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THIRD DIVISION

[G.R. Nos. 137414-15. May 29, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **OSCAR CALAMLAM** *y* **AGNAZATA,** *accused-appellant.*

SYNOPSIS

Mary Jane F. Calamlam accused her father, herein accused-appellant, of sexually violating her on two separate occasions. The first sexual assault was allegedly committed sometime in September 1989, while the second incident occurred on July 22, 1997. Appellant pleaded not guilty to the charges of two counts of rape filed against him. He claimed that her daughter filed the cases out of vengeance for having beaten her. However, the trial court, after due trial, gave credence to the complainant's narration of the sexual abuses she suffered at appellant's hands, and rendered judgment of conviction against him. Hence, this appeal.

The Court held that the appeal was meritorious with respect to the rape committed on July 22, 1997. The Court found that the prosecution failed to establish the elements of rape in the said case. Hence, appellant's acquittal with respect thereto was in order. On the other hand, the Court affirmed the decision of the trial court finding appellant guilty of sexually abusing his daughter sometime in September 1989. It found complainant's account of the incident clear and candid. It was not persuaded with appellant's imputation of ill motive on the complainant. According to the Court, even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to fabricate a story which could puff out the life of her own father or put the most of his remaining lifetime of shame. The usual plaint by indictees for rape that the charges against them came about as a result of family feuds, resentment, or revenge cannot sway the Court from lending full credence to the testimony of complainant who remained steadfast throughout her testimony.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FAILURE OR DELAY IN REPORTING A CARNAL VIOLATION

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COMMITTED BY A FATHER AGAINST HIS DAUGHTER DUE TO THREATS IS HARDLY UNJUSTIFIED; CASE AT BAR.— That there was considerable delay on Mary Jane's part in reporting the incident does not dent her credibility. Failure or delay in reporting a carnal violation committed by a father against his daughter due to threats is hardly unjustified. For the father's moral ascendancy can lead the daughter to suffer in silence. Thus, Mary Jane's delay in reporting the first rape incident can be attributed to the fear instilled in her by the incessant threats and intimidation, not to mention the constant physical abuse inflicted on her by appellant who undoubtedly exercises moral ascendancy over her. It was commonsensical that she feared the wrath of appellant who, by his own admission, had absolutely no qualms in using physical force against members of his family. That fear could have indeed overcome Mary Jane is not difficult to believe as appellant was in possession of two guns.

2. **ID.; ID.; ID.; NOT AFFECTED BY INCONSISTENCY ON TESTIMONY THAT HAS NOTHING TO DO WITH ESSENTIAL FACT OF THE COMMISSION OF THE CRIME.**— The perceived inconsistency between the testimony of Mary Jane that she told no one of the rape and that of her friend Lychin Rivel that she (Mary Jane) divulged to her has nothing to do with the essential fact of the commission of rape.

3. **ID.; ID.; ID.; EVEN WHEN CONSUMED WITH REVENGE, IT TAKES A CERTAIN AMOUNT OF PSYCHOLOGICAL DEPRAVITY FOR A YOUNG WOMAN TO FABRICATE A STORY WHICH COULD SNUFF OUT THE LIFE OF HER OWN FATHER OR PUT THE MOST OF HIS REMAINING LIFE IN JAIL AND DRAG HERSELF AND THE REST OF HER FAMILY TO A LIFETIME OF SHAME.**— Clutching at straws, appellant imputes ill-motive on Mary Jane, alleging that she filed the cases out of vengeance for having beaten her. This Court is not persuaded. Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to fabricate a story which could snuff out the life of her own father or put the most of his remaining life in jail and drag herself and the rest of her family to a lifetime of shame. The usual plaint by indictees for rape that the charges against them came about as a result of family feuds, resentment, or revenge can not sway this Court from lending full credence to the testimony of Mary Jane who remained steadfast throughout her testimony.

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4. ID.; ID.; ID.; THE FACT THAT THE RAPE VICTIM'S MOTHER TESTIFIED IN ACCUSED'S DEFENSE DOES NOT RENDER VICTIM'S TALE FALSE.— That Mary Jane's own mother testified in appellant's defense does not render her tale false. For some mothers actually choose to suffer with their daughters in silence than risk the embarrassment of public trial and, for those in the marginalized sector, risk losing their means of support when their breadwinner-husband goes to jail.

