, 2002.

Supreme Court E-Library

Lyzel must have been shocked and utterly confused by the fact that her own father, committed such an act of bestiality against her. More importantly, it is established by competent evidence that appellant threatened to kill Lyzel if she told anybody about the rape. That alone is sufficient explanation why she did not make known to other people the first time that she was raped by her father.

Appellant raised no defense whatsoever. He virtually admitted his guilt. A review of the transcript of stenographic notes taken during his direct and cross examinations shows that he never disowned the acts imputed against him.[28] Appellant merely claimed that he was drunk and he asked for forgiveness from Lyzel, if he had really raped her and for compassion from the trial court. In *People vs. Alvero*, we held that a plea for forgiveness may be considered as analogous to an attempt to compromise and an offer of compromise by the accused may be received in evidence as an implied admission of guilt.[29] Thus, by asking for forgiveness, appellant has admitted his guilt.

As to the second assigned error, the OSG agrees with appellant. We sustain the arguments of both appellant and the OSG. The trial court erred in imposing the death penalty.

Articles 266-A and 267 of the Revised Penal Code, as amended by R.A. No. 8353, provide:

Art. 266-A. Rape; When and How Committed. — Rape is committed:

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

   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

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[28] TSN, December 16, 1997.

[29] 329 SCRA 737, 755–756 (2000).

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

x x x x x x x x x

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

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The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the *victim is under eighteen (18) years of age and the offender is a parent,* ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim;

x x x x x x x x x

3) When the rape is *committed in full view of* the spouse, parent, *any of the children* or other relatives within the third civil degree of consanguinity; (Italics supplied)

x x x x x x x x x

In both cases, the prosecution has established by competent evidence that Lyzel was fourteen years old and appellant is her father. In Criminal Case No. CBU-45673, it is likewise established that appellant raped his daughter Lyzel in full view of his other minor daughter Mary Ann, thus:

FISCAL LABORTE:

Q *The following day November 1, 1997 at about the same time* 5:00 a.m., can you recall where were you?

A Yes, I can.

Q Where were you on that particular date and time?

A At our house.

Q Again, can you tell the Court if there was any unusual incident that transpired?

A *Yes, sir.*

Supreme Court E-Library

Q What was that unusual incident?

A While I was sleeping beside my sister my father pulled that blanket and then I kicked him. That is why I transferred lying at the foot sir of my sister.

Q You said that when your father pulled the blanket you kicked him why did you kick you father?

A Because I was suspicious on his actuations sir considering that because I noticed what he said to my sister by saying don't tell to your mother. If you tell your mother I would kill you.

Q What was that something which your father don't want to let your sister do, if you know?

A When he abused my sister.

Q Now, after you kicked your father and transferred sleeping at the foot of your sister what happened next?

A While I was lying at that time and when he covered me with a blanket I saw my father rose placed himself on top of my sister.

Q While your father was already on top of your sister what did you do?

A He made a sexual intercourse with my sister.

COURT:

Q Were you not dreaming?

A No, Your Honor.

Q Are your sure you were wide awake at that time?

A Yes, I am sure.

COURT:

Proceed.

FISCAL LABORTE:

Q According to you Mary Ann you covered yourself you covered yourself with a blanket how were you able to witness, to see what all your father did to your sister when you were inside the blanket?

A Because I peeped sir.

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Q Why did you peep when there was no partition or room inside that house?

A The breathing of my father. As a matter of fact, he kicked me.

Q You said you saw what your father did to your sister because you peeped from where did your peep?

A I peeped through the blanket.

Q Whose blanket?

A My blanket.

COURT:

Q Are you made to understand you have covered yourself with a blanket and removed a part so you can peeped?

A That is right Your Honor.

COURT:

Proceed.

FISCAL LABORTE:

Q Now, after your father, according to you, sexually abused your sister Lyzel did your father say anything to your sister?

A Yes, there was. He threatened my sister.

Q What was this threat?

A He told my sister as follows: don't tell your mother and if you tell your mother I will kill you.

Q And after that what happened?

A He keep on sexually abusing my sister.

Q For how long?

A For quite a time.

Q Did you notice, if your sister, ever resisted to the sexual intercourse done by your father to her?

A My sister moaned.

Q How about you Mary Ann considering that you actually saw your father abusing your sister what did you do?

A I cried.

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Q Did you not try to stop your father from abusing your sister?

A No, sir because he placed a bolo beside him when he sleep.

Q On October 31, 1997 did your father place a bolo beside him when he sleep?

A Yes, sir.

