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SECOND DIVISION

[G.R. No. 134525. February 28, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFREDO DELOS SANTOS @ "ONDONG",** *accused-appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of the crime of rape for sexually abusing an eight-year old girl. He was sentenced to suffer the penalty of *reclusion perpetua*. Hence, this appeal.

In affirming the conviction of appellant, the Supreme Court ruled that appellate courts will generally not disturb the findings of the trial court with respect to the credibility of witnesses on the ground that the trial court had the opportunity to observe the witnesses' deportment and manner of testifying. Unless it is shown that the trial court has overlooked, misunderstood or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case, appellate courts are bound by the findings of facts of the trial court.

The Court further ruled that in rape cases, the accused may be convicted solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. A thorough review of the records revealed that the testimony of the victim passed the test of credibility. The Court found that the trial court has not committed any error in its appreciation of the case. The victim was consistent in her testimony and though highly emotional, she was able to relate to the court in great detail the assault that was done to her person. Her deportment before the trial court as she related the events that happened to her lead to no other conclusion other than that she was telling the truth.

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SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.**— In reviewing rape cases, the Court is guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defense.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL; EXCEPTION.**— [W]hen the issue is on the credibility of witnesses, appellate courts will generally not disturb the findings of the trial court on the ground that the trial court had the opportunity to observe the witnesses' deportment and manner of testifying. Unless it is shown that the trial court has overlooked, misunderstood or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case, appellate courts are bound by the findings of facts of the trial court.

3. **ID.; ID.; ID.; IN RAPE CASES, ACCUSED MAY BE CONVICTED SOLELY ON THE TESTIMONY OF VICTIM, PROVIDED THAT SUCH TESTIMONY IS CREDIBLE, NATURAL, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS; CASE AT BAR.**— In rape cases, the accused may be convicted solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. A thorough review of the records reveals that the testimony of Joy Cayabyab withstands the test of credibility. We find that the trial court has not committed any error in its appreciation of the case. Minor Joy Cayabyab was consistent in her testimony and though highly emotional, she was able to relate to the court in great detail the assault that was done to her person. Twice, her direct testimony had to be reset due to outburst of tears. Her

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deportment before the trial court as she related the events that happened to her lead to no other conclusion other than that she was telling the truth.

4. **ID.; ID.; ID.; A YOUNG GIRL WOULD NOT CONCOCT A RAPE CHARGE, ALLOW THE EXAMINATION OF HER PRIVATE PARTS AND PUBLICLY DISCLOSE THAT SHE HAS BEEN SEXUALLY ABUSED UNLESS SHE HAS IN FACT BEEN RAPED; CASE AT BAR.**— [A] young girl would not concoct a rape charge, allow the examination of her private parts, then publicly disclose that she has been sexually abused, if her motive were other than to fight for her honor and bring to justice the person who defiled her. Complainant's testimony on record is too candid and straightforward to be mere fabrication. She bared details which could not be concocted easily even by an ingenious or imaginative narrator. She cried for several minutes, while she testified, enhancing her testimony's credibility. We find that complainant's testimony deserves full faith and credence.

5. **ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; MUST SPECIFICALLY ALLEGE THE AGGRAVATING AND QUALIFYING CIRCUMSTANCES ATTENDANT IN THE COMMISSION OF THE CRIME.**— It cannot be ignored that the appellant committed rape with the aggravating circumstance of *dwelling* as the crime was committed within the house of the victim. Dwelling is considered as an aggravating circumstance primarily because of the sanctity of privacy the law accords to the human abode. However, because of the failure to state such circumstance in the complaint, the same, though proven, cannot be appreciated. Sections 8 and 9, Rule 110 of the Revised Rules on Criminal Procedure, which took effect on December 1, 2000, provides that aggravating as well as qualifying circumstances must be specifically alleged in the information, otherwise they cannot be considered against the accused even if they were proven during the trial. Being favorable to the accused, this rule has to be applied retroactively to this case.

6. **CRIMINAL LAW; RAPE; PENALTY WHEN RAPE VICTIM IS UNDER TWELVE YEARS OF AGE ON THE DATE OF THE COMMISSION OF THE CRIME; CASE AT BAR.**— [D]espite the presence of the aggravating circumstance of dwelling, the penalty herein of *reclusion perpetua* would not

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be affected since under Article 63 of the Revised Penal Code, the penalty of *reclusion perpetua* should be applied regardless of any mitigating or aggravating circumstance that may have attended the commission of a crime. The imposition of the penalty of *reclusion perpetua* is pursuant to paragraph 3 of Article 335 of the Revised Penal Code, the victim being under twelve years of age on the date of the commission of rape.

