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unconstitutional. Nevertheless, they submit to the ruling of the majority that the said law is not unconstitutional and that the death penalty should be imposed in this case.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of R.A. 7659, upon finality of this decision, let the record of this case be forwarded to the Office of the President for possible exercise of clemency and pardoning power.

SO ORDERED.

Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and *Corona, JJ.,* concur.

Davide, Jr., C.J., on official leave.

Bellosillo, J., no part. Did not take part in deliberations.

EN BANC

[G.R. Nos. 144344-68. July 23, 2002]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SEVERINO GONDAWAY DULAY *y* CORONA,** *accused-appellant.*

SYNOPSIS

The trial court found accused-appellant guilty of the crime of rape as charged in the twenty-five (25) Informations and was sentenced to suffer the supreme penalty of death in each of the twenty-five (25) cases for sexually abusing his thirteen-year old daughter.

In affirming the conviction of accused-appellant, the Supreme Court ruled that if the rape is made by force, violence or

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intimidation, it is self-evident that it was made against or without the victim's consent. To prove lack of consent, the law requires resistance by the victim. Any physical overt act manifesting resistance against the rape in any degree from the victim is admissible as evidence of lack of consent. Tenacious resistance, however, is not required. Neither is a determined and persistent physical struggle on the part of the victim necessary. In the case at bar, there is no doubt that appellant forced his daughter to submit to his carnal desires.

Under Article 266-B, paragraph (6), sub-paragraph (1) of the Anti-Rape Law of 1997, if the victim was under eighteen (18) years of age at the time of the rape and the offender is a parent, the penalty for the crime shall be death. The victim's minority and her relationship with the offender having been alleged and proven, the Supreme Court had no option but to affirm the penalty of death on appellant.

SYLLABUS

1. **CRIMINAL LAW; R.A. NO. 8353; RAPE; FORCE, VIOLENCE OR INTIMIDATION; LACK OF CONSENT; ANY PHYSICAL OVERT ACT MANIFESTING RESISTANCE AGAINST THE RAPE IN ANY DEGREE FROM THE VICTIM, ADMISSIBLE AS EVIDENCE OF LACK OF CONSENT; TENACIOUS RESISTANCE, NOT REQUIRED.**— If the rape is made by force, violence or intimidation, it is self-evident that it was made against or without the victim's consent. To prove lack of consent, the law requires resistance by the victim. R.A. No. 8353 specifies the kind of resistance and its proof, *viz:* "*Article 266-D. Presumptions — Any physical overt act manifesting resistance against the act of rape in any degree from the offended party,* or where the offended party is so situated as to render her/him incapable of giving valid consent, *may be accepted as evidence in the prosecution of the acts punished under Article 266-A.*" Any physical overt act manifesting resistance against the rape in any degree from the victim is admissible as evidence of lack of consent. Tenacious resistance, however, is not required. Neither is a determined and persistent physical struggle on the part of the victim necessary.

2. **ID.; ID.; ID.; DATE OF COMMISSION OF RAPE, NOT AN ESSENTIAL ELEMENT OF THE OFFENSE.**— [I]t is not

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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. For in rape cases, the date of commission is not an essential element of the offense; what is material is its occurrence. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MENTAL LAPSE AS TO THE EXACT DATE OF THE RAPES DOES NOT DETRACT FROM THE VERACITY OF THE TESTIMONY. — Juvelyn stated that she jotted down in her notebook the dates she was molested by her father. She memorized these dates. On the witness stand, however, she forgot the exact dates and could not refresh her memory because she lost the notebook when she left the family home. Despite the little lapse, she was able to approximate said dates, but notably, she was very sure of the number of times she was abused. The mental lapse on the part of Juvelyn does not detract from the veracity of her testimony. It even indicates that her account was neither rehearsed nor contrived.

4. ID.; ID.; MOTIVE; IT IS UNBELIEVABLE THAT A DAUGHTER WAS IMPELLED BY EVIL MOTIVE TO ACCUSE HIS FATHER OF A CRIME PUNISHABLE BY DEATH. — Juvelyn's testimony is clear, categorical and straightforward. She did not waver in her narration of all the twenty-five (25) rape incidents and was unshaken even on cross-examination. She recounted accused-appellant's dastardly acts vividly, but shedding tears silently at her painful and traumatic experience. By her detailed account, the spontaneity of her testimony and the candidness of her demeanor, it is hard to imagine that she was impelled by an evil scheme to accuse her father of a crime punishable with death.

5. ID.; ID.; CREDIBILITY OF WITNESSES; VICTIM'S TESTIMONY IS ALL THE MORE ENTITLED TO CREDENCE WHEN CONSISTENT WITH THE MEDICAL FINDINGS. — Moreover, Juvelyn's claim of sexual violation is supported by the medico-legal report stating that the victim had "shallow-healed laceration at 8 o'clock and deep-healed laceration at 6 o'clock." Dr. Winston Tan testified that these lacerations could have been caused by a hard blunt object such as an erect male genitalia or any other object of the same consistency. The lacerations were fresh

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and could have been inflicted approximately twenty (20) days before December 21, 1998, the date of examination. Dr. Tan declared that his findings are consistent with the victim's claim that she was raped from September 1998 to December 1998.

6. ID.; ID.; ALIBI; CANNOT PROSPER IN THE ABSENCE OF EVIDENCE OF PHYSICAL IMPOSSIBILITY FOR ACCUSED TO BE AT THE CRIME SCENE AT THE TIME OF THE COMMISSION OF RAPES. — Accused-appellant's alibi that he was never absent from his two jobs as driver of a delivery van of the SR Santiago Construction, Co. and as personal driver of his employer has been rebutted by the prosecution. Alan Panotes, payroll master of the SR Santiago Construction, Co. for whom accused-appellant worked, testified that accused-appellant never served as personal driver of Mr. Santiago because the latter had his own driver. Accused-appellant was actually employed in the construction firm from 1995 to December 1998 as a carpenter and delivery van driver. From September 1998 to November 11, 1998, he worked as driver and from November 12, 1998 to December 22, 1998, he was a carpenter. In both jobs, accused-appellant worked for an average of eight (8) hours daily, six (6) days a week from 8:00 A.M. to 5:00 P.M. He rendered overtime for only fourteen (14) days in September 1998, four days in October 1998 and only several hours in November and December 1998. For the period September 1998 to December 1998, he rarely worked overtime and in fact, incurred absences during his regular work hours. And he never worked on Sundays. It is clear from the evidence that from September 1998 to December 1998, it was not impossible for accused-appellant to have been in their house and that he molested his daughter.

