

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER PEDRES Y MATUCIÑO, ACCUSED-APPELLANT.**

Ponente: LAMPAS PERALTA, J.

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**LAMPAS PERALTA, J.:**

Assailed in this appeal is the Joint Judgment dated May 30, 2012[1] of Branch 12, Regional Trial Court, Ligao City, Albay convicting accused-appellant Roger Pedres y Matuciño of the crimes of rape and acts of lasciviousness in Criminal Cases Nos. 5642 and 5643, respectively.

**The Antecedents**

Accused-appellant is the father of AAA[2] who was then eight (8) years old when she was first raped by accused-appellant in 2002 in their house located at XXX, Ligao City. Around noontime, while AAA was lying in bed in their bedroom, accused-appellant entered the room, removed his undergarments and laid down beside AAA. Accused-appellant then went on top of AAA and inserted his penis into her vagina. AAA was shocked and felt pain. Then, on November 2, 2007, around 3:00 A.M., at accused-appellant's house in YYY, Ligao City, AAA (then 13 years old) was awakened when her father laid down beside her, caressed and mashed her breasts. Accused-appellant inserted his finger inside AAA's vagina which made her cry. Accused-appellant attempted to go on top of AAA, but she resisted by moving her body and turning her back. Immediately AAA got up, went out of the room and slept in the living room.

On November 16, 2007, while attending school in Ligao City, AAA confided to a classmate what accused-appellant did to her and while she was crying, AAA's teacher noticed and inquired what her problem was. As AAA was hesitant to talk, the teacher accompanied AAA to the school's guidance counselor. Before the guidance counselor and the school principal, AAA revealed the two (2) incidents. Eventually, AAA was referred to the Department of Social Welfare and Development and a social worker brought AAA to the police station of Ligao City.

The factual details were summarized in the People's brief as follows:

“In 2002 at around noontime in the house of Appellant located at Brgy. XXX, Ligao City, the victim “AAA,” then eight years old, was lying in bed in their bedroom when her father, herein Appellant, entered the room from the sala. Thereafter, Appellant removed his undergarments and laid beside his daughter “AAA.” Appellant then went on top of “AAA” and inserted his penis to her vagina. He made a push and pull movement. As a result, “AAA” was shocked and felt pain.

“AAA's” ordeal was not the last as her father ravished her again in 2007 when she was already thirteen years old. At that time, “AAA” was staying in the house of Appellant's mother located at Brgy. YYY, Ligao City. The house of Appellant was near the house of his mother. On November 1, 2007, at around 5:00 in the afternoon, Appellant invited “AAA” to his house and promised “AAA” that he will cook chicken for dinner.

“AAA” accepted Appellant's invitation and went to Appellant's house. That evening, “AAA” slept together with Appellant's seven month old baby and his common-law wife in one room. The three slept side by side on the bed, with “AAA”, the baby and the common-law wife in that order. While Appellant was outside the house having a drinking spree with relatives.

At around 3:00 o'clock in the early morning of November 2, 2007, “AAA” was awakened by her father when he laid beside her then caressing and massaging her breast. After which, Appellant inserted his finger inside “AAA's” vagina. “AAA” cried and was so afraid. Appellant also attempted to go on top of “AAA” but the latter resisted by moving her body. “AAA” turned her back at his father and immediately got up. She went out of the room and slept at the sala.

On November 16, 2007, while attending school in ZZZ High School of Ligao City, and fearing that she might get molested all over again and might get pregnant, “AAA” confided to a classmate what she experienced from her father. The teacher of “AAA”, GGG, noticed that “AAA” was crying; hence, she inquired what her problems were all about. “AAA” was hesitant to talk, thus the teacher accompanied “AAA” to the school's guidance counselor, HHH.

At the guidance counselor's office, and in front of the school principal, “AAA” revealed her father's bestiality. The revelations were reduced into writing. “AAA,” having mustered the courage to file a complaint against her father, was referred to the DSWD. A social worker brought “AAA” to the police station and she was interviewed by PO2 Alma del Valle of the Children and Women's Desk of the PNP, Ligao City. A police blotter certification dated December 20, 2007 was prepared, and the prosecution of the cases against Appellant started.

“AAA” was also referred by the police to the City Health Office of Ligao City for medical examination. Dr. Lea Remonte, the City Health Officer, conducted the examination and reported in her Medico-Legal Report No. ML-2007-107, the following:

#### ANO-GENITAL EXAMINATION

Hymen:

Healed deep laceration at 6:00 o'clock and 7:00 o'clock position, estrogenized crescentic type of hymen.