5. ID.; CRIMINAL PROCEDURE; PROSECUTION FOR RAPE; TIME OR DATE OF COMMISSION OF A CRIME NEED NOT BE ALLEGED WITH EXACTITUDE EXCEPT WHEN TIME IS AN ESSENTIAL INGREDIENT THEREOF.— Respecting appellant's argument that the allegation in the first information relative to the date of the commission of the crime is not sufficiently definite to give him opportunity to prepare for his defense, the same is bereft of merit. Allegation of the exact time or date of the commission of a crime is not important in a prosecution for rape, it having no substantial bearing on its commission. That is why under the Rules on Criminal Procedure, it is not necessary for the information to allege the date and time of the commission of the crime with exactitude except when the time is an essential ingredient thereof.

6. CRIMINAL LAW; RAPE; LUST IS NO RESPECTER OF TIME AND PLACE.— As to appellant's submission that it was impossible for him to commit rape in light of the presence of Mary Jane's maternal grandmother and aunt in the same compound where he and his family live, the same does not lie. Lust is no respecter of time and place. Just as presence of people nearby or suitability of the place is no deterrent to the commission of rape.

7. ID.; ID.; IMPOSABLE PENALTY.— The birth certificate of Mary Jane shows that she was born on May 4, 1975. She was thus 14 years old when she was raped in September 1989. The same document shows appellant to be her father, a fact appellant himself admitted during the trial. As thus correctly found by the trial court, Article 335 of the Revised Penal Code, before its amendment by RA 7659 which took effect on December 31, 1993, is applicable. The rape committed by appellant is, therefore, simple, penalized by *reclusion perpetua*.

8. ID.; ID.; EACH CHARGE THEREOF IS A DISTINCT AND SEPARATE CRIME THE ELEMENTS OF WHICH MUST BE

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PROVED BEYOND REASONABLE DOUBT.— Mary Jane's allegation that appellant "again did it to me" does not prove the elements of the rape subject of the second case. Each charge of rape is a distinct and separate crime the elements of which must be proved beyond reasonable doubt. Appellant's acquittal in Criminal Case No. 5487-97-C is thus in order.

9. CIVIL LAW; DAMAGES; MORAL DAMAGES; GRANTED WITHOUT NECESSITY OF ADDITIONAL PLEADING OR PROOF OTHER THAN THE FACT OF RAPE; INDEMNITY *EX DELICTO*; SEPARATE AND DISTINCT FROM MORAL DAMAGES.— This Court notes that while the trial court correctly awarded ₱50,000.00 as moral damages which is granted in rape cases without the necessity of additional pleading or proof other that the fact of rape, it failed to award any indemnity *ex delicto,* which is separate and distinct from that of moral damages and which current jurisprudence has fixed at ₱50,000.00.

10. ID.; ID.; EXEMPLARY DAMAGES; AWARDED TO DETER OTHER FATHERS WITH SIMILAR PERVERSE TENDENCIES OR ABERRANT SEXUAL BEHAVIORS FROM SEXUALLY ABUSING THEIR OWN DAUGHTERS.— In addition, this Court imposes the amount of ₱25,000.00 for exemplary damages to deter other fathers with similar perverse tendencies or aberrant sexual behaviors from sexually abusing their own daughters.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

This is an appeal from the January 6, 1999 decision[1] of the Regional Trial Court (RTC), Branch 34, Calamba, Laguna finding appellant Oscar Calamlam guilty of two counts of rape.

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[1] *Rollo* at 20-28.

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In two informations dated August 27, 1997, appellant was charged before the Calamba RTC with two counts of rape of his daughter Mary Jane, docketed as Criminal Case Nos. 5487-97-C and 5488-97-C. The inculpatory portions of the informations read as follows:

Criminal Case No. 5488-97-C

That sometime in September 1989, at at (sic) Brgy. Maahas, Municipality of Los Baños Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, through force, violence and intimidation and with lewd design did then and there willfully, unlawfully and feloniously have carnal relation with his daughter, one MARYJANE F. CALAMLAM fourteen (14) years old, a minor, against her will and consent to her damage and prejudice.