7. **CIVIL LAW; DAMAGES; CIVIL INDEMNITY *EX DELICTO* AND MORAL DAMAGES; AWARDED IN CASE AT BAR.**— The trial court correctly ordered the payment of Fifty Thousand Pesos (₱50,000.00) as civil indemnity *ex delicto*. However, another Fifty Thousand Pesos (₱50,000.00) should have been awarded to the victim as moral damages without need of further proof, because it is recognized that her injury is concomitant with and necessarily the result of the odious crime.

8. **ID.; ID.; EXEMPLARY DAMAGES; AWARDED WHEN AN AGGRAVATING CIRCUMSTANCE IS PRESENT; CASE AT BAR.**— [I]nsofar as the civil aspect of the case is concerned, the presence of the aggravating circumstance of dwelling may be considered as a basis for an award of exemplary damages in the amount of ₱20,000.00, pursuant to recent jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Carlito Soriano for accused-appellant.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

On appeal is the decision dated May 8, 1998, rendered by the Regional Trial Court (Branch 57) of San Carlos City, Pangasinan, finding accused Alfredo Delos Santos *alias* "Ondong" guilty of rape and sentencing him to suffer *reclusion perpetua* and to pay civil indemnity in the amount of ₱50,000.00.

On July 25, 1996, Domingo P. Cayabyab, father of Joy Cayabyab, filed a complaint charging Alfredo delos Santos @ "Ondong", as follows:

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"That on or about November 2, 1995, in Barangay Nalneran, Municipality of Basista, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force or intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with his minor daughter Joy L. Cayabyab, a minor of 8 years old.

"Contrary to Article 335 of the Revised Penal Code."[1]

Upon arraignment, accused pleaded not guilty.[2] Trial then ensued.

The prosecution presented the victim Joy L. Cayabyab, her sister Joan, their parents Domingo and Edivina, and the examining doctor Maria Salome Romero as witnesses.

Joy L. Cayabyab was ten (10) years old and in Grade IV at the time of her testimony.[3] In between tears she testified as follows: In the morning of November 2, 1995, while she was defecating inside the comfort room of their house in Nalneran, Basista, Pangasinan, she heard somebody knock and Alfredo delos Santos *alias* "Ondong" entered. Once inside, Alfredo locked the door and removed his trousers then he embraced and kissed her and put her on his lap.[4] She then demonstrated to the court how she was lifted by the accused while they were facing each other and standing inside the comfort room. Her legs were spread apart between the legs of the accused then the accused inserted his organ into her vagina. She said she felt pain.[5] The accused told her not to tell her mother what happened, then he put on his shorts and left the victim inside the comfort room. Later, she went to her sister, Joan, who was eating at their dining table and told her what happened. When their parents returned she did not tell them immediately what happened because she was afraid. It was Joan who told them what happened.[6]

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[1] *Rollo*, p. 6.

[2] Original Records, Vol. I, p. 52.

[3] TSN, March 3, 1997, p. 3.

[4] *Id.*, at pp. 5–8.

[5] TSN, May 27, 1997, pp. 5–7, 11.

[6] *Id.*, at pp. 13–16.

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In the cross-examination, she admitted that she knows how to bike and once used a bicycle at a grassy yard. She also admitted that they have fruit trees in their yard but said that she does not climb them.[7]

Joan Cayabyab, who was eight years old at the time she was placed on the witness stand, testified, thus: In the morning of November 2, 1995, she was eating with her sister Joy and kid brother Jay-R. Later, her sister went inside the comfort room to defecate. She saw accused follow, enter the comfort room and stay inside for about half an hour. She was still eating at the table when the two came out.[8] The accused then went home right away while Joy sat beside her and revealed that Ondong inserted his private organ into her vagina.[9]

Domingo Cayabyab, father of Joy, testified that: on November 2, 1995, he and his wife attended a prayer worship at the Iglesia Ni Cristo chapel at Barangay Nalneran, Basista, Pangasinan; upon reaching home, he noticed that his 8-year old[10] daughter, Joy, was pale and was cowering in fear; and when he asked what happened, Joy narrated that while she was inside the comfort room defecating, accused Alfredo entered, kissed her, touched her breast, brought out his penis and inserted it into her vagina;[11] he (Domingo) reported the incident to Carlo Cabotaje, the Minister of the Iglesia Ni Cristo in their area, and to the PNP Station of Basista, Pangasinan; his daughter then underwent medical examination and afterwards, he went to the Prosecutor's Office to file a complaint.[12]

Edivina Cayabyab, mother of the victim, testified as follows: In the morning of November 2, 1995, she and her husband Domingo Cayabyab attended a fellowship in the Iglesia Ni Cristo

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[7] TSN, August 12, 1997, pp. 6–7.