7. CRIMINAL LAW; RAPE; NEED NOT BE COMMITTED IN SECLUSION. — At the time of the alleged rape, Juvelyn had three (3) sisters living in the family home, namely: Glenda, 18 years of age, Jonalyn, 10 years of age and Liway, 8 years old. Except for the last rape, all the twenty-four (24) rapes were committed while the victim was sleeping inside the family home. This home measures 6 meters by 4 meters and has a makeshift wall dividing the area into a living room and kitchen on one side and a dressing room on the other. At the back of the house was the bathroom separated by a wall. At night, the whole house serves as the family bedroom. Accused-appellant and

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his wife sleep in the dressing room while the children sleep in the living room and kitchen. Accused-appellant alleges that he always slept with his wife, Lilia, and there was never any instance when they slept apart from the other. Lilia corroborates this claim. The records, however, will reveal that accused-appellant admitted on cross-examination that there were times from September 1998 to December 1998 when he and Juvelyn slept together. His wife also confirmed on cross-examination that during the said period, she was pregnant and slept with Glenda, Jonalyn and Liway while accused-appellant slept with Juvelyn on the other part of their house. Thus, by accused-appellant's and Lilia Dulay's own admissions, it was not impossible for accused-appellant to have carnal knowledge of his daughter regularly for four (4) months without detection from his wife and other children. The sexual abuses were made in the wee hours of the morning when everyone was fast asleep and the lights were out. Juvelyn declared that she did not wake up her mother and sisters for fear that her father would beat them. Lilia only found out about the rapes when accused-appellant got violent after Juvelyn refused his advances four (4) months later.

8. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR. — In addition to the award of civil indemnity and moral damages, the award of exemplary damages is in order to deter fathers with perverse tendencies and aberrant sexual behavior from sexually abusing their daughters.

9. CRIMINAL LAW; RAPE; DEATH PENALTY; IMPOSED WHEN CIRCUMSTANCES OF MINORITY OF VICTIM AND HER RELATIONSHIP WITH OFFENDER ARE ALLEGED IN THE INFORMATION AND PROVEN DURING TRIAL.— Under Article 266-B, paragraph (6), sub-paragraph (1) of the Anti-Rape Law of 1997, if the victim was under eighteen (18) years of age at the time of the rape and the offender is a parent, the penalty for the crime shall be death. The victim's minority and her relationship with the offender having been alleged and proven, this Court has no option but to impose the penalty of death on accused-appellant.

APPEARANCES OF COUNSEL

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

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DECISION

***PER CURIAM*:**

Under Republic Act No. 8353, the Anti-Rape Law of 1997, is resistance by the victim required to prove lack of consent to the rape? If yes, how do we prove this resistance? These are the questions posed in the cases at bar.

On automatic review is the decision of the Regional Trial Court, Branch 166, Pasig City in Criminal Cases Nos. 115366-H, 116085-H to 116108-H convicting accused-appellant Severino Gondaway Dulay *y* Corona for the crime of rape as charged in twenty-five (25) Informations, and sentencing him to death in each of said twenty-five (25) counts.

On December 22, 1998, accused-appellant was charged with rape in 25 Informations under Article 335 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353. The rapes were allegedly committed on December 13, 1998,[1] September 14, 1998, on or about September 15-20, 1998, on or about September 21-27, 1998, September 28-30, 1998, on or about October 1-4, 1998, on or about October 5-8, 1998, on or about October 9-11, 1998, on or about October 12-15, 1998, on or about October 16-19, 1998, on or about October 20-23, 1998, on or about October 24-27, 1998, on or about October 28-31, 1998, on or about November 1-3, 1998, on or about November 4-7, 1998, on or about November 8-11, 1998, on or about November 12-14, 1998, on or about November 15-17, 1998, on or about November 18-20, 1998, on or about November 21-24, 1998, on or about November 25-27, 1998, on or about November 28-30, 1998, on or about December 1-4, 1998, on or about December 5-8, 1998, and on or about December 9-12, 1998.[2] Except for the dates of commission of the offenses, the 25 Informations read as follows:

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[1] Criminal Case No. 115366-H; Records, vol. 1, p. 1.

[2] The 24 rapes committed from September 14, 1998 to on or about December 9-12, 1998 were docketed as Criminal Cases Nos. 116085-H to 116108-H; Records, vol. 2, pp. 80-81, 98-143.

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"On or about [date of commission], in Pasig City, and within the jurisdiction of this Honorable Court, the accused, with lewd design and by means of force, threats and intimidation, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with his daughter, Juvelyn Dulay *y* Mones, thirteen (13) years old, against her will and consent.

Contrary to law.

Pasig City, December 22, 1998."[3]

Accused-appellant was arraigned and he pleaded not guilty to the offenses. At the trial, the prosecution presented four witnesses — three principal and one rebuttal, namely: (1) Juvelyn Dulay, the victim; (2) Dr. Winston Tan, a medico-legal officer of the Philippine National Police (PNP) Crime Laboratory; (3) Adrian Ruiz, a *barangay tanod* who arrested accused-appellant; and (4) Alan Panotes, payroll master of the SR Santiago Construction Co., as rebuttal witness. The following facts were established: At 1:00 in the morning of September 14, 1998, Juvelyn[4] Dulay, then thirteen years of age, was sleeping in her family home at No. 30 Mercedes Avenue, San Miguel, Pasig City. While asleep, she sensed someone touching her private parts. She woke up and saw her father, herein accused-appellant, touching her. Juvelyn moved away but accused-appellant held her tightly against him. He put his finger inside her vagina and, with his other hand, peeled off her short pants and panty. He got up and pulled down his shorts and briefs and then went on top of her. He put his penis inside his daughter's vagina. Juvelyn felt pain. She pleaded with her father to stop doing it but he said it would not take long. Juvelyn wanted to shout for help. Her two younger sisters, Liway and Jonalyn, were sleeping also on the floor above their heads but Juvelyn was scared that if she shouted, accused-appellant might hurt them. Slowly and silently, she tried to reach out to her sisters but could not

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[3] Records, vol. 1, p. 1; vol. 2, pp. 80-81, 98-143.

[4] In the victim's birth certificate, Exhibit "A", her name is spelled as "Juvylyn." Her name is "Juvelyn" in the 25 Informations and court records.

