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EN BANC

[G.R. No. 145995. March 20, 2003.]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SATURNINO ILUIS *y* JANDOC,** *accused-appellant.*

SYNOPSIS

Appellant was found guilty of raping a child barely six years of age. He was sentenced to death and, hence, this automatic review.

The Court affirmed the findings of the trial court. It was observed that the seven-year victim remained consistent and credible even with the extensive and rigorous cross-examination conducted by appellant's counsel. Her failure to give details on the commission of the crime and her alleged indifferent reaction after the crime did not affect her credibility. Death penalty, however, cannot be imposed in the absence of specific allegation in the Information that the victim is below seven years of age. Hence, the proper penalty is *reclusion perpetua* plus ₱50,000 for civil indemnity and another ₱50,000 for moral damages.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.** – The Court finds no sufficient basis for ignoring, let alone overturning, the factual assessment made by the court below. Once again, the Court must reiterate the familiar rule that the task of taking on the issue of credibility is a function properly lodged with the trial court and whose findings are entitled to great weight.

2. **CRIMINAL LAW; RAPE; BRIEFEST CONTACT OF PUDENDUM BY THE PHALLUS IS SUFFICIENT.** – The unflinching testimony of the child victim notwithstanding, appellant would insist that her statement that "he (appellant) put his penis *into* my vagina" was inadequate to warrant conviction for the crime of rape. The trial court correctly brushed aside this argument. Granting that there was no complete penetration of the vagina, even just the briefest contact of the

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pudendum by the phallus, however, would be enough to consummate the crime of rape.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF CHILD VICTIM OF RAPE, UPHELD.** – Considering her age, Juliene's failure to give the gory details on the sexual debasement would be understandable and typical of an innocent child whose virtue had unexpectedly been violated and her chastity abused. Ample margin of inaccuracies should be accorded to a child witness who obviously had been gripped with tension on the witness stand. Most significantly, no plausible reason was given by the defense why Juliene would fabricate the charges.

4. **ID.; ID.; ID.; NOT AFFECTED BY THE VICTIM'S ALLEGED INDIFFERENT REACTION AFTER THE CRIME.**— Appellant claims that Juliene's behavior after the commission of the crime, *i.e.*, in not missing school, can hardly be considered normal for one who has been raped. There is, the Court has repeatedly observed however, no standard form of behavior that can be anticipated of a rape victim following her defilement, particularly by a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress and rape victims are no different from them.

5. **ID.; ID.; ID.; ID.; MEDICAL REPORT IS NOT ESSENTIAL FOR CONVICTION.** – A medical examination is not essential in the prosecution of a rape case; a medical examination, as well as the medical certificate, is merely corroborative in character. Such a report is not an indispensable requirement for conviction for what matters greatly is the clear, unequivocal and credible testimony of the victim.

6. **CRIMINAL LAW; RAPE; IMPOSITION OF DEATH PENALTY REQUIRES ALLEGATION IN THE INFORMATION THAT VICTIM IS "BELOW SEVEN YEARS OLD."**— In order to warrant the imposition of the death penalty, it is required that the qualifying circumstance of the rape victim being "below seven years of age" should be aptly alleged in the Information. The Court has made it explicit that qualifying circumstances, which would increase the penalty by a higher degree, "must be properly pleaded in the information consistent with the constitutional right of the accused to be informed of the charges against him." The allegation in the Information that the victim

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is "below twelve (12) years old," an age indication that would only call for the penalty of *reclusion perpetua,* cannot suffice to warrant the imposition of the extreme penalty of death.