IMPRESSION: GENITAL FINDINGS SHOW CLEAR EVIDENCE OF BLUNT FORCE OR PENETRATING TRAUMA

The doctor testified that the healed laceration could have been caused by blunt instrument, sexual intercourse or insertion of some foreign body inside the vagina.”[3]

Accused-appellant was separately charged with the crimes of Rape and Rape through Sexual Assault, in the following informations filed with the trial court which read:

Re: Criminal Case No. 5642

For: Rape

“The undersigned Associate Prosecution Attorney hereby accuses ROGER PEDRES y MATUCIÑO, for the crime of RAPE defined and penalized under paragraph 1(d) of Art. 266-A of the Revised Penal Code, as amended in relation to the 6th paragraph of Article 266-B of the same Code, committed as follows:

That sometime in the year 2002, at about 1:00 o'clock in the afternoon at Barangay XXX, Ligao City Philippines, and within the jurisdiction of this Honorable Court, the accused ROGER PEDRES y MATUCIÑO did then and there willfully, feloniously and unlawfully have carnal knowledge of his then eight-year-old biological daughter AAA without her consent and against her will, to the damage and prejudice of said minor.

ACTS CONTRARY TO LAW.”[4]

Re: Criminal Case No. 5643

For: Rape through Sexual Assault

“The undersigned Associate Prosecution Attorney of Ligao City hereby accuses ROGER PEDRES y MATUCIÑO, for the crime of RAPE through Sexual Assault defined and penalized under the second paragraph of Article 266-A of the Revised Penal Code in relation to the 7th paragraph of Article 266-B of the same Code, committed as follows:

That on or about November 2, 2007 at around 3:00 o'clock in the morning at Barangay YYY, Ligao City, Philippines and within the jurisdiction of this Honorable Court, ROGER PEDRES y MATUCIÑO, with lewd designs, did then and there willfully, feloniously and unlawfully lay himself beside his 13-year old biological daughter AAA and deliberately inserted two (2) or three (3) of his fingers into his daughter's vagina, without her consent and against her will, to the damage and prejudice of said minor.

ACTS CONTRARY TO LAW.”[5]

Criminal Case No. 5642 was raffled to Branch 12, while Criminal Case No. 5643 to Branch 11, RTC, Ligao City, Albay. When arraigned on April 23, 2008 in Criminal Case No. 5643, accused-appellant pleaded “not guilty.”[6]

When arraigned on May 30, 2008 in Criminal Case No. 5642, accused-appellant also pleaded “not guilty.”[7] In an Order dated May 29, 2008, Criminal Case No. 5643 was ordered consolidated with Criminal Case No. 5642 pending with Branch 12.[8]

During the preliminary conference[9] on July 16, 2008 in Criminal Case No. 5642, the parties stipulated on the following:

“Stipulation of Facts:

Admitted:

- The identity of Roger Pedres y Matuciño
- That Roger Pedres is the biological father of AAA
- That BBB is the grandmother of AAA hence, the mother of Roger Pedres.
- That AAA and Roger Pedres were living on the same house at XXX, Ligao City in the year 2002.
- That AAA was born on July 16, 1994.
- That CCC is the grandfather of AAA, hence, the father of Roger Pedres.”

During the joint pre-trial on October 3, 2008,[10] the parties stipulated on the following:

### III. STATEMENT OF THE FACTS

#### A. Admitted

- The name of accused Roger Pedres y Matuciño.
- That Roger Pedres is the biological father of AAA.
- That BBB is the grandmother of AAA hence, the mother of Roger Pedres.

- That AAA and Roger Pedres were living on the same house of XXX, Ligao City in the year 2002.

- That AAA was born on July 16, 1994.

- That CCC is the grandfather of AAA, hence, the father of Roger Pedres.”

During the joint trial, the parties presented their respective evidence, consisting of (i) Dra. Lea Remonte, City Health Officer, Ligao City;[11] (ii) Police Officer 2 (PO2) Alma Del Valle;[12] (iii) AAA's Teacher GGG;[13] (iv) Guidance Coordinator HHH;[14] and, (v) private complainant AAA,[15] for the prosecution, and (i) BBB, AAA's grandmother and accused-appellant's mother;[16] (ii) accused-appellant;[17] and, (iii) DDD, AAA's aunt and accused-appellant's younger sister,[18] for the defense.