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touch them because there was a mosquito net separating them. After three minutes, she felt something come out of accused-appellant. He pulled out his penis and licked his daughter's vagina. She pushed his head away but he continued licking. He got up and put on his briefs and shorts and told her not to tell anybody about the incident. Silently, the girl put on her panty and short pants and cried. Accused-appellant went out of the house and returned after some ten minutes. He laid down beside Juvelyn and slept. Juvelyn stayed awake, crying silently over what had just transpired. At 4:00 in the morning, she got up from bed to get ready for school. She was a student in sixth grade. Juvelyn took a bath and was surprised to see blood in her panty. She washed the blood away. She dressed up and, before leaving for school, glanced at her mother who was still asleep. She did not wake up her mother to tell her about the incident because she was scared the latter might not believe her.

In school, the girl felt pain in her vagina. Although she managed to attend all her subjects, she cried and was in a daze the whole day.[5]

The following night, she did not want to sleep beside her father. He got furious and Juvelyn acquiesced, not wanting to incur his ire. Whenever accused-appellant got angry, he would hurt and kick her, her siblings and their mother. Sometimes, he would even bring out his samurai sword and threaten to kill them with it. At that time, their mother was heavy with child.

At about 1:00 in the morning of September 16, 1998, Juvelyn was fast asleep. Again, she felt someone touching her private parts. She woke up and saw her father. He put his finger in her vagina and pulled down her underwear and short pants. He went on top of her and inserted his penis in her vagina. A few minutes later, he pulled out his penis and licked her vagina.

Accused-appellant did the same acts to Juvelyn at about the same time in the same room on two other days in September 1998, *i.e.*, on or about September 19 and 24, 1998. In October

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[5] TSN of August 5, 1999, pp. 5-11.

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1998, he also did the same acts on eight (8) different days. In November 1998, he did it nine (9) times, and in December, four (4) times, also on different days. These acts consisted of the following: touching her private parts, inserting his finger in her vagina, removing his and her underwear, putting his penis inside her vagina, pulling out his penis and then licking her vagina.[6]

On December 13, 1998, at about 6:00 in the evening, Juvelyn was in the living room of their house preparing for bed when her father called her. He told her to get a lamp and a knife because he was going to fix something in the bathroom. When Juvelyn handed him the lamp and knife, he pulled her inside the bathroom. He removed her shorts and panty. She begged her father not to do what he was doing but he said it would not take long. While standing, accused-appellant put his penis inside his daughter's vagina. A few minutes later, he pulled out his penis and licked her vagina. Juvelyn was so angry that she rushed out of the bathroom.[7]

On December 19, 1998, appellant wanted to have sex with his daughter. She refused him. Fuming mad, appellant left the house and had a drinking spree with his friends. Late in the evening, appellant returned home. When he saw Juvelyn, he kicked her and shouted *"Bakit mo ako ginagago?"*[8] Juvelyn ran to her mother. Appellant went out of the house and returned with a hammer. He kicked Juvelyn again and struck her with the hammer. One of his drinking partners tried to stop appellant to no avail. Juvelyn's mother, Lilia, who was carrying the newborn baby in her arms, tried to pacify appellant. He, however, punched her. Juvelyn ran to her mother but appellant kicked his daughter again. Mother, daughter and the other children all fled the house.[9]

Out in the Street, a friend saw them and took pity on them. He brought them to a house in Tondo where they took shelter.

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[6] *Id.*, pp.11-16.

[7] TSN of March 10, 1999, pp. 7- 14.

[8] *Id.*, p.13.

[9] TSN of August 5, 1999, pp. 17-19.

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That night, Lilia asked Juvelyn why appellant got angry with her. It was then that the girl told her mother that her father had been molesting her for the past several months and that night he got angry with her because she refused his sexual advances.[10]

The following day, Juvelyn and her mother went to the office of the *barangay* in Pasig City for assistance in retrieving their possessions from their house. Several *barangay tanods* accompanied them. Upon reaching their house, they found accused-appellant and his friends drinking. Lilia took appellant aside. When the *tanods* left, Lilia asked appellant if what their daughter revealed to her was true. Appellant denied this and shouted: *"Anong akala mo sa akin, baboy?"* Then he lunged at Lilia. Terrified, Lilia and her children all ran out of the house.

They went back to the *barangay* office where they reported everything to the *tanod*. That same day, the tanods arrested appellant and brought him to the police station.

At the station, Juvelyn and her mother filed a complaint for rape against accused-appellant. The following day, Juvelyn and Lilia gave their sworn statements to the police and the girl was subjected to a medical examination. Dr. Winston Tan, a medico-legal officer at the PNP Crime Laboratory, found:

"FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with pale brown areola. Abdomen is flat and soft.

GENITAL:

There is scanty growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish labia minora presenting in between. On separating the same, disclosed an *elastic, fleshy type hymen with shallow healed laceration at 8 o'clock and a deep-healed laceration at 6 o'clock positions."*

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[10] TSN of March 10, 1999, pp. 13-14.

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CONCLUSION:

The subject is in a non-virgin state physically. There are no external signs of application of any form of trauma.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.

xxx xxx xxx."[11]

For his defense, accused-appellant presented two (2) witnesses: his wife, Lilia, and himself. He claims that it was impossible for him to have raped Juvelyn because he always slept with his wife. Lilia Dulay insists that she and her husband always slept together and that there was never any instance when they did not sleep beside each other.[12] Appellant also claims that on the dates of the alleged rape, he was always at work. From September 1998 to December 1998, he was employed as driver of a delivery van of the SR Santiago Corporation and his work hours were from 9:00 in the evening until 3:00 in the morning of the following day. During the day, he worked as personal driver of his employer from 8:00 A.M. to 5:00 P.M. He worked seven (7) days a week, including Saturdays and Sundays, and he was never absent from his two jobs.[13]

On April 10, 2000, the trial court found accused-appellant guilty and sentenced him to death in each of the 25 counts of rape, to pay the victim ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages for each of the 25 cases, *viz:*

"WHEREFORE, the court finds accused Severino Gondaway Dulay *y* Corona GUILTY beyond reasonable doubt of the crime of rape as charged in the twenty-five (25) Informations and is hereby sentenced to suffer the supreme penalty of Death in each of the twenty-five (25) cases and indemnify the victim, Juvelyn Dulay, the amount of ₱75,000.00 for each case and ₱50,000.00 also for each case, as moral

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[11] Exhibit "F".

