

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRISALDO VILLANUEVA, ACCUSED-APPELLANT.

Ponente: DE GUIA-SALVADOR, R., J.

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DE GUIA-SALVADOR, R., J.:

At bench is an appeal from the Amended Decision dated 07 July 2011 of the Regional Trial Court of Marikina City (RTC), Branch 168, in Criminal Case Nos. 2007-9075-MK and 2007-9076-MK, the decretal portion of which reads:

“WHEREFORE, premises considered, judgment is rendered as follows:

- In Crim. Case no. 2007-9075-MK, the Court finds accused CRISALDO VILLANUEVA guilty beyond reasonable doubt for the crime of Acts of Lasciviousness in relation to Sec. 5 (b) of RA 7610 in further relation to Sec. 5(j) of RA 8369 with the qualifying circumstance under Sec. 5(b) of RA 7610 that the victim is under twelve (12) years old of age and the offender is an uncle and hereby sentences him to the indeterminate penalty of 12 years and 1 day of reclusion temporal, as minimum, to 14 years, 8 months and 1 day of reclusion temporal medium, as maximum, to indemnify the offended party... civil indemnity of P30,000.00, moral damages of P30,000.00 and exemplary damages of P15,000.00;

- In Crim. Case no. 2007-9076-MK, the Court finds accused CRISALDO VILLANUEVA guilty beyond reasonable doubt for the crime of Rape (under Art. 266-A par. (2) in relation to Art. 266-B of R.A. 8353, and in relation to Sec. 5 (b) of RA 7610 and in further relation to Section 5(j) of RA 8369) with the qualifying circumstance that the victim is twelve (12) years old of age and the offender is an uncle and hereby sentences him to the indeterminate penalty ...of imprisonment of 6 years and 1 day of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, and to indemnify the offended party... civil indemnity of P30,000.00, moral damages of P30,000.00 and exemplary damages of P15,000.00,

The accused CRISALDO VILLANUEVA being a detention prisoner is entitled to be credited with 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code in the 2 cases.

SO ORDERED.”[1]

THE INDICTMENTS

On 22 January 2007, two (2) separate Informations were filed charging Crisaldo Villanueva y Andales (“appellant”) with acts of lasciviousness under Section 5(b) of RA 7610 (RA 7610)[2] and rape through sexual assault under Article 266-A (2) of the Revised Penal Code, as amended. The accusatory portions of the informations read:

Criminal Case No. 2007-9075-MK

“That on or about the 7th day of April 2005, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the [appellant], being then the uncle of minor [AAA], taking advantage of his moral authority and ascendancy and by means of force and intimidation, with lewd design, did and there willfully, unlawfully, and feloniously commit acts of lasciviousness upon [AAA], a minor, seven (7) years of age, by then and there licking the latter's vagina without her consent and against her will, thereby constituting sexual abuse which is prejudicial to her normal growth and development.

CONTRARY TO LAW.”[3]

Criminal Case No. 2007-9076-MK

“That in or about 7[th] day of April 2006, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the [appellant], being then the uncle of minor [AAA], taking advantage of his moral authority and ascendancy and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously insert his finger into the genital orifice of said [AAA], a minor, seven (7) years of age, against her will and without her consent.

CONTRARY TO LAW.”[4]

After the cases were consolidated,[5] the trial court issued an arrest warrant on 26 January 2007,[6] which led to appellant's arrest[7].

Arraigned on May 21, 2007 with the assistance of a counsel de officio, appellant entered a plea of “NOT GUILTY” to both charges [8]

During the pre-trial, appellant admitted that he is the paternal uncle of AAA[9] At the trial, the prosecution presented as witnesses the minor complainant AAA, her aunt Nida L. Cruz, and the medico-legal officer, Dr. Bonnie Chua.

Appellant and one Zenaida Angelo testified for the defense.