[8] TSN, July 14, 1997, pp. 13-17.

[9] *Id.*, at p. 19.

[10] TSN, November 5, 1996, p. 7.

[11] *Id.*, at pp. 5 and 7.

[12] *Id.*, at p. 7.

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chapel at Nalneran, Basista, Pangasinan.[13] They ate breakfast at around 8:00 o'clock in the morning and afterwards, she started cleaning their house. While cleaning the comfort room, she noticed a blood spot on the floor that made her suspicious. Thereafter, her daughter Joan reported that Ondong entered the comfort room while Joy was inside. When she asked Joy if it was true, Joy answered that the accused indeed entered the comfort room and the latter kissed her, touched her breast, and inserted his penis into her vagina.[14] Later, she (Edivina) reported the incident to the minister of the Iglesia Ni Cristo in their chapel while her husband reported the incident to the Basista Municipal Hall.[15]

Finally, Dr. Maria Salome G. Romero of the San Carlos General Hospital testified that on November 18, 1995, Joy Cayabyab was referred to her for examination;[16] that she found the following:

"I.E. HYMEN: = WITH PARTIAL LACERATION AT 1&2 O'CLOCK POSITION

"VAGINAL CANAL: = ADMITS TIP OF THE EXAMINING FINGER"[17]

that the partial laceration might have been caused, among others, by the sexual organ of the opposite sex.[18] On cross-examination, she clarified that the laceration could also be caused by bicycle-riding, climbing, scratching, stretching the legs and similar activities.[19]

For the defense, Carlo Cabotaje, Servulo Jacinto, and the accused Alfredo delos Santos were presented before the court.

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[13] TSN, July 14, 1997, pp. 24–25.

[14] *Id.*, p. 31.

[15] TSN, July 14, 1997, pp. 27–31.

[16] TSN, December 2, 1996, pp. 3, 6–7.

[17] Exhibit "D", Original Records, p. 9.

[18] TSN, December 2, 1996, p. 14.

[19] TSN, March 14, 1997, p. 3.

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Carlo Cabotaje testified that: he was the resident Minister of the Iglesia Ni Cristo in Nalneran, Basista, Pangasinan. Sometime in November, 1995, the Cayabyab family complained that Alfredo kissed Joy;[20] he called the parties to a conference and learned that Alfredo kissed and touched the private parts of Joy; he then told the parents of Joy to submit the child for medical examination; in his report to his superior, he considered the incident as merely an act of lasciviousness; the case was referred to a higher office in Lingayen, Pangasinan then it was elevated to their main office in Manila;[21] he advised the complainants not to pursue the case anymore since the accused was already given the extreme penalty of expulsion from the Iglesia Ni Cristo.[22] Cabotaje further testified that during his investigation, Edivina Cayabyab complained that the accused kissed the girls, touched their private parts and nothing more.[23] In his re-direct examination, Cabotaje related that during the conference, Corazon Ledesma, Joy's grandmother stood up and said that they want the family of the accused to vacate their land.[24] In his re-cross examination, Cabotaje stated that in their church, it is prohibited to file a case against a fellow member, which regulation was not complied with by the Cayabyab family.[25]

Defense witness Servulo Jacinto, testified that as head deacon of the Iglesia Ni Cristo, it was reported to him that on November 2, 1995, a kissing incident was committed by Alfredo delos Santos against the child Joy Cayabyab; that after receiving the report, he went to the house of the Cayabyabs and asked Joy what happened; that Joy answered that Alfredo delos Santos kissed her and nothing more.[26]

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[20] TSN, August 26, 1997, pp. 4-5.

[21] *Id.*, at pp. 6–7.

[22] *Id.*, at p. 10.

[23] *Id.*, at p. 5.

[24] *Id.*, at p. 15.

[25] *Id.*, at p. 17.