[12] TSN of December 10, 1999, p. 5.

[13] TSN of January 12, 2000, pp. 5-6, 9-11.

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damages, or the aggregate sum of ₱3,125,000.00, plus the costs of the suit.

xxx xxx xxx."[14]

Hence, this appeal. Accused-appellant claims that:

"I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE WHEN THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT."[15]

Accused-appellant stands charged with rape under "Article 335 of the Revised Penal Code (RPC), as amended by R.A. No. 8353," the Anti-Rape Law of 1997. On December 31, 1993, Article 335 of the RPC was amended by R.A. No. 7659. Rape then was committed by having carnal knowledge of a woman: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; or (3) when the woman is under twelve years of age or is demented. On October 22, 1997, Article 335 was further amended by R.A. No. 8353, the Anti-Rape Law of 1997.[16] R.A. No. 8353 reclassified rape, which under the RPC was a crime against chastity, to a crime against persons, and at the same time, expanded rape to include other forms of sexual assault on a person. The amendments removed certain aspects of the law prejudicial to women and which posed barriers to prosecution. These changes addressed the plight of rape victims and survivors who, despite their tragedy, had to undergo the strict requirements of prosecution;[17] for

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[14] Decision, p. 7, *Rollo,* p. 102.

[15] Accused-appellant's Brief, p. 1, *Rollo,* p. 79.

[16] Entitled "An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes."

[17] *Ibid;* R.A. No. 8353 has produced not only substantive but also procedural effects on the related provisions of the Revised Penal Code

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R.A. No. 8353 was "borne out of the seeds of tragedy of the women victims of violence."[18] It was drawn from the richness of experience and collective consciousness of other women who have responded to the phenomenon of gender violence.[19]

Among the innovations, R.A. No. 8353 added a fourth mode of committing rape on a woman, *i.e.*, by fraudulent machination or grave abuse of authority; and on the provision for statutory rape, also added that the same may be committed even though none of the three other modes are present. The law likewise introduced as rape other forms of sexual assault which may be committed not only on women but also on men. Thus:

"*Article 266-A. Rape; When and How Committed.— Rape* is Committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
   a) Through force, threat, or intimidation;
   b) When the offended party is deprived of reason or otherwise unconscious;
   c) By means of fraudulent machination or grave abuse of authority; and
   d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person."

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and the Rules of Court. It has set aside jurisprudence based on the repealed provisions of the former law, and provided for a different governance in rape cases committed and filed after its effectivity — F.D. Regalado, *Criminal Law Conspectus*, p. 478 [2000].

[18] Sponsorship Speech of Senator Leticia R. Shahani, Re S.B. No. 950, Thursday, June 6, 1996, Record of the Senate, vol. IV, No. 88, p. 1059.

[19] *Ibid.*

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In the cases at bar, the twenty-five (25) Informations charged accused-appellant with rape committed by "force, threats and intimidation" under paragraph (1), sub-paragraph (a) of R.A. No. 8353, *i.e.*, Article 266-A (1) (a). In fine, carnal knowledge of the victim was made by force, threat, or intimidation.

The traditional concept of rape is that carnal knowledge is gained against or without the consent of the victim.[20] If the rape is made by force, violence or intimidation, it is self-evident that it was made against or without the victim's consent. To prove lack of consent, the law requires resistance by the victim. R.A. No. 8353 specifies the kind of resistance and its proof, *viz:*

> *"Article 266-D. Presumptions — Any physical overt act manifesting resistance against the act of rape in any degree from the offended party*, or where the offended party is so situated as to render her/him incapable of giving valid consent, *may be accepted as evidence in the prosecution of the acts punished under Article 266-A."*

Any physical overt act manifesting resistance against the rape in any degree from the victim is admissible as evidence of lack of consent. Tenacious resistance, however, is not required. Neither is a determined and persistent physical struggle on the part of the victim necessary.

At the Bicameral Conference Committee Meeting on the disagreeing provisions of S.B. No. 950 and H.B. No. 6265, the forerunners of R.A. No. 8353, the legislators agreed that *Article 266-D is intended to "soften the jurisprudence of the 1970's" when resistance to rape was required to be tenacious.*[21] The lawmakers took note of the fact that rape victims cannot mount a physical struggle in cases where they were gripped by overpowering fear or subjugated by moral authority.[22] Article

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[20] *People v. Chua,* G.R. No. 137841, October 1, 2001, citing Guevara, *Commentaries on the Revised Penal Code*, 5th ed., p. 509 [1957]; Francisco, *Revised Penal Code,* Bk. 3, p. 1314 [1961].

[21] Transcript of the Bicameral Conference Committee Meeting, Committees on Youth, Women and Family Relations, S.B. No. 950 and H.B. No. 6265, June 3, 1997, pp. 26, 37, 41.

[22] *Id.*, at 33-37.

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266-D tempered the case law requirement of physical struggle by the victim with the victim's fear of the rapist or incapacity to give valid consent.[23] Thus, the law now provides that *resistance may be proved by any physical overt act in any degree from the offended party.*

In the cases at bar, the victim testified that her father molested her against her will. Juvelyn testified twice on direct examination. In Criminal Case No. 115366-H, for the rape committed on December 13, 1998, her testimony is as follows:

"x x x x x x x x x

FISCAL APOLO: Miss Dulay, on December 13, 1998 in Pasig, where were you then in the house? Where was your house then?

A: No. 30 Mercedes Avenue, San Miguel, Pasig City.

Q: On December 13, 1998, while you were at your house in Pasig City, do you remember any unusual incident that transpired?

A: Yes.

Q: What was that unusual incident, Miss Dulay?

A: "*Ginalaw po niya ako sa may banyo.*"

Q: What do you mean by "*ginalaw ka niya sa may banyo*?"

A: He inserted his penis inside my vagina.

Q: What was your position at that time as well as the accused?

A: We were both standing.

Q: So who was that person that you are referring to who inserted his penis into your vagina?

A: My father.

Q: What is the relation to the person who you just pointed to?

A: He is the same person.

Q: How many times did he insert his penis into your vagina on the day, December 13, 1998?

A: Once only.

Q: What was he holding at that time, if any?

A: None.

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[23] *Id.*, at 38.

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Q: So how did it happen, Miss Dulay?

COURT: Reform your question.

FISCAL APOLO: Before your father committed those sexual assault against you, what happened before that?

A: He told me to get the lamp and the knife.