The Facts

Version of the Prosecution

The Solicitor General adopted the trial court's summary of AAA's testimony as the prosecution's version of the facts, viz.:

“[AAA] xxx when she was just seven (7) years old, xxx together with her father xxx and brother [BBB] stayed in Marikina together with her Lolo Perdi and [appellant]. During her stay in Marikina, [appellant] would insert his finger inside her vagina and then would lick it. He would do this every time he would go home drunk during the evening while the minor complainant was sleeping in their room together with her brother, father and Lolo Perdi. Whenever [appellant] would arrive home late and he would positioned himself at the foot (“paanan”) of [AAA]. He would wake her up by shaking her knees. He would then pull down her shorts and panty and would lick her vagina. After licking her vagina, he would insert his finger inside her vagina. Whenever he would do it, she would feel pain.

After doing these acts, [appellant] would then put on her shorts and panty and then would go back to his chair where he would sleep. These acts [were] committed on [AAA] for several times but she could not remember the dates. What she could remember was that these incidents happened when she was only seven (7) years old and they were staying in Marikina together with [the appellant]. She did not immediately report these incidents to her father because she did not want to create any problem. Her father came to know about the incidents when her brother...told her father about what [appellant] was doing to her. When her father came to know about it, he asked her if it was true and then he brought her and [her brother] back to Burgos, Montalban. Her father

returned to Marikina.

xxx [AAA] reiterated and insisted that [appellant] would lick her vagina and insert his finger inside her vagina. [Appellant] would thereafter talk to her and tell her not to report to her father.

[AAA] admitted that there were times that her father and [appellant] would quarrel about the latter's drunkenness.

[AAA] again stated that it was her brother... who reported the incident to her father because [her brother] witnessed the incidents. She did not immediately report the incidents because she was afraid of [appellant]. She already witnessed how [appellant] would get angry. He would hit her when she committed a mistake. During the incident, [appellant] told her not to shout.

xxx (W)hen her father learned about the incidents, he and [appellant] quarelled.

X X X X X X

x x x"[10]

Version of the Defense

Appellant denied the charges against him.[11] Raising the defense of alibi, he related that from 8:00 a.m. to 5:00 p.m. of 07 April 2005, the date of the alleged sexual abuse of AAA, he was working as a pipe fitter ("tubero") at a construction site in Del Monte Avenue, Quezon City. After work, he and his co-workers were fetched by a company truck at about 7:00 p.m., and proceeded to the workers' barracks in G. Tuazon, Quezon City, where he spent the entire night.[12]

On cross-examination, appellant admitted that (1) AAA is his niece, being the daughter of his elder brother;[13] (2) in the month of April 2005, AAA and his father were staying with him in the same house in Malanday, Marikina City;[14] and (3) in April 2005, after work he went home to Malanday, Marikina and spent the nights there.[15] On re-direct examination, appellant asserted that during the entire month of April 2005, he was a stay-in worker, and always slept at the workers' barracks of his employer.[16] On re-cross examination, he clarified that during the whole month of April 2005, he went home at Malanday, Marikina only on weekends and every pay day.[17]

Zenaida Angelo testified that she is a resident of No. 206 Malaya St., Malanday, Marikina City. Her house is near the crime scene which is at 204 Malaya St., Malanday, Marikina City. She averred that during the entire day of 07 April 2005, she did not see appellant in the vicinity of the neighborhood, and she knows that he works and stays in Quezon City.

THE TRIAL COURT'S JUDGMENT

Finding AAA's testimony on direct examination "consistent, spontaneous, and straightforward"[18] and her answers on cross-examination "unwavering, candid, and straightforward"[19], the trial court was convinced with moral certainty that appellant sexually abused AAA. Thus, it convicted appellant of the crimes of acts of lasciviousness and rape through sexual assault.

The Issues

Appellant urges the reversal of the appealed decision upon the following errors imputed against the trial court, to wit:

“I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO [AAA's] TESTIMONY

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE [APPELLANT] GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED”[20]

The Court's Ruling

We find no merit in the appeal, but a modification of the penalties imposed is in order.