CONTRARY TO LAW.[2]

Criminal Case No. 5487-97-C

That on or about July 22, 1997, at Brgy. Maahas, Municipality of Los Baños Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, through force, violence and intimidation and with lewd design did then and there willfully, unlawfully and feloniously have carnal relation with his daughter, one MARYJANE F. CALAMLAM twenty-two (22) years old, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[3]

When arraigned on March 2, 1998, appellant, duly assisted by counsel, pleaded "not guilty" in both cases which were consolidated and jointly tried.

The prosecution established the following:

At about noon in September 1989, in Barangay Maahas, Los Baños, Laguna, Mary Jane, then aged 14, arrived home from school and found her father-herein appellant alone. After partaking lunch, she went to their bedroom where appellant pushed her to the bed. Taken aback, she asked him why, but

[2] Records at 16.

[3] *Id.* at 2.

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he told her to stop talking and proceeded to punch her stomach and her "side".

Appellant then removed Mary Jane's panty as he did his own underwear, drawing her to cry profusely and to plead with and tell him "*Sabi po ninyo hindi ninyo gagawin ang ginawa ninyo kay ate.*"[4] Unmindful of her plea, appellant proceeded to part her legs and forcibly insert his penis into her vagina.

After satisfying his lust on Mary Jane, appellant ordered her not to tell her mother, threatening to kill her and her siblings should she do so.[5]

After the lapse of several days, Mary Jane was and had since been repeatedly sexually abused by appellant until she reached the age of 18.[6]

On July 22, 1997, while Mary Jane's mother and brothers were watching television in the living room and her sister was studying in the dining room, appellant told her, as she was about to sleep, that he wanted to have sex with her.[7] She vehemently refused, but he once again punched and slapped her, causing her face to slam against the door. As she could no longer offer any resistance and she could not shout for help, appellant having warned her that if she did he would hurt her, appellant was able to "again do it to [her]".[8] The following day or on July 23, 1997, Mary Jane went to the Philippine National Police (PNP) Criminal Investigation Group in Canlubang, Laguna with her friend Lychin Rivel to report the sexual assaults against her.

Senior Inspector Joselito Antonio Rodrigo, Medico-Legal Officer of the PNP Crime Laboratory, physically examined Mary Jane, the results of which are reflected in his Medico-Legal Report M-059-97.[9] Dr. Rodrigo found that she was no

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[4] TSN, March 16, 1998 at 14.

[5] *Ibid.*

[6] *Id.* at 15.

[7] *Id.* at 16.

[8] *Id.* at 17.

[9] Exhibit "B", Records at 11.

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longer a virgin; her hymen had a deeply healed laceration at 6:00 o'clock position; and her external vaginal orifice offered moderate resistance to the introduction of the examining index finger.

Thus spawned the filing of the cases at bar.

Appellant denied having sexually assaulted Mary Jane. He asserted that the charges against him were made on account of an altercation he had with her.[10] He speculated that because he is very strict with her[11] and beats her up frequently,[12] she concocted the charges.

Testifying in appellant's defense, his wife Gloria and their son Oscar, Jr. claimed that Mary Jane never told them about the alleged sexual assaults prior to the filing of the charges.[13]

Mary Jane's sister Nonafe who likewise testified in appellant's defense speculated that her sister filed the charges against their father in her (Mary Jane's) desire to have him incarcerated on account of the beatings he repeatedly inflicted on her.[14] And she claimed that Mary Jane forced her[15] to execute a sworn statement[16] before the PNP Regional Office in Canlubang declaring that she had seen appellant sexually assaulting her.

Finding for the prosecution, the trial court convicted appellant by the assailed decision of January 6, 1999, the dispositive portion of which reads:

ACCORDINGLY, judgment is hereby rendered as follows:

In Criminal Case No. 5487-97-C, this Court finds accused Oscar Calamlam, Sr. GUILTY beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code,

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[10] TSN, May 25, 1998 at 17.

[11] *Id.* at 5.

[12] *Id.* at 19.

[13] TSN, May 4, 1998 at 4, TSN, May 18, 1998 at 5.

[14] TSN, April 3, 1998 at 10.

[15] *Id.* at 6.

[16] Exhibit "I", Records at 4-5.

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as amended, and hereby sentences him to suffer the penalty of *Reclusion Perpetua.*

Accused is further ordered to indemnify the victim Maryjane Calamlam the sum of ₱50,000.00 as moral and compensatory damages.

In Criminal Case No. 5488-97-C, this Court finds accused Oscar Calamlam, Sr. GUILTY beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of *Reclusion Perpetua.*

Accused is further ordered to indemnify the victim the sum of ₱50,000.00 as moral and compensatory damages.