Q: Did you comply with the order of your father?

A: Yes, ma'am.

Q: What happened next after you brought the same things?

A: He said he will fix the bathroom.

Q: What did the accused do after you got those things?

A: While he was inside the bathroom, he removed my shorts and panty.

Q: What happened next?

A: He inserted his private parts [*sic*] into mine.

Q: And what was your reaction when your father removed your shorts and panty?

A: I told him not to do that but he said it will not take long.

Q: What happened after that?

A: When he was finished, he licked my private part.

Q: What was your reaction while your father was doing those acts to you?

A: I was angry.

Q: What did you do after that?

A: I got out of the bathroom.

Q: What action did you take after that sexual assault?

A: None.

COURT: Why?

A: Because I was afraid.

Q: Afraid of what?

A: Of my father.

Q: Why?

A: Because if I would report it to my mother, my father might hurt her and that time she just gave birth.

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Q: When did you finally report the matter to your mother?

ATTY. ANTONANO: No basis.

COURT: Reform.

Q: Was it the first time that the accused did that sexual assault against your person?
A: No.

Q: So when was the first time that the accused had sexual intercourse with you?

ATTY. ANTONANO: Irrelevant.

Q: In connection with this case did you execute a sworn statement?
A: Yes, ma'am.

Q: If that will be shown to you, will you be able to identify that?
A: Yes, ma'am.

Q: I am showing to you the Sworn Statement of one Juvelyn Dulay consisting of two pages. Will you please examine this and tell the honorable court if this is the same statement that you executed?
A: That is my statement.

Q: There appears a signature above the name Juvelyn Dulay on the second page thereof. Do you know whose signature is that?
A: That is my signature.

COURT: You make it of record that while the witness is testifying she is shedding tears.

Q: Do you confirm and affirm the contents of this?
A. Yes, ma'am.

FISCAL APOLO: We request that the Sworn Statement be marked as Exhibit "B" and the second page as Exhibit "B-1" and the signature as Exhibit "B-2."

Q: How did you come to execute that Sworn Statement?
A: I was able to report what happened to me to my mother because he was trying to hurt us and he was even accusing me of making a fool out of him, and my mother heard him

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say: "*Bakit mo ako ginagago?*" So that when I and my mother had a chance to talk without the presence of my father, my mother insisted in knowing why my father uttered those words and she became suspicious already and that is the time that I told my mother what happened to me.

Q: How did you feel?
A: I felt pain.

Q: Can you quantify in terms of money the moral sufferings that you felt?
A: I do not know.

FISCAL APOLO: We have no further...

x x x x x x x x x."[24]

In Criminal Cases Nos. 116085-H to 116108-H and also 115366-H, Juvelyn testified, *viz:*

"x x x x x x x x x

FISCAL PAZ: How many times were you raped by your father?
A: 25 times.

Q: When was the first time that you were raped by your father?
A: September 14, 1998.

Q: About what time?
A: 1:00 a.m.

Q: Where were [*sic*] at that time?
A: I was in our house.

Q: Where was your house located on September 14, 1998?
A: No. 30 Mercedes, San Miguel Avenue, Pasig City.

Q: What were you doing there at that time?
A: Sleeping.

Q: While you were sleeping was there anything unusual that happened?
A: While sleeping I was awakened when I sensed that somebody was touching my private part.

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[24] TSN of March 10, 1999, pp. 5-14.

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Q: You said you noticed that somebody was touching your private part but what were you wearing at that time?
A: T-shirt and short pants.

Q: What about panty?
A: Yes, sir.

Q: And that short pants is that with a zipper or with a garter?
A: With garter.

Q: When you noticed that somebody was touching your private part, what did you do?
A: I tried to find out who was touching me and I saw my father.

Q: What did you do when you saw your father touching you?
A: I was resisting.

Q: What did he do then when you resisted?
A: He tried to position me facing him.

Q: Was he able to do that?
A: Yes, sir.

Q: How did he do that?
A: He held me tightly.

Q: After you were already facing him, what happened next?
A: He put his finger inside my panty and then in my vagina.

Q: And then what did you do next?
A: He pulled down my shorts and panty and then he also pulled down his shorts and brief.

Q: And what happened next?
A: He went on top of me and put his penis inside my vagina.

Q: Up to what extent did he lower down your panty and shorts?
A: Below my knees.

Q: What about his shorts and brief up to what extent did he lower them?
A: Below his knees also.

Q: When your father was doing this to you, he went on top of you and inserted his penis, what did you do?
A: I was telling him not to do it but he said it will just take a short time.

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Q: And what happened after that?
A: And then I sensed that something came out of him.

Q: How long was the penis of your father inside your vagina?
A: About three minutes.

Q: And what did you feel then when the same was inserted to your vagina?
A: I felt pain.

Q: Now after your father removed his penis from your vagina, what happened next?
A: He licked my private parts.

Q: How long?
A: Short only.

Q: What did you do when your father was doing that to you?
A: I was pushing away his head but he was insisting.

Q: What happened after the licking of your vagina by your father?
A: After that he put on his brief and shorts and told me not to tell anybody.

Q: What did you tell him?
A: I did not answer him, I just put on my panty and shorts and I was crying.

Q: And where did your father go, did he go somewhere else after that?
A: He went out.

Q: What about you?
A: I remained lying down crying.

Q: Did your father come back?
A: Yes, sir.

Q: About how many minutes or hours later?
A: About 10 minutes.

Q: What did he do when he came back?

A: He lied down and then slept.

Q: Where?
A: Beside me.

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Q: Does your father always sleep beside you?
A: Yes, sir.

Q: Who else sleeps with you?
A: None, only the two of us.

Q: Where does your mother sleep?
A: Inside the room.

Q: And how far is that from the place where you were sleeping?
A: Very near, it is only separated by a "*dingding*."

Q: Did you shout when your father was doing these things to you?
A: No sir.

Q: Why?
A: Because I was afraid.

Q: Why were you afraid?
A: Because that time it was very dark, we have no light and my mother was pregnant and they might quarrel.

Q: Why, what would your father do to your mother when they quarrel?
A: Sometimes he kicks and brings out his *samurai*.

Q: How many times have you seen your father doing this to your mother?
A: Many times.

Q: And what about you and the other members of the family what if any, did your father do to you whenever he quarrels with your mother?
A: He kicks my other siblings.

Q: How many brothers and sisters do you have?
A: That time we were six.