Appellant asserts that there is no evidence to show that he sexually abused AAA, and that the trial court had to rely on its own unfounded conclusion to prove all the elements of the crimes charged[21] In seeking his acquittal based on reasonable doubt, he claims that AAA's testimony is self-serving, implausible and incredible. Appellant points out the inconsistencies in the crucial details of her testimony, thus: “On direct examination, [AAA] was quite emphatic when she declared that [appellant] inserted his finger in her genitals once; that her brother Totong was on her left side, while her father was on her right; and that Totong was the one who told her father about the alleged incidents.”[22] In contrast, “on cross examination, when confronted as to how many times she was sexually abused by [appellant], she made a turn around when she averred that she cannot count on her hands how many times; that it was she who told her father about the sexual abuses and not her brother.”[23]

Appellant also contends that physical evidence belied AAA's testimony that she was sexually assaulted many times through the insertion of a finger in her vagina. He cites the testimony of Dr. Bonnie Chua, the medico-legal officer who examined AAA, who observed the absence of scarring, bleeding, and healed lacerations in her vagina.[24]

Further, appellant points out that the credibility of AAA's story of sexual abuses is dubious given her testimony that they occurred while her father, brother and grandfather were sleeping just beside her in one room. Under such circumstances, he stresses that AAA could have easily called for help, but no one seemed to have noticed that she was sexually abused.[25]

Appellant's assignment of errors boil down to AAA's credibility which the trial court relied upon in convicting him of the crime of rape through sexual assault and of acts of lasciviousness. The rule is, however, long and well-settled that the findings of the trial court pertaining to the credibility of witnesses are entitled to great weight and respect since it has the unique opportunity to examine their demeanor on the witness stand.[26] Such findings are, in fact, accorded finality,[27] unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood, or misappreciated and which, if properly considered, would alter the results of the case.[28] Far from yielding reasons of such strength or cogency as would warrant a departure from the foregoing principles, however, our circumspect perusal of the records confirmed the trial court's observation that AAA testified in a “consistent, spontaneous and straightforward” manner in recounting the sexual abuses to which she was forcibly subjected. Excerpts of her testimony about the last time that appellant sexually abused her read:

“Q-

Doon na lang tayo sa huling nangyari ha?

A-

Opo.

Q-

Saan siya nanggaling noon?

A-

Sa labas po.

Q-

Tapos tulog na iyong mga kasama mo?

A-

Opo.

Q-

Sino nga ulit mga kasama mo?

A-

Si [BBB] po, saka si papa, saka si Lolo...po.

Q-

Saan sila natutulog?

A-

Doon po sa... tabi-tabi po kami.

Q-

Magkakahilera ba kayong apat?

A-

Opo.

X x x

X X X

X X X

Q- Noong dumating si Crisaldo [referring to appellant], noong gabing iyon, saan siya lumapit sayo?

X x x

x x x

x x x

A-

Doon sa paanan.

X x x

x x x

x x x

Q-

Doon muna tayo sa huling gabi ha?

A-

Opo.

Q-

Gabi na naman siya umuwi noon?

A-

Opo.

Q-

At ginising ka niya?

A-

Opo.

Q-

Paano ka ginising?

A-

Ginaganon-ganon po niya ako. Ginaganun po.

PROSECUTOR UNTALAN:

Witness is shaking her knees.

Q-

Tapos, pagkahawak niya sa tuhod mo?

A-

Huhubaran na po niya ako.

Q-

Huhubaran na?

A-

Opo.

Q-

Anong tatanggalin sa'yo?

A-

Short po.

Q-

Short. Tapos?

A-

Tapos panty po.

Q-

Tapos?

A-

Tapos dun po, didilaan na po niya tapos susundutin na po.

Q-

Anong nauuna, ito yung pinakahuli ha? Anong nauna, dinilaan o sinundot?

A-

Dinilaan po.

Q-

Dinilaan. Noong dinilaan niya, gaano katagal ang pagdila niya sayo? Anong dinilaan niya ulit?

A-

Pepe ko po.

Q-

Gaano katagal?

X x x

x x x

x x x

COURT:

Matagal ba, mabilis lang, sandali lang?

WITNESS:

A-

Mabilis lang po tapos susundot na po niya yung kamay niya sa pepe ko po.

Q-

Kamay?

A-

Yung daliri po.

X x x

x x x

x x x

Q-

Ngayon, pagka pinapasok niya yung daliri niya matagal din ba?