Q *How about on November 1, 1997 did he also place the bolo* beside him when your father sleep?

A Yes, he place the bolo beside him every night.[30]

However, the complaints/informations in those two cases fail to allege Lyzel's minority or appellant's relationship to her. Section 9, Rule 110 of the Revised Rules of Criminal Procedure, requires that both qualifying and aggravating circumstances must be stated in the complaint or information. Existing jurisprudence instructs that the death penalty may be imposed only if the complaint or information has alleged and the evidence has proven both the minority of the victim and her relationship to the offender *by the quantum of proof required for conviction.*[31] *In the present* case, not only were the minority of the complainant and her relationship with appellant not alleged in the two complaints/ informations filed against appellant, but, also, the aggravating/ qualifying circumstance that the second rape was committed in full view of appellant's daughter. Consequently, appellant may be convicted only of simple rape; hence, the trial court erred in imposing death penalty in both cases. The appropriate penalty which could be imposed on the appellant is *reclusion perpetua* in each count.

Let us now consider the civil aspect of the criminal cases.

It is a settled rule that an appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of the appellate court to correct an error as may be found in the

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[30] TSN, November 18, 1997, pp. 5–7.

[31] *People vs. Mauro*, G.R. Nos. 140786-88, March 14, 2003; *People vs. Invencion*, G.R. No. 131636, March 5, 2003; *People vs. Lim*, 312 SCRA 550, 570 (1999).

Supreme Court E-Library

appealed judgment, whether or not it is made the subject of assignment of errors.[32]

While the trial court correctly awarded moral damages in the amount of ₱50,000.00, it failed to award civil indemnity.

Civil indemnity is distinct from moral damages as it is based on different jural foundations and assessed by the court in the exercise of its sound discretion.[33] The award of civil indemnity is mandatory upon the finding of fact of rape.[34] Based on existing jurisprudence, the civil indemnity for the victim in simple rape shall not be less than ₱50,000.00.[35]

It is settled that the presence of an aggravating circumstance justifies an award for exemplary damages under Article 2230[36] of the Civil Code even in the absence of an allegation of the aggravating circumstance in the Information.[37] The award of exemplary damages should serve to deter other fathers with perverse tendencies and aberrant sexual behavior from preying upon and sexually abusing their daughters.[38] Thus, exemplary damages in the amount of ₱25,000.00 for each count of rape should be awarded to the victim in view of the presence of the aggravating circumstances of relationship and dwelling.

WHEREFORE, the Decision of the Regional Trial Court of Cebu City, Branch 18, dated December 22, 1997 in Criminal

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[32] *People vs. Medina*, 300 SCRA 98, 114 (1998).

[33] *People vs. Antonio*, G.R. No. 145726, March 26, 2003.

[34] *People vs. Invencion, supra.*

[35] *Ibid.*

[36] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[37] *People vs. Durohom*, G.R. No. 146276, November 21, 2002; *People vs. Mitra*, 328 SCRA 774, 792 (2000).

[38] *People vs. Calamlam*, G.R. Nos. 137414-15, May 29, 2003; *People vs. Metin*, G.R. No. 140781, May 8, 2003; *People vs. Purazo*, G.R. No. 133189, May 5, 2003; *People vs. Umayan*, G.R. No. 147033, April 30, 2003.

Supreme Court E-Library

Cases Nos. CBU-45672 and CBU-45673 finding appellant Romeo H. Lambid guilty beyond reasonable doubt of two (2) counts of rape is *AFFIRMED* with *MODIFICATIONS* to the effect that in each case, he is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay complainant Lyzel S. Lambid the amounts of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Twenty Five Thousand Pesos (₱25,000.00) as exemplary damages in addition to the amount of Fifty Thousand Pesos (₱50,000.00) awarded by the trial court as moral damages or a total of Two Hundred Fifty Thousand Pesos (₱250,000.00).

SO ORDERED.

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

Azcuna, J., is on leave.

EN BANC

[G.R. No. 137554. October 1, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOHN MAMARION, Leny Leysa (Acquitted), JULIET HARISCO, Bebot dela Rosa *alias* "Bebot Villarosa" (Acquitted), Benjie Bernaje (At-large); Sergio Mendoza *alias* "Bambi", *alias* "SM", *alias* "Friday" (Acquitted), Ronald Porquez (At-large), ROLANDO V. MACLANG, CHARLITO DOMINGO,** *appellants.*

SYNOPSIS

An amended information was filed which charged several persons for the crime of kidnapping for ransom and killing of an elderly, rich Filipino-Chinese businesswoman, Roberta