In a Joint Judgment dated May 30, 2012, the trial court convicted accused-appellant of rape in Criminal Case No. 5642, and acts of lasciviousness in Criminal Case No. 5643. The dispositive portion of the Joint Judgment reads:

“WHEREFORE, premises considered, judgment is rendered:

1. Finding the accused, ROGER PEDRES y MATUCIÑO, guilty beyond reasonable doubt of the crime of incestuous RAPE defined and penalized under Article 266-A, in relation to the 6th paragraph of Article 266-B of the Revised Penal Code, as amended, thereby sentencing him to suffer the indivisible penalty of imprisonment of reclusion perpetua;

2. Finding the accused, ROGER PEDRES y MATUCIÑO, guilty beyond reasonable doubt of the crime of ACTS OF LASCIVIOUSNESS, defined and penalized under Article 336, of the Revised Penal Code, as amended, thereby sentencing him to suffer the indeterminate penalty of imprisonment of five (5) months and ten (10) days of arresto mayor in its medium period, as minimum, to four (4) years and two (2) months of prision correccional in its medium period, as maximum.

3. Ordering the accused, ROGER PEDRES y MATUCIÑO, to pay AAA, the following amount:

a.) the sum of Seventy-Five Thousand (P75,000.00) as civil indemnity for the crime of rape qualified by relationship and the victim's minority in Criminal Case No. 5642;

b.) the sum of Twenty-Five Thousand (P25,000.00) as civil indemnity for the crime of acts of lasciviousness in Criminal Case No. 5643;

b.) the sum of Seventy-Five Thousand (P75,000.00) as moral damages in Criminal Case No. 5642 and the sum of Twenty Five Thousand (P25,000.00) in Criminal Case No. 5643;

c.) the amount of Twenty Five Thousand (P25,000.00) pesos as exemplary damages in Criminal Case No. 5642 and the amount of Ten Thousand (P10,000.00) pesos in Criminal Case No. 5643.

### **SO ORDERED.”[19]**

Hence, accused-appellant filed this appeal which is anchored on the following assignment of errors:

#### **I**

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PRIVATE COMPLAINANT'S TESTIMONY.

#### **II**

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

### **The Issue**

Whether the trial court erred in convicting accused-appellant of the crimes of rape and acts of lasciviousness.

### **The Court's Ruling**

The present appeal is premised on accused-appellant's argument that the trial court erred in giving full weight and credence to AAA's testimony which is allegedly flawed with incredulous statements. The question thus boils down to credibility.

According to accused-appellant, AAA's behavior “seemed uncharacteristic of a supposed rape victim” and her actuations “are contrary to normal behavior” because from 2002 to 2007, she declared that she would go to accused-appellant's house for an errand or even where there is none. Allegedly, AAA's story was “implausible” as she faltered in recounting the events surrounding the sexual molestations committed against her. AAA herself testified that accused-appellant merely caressed her, and accused-appellant also posits that based on the testimony of Dr. Remonte, the medico-legal officer, the sexual acts happened not once but many times and hence, AAA had prior sexual experiences before the complained incidents.[21]

The asseveration fails to impress.

Well-entrenched is the doctrine that the Court ordinarily puts great weight on the factual findings of the judge who conducted the trial of the case and heard the testimonies of the witnesses themselves. This is especially true in rape cases where the crime is usually committed in the presence of no other person than the victim and the accused. Compared to appellate magistrates who are merely faced with the cold and inanimate pages of the transcript of records brought before them, the trial judge comes face to face with the rape victim herself on the

witness stand. He personally observes her conduct and demeanor while responding to the questions propounded by the prosecutor on direct examination as well as those from the defense counsel on cross examination. Moreover, it is also the trial judge who has the chance to pose clarificatory questions to the victim. Thus, when the trial judge makes his findings as to the issue of credibility, such findings bear great weight upon the appellate court.[22]

To be sure, as noted by the trial court, there is no question on the following established facts:

“From the totality of the evidence of both parties, the following are the established facts: 1.) the relationship of the accused to the private complainant being the biological father of the latter, despite the fact that a certain CCC was indicated at AAA's Birth Certificate as her father; 2.) the birth date of private complainant, AAA, which is July 16, 1994, which corresponds to the age of the victim at the time of the commission of alleged incidents.”[23]

It bears stressing that AAA positively identified accused-appellant as the one who inserted his penis in her vagina in 2002 when she was eight (8) years old, and also the one who inserted his left finger in her vagina in 2007 when she was thirteen (13) years old. AAA candidly recounted the details of the two (2) incidents as follows:

“Q Now madam witness, do you remember having filed a case against this person, your father?

A Yes, Sir.

Q Why did you file a case against your biological father?

A To gain justice for what he did to me.

Q What is that thing that your father did to you?

A He raped me.

Q Can you still recall the date or the month or at least the year at that time?

A Yes, Sir.

Q Kindly tell us, Madam Witness?

A When I was in grade II and the other was last November 2, 2007.

Q Let us discuss first the incident when you were still in grade II, kindly tell us how old are you at that time?