A- Saglit lang po...."[29]

AAA's testimony on direct and cross-examination as to the number of times appellant inserted his finger in her vagina is not conflicting. When she stated that appellant inserted his finger once in her private part, she is referring to the last time ("pinakahuling nangyari") [30] he sexually abused her. Anent her reply on cross-examination that she could no longer count the number of times appellant inserted his finger in her vagina, that testimony refers to all the episodes that appellant sexually abused her. [31] To stress, the criminal charges against appellant pertain only to those committed on 07 April 2005, the last among the numerous times appellant sexually abused AAA.

We likewise find no inconsistency as to who between AAA and her younger brother, Totong, told their father about the sexual abuses appellant committed against her. AAA clarified that her younger brother was the first to tell her father of appellant's nightly incursions in her vagina, [32] while she confirmed them upon being confronted by her father. [33]

Significantly, AAA never wavered on her account of the sexual abuses committed against her by appellant, not only on direct, cross, and re-direct [34] examinations but also on clarificatory questioning of the trial judge. [35] It is also noteworthy that AAA cried several times during her testimony. [36] Such spontaneous emotional breakdown strengthens her credibility. In a catena of cases, the crying of the victim during her testimony was considered evidence of the credibility of her charges with the verity borne out of human nature and experience. [37]

When a woman - more so if she is a minor - says she has been raped, it has been repeatedly ruled that she says, in effect, all that is necessary to prove that rape was committed. [38] In cases of offended parties who are young and immature girls, there is considerable receptivity on the part of the courts to lend credence to their testimonies, considering not only their relative vulnerability [39] but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in

secrecy, did expose them to.[40] Indeed, no decent woman in her right mind would tell a tale that would sully her reputation and bring undue embarrassment and shame to herself and expose her family to all sorts of public aspersions if it is not the truth.[41] Where the accused could not, consequently, present any sensible justification as to why private complainant had accused him of such serious offenses as rape[42] and acts of lasciviousness, such fact logically proves that no improper motive propelled the latter to so charge the former.

We also find no merit in appellant's contention that the medical finding in these cases does not substantiate that AAA was sexually assaulted many times through insertion of a finger.

In Criminal Case No. 2007-9075-MK, the act complained of as constituting the offense of acts of lasciviousness is appellant's "licking of [AAA's] vagina..." Indeed, such act will not cause any bleeding, laceration, or scarring; nor will signs thereof be detected by an examination of AAA's vagina.

In Criminal Case No. 2007-9076-MK, the act complained of as constituting rape through sexual assault is appellant's insertion of his finger into AAA's vagina. Such act will not also cause injury or show physical signs of penetration in view of the small circumference and length (1 ½ inch)[43] of appellant's forefinger[44] and elasticity of the hymen.[45] At the witness stand, Dr. Chua clearly stated that insertion of a finger in the vagina would not automatically result in a laceration in the hymen, an elastic type of tissue.[46] We therefore agree with Dr. Chua's conclusion in his medical report[47] that the complained sexual abuses cannot be totally ruled out based only on the absence of hymenal laceration or signs thereof in AAA's hymen.

At any rate, the presence of laceration, fresh or healed, is not an element of the crimes, i.e., acts of lasciviousness and rape through sexual assault, for which appellant was accused of and convicted. Neither will it undermine the credibility of AAA and her account of sexual abuses. As held in *People v. Amistoso*: [48]

"The absence of fresh lacerations in Remilyn's hymen does not prove that appellant did not rape her. A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape. In addition, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case. The credible disclosure of a minor that the accused raped her is the most important proof of the sexual abuse." [49]

Appellant further insists that it would be impossible for him to commit the crimes charged in the same room where AAA's father, brother, and grandfather were then asleep. However, this defense had long been rejected by the Supreme Court.[50] The oft-repeated rule is that lust is no respecter of time and place, and rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, and even inside a house where there are other occupants or where other members of the family are also sleeping.[51] Thus, the mere presence of AAA's relatives in the same room will not negate the tale of rape related by AAA. More so because AAA's father and grandfather were in deep sleep,[52] and she opted to suffer in silence while appellant was sexually abusing her.[53]

By way of defense, appellant denies having sexually abused AAA on 07 April 2005, and claimed having spent the entire night of that day at the worker's barracks in G. Tuazon, Quezon City after working from 8:00 a.m. to 5:00 p.m.