Q: How many were staying with you in your house?
A: Only 3 of us brothers [*sic*] and sisters.

Q: And who were these two others who were with you?
A: Jonalyn and Liway.

Q: How old is Liway?
A: 9 years old.

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Q: What about Jonalyn?
A: 11 years old.

Q: Where were these two sleeping on that day?
A: They were sleeping near our heads.

Q: Why did you not wake them up at the time your father was doing this to you and ask for help?
A: Because that time it was very dark and there was a mosquito net and I could not reach them.

Q: Why did you not shout to them?
A: I was afraid because my father might hurt me.

Q: You said after your father came back, he slept and you were then crying, were you able to sleep that night?
A: I was not, sir.

Q: Why were you not able to sleep the whole night?
A: Because I was thinking of what happened and I continued crying.

Q: What then did you feel when you rose up the following day?
A: I stood up at about 4:00 a.m. because I was going to school.

Q: You were still studying then?
A: Yes, sir.

Q: Where?
A: San Miguel Elementary School.

Q: What grade?
A: Grade 6 (six).

Q: And after you got up what did you do?
A: I took a bath.

Q: When you took a bath what if any did you notice?
A: I noticed blood in my panty.

Q: And what did you do when you noticed blood in your panty?
A: I was surprised and I just wash [*sic*] it.

Q: Did you see your mother on that day?
A: Yes, but she was still sleeping.

Q: What time did you go to school?
A: 5:30 a.m.

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Q: Did you tell your mother what happened to you the night before that day?
A: No, sir.

Q: Why?
A: I was afraid and that my mother might not believe me.

Q: Why would you say that?
A: Because she might think I am just fooling her.

Q: You said . . .

FISCAL PAZ:

May we put on record that all the time this witness was testifying, she is crying.

Q: When was the second time that you were raped by your father?
A: Maybe after two days, that was on the 16th.

Q: Where were you at that time?
A: Inside the house.

Q: What time?
A: About the same time 1:00 o'clock in the morning.

Q: What were you doing then?
A: I was sleeping.

Q: While you were sleeping what happened?
A: He repeated what he did to me.

Q: Did he again touch your private part with his hand?
A: Yes, sir.

Q: Did he insert his penis again?
A: Yes, sir.

COURT:

Very leading.

Q: What did he do after touching your private part?

COURT:

When you said he repeated again what he did to you, what were those things?

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A: Touching, holding my private part, inserting his finger inside my vagina, inserting his penis inside my vagina and licking my vagina.

Q: When was the third time that he raped you?
A: Maybe September 19.

Q: About how many days after the second rape incident?
A: About after three days.

Q: And what did he do to you?
A: The same, sir.

Q: How many days in a week your father do these things to you?
A: About twice a week.

Q: When was the fourth time that he did that to you?
A: I can not recall anymore.

Q: About how many days after the third rape incident?
A: Maybe after five days.

Q: And that was still in the month of September?
A: Yes, sir.

Q: What time did he do that to you?
A: About the same time.

Q: What did he do to you?
A: The same, he does the same things.

Q: How many times were you raped in September?
A: About four times.

Q: On October, how many times were you raped the fifth time [*sic*]?
A: About the second day of October.

Q: And where did that happen?
A: In our house also.

Q: What time did that happen?
A: Almost the same time.

Q: What were you doing at the time he did that to you?
A: Sleeping.

Q: And what happened when you were sleeping?

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A: I woke up because I felt somebody was touching my private part.

Q: What did you see when you woke up?
A: I saw my father.

Q: What was he doing?
A: Touching my private part.

Q: What else did he do?
A: The same thing he did previously, that is what he does every time.

Q: And when was the sixth time that he raped you?
A: I can not recall.

Q: Was it still in October?
A: Yes, sir.

Q: About how many days after the fifth incident?
A: Maybe after four days.

Q: Where did he rape you?
A: The same place, in our house.

Q: And what did he do to you?
A: The same things, what he is doing to me.

Q: When was the seventh time?
A: I can not recall.

Q: How many days after the sixth?
A: Maybe 3 to 4 days.

Q: Where did he do this?
A: Same place.

Q: And what did he do to you?
A: The same things, what he always does to me.

Q: When was the eighth time?
A: I can not recall.

Q: About how many days after the seventh time?
A: I can not recall the date but maybe three to six days after the seventh time.

Q: And where did that happen?
A: The same place, our house.

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Q: What did he do to you?
A: The same thing.

ATTY. ANTONANO:

May I request if just to abbreviate, because this is 25 counts of rape, if we can have all rapes by the month and then what happened there and where it happened?

COURT:

That is what Fiscal is doing. So you want the Fiscal to ask the witness by the month?

ATTY. ANTONANO:

Yes, your Honor.

Q: How many times were you raped in the month of October?
A: 8 times.

Q: And in all those times that you were raped, where did these rape incidents happen?
A: In the same house, our house.

Q: And what were you doing in those incidents?
A: I was sleeping.

Q: And what did your father do to you inside your house while you were sleeping?
A: The same thing, he raped me.

Q: And what were those things?
A: Touching my private parts, inserting his finger inside my vagina, inserting his penis inside my vagina and he licks my vagina.

Q: In the month of November, how many times were you raped by your father?
A: Nine times.

Q: And where did these rape incidents happen?
A: In our house in Pasig.

Q: What time?
A: The same time about 1:00 o'clock in the morning.

Q: And what did your father do to you?
A: The same.

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Q: What were these things that he did to you?
A: Touching my private parts, inserting his finger inside my vagina, inserting his penis inside my vagina and he licks my vagina.

Q: And in December, how many times were you raped by your father?
A: Four times.

Q: Where did this happen?
A: The first three happened in the same place, in our house, and the fourth in our bathroom.

ATTY. ANTONANO:

The fourth incident was already testified to by the witness.

Q: Where is this bathroom located?
A: It is outside, near the back of our house.

Q: You stated that the first three times that you were raped by your father during the month of September happened inside the house, what time?
A: The same time.

Q: And in these three occasions, what did your father do to you?
A: The same as what he did previously.

Q: And these were?
A: Touching my private parts, inserting his finger inside my vagina, inserting his penis inside my vagina and licking my private parts.

Q: In all these occasions except for the last incident because that was already testified to when your father did these things to you, what did you do, if any?
A: I was resisting but he was forcing me.

Q: Having in mind the first rape incident that happened on September 14, 1998, why did you still sleep with your father?
A: After that, I did not want to sleep beside him but he got angry and whenever I go to sleep, he sleeps beside me.