With costs against the accused in both cases.

SO ORDERED.[17]

Hence, the present appeal, appellant assigning the following errors to the trial court:

I. THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF TWO COUNTS OF RAPE.

II. THE COURT *A QUO* ERRED IN ORDERING THE ACCUSED-APPELLANT TO INDEMNIFY VICTIM IN THE TOTAL AMOUNT OF ₱100,000.00 AS MORAL AND COMPENSATORY DAMAGES.[18]

Appellant posits that Mary Jane's charges are rendered suspect by the delay of almost eight years in filing them from the alleged occurrence of the first rape incident; that Mary Jane's return to their residence, even after the alleged first rape incident, despite the fact that she was already boarding in a house near her place of work, casts serious doubt on her charges;[19] that it would be impossible for him to have committed the crimes since they lived in one compound with Mary Jane's maternal grandmother and aunt; that her testimony that she

[17] *Rollo* at 28.

[18] *Id.* at 44.

[19] *Ibid.*

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did not tell anyone of the rape incidents because she did not want to involve anyone runs counter to her friend Lychin Rivel's testimony that she (Mary Jane) tearfully told her that she would commit suicide if said friend did not help her;[20] and that the information charging him with the first count of rape does not state the date of the commission of the crime with sufficient certainty as to give him an opportunity to prepare for his defense.[21]

After a considered review of the records of these two cases, this Court finds that the appeal is meritorious with respect to the second count of rape but not with respect to the first.

Mary Jane's account of the first rape incident is clear and candid, punctuated with tears:

Q: The date of September 1989 do you recall of any unusual incident that happened to you?

xxx xxx xxx

A: The rape sir.

Q: Who raped you?

A: My father.

Q: When you said your father who is your father?

A: Oscar Calamlam, Sr.

Q: In what place were you raped?

A: In our house located in Maahas.

Q: More or less what time was it?

A: Between 12:15 to 12:30 sir.

Q: Midnight?

A: Noon your honor.

Q: In what portion of the house were you raped by your father?

A: Inside our room.

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[20] *Id.* at 52.

[21] *Ibid.*

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Q: Can you tell us in brief how your father was able to rape you in your own house in September 1989?

A: I have just came (*sic*) from the school then at 12:15 noon so I came to the house and I was surprised he was alone. Normally he does no (*sic*) let my brothers and sister to (*sic*) leave before 1:00 because theirs (*sic*) classes start at 1:00 but at that time he was alone.

Q: When you arrived in your house, where did you proceed?

A: In the kitchen because he told me to eat.

Q: Did you eat as told by your father?

A: Yes, sir.

Q: After eating what did you do?

A: I was changing (*sic*) clothes because I was going to wash dishes.

Q: Where did you change clothes?

A: Inside our room.

Q: What happened when you changed your dress?

A: When I passed by the living room he was no longer in the living room and when I returned to the room he was there.

Fiscal: ***May I manifest your honor that the witness is crying.*** *After you found your father inside that room, what did you do?*

A: I did not mind him.

Q: What happened next?

A: *He pushed me on the bed and I asked him "Bakit po?" and he told me to stop.*

Q: After you said you were thrown by your father what did your father do to you?

A: *He boxed me on my stomach and on my side.*

Q: What did you do when you said you were boxed by your father in (*sic*) your side and in (*sic*) your stomach?

A: *I fell on the bed and held my hands like this, (Witness raised her hand) and then he removed my panty.*

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Q: After removing your panty what did your father do?

A: He also removed her (*sic*) brief.

Q: After your father removed his brief and you were already lying down, what did you do?

A: I was crying.

Q: Why?

A: Because I already knew then what will happen sir because at that time I asked him "*Sabi po ninyo hindi ninyo gagawin sa akin ang ginawa ninyo kay ate.*"

Fiscal: May we again manifest that the witness is crying.

Q: After telling your father and he removed his brief what did he do?

A: He did what he wanted to do and raped me.

Q: What exactly did he do to you?