7. ID.; ID.; PROPER CIVIL PENALTIES. – Pursuant to prevailing jurisprudence, in addition to the civil indemnity of ₱50,000.00 awarded by the court *a quo,* a like amount of ₱50,000.00 in moral damages must also be awarded to the rape victim.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VITUG, *J.*:

In Criminal Case No. V-0786, the Regional Trial Court of Pangasinan, Branch 50, found Saturnino Iluis *y* Jandoc @ "Masong" guilty beyond reasonable doubt of rape "defined and penalized under Item No. 4 of the last paragraph of Article 335 of the Revised Penal Code, as amended," and sentenced him to suffer the penalty of death, as well as to pay civil indemnity of fifty thousand pesos (₱50,000.00) to the victim, Juliene M. Abriam, for the crime.

The Information that Juliene Abriam, assisted by her grandmother, caused to be filed in court on 23 June 1998, read:

"That sometimes [*sic*] between the months of August and October, 1997 at Poblacion Zone IV, Municipality of Villasis, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one Juliene Abriam *y* Motea being below twelve (12) years old, against the latter's will and consent, to the damage and prejudice of said Juliene Abriam *y* Motea.

"Contrary to Art. 335, in relation to R.A. No. 8353 of the Revised Penal Code."[1]

[1] *Rollo*, p. 10.

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At his arraignment, Saturnino Iluis entered a plea of not guilty.

The evidence adduced by the prosecution, upon which the trial court based its finding of guilt, tended to show that —

Juliene Calaunan Mutia[2] was born on 23 September 1991 in Siniloan, Laguna,[3] to a single parent, Julieta Calaunan Mutia, who, unfortunately, would not live long enough to see her daughter pass through her formative years. Juliene was barely four years old when her mother died. She was left to the care of Maritess Raguindin, Julieta's sister, who had several children of her own. Ultimately, Maritess gave the child to Ana Abriam for "adoption." Maritess gave Ana the birth certificate of Juliene that she had taken from Julieta's wallet. With her husband Dominador Raguindin, Maritess executed a document in the dialect, dated 13 October 1993,[4] to confirm that the couple had entrusted Juliene to the custody of Ana. Two days after giving the custody of Juliene to Ana, Maritess received from Ana dollars equivalent to ₱10,000 "as a sort of help." Ana would also give some sums to Maritess whenever she would come around and visit Juliene, also called Jing, at the Abriam residence.

Ana Abriam, 71, named Rosita Abriam at birth, decided for reasons of her own to call herself Ana when she had started to become sickly. She turned American citizen in 1981. In October 1993, Juliene became her *taraken* or "adopted" child. In school, Juliene was thought to have been legally adopted and was made to use the surname Abriam. Whenever Rosita would go to the United States, she would entrust Juliene to the custody of Saturnino Iluis, his sister-in-law Teresita Iluis or Tessie and his mother Basilia, in Rosita's house at No. 80, San Geronimo Street, Zone IV, Poblacion, Villasis, Pangasinan.

In August 1997, Rosita left for the United States; she returned on 18 November 1997. A few days later, on the early evening of 21 November 1997, Rosita was viewing a television show

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[2] This is the name appearing in the certificate of live birth (Exh. A). She signed her name as Juliene M. Abriam in the complaint. Her first name is spelled "Juliene" in the record of this case.

[3] Exh. A, Records, p. 3.

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with Juliene when the latter held Rosita and meaningfully pressed the middle of Rosita's palm. Realizing that the gesture conveyed something that was "not a nice act," Rosita told Juliene, "Whoever did that thing to you tell me his name because that man might kidnap and kill you." When Juliene refused to talk, Rosita "threatened" Juliene that she would not give the girl the things that had been bought for her. Juliene uttered, "I am afraid, Grandma, but I will tell his name. He is Uncle Masong." Rosita called Tessie and her nephew so that they could also hear what the child was saying. Once again when asked, Juliene disclosed that Masong molested her. He would embrace, kiss, touch her private part, and then *garawen* her. When Rosita asked Juliene what she meant by *garawen*, Juliene said that Masong would put his penis into her vagina.