Q: Will you please tell us what your father would usually do whenever he is angry?
A: He hurts us.

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Q: And how many months pregnant was your mother at that time?
A: Five months.

Q: In all these occasions did you ever tell your mother about any of these incidents?
A: I was able to tell my mother in December already.

Q: Why did you tell to your mother about these rape incidents only in December 1998?
A: Because on December 19, he again wanted to use me but I resisted so my father had a drinking spree.

xxx xxx xxx."[25]

Juvelyn testified that her father violated her against her will. In the first rape, accused-appellant touched her private parts, and she moved away from him. He, however, held her tightly against him. She pleaded with him to stop and pushed his head away, but he overpowered her. In all the twenty-four (24) subsequent sexual violations, she resisted her father and begged him to stop. Still, he persisted with his dastardly acts. In the last rape on December 13, 1998, the evidence shows that accused-appellant again removed her shorts and panty, the victim once more pleaded with him to desist but he refused saying the act would not take long. She was furious and rushed out of the bathroom right after accused-appellant satisfied his lust.

In all the twenty-five (25) incidents, there is no doubt that accused-appellant forced his daughter to submit to his carnal desires. His daughter bore everything silently, terrorized by the thought that if she struggled tenaciously, her father would get violent. She also wanted to save her then pregnant mother from her father's wrath. From experience, she knew that whenever accused-appellant got angry, he would kick everyone in the house, bring out his *samurai* sword and threaten to kill all of them. It was only four months later, after Lilia gave birth,[26]

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[25] TSN of August 5, 1999, pp. 5-17.

[26] Lilia gave birth on November 27, 1998-TSN of December 15, 1999, p. 12.

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that Juvelyn gathered the guts to refuse her father's immoral advances. True enough, accused-appellant beat her and her mother, who was then even carrying the newborn baby in her arms.

Contrary to accused-appellant's allegation, it was not impossible for Juvelyn to remember with certainty the number of times she was violated. On cross-examination, she testified:

"x x x x x x x x x

Q: By the way, you said that you were raped by your father 25 times, what time does your father usually rape you during those times?

A: About 1:00 in the morning.

Q: In your sworn Statement which you identified during the previous hearing of this case, there was a question posted to you by the police. Question No. 7 — you were asked *mga anong oras ka palaging ginagalaw ng tatay mo? Sagot — Tuwing madaling araw po pag tulog na yung mga kasama namin sa bahay.* Do you still maintain your answer?

A: Yes, ma'am.

Q: And when you said *'patay na po ang ilaw,'* does it mean to say no lights at all whenever you sleep, Miss Witness?

A: No more light in the house.

Q: And during the previous hearing you also testified that when you noticed that somebody was touching your private parts you tried to find out who was touching you and you saw your father?

A: Yes, ma'am.

Q: And how come you were able to see your father despite the fact that there is no more light left Miss Witness?

A: Because there was moonlight and beside [us] was a window.

Q: But aside from the moonlight there were no other light that penetrate your house Miss Witness?

A: Yes, ma'am.

Q: You said that your father abused you 25 times or approximately twice a week, you seemed to have remembered very well the number of times you were abused by your father, how is that Miss Witness?

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Q: You said that your father abused you 25 times or approximately twice a week, you seemed to have remembered very well the number of times you were abused by your father, how is that Miss Witness?
A: Because I noted them down but I do not have it with me anymore.

Q: When did you lose that [*sic*] notes, Miss Witness?
A: I can not recall.

Q: But are you sure that you were raped 25 times by your father?
A: Yes, ma'am.

Q: Before your statement was taken by the police, do you still have with you that [*sic*] notes?
A: Yes, ma'am.

Q: And where do you usually keep those notes Miss Witness?
A: The place where I kept my clothes.

Q: Did you not take extra protection in order that the said notes will [not] be lost thinking that the same will be useful in making the charges against your father?
A: I thought of that.

Q: When your statement was taken by the police, do you have with you at that time your notes?
A: No, ma'am.

Q: And what made you so sure as to the number of times that you were abused by your father when you do not have with you at that time the said notes?
A: Because before I gave my statement to the police investigator, I used to read that [*sic*] notes.

Q: So you are saying to us that you already have by heart the notes that you have listed thereat?
A: Yes, ma'am.

Q: In the said notes you also listed the exact date when you were abused for the first time up to the 25th time by your father?
A: Yes, ma'am.

Q: Miss Witness, do you remember the exact date when you were abused the second time by your father?

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xxx xxx xxx."[27]

Juvelyn stated that she jotted down in her notebook the dates she was molested by her father. She memorized these dates. On the witness stand, however, she forgot the exact dates and could not refresh her memory because she lost the notebook when she left the family home. Despite the little lapse, she was able to approximate said dates, but notably, she was very sure of the number of times she was abused.

The mental lapse on the part of Juvelyn does not detract from the veracity of her testimony. It even indicates that her account was neither rehearsed nor contrived.[28] Moreover, 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.[29] For in rape cases, the date of commission is not an essential element of the offense; what is material is its occurrence.[30] The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.[31]

Juvelyn's testimony is clear, categorical and straightforward. She did not waver in her narration of all the twenty-five (25) rape incidents and was unshaken even on cross-examination. She recounted accused-appellant's dastardly acts vividly, but shedding tears silently at her painful and traumatic experience. By her detailed account, the spontaneity of her testimony and the candidness of her demeanor, it is hard to imagine that she was impelled by an evil scheme to accuse her father of a crime punishable with death.

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[27] TSN of September 15, 1999, pp. 28-33.

[28] *People v. Mauricio,* 353 SCRA 114, 121-122 [2001].

[29] Section 11, Rule 110, Revised Rules of Criminal Procedure.

[30] *People v. Macaya,* 351 SCRA 707, 714 [2001]; *People v. Gopio,* 346 SCRA 408, 429 [2001].

[31] Section 11, Rule 110, Revised Rules of Criminal Procedure.