We uphold the trial court's rejection of appellant's defenses denial and alibi. Unless substantiated by clear and convincing evidence, denial is a self-serving defense that deserves no weight in law[54] such that, between the positive declaration of the victim and the negative statement of appellant, the former decidedly deserves more credence.[55] With the credibility of the testimony of appellant's witness discounted as above-discussed, we find that the trial court committed no reversible error in giving credence to the testimony of AAA, a child of tender years. Here, AAA positively identified appellant as the person who licked and "fingered" her vagina on the date

of the incident because she saw appellant's face[56] after he roused her from sleep by shaking her knees.[57] Likewise, the room was then suffused in light[58] coming from a fluorescent tube[59] giving AAA an opportunity to unerringly identify appellant as the sexual fiend who abused her.

For alibi to prosper, on the other hand, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of its commission,[60] and the defense must be supported by credible corroboration from disinterested witnesses.[61] Here, the crime scene in Marikina City is readily accessible from the workers' barracks at G. Tuazon, Quezon City, where appellant professed to be at the time of the incidents on 07 April 2005.

The testimony of defense witness Zenaida Angelo hardly bolsters appellant's alibi. All she could state is that he never saw appellant within the premises of her house on the date of the incident, but she was unsure as to his actual whereabouts on said date.[62] Worse, appellant admitted on cross-examination that in the month of April 2005, he went home after work and spent the night at the crime scene.[63]

Moreover, having in mind the principle that a baptismal certificate showing the date of birth of the victim would suffice to prove age,[64] appellant asserts that Exhibit "D" is not the baptismal certificate of AAA because the last name of the baptized child differs from the last name of AAA appearing in the Informations.[65] Appellant's assertion is misplaced.

We uphold the trial court in rejecting appellant's assertion as follows:

"With respect to the issue on the minority of [AAA], prosecution has sufficiently established her age to be seven (7) years old at the time of the incidents in question as evidenced by the Baptismal Certificate (Exhibit "D") of the child. In fact the existence of this Certificate was admitted by the defense. (Comment/Objection, Rollo, p. 150) Moreover, from the testimony of the minor herself and from her appearance during the presentation of her testimony, it is of the court's observation that she is indeed below 12 years of age." [66]

The trial court aptly considered the person baptized in Exhibit "D" to be the same as AAA, the private complainant. The fact that the date of birth, name of parents, and the name of the person baptized in Exhibit "D" is identical to those details of the victim under the Social Case Study Report[67] ("Report") clearly indicates that Exhibit "D" is AAA's Baptismal Certificate. A perusal of the Report also shows that the sexual violations (licked and "fingered") committed against the interviewed victim, the environmental circumstances of the crimes, and the perpetrator (appellant) are the same as that related by AAA in open court.

The variation in the last name of AAA in Exhibit "D" and in the Informations may be explained by a referral to the Report. AAA is a child born out of wedlock,[68] thus, the name of AAA bearing her mother's last name[69] appear in the Informations in accordance with the mandate of Article 176 of the Family Code, as amended by Republic Act No. 9255,[70] that illegitimate children shall use the surname of their mother. On the other hand, persons who recorded the details in Exhibit "D" may not be familiar with the foregoing legal provisions or was under the impression that AAA's parents were actually married,[71] prompting them to copy the surname of AAA's father.

CRIMES COMMITTED and PENALTIES

Criminal Case No. No. 2007-
9075-MK: Acts of
Lasciviousness under RA 7160

Section 5 (b), Article III of R.A. No. 7610, defines and penalizes acts of lasciviousness committed against a child thus:

Section 5. Child Prostitution and Other Sexual Abuse. X x x x x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under ... Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period.” (Bold underscoring supplied for emphasis)

Conviction under the aforequoted provision or for child abuse through lascivious conduct committed against a minor below 12 years of age, as explained in *People v. Bonaagua*,^[72] requires the prosecution to establish the requisites for the crime of acts of lasciviousness under Article 336^[73] of the RPC and the requisites for sexual abuse under Section 5 of R.A. No. 7610.