Rosita decided to have Juliene medically examined. Since it was a Friday, Rosita waited for Monday before she brought Juliene to Dr. Hiam Kiat Dy for examination. Not satisfied with the findings of Dr. Dy, Rosita brought Juliene to the Don Amadeo J. Perez, Sr., Memorial General Hospital in Urdaneta, Pangasinan. Dr. Jeanna Nebril-Ramilo who examined Juliene on 28 November 1997 made her findings thusly:

> "External Genitalia: No abrasion, scar noted on pubic/escutchen.
>
> - Labia Major — Labia Minor gaping, positive rounding fourchette
>
> - Deep healed laceration 1:00 o'clock position hymen.
>
> - Healed laceration 3:00 position
>
> - Admits index finger midway with slight resistance."[5]

According to Dr. Nebril-Ramilo, these findings revealed the "possibility of penetration" of the child's sex organ by a blunt object.[6]

On Monday, 24 November 1997, Jonathan Fernando-Manlongat, Juliene's kindergarten teacher at the St. Anthony

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[4] Exh. B, supra at 5.

[5] Exh. D, Records, p. 15.

[6] TSN, April 12, 1999, p. 18.

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Abbot Academy, noticed that it was *Manang* Tessie who accompanied Juliene to school. When Jonathan asked *Manang* Tessie why Juliene was absent the previous Friday, *Manang* Tessie replied that Juliene's grandmother had just arrived from America. When he inquired why it was she, not Masong, who accompanied Juliene to school, *Manang* Tessie told Jonathan that Masong had been fired because "he had done something wrong to the child." Jonathan wanted to know what had happened but *Manang* Tessie told him to just speak to the child. At recess period, Jonathan asked Juliene what her "uncle" Masong did to her. At first, Juliene just stared at Jonathan but, when Jonathan persisted, Juliene reluctantly answered that Masong had molested her.

According to Juliene herself, during the months of August to October 1997, Masong would let her smoke, take off her panty, and put his penis into her vagina. She would feel pain whenever Masong inserted his penis into her vagina but, fearful, she kept quiet about the matter. Eventually, however, Juliene told her Grandma Ana about the molestations and that Masong did the acts of taking off her panty and putting his penis into her vagina three times in the *kubo-kubo* (nipa hut). Her grandma being then abroad, Juliene would sleep with her aunt Tessie but it was Masong who would bring and fetch her to and from school.

The defense interposed denial. Saturnino Iluis (Masong), single, 42, reached only the 6th grade in the Elementary School and also answered to the nickname "Melchor." He worked in the Abriam household from 1 April 1995 until 24 November 1997. His sister-in-law, Teresita, who was hired to work in the same household on 27 August 1997, was responsible for the laundry work and for looking after Juliene. Saturnino treated Juliene both as a sister and as his own child. He denied the accusation against him which he attributed to his having spent the household allowance of ₱5,850 for the dress and pictures of Juliene when she became a beauty contest candidate in her school. He was sent home on 19 November 1997 after Rosita previously warned him, through Teresita, that should he be unable to pay that amount, she would file a rape case against him. He was at home in Amamperez when the police arrested him. Teresita

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Iluis sought to corroborate, in part, the testimony of her brother-in-law.

The defense also presented Dr. Hian Kiat C. Dy who was the first physician to examine Juliene upon the request of Chief of Police Patricio Fantin Piñol. In the medical report, he inscribed the following findings:

"1. Redness — area between urethra opening and vaginal opening.

"2. Vaginal Opening — about 0.3 cm. in diameter

"3. Hymen — intact/no laceration

"4. Pain and tenderness of the vulva."[7]

The redness of the urethra could have been due, he said, to inflammation or infection, and an intact hymen implied that there was no laceration and that no foreign object had been inserted into the vagina. He admitted, however, that the redness between the urethra opening and the vaginal opening could have been caused by an erect penis coming into contact with the vaginal opening.

The trial court found Saturnino Iluis guilty of the crime of qualified rape for which it imposed upon him the death penalty; it concluded:

"WHEREFORE, the Court finds the accused Saturnino Iluis *y* Jandoc @ 'Masong' guilty beyond reasonable doubt of the crime of rape defined and penalized under Item No. 4 of the last paragraph of Art. 335 of the Revised Penal Code, as amended, and is hereby accordingly sentenced to suffer the penalty of death.