A: *He opened my legs and inserted his private part into mine.*

Q: *What were you doing at that time your father was inserting his private part to (sic) your private part?*

A: *I was crying because it was painful.*

Q: *You said he was able to insert his penies (sic) to (sic) your private organ?*

A: *It was "mahapdi na masakit".*

Q: *After your father has (sic) inserted his private part in to your private part, what happened next?*

A: *I do not know because after those things he told me not to tell my mother because if I told it (sic) to my mother he would kill me together with my brothers and sisters.*

x x x x x x x x x [22] (emphasis and italics supplied)

That there was considerable delay on Mary Jane's part in reporting the incident does not dent her credibility. Failure or

[22] TSN, March 16, 1998 at 12–14.

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delay in reporting a carnal violation committed by a father against his daughter due to threats is hardly unjustified.[23] For the father's moral ascendancy can lead the daughter to suffer in silence.[24]

In a long line of cases, this Court has held that delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim. A rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies this terror, because the perpetrator is a person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and the degree of fear.

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The pattern of instilling fear and terror, utilized by the perpetrator in incestuous rape to intimidate his victim into submission is evident in virtually all similar cases which have reached this Court: the rapist perverts whatever moral ascendancy and influence he has over his victim in order to intimidate and force the latter to submit to repeated acts of rape over a period of time. In many instances, he succeeds and the crime is forever kept on a lid. In a few cases, the victim suddenly finds the will to summon unknown sources of courage to cry out for help and bring her depraved malefactor to justice.

Given this pattern, we have repeatedly ruled that the failure of the victim to immediately report the rape is not indicative of fabrication.

x x x x x x x x x

In all of these and other cases of incestuous rape, the perpetrator takes full advantage of his blood relationship, ascendancy, and influence over his victim, both to commit the sexual assault and to intimidate the victim into silence. Unfortunately for some perpetrators of incestuous rape, their victims manage to break out from the cycle of fear and terror. In *People v. Molero*, we emphasized that "an intimidated person cowed into submitting to a series of repulsive

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[23] *People v. Guiwan*, 331 SCRA 70, 77–78 (2000).

[24] *People v. Traya*, 332 SCRA 499, 506 (2000).

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acts may acquire some courage as she grows older and finally state that enough is enough, the depraved malefactor must be punished."[25]

Thus, Mary Jane's delay in reporting the first rape incident can be attributed to the fear instilled in her by the incessant threats and intimidation, not to mention the constant physical abuse inflicted on her by appellant who undoubtedly exercises moral ascendancy over her. It was commonsensical that she feared the wrath of appellant who, by his own admission,[26] had absolutely no qualms in using physical force against members of his family.[27] That fear could have indeed overcome Mary Jane is not difficult to believe as appellant was in possession of two guns.[28]

With respect to appellant's contention that Mary Jane's allegations are rendered dubious in light of her return to their residence after the first rape incident despite the fact that she was staying at another house, Mary Jane proffered a satisfactory explanation — that she was forced by appellant to leave that house which was being rented by her friend Susan Layos where she initially sought refuge:

Q: Where is this house of Susan Layos?

A: She was renting that house located at Checkpoint at the back of *bulalohan.*

Q: Where is this Checkpoint?

A: *Mapayapa* sir.

Q: You said your father sometime on (sic) January went there and poked a gun (sic) at you, can you tell us how he came to know the place where you were living where Susan Layos was boarding?

A: He told me he saw me when he went to *bulalohan* to meet somebody. I was at the bathroom then when he came to the house and he entered the house asking Susan Layos of my

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[25] *People v. Melivo*, 253 SCRA 347, 356–358 (1996).

[26] TSN, May 25, 1998 at 19.

[27] TSN, March 16, 1998 at 15, TSN, April 3, 1998 at 5.

[28] TSN, March 16, 1998 at 15.

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whereabouts and Susan Layos told him that she will call me but he did not wait for Susan Layos to call me then he rushed on (sic) the bathroom and poked a knife at me. He told me if I will not go with him he will kill me so Susan Layos told me to go with my father because she was afraid.

Q: You said that because of what your father did Susan Layos was so scared that she asked you to go with your father?

A: At first I told Susan Layos I will not go with my father but Susan Layos told me to go with him because she was afraid then. I was still talking with Susan when my father slapped me so I went with him.[29]

Mary Jane went on to declare that after that slapping incident, she managed to escape from appellant's clutches by staying at a boarding house near her place of work, but appellant again fetched her, telling her that her youngest brother, to whom she was very close, was very sick.[30]

As to appellant's submission that it was impossible for him to commit rape in light of the presence of Mary Jane's maternal grandmother and aunt in the same compound where he and his family live, the same does not lie. Lust is no respecter of time and place.[31] Just as presence of people nearby[32] or suitability of the place is no deterrent to the commission of rape.