A Eight (8) years old, Sir.

Q Can you still recall the date and the year?

A 2002, Sir.

Q Now, tell us where did it happen?

A In XXX.

Q Where in particular in XXX?

A In our house because we have a house there.

Q Who owns that house there?

A My biological father.

Q Are you referring to Roger Pedres?

A Yes, sir.

Q At that time, Madam Witness, can you still recall the time it happened?

A Noon time, Sir.

Q Can you still remember who were the persons inside that house?

A It was just the two of us.

Q What were you doing at that time?

A I was lying in bed.

Q Can you tell us where in particular of the house where you were lying?

A In the bedroom.

Q In whose bedroom?

A Our bedroom, we only have one bedroom.

Q How about your father where is he at that time?

A When I was lying my father was at the sala.

Q And do you know what is he doing at that time?

A Sitting.

Q You said you were lying in the bed inside your room can you remember what happened?

A He entered the bedroom.

Q And so what happened next when he entered the room?

A I thought he was just going to change his clothes but he removed his clothes.

Q Can you particularly tell us which part of his clothes removed?

A His shorts.

Q After he removed his short what happened next, Madam Witness?

A He lay beside me.

Q And then what did he do after that?

A He raped me.

Q Madam Witness, the word rape is somewhat a big word; can you please tell us what in particular did your father do after he lay beside you, if any, Madam Witness?

A He went on top of me.

Q Can you still remember what is he wearing at that time when he put himself on top of you?

A He was wearing t-shirt that time but he has no undergarment.

Q When you said he does not any undergarment that time can you tell us what undergarment he removed that time?

A He has no brief.

Q You said that he went on top of you, can you still recall what did he do next after he went on top of you?

A He inserted his thing to my thing.

Q Are you wearing anything at that time when he put himself on top of you?

A He removed my short and panty.

Q And what is your position when he removed your short and panty, Madam Witness?

A I was lying.

Q When you said he inserted his thing to your thing what do you mean by that thing, kindly tell us?

PROS. RESTUBOG:

Can we request, Your Honor, the DSWD representative to sit beside the witness?

COURT:  
Allowed.

WITNESS:  
A His “ari.”

PROS. RESTUBOG:

Q What do you mean by “ari”?  
A His penis, Sir.

Q And this thing of yours?

INTERPRETER:

She is referring to her vagina.

Q When he entered his thing to your vagina what did you feel if any?  
A It was painful, Sir.

Q When he inserted his penis to your vagina what else did he do?

PROS. RESTUBOG:

Let me rephrase the question, Your Honor.

Q When he inserted his penis in your vagina what else did he do, if any?  
A That was what he did.

Q Can you still recall his action at that time when he inserted his penis to your vagina?  
A He made push and pull movement.

Q When he was doing this what did you feel if any?  
A None, Sir.

Q What were you doing at that time when he was doing this action?

A I was shocked.

Q Why, Madam Witness, were you shocked?

A I was of tender age that time and I do not know what is happening.

Q Did you resist?

A I got afraid because he was hurting me.

Q When you said that he was hurting you tell us when was the time when he was hurting you that time or some other time?

A When he is hot tempered he hurt me.

PROS. RESTUBOG:

I would just put on record that the complainant witness is continuously crying.

COURT:

Noted.

PROS. RESTUBOG:

Q You said that your father acted in a push and pull movement what else happened next after he do that?

WITNESS:

A After that he stood up.

Q And how about you, Madam Witness, what did you feel when he stood up?

A I was still shocked.

x x x x x x x x

Q Now let us go on to the next issue, Madam Witness, you said it happened on November 2, 2007, can you still recall the time?

A I am not sure of the time but it was I think around three o'clock in the early morning.

Q Kindly tell us where were you at that time?

A In their house.

Q And what are you doing there?

A He did not permit me to go to WWW.

Q Why, what is there in WWW?

A It was All Saints Day.

Q What did you do now?

A I went with him because I have no companion and he told me that we will cook chicken.

Q Can you still recall the time?

A It was 5:00 o'clock in the afternoon when my mother left.

Q Can you still recall who were there at that time at the house of your father?

A My stepbrother and my stepmother.

Q What are the names of your stepmother and stepbrother?

A EEE and FFF.

Q What time did you sleep that day?

A It was night time after supper we have no clock there.

Q And where did you sleep?

A We went to sleep ahead there was only one room there.

Q And who were inside the bedroom when you sleep?

A I, my stepmother and my stepbrother.

Q And your father where is he at that time?

A They were having a drinking spree with my uncle and my cousins.

Q While you were sleeping at that time can you recall of any incident that happened if any?