The element of Acts of Lasciviousness defined in Article 336 of the RPC are:

(1) That the offender commits any act of lasciviousness or lewdness;

(2) That it is done under any of the following circumstances:

- By using force or intimidation; or

- When the offended party is deprived of reason or otherwise unconscious; or

- When the offended party is under 12 years of age; and

(3) That the offended party is another person of either sex.

while the elements^[74] of sexual abuse under Section 5, Article III of R.A. No. 7610 are:

(1) The accused commits the act of sexual intercourse or lascivious conduct.^[75]

(2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

(3) The child, whether male or female, is below 18 years of age.

Appellant's act of licking the vagina of AAA, then a seven-year-old minor, constituted the crime of acts of lasciviousness under Section 5 (b) of R.A. No. 7610, as correctly found by the trial court in Criminal Case No. No. 2007-9075-MK. However, the penalty imposed and the amount of damages awarded should be modified.

Considering that appellant is AAA's uncle, a collateral relative within the second degree of consanguinity, the imposable penalty shall be imposed in its maximum period pursuant to Section 31(c)^[76] of RA 7610. The maximum period of the imposable penalty of reclusion temporal in its medium period ranges from sixteen (16) years, five (5) months and ten (10) days to seventeen (17) years and four (4) months.^[77]

Applying the Indeterminate Sentence Law, the penalty next lower in degree is reclusion temporal in its minimum period with a range of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.^[78] Thus, appellant should be meted the indeterminate penalty of imprisonment from fourteen (14) years and eight (8) months of reclusion temporal, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.^[79]

Recent jurisprudence^[80] fixed the amount of civil indemnity ex delicto at Php20,000.00, and moral damages at

Php15,000.00 in a case of acts of lasciviousness under Section 5 (b) of RA 7610. Accordingly, the amounts awarded by the trial court should be correspondingly reduced.

The minority of AAA is considered an aggravating circumstance,[81] hence, an award of Php15,000.00[82] as exemplary damages is also proper.

Criminal Case No. No. 2007-
9076-MK: Rape through
Sexual Assault

Rape may be committed either through sexual intercourse or by sexual assault.[83] Article 266-A, as amended by RA 8353,[84] provides:

"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." [Emphasis supplied]

Paragraph 1 of the aforequoted provision of law is referred to as rape through sexual intercourse. It is commonly denominated as "organ rape" or "penile rape." Carnal knowledge is the central element and must be attended by any of the circumstances enumerated in subparagraphs (a) to (d).[85] Paragraph 2 thereof refers to rape through sexual assault and is also known as "instrument or object rape", or "gender-free rape."[86] The gravamen of this crime is the insertion of (i) the penis into another person's mouth or anal orifice, or (ii) any instrument or object, into another person's genital or anal orifice.[87]

The elements of the second mode or Rape through Sexual Assault are:

- (1) That the offender commits an act of sexual assault;
- (2) That the act of sexual assault is committed by any of the following means:
 - (a) by inserting his penis into another person's mouth or anal orifice;
 - (b) by inserting any instrument or object into the genital or anal orifice of another person;
- (3) That the act of sexual assault is accomplished under any of the following circumstances:
 - a) by using force or intimidation; or
 - b) when the offended party is deprived of reason or otherwise unconscious; or
 - c) by means of fraudulent machination or grave abuse of authority; or
 - d) When the offended party is under twelve (12) years of age or is demented.[88]

Article 266-B of the RPC provides a penalty of prision mayor[89] for rape through sexual assault under Article 266-A (2). However, if the rape is committed with any of the ten aggravating/qualifying circumstances[90] mentioned in Article 266-B, the imposable penalty is reclusion temporal.[91]

All elements of rape through sexual assault were established by the prosecution through the consistent and categorical testimony of the 7-year old victim that appellant inserted his forefinger in her vagina. Also, appellant admitted[92] that AAA, being the daughter of his elder brother, is a relative by consanguinity within the third civil degree.