[26] TSN, September 19, 1997, pp. 3–6.

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Accused Alfredo delos Santos gave his testimony as follows: He knows Joy and Joan Cayabyab since their birth and has always treated them as his kid sisters. It is not true that on November 2, 1995, at 7:00 o'clock in the morning, he entered the comfort room where Joy was, and raped her. In a conference before Deacon Servulo Jacinto, the two girls, in the presence of their parents, even stated that he merely kissed them and nothing more. The two were also brought before Carlo Cabotaje and once more, the girls said that they were kissed by him. Other conferences were held in Lingayen, Pangasinan and at the Central Office of the Iglesia Ni Cristo in Quezon City, and as in the other conferences, when the girls were asked what happened, they answered "he kissed us." The accused also stated that the parents of Joy and Joan were expelled from the congregation because of their false accusation against him. He likewise explained that Corazon Ledesma, the grandmother of Joy wants to eject his father from her land. Failing in this, Corazon threatened his father that cases will be filed against all of them.[27]

In rebuttal, the prosecution presented Edivina Cayabyab. She clarified that when the meeting was held before Carlo Cabotaje, she reported only a kissing incident because she did not want to spread publicly what happened to her daughter. Also, at that point, her daughter has not yet undergone medical examination hence she was still uncertain of the extent of the injury suffered by her daughter. She denied the statement of Carlo Cabotaje that she did not accept the advice to submit her daughter for medical examination to determine the injury she suffered.[28] She further stated that they were expelled from their church due to their refusal to accept the settlement of the case.[29]

Corazon Ledesma, grandmother of Joy Cayabyab, testified that the accused is the son of her tenant Bienvenido delos Santos; that the report made to Carlo Cabotaje was not merely kissing

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[27] TSN, December 17, 1997, pp. 2-7.

[28] TSN, January 12, 1998, pp. 4–6.

[29] *Id.*, at p. 8.

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but rape; and that after the accused was expelled, they filed a case against him.[30]

As sur-rebuttal witness, the defense presented the father of the accused, Bienvenido delos Santos. He testified that he knows Corazon Ledesma, the grandmother of Joy Cayabyab, because she is his landlady. According to him, she was ejecting him from the land he is tilling; she even brought the matter to the Land Reform Office at Basista, Pangasinan; however, when she was not able to eject him, she concocted the rape case against his son.[31]

On May 8, 1998, the trial court rendered its decision thus:

"WHEREFORE, premises considered, the court finds the accused Alfredo delos Santos guilty beyond reasonable doubt of RAPE defined under Article 335 of the Revised Penal Code, as amended, and hereby imposes upon the said Alfredo delos Santos the sentence of *Reclusion Perpetua* and is ordered to pay civil indemnity in the amount of ₱50,000.00.

"SO ORDERED."[32]

The accused immediately filed an appeal before this Court, raising the following errors:

"I THE HONORABLE COURT *A QUO* ERRED IN ITS FINDINGS OF FACTS WHICH, HAD THEY BEEN IN ACCORDANCE WITH THE EVIDENCE ADDUCED, WILL SUFFICE TO SUPPORT A JUDGMENT OF ACQUITTAL FOR ACCUSED-APPELLANT.

"II THE HONORABLE COURT *A QUO* ERRED IN CONVICTING ACCUSED-APPELLANT FOR RAPE."[33]

Appellant argues that the trial court erred in construing "the mixed expressions of sadness and anger shown in (Joy's) face during her testimony x x x. (as signs) that she was telling the

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[30] TSN, February 27, 1998, pp. 4–5.

[31] TSN, April 2, 1998, pp. 3–4.

[32] *Rollo*, p. 28.

[33] *Id.*, at p. 45.

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truth." According to appellant, said mixed expressions could be due to the fact that it was her first time to testify in court; or that she and her sister were kissed by appellant; or probably because she had difficulty recalling what she was taught to testify. These expressions, appellant asserts, do not necessarily prove that she was raped.[34]

Appellant also calls attention to the testimonies of the ministers of the Iglesia Ni Cristo and the entries in the logbooks of the conferences conducted before them where it was found and recorded that what took place was "*panghahalik ng bata, panghihipo ng ari.*" Since these were the only complaints made before the Iglesia Ni Cristo, only such should be believed, *i.e.*, no rape took place but only kissing and touching of private parts.[35]