"The accused is further ordered to pay Juliene M. Abriam the sum of FIFTY THOUSAND PESOS (₱50,000.00) as indemnification."[8]

In this automatic review, appellant would have it that —

"I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT SATURNINO ILUIS *Y* JANDOC BEYOND REASON-

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[7] Exh. 2-a.

[8] *Rollo*, pp. 53-54.

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ABLE DOUBT OF STATUTORY RAPE NOTWITH-STANDING THE WEAKNESS OF THE PROSECUTION EVIDENCE.

"II.

ASSUMING ARGUENDO THAT THE ACCUSED IS GUILTY, THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY BECAUSE THE TRUE AGE OF THE VICTIM, WHICH WAS 6 YEARS OLD AT THE TIME OF THE RAPE, WAS NOT ALLEGED IN THE INFORMATION NOR WAS IT DULY PROVED BEYOND REASONABLE DOUBT."[9]

The Court finds no sufficient basis for ignoring, let alone overturning, the factual assessment made by the court below. Once again, the Court must reiterate the familiar rule that the task of taking on the issue of credibility is a function properly lodged with the trial court and whose findings are entitled to great weight.[10]

In this case, the trial court observed that Juliene had remained consistent and demonstrated her credibility even with the extensive and rigorous cross-examination conducted by appellant's counsel.[11] In assailing the credibility of the victim, who was only seven years old when she testified on the sexual ordeal she had suffered a year before, appellant would stress on her failure to give details of the commission of the crime. That, however, would not exactly appear to be the case. The victim testified:

"PROS. MAPILI:

"Q Between the months of August to October, 1997 do you remember if 'Masong' did something to you Madam Witness?
"A Yes, sir.

"Q What was that something which 'Masong' did to you?
"A He let me smoke, he took off my panty and he put his penis into my vagina, sir.

"Q And where were you when 'Masong' put his penis into your vagina?
"A In a little '*kubo-kubo*' (small nipa hut), sir.

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[9] *Rollo*, p. 75.

[10] *People vs. Taño*, G.R. No. 133872, 5 May 2000, 331 SCRA 449.

[11] RTC Decision, p. 26.

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"COURT:
"Q Where is that little '*kubo-kubo*'?
"A Near our shed, sir.

"PROS. MAPILI:
"Q That little '*kubo-kubo*' is located near the house of your grandma Ana Abriam?
"A Yes, sir.

"Q Is that 'kubo-kubo' still there at this time?
"A Yes sir, it still exists.

"Q So [how] did you feel when 'Masong' put his penis into your vagina?
"A I felt pain, sir.

"Q So what did you do when you felt the pain?
"A I remained silent, sir.

"Q Why did you not say or do something?
"A I was afraid, sir.

"Q Why were you afraid at that time?
"A Because of that thing that he did to me, sir.

"Q And what did 'Masong' do or tell you if any when he put his penis into your vagina?
"A That I will not tell the matter, sir.

"Q Now you said that 'Masong' warned you not to tell the matter, did you tell the matter to anyone?
"A Yes, sir.

"Q To whom did you tell what Masong did to you?
"A To my grandma Ana Abriam, sir.

"Q And what did you tell to your grandma Ana?
"A I told her what he did to me, sir.

"Q You are referring [to] what Masong did to you?
"A Yes, sir.

"COURT:
"Q How did you tell your grandma Ana . . . what did you say to her?
"A I only had my left forefinger pointed at the middle of her palm, Your Honor.

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"PROS. MAPILI:
"Q So that is the sign [of] what Masong did to you?
"A Yes, sir.

"Q And what was the response of your grandma Ana when you demonstrated to her what Masong did to you?
"A She asked me, 'what did he do to you?'