A Yes, Sir, I was awoken and he was beside me.

Q Can you still recall what he was wearing at that time when you were awoken?

A Yes, Sir.

Q Tell us please?

A He was in short and upper garment.

Q What did he do when you were awoken to find out that he is beside you?

A He was caressing me.

Q Tell us what part of your body he was caressing to?

A My breast.

Q Tell us where is your half brother and stepmother at that time?

A My step brother was at the middle and after my stepbrother is my stepmother.

Q Can you tell us which side is your stepmother and stepbrother lying?

A At my right side.

Q How about your father where did he lay down?

A At my left side.

Q While he was caressing you what did he do next?

A He inserted his finger inside my vagina.

Q Can you still remember what are you wearing at that time?

A I was wearing short that time.

Q Can you still remember which finger did he use or insert your vagina?

A His left finger.

Q What did you feel, Madam Witness, when he inserted his finger inside your vagina?

A I was afraid that time and I was crying.

Q What else did you do after he inserted his finger inside your vagina?

A He was attempting to go on top of me but I resisted.

Q What did you do to resist?

A When he attempts to go on top of me I move.

Q What did he do when you were resisted or moving?

A I already forgot.

Q So, generally what did you feel when your own father sexually abused you, Madam Witness?

A I am angry at him.

Q What else?

A That is all. (The witness is crying)"[24]

Noteworthy is the following observation of the trial court concerning AAA's testimony:

"The testimony of AAA, as this Court found, as she recounted her ordeal in the hands of accused, is forthright and credible. She testified that sometime in the year 2002, and in November 2, 2007, she was raped by her father. She was candid and unshaken when she declared that she was ravished by her father, x x x

x x x x x x x x

AAA's woeful tale of her harrowing experience was impressively clear, definite, and convincing. There was no indication whatsoever of a concocted recital. She was positive and firm in pointing her father, as the person who deflowered her. Her narration contains details only a real victim could remember and reveal. This Court is convinced that it can stand the meticulous scrutiny of any legal mind. AAA, who is a young and decent Filipina, would neither publicly admit that she was ravished and her honor tainted by no less than her father nor allow herself to be exposed to public ridicule and scandal leading to the destruction of her future and that of her family if such were not the truth. The determination of AAA in facing public trial, unmindful of the resulting humiliation and shame, that will bring her and her family obviously demonstrate her genuine desire to condemn the injustice that her father did to her and for her father to be apprehended and punished. Time and again, the Court ruled that whe the testimony of a rape victim meets the test of credibility, she is deemed to have said all that it is necessary to show that she has been violated.

The Court notes with significance that all throughout AAA's recollection of the bestiality which she suffered from her father, she was crying, and had lost her composure. This is a display of emotion of the pain that she feels whe asked to recount her traumatic experience. This added poignancy and credibility to the charges of rape which denounced her father."[25]

Accused-appellant tries to discredit AAA's testimony and claims that from 2002 to 2007, AAA's behavior seemed uncharacteristic of a supposed victim because she would still go to accused-appellant's house with or without an errand to do. Allegedly, this is contrary to normal human behavior as she was able to resume her life as normally as possible despite the alleged first rape incident.[26]

It is jurisprudential that there is no hard and fast rule with respect to a victim's reaction to the physical and psychological trauma attendant to the crime of rape. As held in *People vs. Romeo Valdez*: [27]

“Contrary to appellant's simplistic reasoning, there can be no hard and fast rule with respect to a victim's reaction to the physical and psychological trauma attendant to the crime of rape. In *People v. Silvano*, cited by the Solicitor General and involving similar factual circumstances, this Court stated:

Appellant further contends that her daughter's acts after the alleged rape, such as going to school the next day, leaving their home after more than two weeks had lapsed since the incident and reporting the same only when confronted by her mother are inconsistent with the behavior of a rape victim. The contention is without merit. The behavior and reaction of every person cannot be predicted with accuracy. It is a time-honored precept that "different people react differently to a given situation or type of situation and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience." Not every rape victim can be expected to act conformably to the usual expectations of every one. Some may shout; some may faint; and some may be shocked into insensibility; while others may openly welcome the intrusion.