Appellant also cites a portion of Joan's testimony, where she said that her Kuya Ondong kissed her and this is also what he did to her sister Joy, which statement she also made before Pastor Cabotaje of the Iglesia Ni Cristo.[36]

Further, appellant assails the explanation of the prosecution that when the Cayabyab family went to the Iglesia Ni Cristo what they narrated was not the whole truth because they were not certain of the real story at the time. This, according to appellant, is hard to believe and is contrary to human experience.[37] Appellant insists that the failure to report that Joy was raped before Pastor Cabotaje creates serious doubts on private complainant's claim that appellant raped her; that when doubt exists, this should always be resolved in favor of the accused.[38] The appellant also reminds the Court that the parents of private complainant were expelled from the Iglesia Ni Cristo because of the fabricated charge of rape; that this indicates that the

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[34] *Id.*, at p. 50.

[35] *Rollo*, pp. 50–51.

[36] *Id.*, at p. 52.

[37] *Id.*, at p. 53.

[38] *Id.*, at p. 55.

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evidence of the prosecution fails to stand the test of reason and is not sufficient to sustain conviction.[39]

The Solicitor General contends that the testimony of Joy Cayabyab should be given full credit as this was corroborated by three other witnesses and the findings of fact of trial courts must be accorded respect.[40]

The Solicitor General further argues that the logbook containing minutes of the conferences before the Iglesia Ni Cristo which was presented by appellant before the trial court has no evidentiary value, the same not being an official document as it was not identified during the trial. Also, assuming *arguendo* that the logbook did contain the foregoing entries, the veracity thereof is very much in question considering the policy of the Iglesia Ni Cristo not to allow suit among its members.[41]

We find the appeal devoid of merit.

In reviewing rape cases, the Court is guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defense.[42]

Basic is the principle that when the issue is on the credibility of witnesses, appellate courts will generally not disturb the findings of the trial court on the ground that the trial court had the opportunity to observe the witnesses' deportment and manner of testifying.[43] Unless it is shown that the trial court has overlooked, misunderstood or misappreciated certain facts and

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[39] *Id.*, at pp. 55–56.

[40] *Id.*, at p. 86.

[41] *Rollo*, pp. 87–88.

[42] *People vs. Ortega*, G.R. No. 137824, September 17, 2002.

[43] See note 42.

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circumstances which if considered would have altered the outcome of the case, appellate courts are bound by the findings of facts of the trial court.[44]

In rape cases, the accused may be convicted solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things.[45] A thorough review of the records reveals that the testimony of Joy Cayabyab withstands the test of credibility. We find that the trial court has not committed any error in its appreciation of the case. Minor Joy Cayabyab was consistent in her testimony and though highly emotional, she was able to relate to the court in great detail the assault that was done to her person. Twice, her direct testimony had to be reset due to outburst of tears. Her deportment before the trial court as she related the events that happened to her lead to no other conclusion other than that she was telling the truth. As we have consistently held, a young girl would not concoct a rape charge, allow the examination of her private parts, then publicly disclose that she has been sexually abused, if her motive were other than to fight for her honor and bring to justice the person who defiled her. Complainant's testimony on record is too candid and straightforward to be mere fabrication. She bared details which could not be concocted easily even by an ingenious or imaginative narrator. She cried for several minutes, while she testified, enhancing her testimony's credibility. We find that complainant's testimony deserves full faith and credence.[46]

In a similar case, complainants Marjorita and Ma. Victoria were ten and eleven years old, respectively, when they testified in court. In said case we held, "[a]t such tender years, they were still unfamiliar with and naive in the ways of the world that it is quite unbelievable that they could fabricate such a sordid story of personal defloration. Their testimonies therefore cannot be disregarded."[47]

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[44] *People vs. Campos*, 340 SCRA 517, 521 (2000).

[45] *People vs. Calimlim*, 364 SCRA 45, 55 (2001).

[46] See note 45.

[47] See note 44.