"COURT:
"Q What was your answer?
"A I told her what he did to me, sir (witness turning her head to the place of the accused.)

"Q What did he do to you?
"A He took off my panty and put his penis into my vagina Your Honor.

"Q How many times did Masong do that to you?
"A Three (3) times, Your Honor.

"Q On different dates?

"ATTY. BUMACOD:
Your Honor, the accused is charged for only one count.

"COURT:
Yes.

"A Yes, Your Honor.

"Q On the same date?
"A Different dates, Your Honor.

"Q Also in [the] '*kubo-kubo*'?
"A Yes, Your Honor.

"Q So 3 times inside the '*kubo-kubo*'?
"A Yes, Your Honor."[12]

On cross-examination, Juliene continued:

"ATTY. BUMACOD:
"Q From whom did you learn how to make that sign of pointing your left forefinger at the middle of the palm of your grandmother?
"A From Masong, sir.

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[12] TSN, 28 February 2000, pp. 6-9.

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"Q What did Masong tell you about that sign?
"A He taught me to do that, sir.

"Q You want to impress the Honorable Court Juliene that Masong made or pointed his forefinger at your palm or at his palm?
"A In my palm, sir.

"Q And did he tell you what is that sign?
"A No, sir.

"Q So if Masong did not tell you Madam Witness what is that sign, what do you mean then to tell your grandmother when you pointed at [sic] your left forefinger at the middle of her palm?
"A I only did that act, sir.

"xxx xxx xxx

"ATTY. BUMACOD:
"Q So you told her, I'm referring to your grandma, what Masong did without your grandma asking you anything?
"A She asked me, sir.

"Q What did she ask you?
"A That thing that he did to me, sir.

"Q And what is that that you told her?
"A The thing that Masong did to me, sir.

"Q What is that that Masong did to you?
"A That same thing that he did to me, sir.

"COURT:
"Q What did Masong do to you?
"A That same thing, Your Honor.

"Q Can you tell the Court what is that same thing that Masong did to you?
"A He took off my panty, Your Honor.

"Q What else?
"A He put his penis into my vagina, Your Honor.

"ATTY. BUMACOD:
Madam Witness, you said that Masong put his penis into your vagina. How long in time did he put his penis in your

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vagina, if you remember?
"A Long ago [sic], sir."[13]

The unflinching testimony of the child victim notwithstanding, appellant would insist that her statement that "he (appellant) put his penis *into* my vagina" was inadequate to warrant conviction for the crime of rape. The trial court correctly brushed aside this argument. Granting that there was no complete penetration of the vagina, even just the briefest contact of the pudendum by the phallus, however, would be enough to consummate the crime of rape.[14] In *People vs. Balgos*,[15] the six-year old victim testified that the penis of the appellant did not penetrate her vagina but only touched its "hole." The Court considered that testimony as being sufficient and a "tell-tale sign" of the victim's "honesty and candor in relating her unsavory experience." Considering her age, Juliene's failure to give the gory details on the sexual debasement would be understandable and typical of an innocent child whose virtue had unexpectedly been violated and her chastity abused. [16] Ample margin of inaccuracies should be accorded to a child witness who obviously had been gripped with tension on the witness stand.[17] Most significantly, no plausible reason was given by the defense why Juliene would fabricate the charges.

Appellant claims that Juliene's behavior after the commission of the crime, *i.e.*, in not missing school, can hardly be considered normal for one who has been raped. There is, the Court has repeatedly observed however, no standard form of behavior that can be anticipated of a rape victim following her defilement, particularly by a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress and rape victims are no different from them.

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[13] TSN, 16 March 2000, pp. 13-15.

[14] *People vs. Brigildo*, G.R. No. 124129, 28 January 2000, 323 SCRA 631.

[15] 323 SCRA 372.

[16] *Ibid.*

[17] *People vs. Lomerio*, G.R. No. 129074, 28 February 2000, 326 SCRA 530.