The failure of the victim to immediately reveal his father's incestuous acts is not indicative of fabricated charges. It should be noted that:

"Many victims of rape never complain or file criminal charges against their rapists. They prefer to bear the ignominy and pain rather than reveal their shame to the world or risk rapists making good their threats to kill or hurt their victims." [citing *People v. Silvafan*, 151 SCRA 617, 629 (1987); and *People v. Cabrerros*, 314 Phil. 250 (1995), 244 SCRA 362]

xxx It is not uncommon for a young girl at such age to be intimidated into silence and conceal for sometime the violation of her honor, even by the mildest threat against her life. Silence is not an odd behavior of rape victims who do not always immediately go to the rooftop and denounce their assailants. This "natural reticence or aversion of the victims to reveal the humiliation attaching to the crime" is a "stigma they will have to bear indefinitely thereafter." The fear of these young victims of reprisals upon them or their families easily cows them into submission and silence. Worse, in incestuous rape, that fear which compels non-revelation is further reinforced by the moral ascendancy of the rapist over his ravished relative. As the father of the victim, appellant whom she called "Daddy" had assumed parental authority over her during her formative years. Undisputedly, he exerts strong moral influence over complainant." (Underlining supplied)

It is also settled that that there is no stereotypical form of reaction from a woman, much more a minor, when faced with a shocking and horrifying experience such as a sexual assault. Thus, minor victims cannot plausibly be judged by the norms of behavior expected from mature women. As held:

“Rape is more than a simple act of physical violation. For, it debases a woman's dignity, leaving a stigma on her honor and scarring her psyche for life. The Court notes that AA has barely reached puberty when the crime was committed. She grew up in a remote rural area in Bicol, expectedly ignorant of worldly ways. We have stated, in similar cases, that there is no stereotypical form of reaction from a woman, much more a minor, when faced with a shocking and horrifying experience such as a sexual assault. We, therefore, cannot plausibly judge AA by the norms of behavior expected from mature women. Far from being unnatural and highly

suspect, AA's silence about the incident is understandable. Given her tender age, she was easily cowered into silence by any form of threat coming from appellant. That AA chose to keep quiet until discovering the awful fact of her pregnancy arising from the rape incident does not in any way erode her credibility.”[28]

Also, accused-appellant's claims that AAA may have engaged in sexual intercourse in the past as the medico-legal officer testified that the sexual acts happened not once but several times and the healed lacerations did not occur on the date of the second incident on November 2, 2007.[29]

Suffice it to stress that in *People v. Bohol*,[30] the Supreme Court explained the treatment of medical evidence as not essential in proving rape cases. Thus:

“There is no gainsaying that medical evidence is merely corroborative, and is even dispensable, in proving the crime of rape. In child sexual abuse cases particularly, normal physical findings are common due to several factors, such as delay in seeking medical examination, the rapid healing of injuries, washing, urinating or defecating after the sexual assault, the elasticity of the hymen, changes in the hymenal tissue due to estrogen effect when the victim is at the pubertal stage, or the type of sexual molestation involved, such as fondling, oral sodomy, or cunnilingus, which leaves no physical marks. The child's disclosure is the most important evidence of the sexual abuse she has gone through.”

In *People vs. Teddy Magayon*,[31] the Supreme Court stressed that the medical examination of the victim, as well as the medical certificate, is merely corroborative in character and is not an indispensable element in rape. What is important is the credible, clear and positive testimony of the victim. Thus:

“With respect to the alleged conflicting testimonies of AAA and prosecution witness Asi, and the medical report indicating that the rape incident happened on August 31, 1996 and not on August 9, 1996, the same cannot be used to cast doubt on the victim's credibility. Witness Asi must be referring to the third rape incident, albeit not charged in the information, which was narrated by the victim AAA in her August 9, 1996 Sinumpaang Salaysay and which was formally offered by the prosecution as Exhibit "D." According to AAA's affidavit, she was molested by Magayon on three different occasions, although he was only charged for one of them: the first happened in her house; the second occurred the following day as Magayon ordered AAA to accompany him to harvest banana buds; and the third transpired on a Friday of the same month while AAA was riding on Magayon's sled. In the same vein, the medical report indicating a recent vaginal laceration could have been caused by the latest molestation suffered by AAA in the hands of accused-appellant.

In any case, the testimony of Asi and the medical report do not affect the outcome of the case since they are mere corroborative evidence. This is so because in rape cases, the accused may be convicted solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. Such is the case here. In fact, AAA's credibility is bolstered by her lack of ill motive to testify against Magayon and there is no iota of evidence where it can be inferred that she could have been impelled by such motive. In one case the defense argued that the testimony of the prosecution witness varied from that of the victim. This Court debunked said contention in this manner:

xxx xxx xxx

This Court in another case held that the testimony of a trustworthy victim prevails over the seemingly inconsistent medical report, thus:

Insofar as the evidentiary value of a medical examination is concerned, we have held that "a medical examination of the victim, as well as the medical certificate, is merely corroborative in character and is not an indispensable element in rape. What is important is that the testimony of private complainant about the incident is clear, unequivocal and credible." A medical examination is not indispensable to the prosecution of rape as long as the evidence on hand convinces the court that a conviction for rape is proper.