With the presence of the aggravating/qualifying circumstance of minority and relationship, appellant should be meted the penalty of reclusion temporal. No other aggravating circumstance is present other than minority and relationship, and applying the Indeterminate Sentence Law, the maximum term of the penalty shall be imposed in its medium period or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. The minimum term thereof is prision mayor or six (6) years and one (1) day to twelve (12) years, the penalty next lower in degree to reclusion temporal, the penalty prescribed by the RPC. Thus, appellant should be meted the penalty of imprisonment for an indeterminate term of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.[93]

The trial court correctly awarded the amount of Php30,000.00 each, as civil indemnity and moral damages.[94] However, the amount of exemplary damages should be increased from Php15,000.00 to Php30,000.00, in line with current jurisprudence.[95]

Finally, all monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this decision until fully paid consistent with current policy.[96]

WHEREFORE, the appealed Amended Decision dated 07 July 2011 in Criminal Case Nos. 2007-9075-MK and 2007-9076-MK, is AFFIRMED with the following MODIFICATIONS:

In Criminal Case No. 2007-9075-MK, appellant is meted to suffer the indeterminate penalty of fourteen (14) years and eight (8) months of reclusion temporal, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.⁹⁷ The award of civil indemnity and moral damages in the amount each of Php30,000.00 is REDUCED to Php20,000.00 and Php15,000.00, respectively. Further, exemplary damages of Php15,000.00 is AWARDED to the child-victim.

In Criminal Case No. 2007-9076-MK, appellant is sentenced to suffer the indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. The award of exemplary damages is INCREASED from Php15,000.00 to Php30,000.00.

All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this decision until fully paid.

SO . . .

. . . ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Garcia, R.R., and Bueser, D.Q., JJ., concur.

[1] Records, p. 267

[2] An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes

[3] Records, p. 01. Emphasis supplied

[4] Ibid., p. 03. Ibid

[5] Ibid., p. 21

[6] Ibid., pp. 23-24

[7] Ibid., p. 25

[8] Ibid., p. 41

[9] Ibid., p. 68

[10] Ibid., pp. 64-65

[11] TSN, 16 March 2009, pp. 14-15

[12] TSN, 16 March 2009, pp. 07-08

[13] TSN, 23 September 2009, p. 02

[14] Ibid., 23 September 2009, pp. 03 and 05

[15] Ibid., 23 September 2009, pp. 10-11

[16] Ibid., 23 September 2009, pp. 12-13

[17] Ibid., 23 September 2009, pp. 13-14

[18] Page 07 of the appealed decision

[19] Page 13 of the appealed decision

[20] Rollo, p. 25

[21] Ibid., p. 26

[22] Ibid.

[23] Ibid.

[24] Rollo, p. 28

[25] Ibid.

[26] People v. Bosi, G.R. No. 193665, 25 June 2012, cited in People v. Padigos, G.R. No. 181202, 05 December 2012. People vs. Suarez, G.R. No. 153573-76, April 15, 2005

[27] People vs. Iglesia, 365 SCRA 156

[28] People vs. Marino, G.R. No. 168693, June 19, 2009

[29] TSN, 10 December 2007, pp. 15-18. Emphasis supplied

- [30] Ibid.
- [31] TSN, 10 December 2007, p. 33
- [32] TSN, 17 April 2009, pp. 09-10
- [33] TSN, 19 May 2008, pp. 03-04
- [34] TSN, 08 May 2008, pp. 03 and 07
- [35] TSN, 19 May 2008, pp. 08-09 and 13
- [36] TSN, 10 December 2007, pp. 10 and 39; 17 April 2008, pp. 11-12; 19 May 2008, p. 06
- [37] People v. Bontuan, G.R. Nos. 142993-94, 5 September 2002. People vs. Agustin, 365 SCRA 667
- [38] People vs. Ancheta, 419 SCRA 307; People vs. Bagaua, 394 SCRA 54
- [39] People vs. Pacheco, 424 SCRA 164
- [40] People vs. Sumarago, 422 SCRA 324
- [41] People vs. Bontuan, G.R. Nos. 142993-94, September 5, 2002
- [42] People vs. Sabardan, 429 SCRA 9
- [43] TSN, 10 December 2007, p. 20. From the fingertip up to the middle of the first and second line.
- [44] TSN, 10 December 2007, p. 19.
- [45] TSN, 14 August 2008, p. 12.
- [46] Ibid.
- [47] Medico-Legal Report No. M-1926-05
- [48] G.R. No. 201447, 09 January 2013; People v. Cabungan, G.R. No. 189355, 23 January 2013.
- [49] Emphasis supplied.
- [50] People vs. Viray, 164 SCRA 135 (1988); People vs. Guibao, G.R. No. 93517, 15 January 1993; People v. Bosi, G.R. No. 193665, 25 June 2012; People of the Philippines vs. Faustino, G.R. No. 194462, 13 June 2012.
- [51] People vs. Castel, G.R. No. 171164, 18 November 2008, citing People vs. Evina, 453 Phil. 25, 41 (2003), citing People vs. Perez, 357 Phil. 17, 29 (1998)
- [52] TSN, 10 December 2007, p. 15
- [53] TSN, 17 April 2008, pp. 11,16 and 18
- [54] Navarette vs. People, G.R. No. 147913, January 31, 2007
- [55] People vs. Briones, 391 SCRA 78
- [56] TSN, 10 December 2007, p. 12
- [57] Ibid., 10 December 2007, pp. 16-17
- [58] Ibid., 10 December 2007, p. 12