The perceived inconsistency between the testimony of Mary Jane that she told no one of the rape and that of her friend Lychin Rivel that she (Mary Jane) divulged to her has nothing to do with the essential fact of the commission of rape.[33]

Respecting appellant's argument that the allegation in the first information relative to the date of the commission of the crime is not sufficiently definite to give him opportunity to prepare for his

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[29] TSN, March 16, 1998 at 18.

[30] *Id.* at 19.

[31] *People v. Docena*, 322 SCRA 820, 832 (2000) (citations omitted).

[32] *People v. Baybado*, 335 SCRA 712, 720 (2000) (citation omitted).

[33] *People v. Siao*, 327 SCRA 231, 257 (2000).

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defense, the same is bereft of merit. Allegation of the exact time or date of the commission of a crime is not important in a prosecution for rape,[34] it having no substantial bearing on its commission.[35] That is why under the Rules on Criminal Procedure,[36] it is not necessary for the information to allege the date and time of the commission of the crime with exactitude except when the time is an essential ingredient thereof.[37]

Finally, clutching at straws, appellant imputes ill-motive on Mary Jane, alleging that she filed the cases out of vengeance for having beaten her. Thus appellant claimed as follows, quoted *verbatim*:

Q: You said a while ago that your daughter, the complainant in this case has a kissmark, when did you find this kissmark if you can still remember?

A: I could recall that it happened between the month of April and May. I remember when she came home I saw that kissmark and she was also putting ice on her face. And when I saw the kissmark on her neck I beat her and hurt her.

x x x x x x x x x

Q: And you are saying that because of that incident when you saw these red marks on her left and right neck you beat her that is the reason why your daughter filed these charges against you?

A: That is what I know.[38]

This Court is not persuaded. Even when consumed with revenge, it takes a certain amount of psychological depravity for a young

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[34] *People v. Bernaldez*, 294 SCRA 317, 327 (1998).

[35] *People v. Alvero*, 329 SCRA 737, 747 (2000) (citations omitted).

[36] Rule 110, Sec. 11. *Date of commission of the offense.* — It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

[37] *People v. Santos*, 334 SCRA 655, 664-665 (2000).

[38] TSN, May 25, 1998 at 6-17.

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woman to fabricate a story which could snuff out the life of her own father or put the most of his remaining life in jail and drag herself and the rest of her family to a lifetime of shame.[39] The usual plaint by indictees for rape that the charges against them came about as a result of family feuds, resentment, or revenge can not sway this Court from lending full credence to the testimony of Mary Jane who remained steadfast throughout her testimony.[40]

That Mary Jane's own mother testified in appellant's defense does not render her tale false. For some mothers actually choose to suffer with their daughters in silence than risk the embarrassment of public trial and, for those in the marginalized sector, risk losing their means of support when their breadwinner-husband goes to jail.[41]

As regards Mary Jane's sister Nonafe also testifying for appellant, albeit she had earlier executed a sworn statement that she witnessed appellant assaulting Mary Jane, her admission at the witness stand she priorly received a letter[42] from appellant instructing her to assert his innocence and put Mary Jane's character in a bad light raises nagging doubts on her testimony in appellant's favor. The pertinent portions of appellant's letter to Nonafe are quoted *verbatim*:

x x x *At huag kang matakot dahil nasasaiyo ang akin paglaya huag basta maniniwala saiyong (Ate Jane). Bibilugin ang ulo mo!x x x Sabihing mo ring paano po manyayari ang bagay na inyong simulat simula po ay ikaw ang katabi ng iyong Ate Jane at ikaw ay walang nakikita na ganoong. Sabihing mo na lahat kamo ng iyong alam ay lagi ko siyang nasasaktan, na malimit ang kanyang pag alis ng bahay at malimit kamong kasama niya ng kanyang barkada at malimit umaga ang uwi.*

Sabihing mo at basahin mo ang kanyang salay-say upang iyong matandaan. lahat ng kanyang salaysay ay baliktarin mo! ang

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[39] *People v. Guiwan*, 331 SCRA 70, 77 (2000) (citation omitted).