The defense also makes much of AAA's composure right after the molestation. This Court finds the same to be without merit, considering that different people react differently to a given situation. There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience." (Underlining supplied)

Accused-appellant's defense is bare denial. As to the rape incident committed in 2002, he merely said that he "cannot do that." [32] As regards the sexual assault on November 2, 2007, he allegedly woke up around 3:00 in the morning because his son was crying, and while holding his son on his left hand, he tried to wake up AAA with his right hand. When AAA woke up, she went out of the room and continued to sleep at the sala. [33]

It suffices to stress the basic rule that bare denial deserves no consideration and cannot prevail over the candid and positive testimony of AAA. As held:

"Appellant's denial cannot prevail over the positive testimony of the victim, who identified him as her malefactor. Elementary is the rule that "a bare denial is a negative declaration which deserves no consideration and cannot prevail over the affirmative testimony of the victim which is corroborated by more evidence. It cannot survive the positive identification of the malefactor by the victim. Affirmative testimony is far stronger than a negative one, especially when it comes from the mouth of a credible witness.

Moreover, in cases of incestuous rape, this Court usually gives more weight to the testimonies of young rape victims, especially a barrio lass like AAA. No woman would cry rape, undergo a public trial and relate the details of her defilement, unless motivated by her quest to right an injustice done to her." [34]

The trial court cannot thus be faulted in convicting accused-appellant of rape defined and penalized under Article 266-A (1), [35] in relation to Article 266-B [36] of the Revised Penal Code, as amended, in Criminal Case No. 5642.

Rape under Article 266-A (1), RPC is referred to as rape through sexual intercourse. Carnal knowledge is the central element and it must be proven beyond reasonable doubt. It is commonly denominated as "organ rape" or "penile rape" and must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. [37]

Rape under Art. 266-A(1)(d), RPC is commonly called statutory rape because a female of that age is deemed incapable of giving consent to the carnal knowledge. [38] The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman, and (2) that the woman is below 12 years of age. [39] In fine, where

the girl is below 12 years old, as in this case, the only subject of inquiry is whether “carnal knowledge” took place,[40] and conviction will lie provided sexual intercourse is proven.[41] Article 266-B, paragraph 6(1), however, qualifies the rape by a father of his daughter who is below 18 years of age. The presence of the qualifying circumstances of minority and relationship raises the crime of statutory rape to qualified rape.[42]

According to the sixth paragraph of Article 266-B, the death penalty shall be imposed if the crime of rape is committed “when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.”[43] In view, however, of the enactment on June 24, 2006 of Republic Act (RA) No. 9346,[44] the imposable penalty for accused-appellant is still reclusion perpetua.[45] The trial court, however, failed to indicate that accused-appellant shall not be eligible for parole. Under Section 3,[46] RA No. 9346, “[p]ersons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4180,[47] otherwise known as the Indeterminate Sentence Law, as amended.”[48] Accordingly, in Criminal Case No. 5642, accused-appellant must therefore suffer the penalty of reclusion perpetua without eligibility for parole.

As regards the civil liability of accused-appellant in Criminal Case No. 5642, the Court affirms the award of civil indemnity and moral damages each in the sum of P75,000.00. The civil indemnity and moral damages are P75,000 and P75,000, respectively, for each conviction of rape which is qualified by circumstances warranting the imposition of the death penalty.[49] The award of exemplary damages is also proper. Exemplary damages are awarded under Article 2230,[50] New Civil Code if there is an aggravating circumstance, whether ordinary or qualifying.[51] However, the Court increases the award of exemplary damages from P25,000.00 to P30,000.00 consistent with prevailing jurisprudence.[52]

However, the trial court erred in convicting accused-appellant of acts of lasciviousness only in Criminal Case No. 5643. The information charged accused-appellant with rape through sexual assault. But according to the trial court, the crime was acts of lasciviousness only because the prosecution failed to establish carnal knowledge. Said the trial court:

“In Criminal Case No. 5643, this Court, after careful assessment of the facts, find that the prosecution failed to prove beyond reasonable doubt that rape was consummated. The testimony of AAA does not establish carnal knowledge.

xxx xxx xxx

To insist that mere inserting of the fingers into the vagina of the private complainant is already carnal knowledge will effectively emasculate the critical distinction, between consummated and attempted rape, that the Supreme Court laid down in *People vs. Campuhan*, i.e., the touching of the female organ to constitute consummated rape should be construed in relation to the entry by the penis, however slight, into the labia majora. Hence, there should be evidence of the introduction of accused's penis into the aperture or within the pudendum of the vagina of private complainant, to consider the crime of Rape, either in its consummated or attempted stage.