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The defense attempts to blemish the medical report of Dr. Nebril-Ramilo by the findings of Dr. Dy but the latter himself, on cross-examination, did not rule out the possibility of "an erect penis coming into contact" with the sex organ of the child that resulted in the redness of the area between the urethral and the vaginal openings.[18] In any event, a medical examination is not essential in the prosecution of a rape case; a medical examination, as well as the medical certificate, is merely corroborative in character. Such a report is not an indispensable requirement for conviction for what matters greatly is the clear, unequivocal and credible[19] testimony of the victim.

Appellant is correct, however, in submitting that the death penalty should not have been imposed. Article 335 of the Revised Penal Code, as amended, provides:

"Article 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

"xxx xxx xxx

"3. When the woman is under twelve years of age or is demented.

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

"xxx xxx xxx

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

"xxx xxx xxx

"4. when the victim is a religious or a child below seven (7) years old."

While the age of the victim, *i.e.,* of being barely six years old at the time of the rape, is supported by the Certificate of

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[18] TSN, 10 May 2000, p. 11. See: *People vs. Lomerio, supra* at 544 where the Court agreed with the prosecution that redness of the labia minora of the victim, which the defense claimed to have been caused by the finger of another person, does not rule out the possibility of sexual intercourse.

[19] *People vs. Lerio*, 324 SCRA 76.

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Live Birth (Exhibit "A"), showing that Juliene was born on 23 September 1991, and the testimony of Maritess Raguindin (the sister of Juliene's mother[20]), in order, however, to warrant the imposition of the death penalty, it is required that the qualifying circumstance of the rape victim being "below seven years of age" should be aptly alleged in the Information. The Court has made it explicit that qualifying circumstances, which would increase the penalty by a higher degree, "must be properly pleaded in the information consistent with the constitutional right of the accused to be informed of the charges against him." [21] Mindful, indeed, of the entitlement of an accused to this fundamental right, the Court has now provided for in Rule 110 of the Revised Rules of Criminal Procedure, made effective on 1 December 2000, thusly:

"SEC. 8. Designation of the offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

"SEC. 9. Cause of accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment."

The allegation in the Information that the victim is "below twelve (12) years old," an age indication that would only call for the penalty of *reclusion perpetua*, cannot suffice to warrant the imposition of the extreme penalty of death.

Pursuant to prevailing jurisprudence, in addition to the civil indemnity of ₱50,000.00 awarded by the court *a quo*, a like amount of ₱50,000.00 in moral damages must also be awarded to the rape victim.

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[20] TSN, 19 April 1999, pp. 5-6.

[21] *People vs. Bernaldez*, 322 SCRA 462.

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WHEREFORE, the decision of the trial court insofar as it finds appellant Saturnino Iluis y Jandoc, *a.k.a.* Masong or Melchor, guilty beyond reasonable doubt of the crime of rape is *AFFIRMED* with *MODIFICATION* in (a) that the penalty of death imposed is reduced to *reclusion perpetua* and (b) that, in addition to the civil indemnity of fifty thousand pesos (₱50,000.00) ordered to be paid by appellant, another amount of fifty thousand pesos (₱50,000.00) in moral damages is awarded to Juliene Abriam. Costs *de oficio.*

SO ORDERED.

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

Ynares-Santiago, J., on leave.

THIRD DIVISION

[G.R. No. 148568. March 20, 2003.]

ATLANTIC ERECTORS, INC., *petitioner, vs.* **HERBAL COVE REALTY CORPORATION,** *respondent.*

SYNOPSIS

Respondent and petitioner entered into a construction contract whereby petitioner agreed to construct several townhouse units on respondent's land for a total of almost ₱17M. Later, petitioner filed a complaint against respondent for sum of money with damages and notice of *lis pendens* annotated on respondent's land titles. Petitioner averred that its money claim on the cost of labor and materials for the townhouses it constructed on respondent's land was a proper lien that justified the annotation of a notice of *lis pendens* on the land titles.