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The imputation of the defense that Joy was prompted by her family to accuse herein appellant of the crime of rape because they could not evict the family of appellant from the property of Joy's grandmother, is completely outrageous and utterly desperate. This Court has noted that not a few accused in rape cases have attributed the charges brought against them to family feud, resentment, or revenge. But such allegations have never swayed this Court from lending full credence to the testimony of the complainant where she remains steadfast in her direct and cross examination.[48] It is unlikely for a young girl and her family to impute the crime of rape to another and face social humiliation if not to vindicate the honor of complainant.[49] Indeed, it is hard to fathom that parents would use their offsprings as engines of malice, especially if the same would subject them to humiliation and stigma.[50] Even as to grandparents, it is not believable that they who nurtured and loved the victim would expose an innocent girl to humiliation and stigma of a rape trial simply to get back at the accused.[51]

In his Brief, appellant calls attention to the fact that the charges against him brought by the Cayabyab family before the Iglesia ni Cristo consisted only of "kissing and touching." As convincingly explained by Edivina in her rebuttal, when they went to the Iglesia ni Cristo to report appellant, she did not want to spread publicly what had happened to her daughter; that their child has not yet undergone medical examination, and therefore, they were not yet sure as to the extent of the injuries suffered by her. We find this consistent with the propensity of parents to protect the honor of their family, a trait inherent to the Filipino culture. We are convinced that the discrepancy in the complaint filed before the Iglesia ni Cristo and before the regular court is attributable to the stand of the family not to cry rape and thus taint their family's honor and reputation until their daughter

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[48] *People vs. Monteron*, G.R. No. 130709, March 6, 2002.

[49] *People vs. Villadares*, 354 SCRA 86, 98 (2001).

[50] *People vs. de los Reyes*, G.R. No. 124895, 327 SCRA 56, 67 (2000).

[51] *People vs. Aguiluz*, 354 SCRA 465, 473 (2001).

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shall have undergone medical examination and thereby ascertain the extent of the damage done to her purity. Indeed, it is highly improbable that a rape victim and her family would publicly disclose such an incident and thus sully their honor and reputation unless they are certain that the charge is true.[52]

Thus, we hold that the trial court correctly found the accused guilty of rape.

It cannot be ignored that the appellant committed rape with the aggravating circumstance of *dwelling* as the crime was committed within the house of the victim. Dwelling is considered as an aggravating circumstance primarily because of the sanctity of privacy the law accords to the human abode.[53] However, because of the failure to state such circumstance in the complaint, the same, though proven, cannot be appreciated. Sections 8 and 9, Rule 110 of the Revised Rules on Criminal Procedure, which took effect on December 1, 2000, provides that aggravating as well as qualifying circumstances must be specifically alleged in the information, otherwise they cannot be considered against the accused even if they were proven during the trial. Being favorable to the accused, this rule has to be applied retroactively to this case.[54]

However, despite the presence of the aggravating circumstance of dwelling, the penalty herein of *reclusion perpetua* would not be affected since under Article 63 of the Revised Penal Code, the penalty of *reclusion perpetua* should be applied regardless of any mitigating or aggravating circumstance that may have attended the commission of a crime.[55]

The imposition of the penalty of *reclusion perpetua* is pursuant to paragraph 3 of Article 335 of the Revised Penal Code, the victim being under twelve years of age on the date of the commission of rape. The trial court correctly ordered the payment

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[52] *People vs. Collado*, 353 SCRA 381, 394 (2001).

[53] *People vs. Agoncillo*, 358 SCRA 178, 196 (2001).

[54] *People vs. Durohom*, G.R. No. 146276 (November 21, 2002).

[55] *Ibid.*

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of Fifty Thousand Pesos (₱50,000.00) as civil indemnity *ex delicto*. However, another Fifty Thousand Pesos (₱50,000.00) should have been awarded to the victim as moral damages without need of further proof, because it is recognized that her injury is concomitant with and necessarily the result of the odious crime.[56]

Moreover, insofar as the civil aspect of the case is concerned, the presence of the aggravating circumstance of dwelling may be considered as a basis for an award of exemplary damages in the amount of ₱20,000.00, pursuant to recent jurisprudence.[57]

WHEREFORE, the assailed decision of the Regional Trial Court, Branch 57, of San Carlos City, Pangasinan, finding appellant Alfredo Delos Santos alias Ondong *GUILTY* of rape and sentencing him to suffer *Reclusion Perpetua* and to pay civil indemnity in the amount of *FIFTY THOUSAND PESOS* (₱50,000.00) is *AFFIRMED* with the *MODIFICATION* that appellant is also ordered to pay the offended party Joy Cayabyab, *FIFTY THOUSAND PESOS* (₱50,000.00), as moral damages, together with the costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and *Callejo, Sr., JJ.*, concur.

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[56] *People vs. Ortega*, G.R. No. 137824, promulgated September 17, 2002.

[57] *People vs. Durohom, supra.*