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Jimmalou testified that accused-appellant raped her one evening in June, 1998, while she was left at home with him. Jimmalou's mother had earlier left their house to visit her daughter Marivic in Taboc Sur. Junior was out fishing and brought his wife Melissa with him. While accused-appellant was outside their house, Jimmalou went to the house of their neighbor Boy Masayon to watch television. Masayon's house was about 15 meters from the house of the Manlods. Not long thereafter, accused-appellant went to Masayon's house, whipped Jimmalou's back with a belt and commanded her to go home. At around 6:00 p.m., Jimmalou went home and laid out a mat in their living room where she, her mother and sister-in-law slept every night. While the rest of her family was still out, she went to sleep.[5]

Later that evening, she woke up because she felt someone kicking her. She saw that it was accused-appellant who kicked her and then commanded her to look for his short pants. Jimmalou said that accused-appellant looked drunk and smelled of liquor. She went inside accused-appellant's room to look for the latter's short pants when she noticed that accused-appellant had followed her and was closing the door of the room. Accused-appellant poked a double-bladed knife in Jimmalou's neck with his right hand and warned not to make any noise. He then pushed her towards the bed and made her lie down. Still poking the knife in Jimmalou's neck with his right hand, accused-appellant ordered her to remove her short pants. Thereafter, he ripped off her panty with his left hand. Accused-appellant knelt down, placed his knees beside her thighs, ripped off her panty and inserted his penis into Jimmalou's vagina by doing push and pull movements. Jimmalou said that she felt pain in her private part and in her abdomen. She added that she could not shout for help because each time she tried to do so, accused-appellant would press the pointed end of the knife to her neck and threaten her that he would kill her and her mother if she resisted.[6]

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[5] *Id.*, at 6-9.

[6] *Id.*, at 9-12.

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room on the other.[37] At the back of the house was the bathroom separated by a wall.[38] At night, the whole house serves as the family bedroom. Accused-appellant and his wife sleep in the dressing room while the children sleep in the living room and kitchen. Accused-appellant alleges that he always slept with his wife, Lilia, and there was never any instance when they slept apart from the other. Lilia corroborates this claim.[39]

The records, however, will reveal that accused-appellant admitted on cross-examination that there were times from September 1998 to December 1998 when he and Juvelyn slept together.[40] His wife also confirmed on cross-examination that during the said period, she was pregnant and slept with Glenda, Jonalyn and Liway while accused-appellant slept with Juvelyn on the other part of their house.[41] Thus, by accused-appellant's and Lilia Dulay's own admissions, it was not impossible for accused-appellant to have carnal knowledge of his daughter regularly for four (4) months without detection from his wife and other children. The sexual abuses were made in the wee hours of the morning when everyone was fast asleep and the lights were out. Juvelyn declared that she did not wake up her mother and sisters for fear that her father would beat them. Lilia only found out about the rapes when accused-appellant got violent after Juvelyn refused his advances four (4) months later.

Accused-appellant's alibi that he was never absent from his two jobs as driver of a delivery van of the SR Santiago Construction, Co. and as personal driver of his employer has been rebutted by the prosecution. Alan Panotes, payroll master of the SR Santiago Construction, Co. for whom accused-appellant worked, testified that accused-appellant never served as personal

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[37] TSN of December 15, 1999, pp. 4-5; TSN of January 12, 2000, pp. 4-5.

[38] TSN of September 15, 1999, p. 36.

[39] TSN of December 10, 1999, p. 5.

[40] TSN of January 12, 2000, p. 18.

[41] TSN of December 15, 1999, pp. 10-11.

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driver of Mr. Santiago because the latter had his own driver.[42] Accused-appellant was actually employed in the construction firm from 1995 to December 1998 as a carpenter and delivery van driver.[43] From September 1998 to November 11, 1998, he worked as driver and from November 12, 1998 to December 22, 1998, he was a carpenter. In both jobs, accused-appellant worked for an average of eight (8) hours daily, six (6) days a week from 8:00 A.M. to 5:00 P.M.[44] He rendered overtime for only fourteen (14) days in September 1998, four days in October 1998 and only several hours in November and December 1998. For the period September 1998 to December 1998, he rarely worked overtime and in fact, incurred absences during his regular work hours.[45] And he never worked on Sundays. It is clear from the evidence that from September 1998 to December 1998, it was not impossible for accused-appellant to have been in their house and that he molested his daughter.

The twenty-five (25) Informations alleged that accused-appellant is the father of the victim and that the victim was then thirteen (13) years of age at the time of the rapes. The prosecution presented Juvelyn's birth certificate indicating her date of birth as February 7, 1985 and accused-appellant as her father.[46] Even accused-appellant and his wife admitted that Juvelyn is appellant's daughter.[47] Under Article 266-B, paragraph (6), sub-paragraph (1) of the Anti-Rape Law of 1997, if the victim was under eighteen (18) years of age at the time of the rape and the offender is a parent, the penalty for the crime shall be death. The victim's minority and her relationship with

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[42] TSN of January 26, 2000, p. 6.

[43] *Id.*, p. 4.

[44] Daily Time Record, Exhibits "I", "I-1" to "I-18", "J", "J-1" to "J-6;" Payroll Sheets, Exhibits "K", "K-1" to "K-3", "L", "L-1" to "L-3", "M", "N".

[45] TSN of January 26, 2000, pp. 4, 5; Exhibits "K", "K-1" to "K-3", "L", "L-1".

[46] Exhibit "A".

[47] TSN of December 15, 1999, p. 3; TSN of January 12, 2000, p. 2.

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the offender having been alleged and proven, this Court has no option but to impose the penalty of death on accused-appellant.

In addition to the award of civil indemnity and moral damages, the award of exemplary damages is in order to deter fathers with perverse tendencies and aberrant sexual behavior from sexually abusing their daughters.[48]

IN VIEW WHEREOF, the decision of the Regional Trial Court, Branch 166, Pasig City in Criminal Cases Nos. 115366-H, 116085-H to 116108-H is affirmed with the modification that exemplary damages is awarded in addition to the civil indemnity and moral damages in each case. In each of the said twenty five (25) cases, accused-appellant is sentenced to suffer the penalty of death[49] and to indemnify the victim, Juvelyn Dulay *y* Mones the sum of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages, for the aggregate sum of ₱3,750,000.00.

In accordance with Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659, upon finality of this decision, let certified true copies of the records of these cases be forwarded to the Office of the President for possible exercise of executive clemency.

SO ORDERED.

Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and *Corona, JJ.,* concur.

Davide, Jr., C.J., on leave.

Bellosillo, Acting C.J., no part. Did not participate in deliberations.

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[48] *People v. Sacapeno,* 313 SCRA 650, 666 [1999].

[49] Three members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional. Nevertheless, they submit to the ruling of the Court, by majority vote, that the law is constitutional and the death penalty should be accordingly imposed.