[40] *People v. Itdang*, 343 SCRA 624, 631 (2000) (citation omitted).

[41] *People v. Arves*, 343 SCRA 123 (2000).

[42] Exhibit "G", Records at 132–133.

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kanyang sinabi at pati iyong salaysay mo ay sabihing mo ring tinuro lamang saiyo. Lahat ng iyong ibig ay boung puso kong susundin. x x x Umasa kang susundin kong lahat ng iyong gusto mo. x x x[43] (Italics supplied)

The birth certificate[44] of Mary Jane shows that she was born on May 4, 1975. She was thus 14 years old when she was raped in September 1989. The same document shows appellant to be her father, a fact appellant himself admitted during the trial.[45] As thus correctly found by the trial court, Article 335 of the Revised Penal Code,[46] before its amendment by RA 7659 which took effect on December 31, 1993, is applicable. The rape committed by appellant is, therefore, simple, penalized by *reclusion perpetua.*

With respect to the second rape case, the prosecution failed to establish its case as the following testimony of Mary Jane instructs:

Q: That date of July 22, 1997 again do you recall of any unusual incident that happened to you?

A: That time, after watching television I entered the room, it was 7:00 o'clock then, when I again stood up and watched

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[43] *Ibid.*

[44] Exhibit "E", Records at 55.

[45] TSN, May 25, 1998 at 3.

[46] Art. 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force and intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by *reclusion perpetua.*

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

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t.v. at that time he was already beside me because he was already sleeping beside me.

Q: Where is this t.v. where you said you were viewing a program?

A: It is located in the living room, adjacent to the room. It is only divided by a wall (sic).

Q: What was your mother doing at that time?

A: Watching t.v. sir.

Q: How about your brothers and sisters?

A: My brothers were also watching t.v. while my sister was studying in the dining room.

Q: What portion of the house was this t.v. situated when you said you were watching t.v. program?

A: In the living room.

Q: And what happened after you said you were watching this t.v. program?

A: After the program sir I was then about to sleep. I was already lying he was wearing brief because he always wear (sic) in sleeping and *he told me that he wanted to "gumanon". I told him "Ayaw ko na tatay, hirap na hirap na po ako." But he boxed me. "Ganoon naman ho iyon gumagawa ng galit kapag hindi ako napayag."*

Q: Then what happened after you told him "*Ayaw ko na po tatay, hirap na hirap na ako.*"?

A: He slapped me on my ears and my face hit the wall.

Q: After he slapped you on your face what did he do next?

A: *He again did it to me and I cried.*

Q: *When you said he did it again to you, how did he do it?*

A: *Just like before he held my hands, raised my legs at "ilulugso ang kanyang pagnanasa."*

x x x x x x x x x[47] (Italics supplied)

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[47] *Id.* at 15-17.

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Mary Jane's allegation that appellant "again did it to me" does not prove the elements of the rape subject of the second case. Each charge of rape is a distinct and separate crime the elements of which must be proved beyond reasonable doubt.[48] Appellant's acquittal in Criminal Case No. 5487-97-C is thus in order.

This Court notes that while the trial court correctly awarded ₱50,000.00 as moral damages which is granted in rape cases without the necessity of additional pleading or proof other than the fact of rape, it failed to award any indemnity *ex delicto*, which is separate and distinct from that of moral damages and which current jurisprudence has fixed at ₱50,000.00.

In addition, this Court imposes the amount of ₱25,000.00 for exemplary damages to deter other fathers with similar perverse tendencies or aberrant sexual behaviors from sexually abusing their own daughters.[49]

WHEREFORE, the judgment on review is hereby *AFFIRMED* with *MODIFICATION*.

As modified, appellant Oscar Calamlam *y* Agnazata is found *GUILTY* beyond reasonable doubt of the crime of simple RAPE in Criminal Case No. 5488-97-C, and is hereby sentenced to suffer the penalty of *reclusion perpetua* and pay complainant Mary Jane Calamlam *y* Feliciano ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

Appellant is *ACQUITTED* of the charge in Criminal Case No. 5487-97-C.

SO ORDERED.

Puno (*Chairman*) and *Panganiban, JJ.*, concur.

Sandoval-Gutierrez and *Corona, JJ.*, on leave.

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

[49] *People v. Guiwan*, 331 SCRA 70, 81 (2000) (citation omitted).