[59] TSN, 17 April 2008, p. 21

[60] People v. Amistoso, G.R. No. 201447, 09 January 2013

[61] Ibid.

[62] TSN, 24 May 2010, pp. 08-09

[63] TSN, 23 September 2009, pp. 10-11

[64] People v. Lupac, G.R. No. 182230, 19 September 2012

[65] Rollo, pp. 29-30

[66] Records, p. 270. 07 July 2011 Order

[67] Records, pp. 60-65. The trial court ordered (Records, p. 48) Melissa Briguera, the Social Worker of the Office of the Clerk of Court, Regional Trial Court of Marikina City (OCC-RTC), to interview the parties involved and to submit a report.

[68] Records, p. 63

[69] Prosecution witness Nida Cruz, whose maiden name is “Labanes,” (TSN, 02 February 2009, p. 02) testified that AAA is the daughter of her sister (TSN, 02 February 2009, p. 04)

[70] Under the amendatory law, illegitimate children, as exception, MAY now use the surname of their father IF their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or WHEN an admission in a public document or private handwritten instrument is made by the father.

[71] In the Baptismal Certificate, her parents claimed that they were “MARRIED IN Burgos, Rodriguez, Rizal.”

[72] G.R. No. 188897, 06 June 2011, citing Navarrete v. People, G.R. No. 147913, 31 January 2007

[73] Art. 336. Acts of lasciviousness. – Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prision correccional.

[74] People v. Rayon, Sr., G.R. No. 194236, 30 January 2013

[75] Section 2 (h), Rules and Regulations of R.A. No. 7610 defines “Lascivious conduct” as the “intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.”

[76] Section 31. Common Penal Provisions. –

x x x

x x x

x x x

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, ...”

[77] Luis B. Reyes, The Revised Penal Code, Book II, 2001 edition, p. 1025

[78] Ibid., pp. 1025-1026

[79] People v. Lomaque, G.R. No. 189297, 05 June 2013

[80] Ibid.

[81] Ibid., citing People v. Soria, G.R. No. 179031, 14 November 2012

[82] People v. Bonaagua, G.R. No. 188897, 6 June 2011

[83] People v. Soria, G.R. No. I 79031, 14 November 2012

[84] 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. Approved on 30 September 1997

[85] People v. Soria, supra

[86] Ibid.

[87] Pielago v. People, supra

[88] Luis B. Reyes, The Revised Penal Code, Book II, 2001 edition, p. 520

[89] Six (6) years and one (1) day to twelve (12) years

[90]

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

"2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

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

"4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

"5) When the victim is a child below seven (7) years old;

"6) When the offender knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

"7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

"8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

"9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

"10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the

offended party at the time of the commission of the crime. (Emphasis supplied)

[91] 12 years and 1 day to 20 years.

[92] Records, p. 68.

[93] People v. Bonaagua, supra.

[94] Ibid.

[95] People v. Pielago, G.R. No. 202020, 13 March 2013.

[96] People v. Vitero, G.R. No. 175327, 3 April 2013.

[97] People v. Lomaque, supra.

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