The criminal act ascertained by the prosecution, which has the onus probandi in demonstrating in sufficient

detail the manner by which the crime was perpetrated, are the following: the accused touched AAA's private part, mashed her breast; inserted his fingers into AAA's vagina; and went on top of AAA, but was unable to have sexual intercourse because of the resistance offered by AAA by moving her body. There is no evidence of the introduction of the penis of accused into the aperture or within the pudendum of the vagina of private complainant. Under these circumstances, while rape through sexual assault can be rationally ruled out, this, of course, does not mean that no crime was perpetrated in Crim. Case No. 5643.

Although the indictment was for Rape through Sexual Assault, finding the guilt for a lesser offense of acts of lasciviousness is tenable considering that the latter offense is necessarily included in the former. Accused, being positive for having the intent to lie with his daughter, is guilty of the crime of acts of lasciviousness.”[53]

Rape under Article 266-A, paragraph 2[54] is commonly known as rape by sexual assault. The perpetrator, under any of the attendant circumstances mentioned in paragraph 1, commits this kind of rape 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.[55] It is otherwise called "instrument or object rape," also "gender-free rape," or the narrower "homosexual rape.”[56] The following are the elements of the crime of rape through sexual assault:

“(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; or
- (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 and intimidation;
- (b) When the woman is deprived of reason or otherwise unconscious; or
- (c) By means of fraudulent machination or grave abuse of authority; or
- (d) When the woman is under 12 years of age or demented.[57]

Clearly, accused-appellant is liable for the crime of rape through sexual assault in Criminal Case No. 5643. Jurisprudence is established that the insertion of accused-appellant's left finger into the victim's vagina constituted the crime of rape through sexual assault.[58] Even if AAA was already thirteen (13) years old at the time, the prosecution need not prove force or intimidation. In rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be

employed; moral influence or ascendancy takes the place of violence or intimidation.[59]

Rape by sexual assault in Article 266-A(2), RPC is punishable under Article 266-B by prision mayor, the duration of which is from six (6) years and one (1) day to twelve (12) years.[60] The penalty is reclusion temporal “if the rape is committed by any of the 10 aggravating/qualifying circumstances mentioned in this article,”[61] as in this case. In Criminal Case No. 5643, the qualifying circumstances of minority and relationship are present, as the rape by sexual assault was committed by a father against his then 13-year old daughter. Reclusion temporal ranges from twelve (12) years and one (1) day to twenty (20) years.[62]

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the RPC. Other than the aggravating/qualifying circumstances of minority and relationship which have been taken into account to raise the penalty to reclusion temporal, no other aggravating circumstance was alleged and proven.[63] Hence, the penalty shall be imposed in its medium period, or from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. On the other hand, the minimum term of the indeterminate sentence should be within the range of the penalty next lower in degree than that prescribed by the Code which is prision mayor or six (6) years and one (1) day to twelve (12) years.[64]

Thus, in Criminal Case No. 5643, accused-appellant should be meted the indeterminate sentence of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.[65]

While the Supreme Court in *People vs. Chingh*[66] imposed upon therein respondent the higher penalty provided in Section 5(b),[67] RA No. 7610[68] for the crime of rape through sexual assault, the condition which compelled the High Court to apply the penalty under said law instead of the penalty provided in the penultimate paragraph of Article 266-B, RPC, is not present. In the present case, the penalty imposable is reclusion temporal as the aggravating circumstances of minority and relationship were proven.

In *People vs. Bonaagua*,[69] wherein the penalty imposed was under the RPC, the Supreme Court explained that it applied the penalty under Section 5(b), RA No. 7610 in *People vs. Chingh* to avoid unfairness to the victim. Said the High Court:

“It must be clarified, however, that the reasoning expounded by the Court in the recent case of *People v. Armando Chingh y Parcia* [645 SCRA 573, March 16, 2011], for imposing upon the accused the higher penalty provided in Section 5 (b), Article III of R.A. No. 7610, has no application in the case at bar. In the said case, the Court, acknowledging the fact that to impose the lesser penalty would be unfair to the child victim, meted upon the accused the higher penalty of reclusion temporal in its medium period as provided in Section 5 (b), Article III of R.A. No. 7610, instead of the lesser penalty of prision mayor prescribed by Article 266-B for rape by sexual assault under paragraph 2, Article 266-A of the RPC. The Court elucidated:

In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under Art. 266-A, par. 2 of the Revised Penal Code, as amended by R.A. No. 8353, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is prision mayor, considering that VVV was below 12 years of age, and considering further that Armando's act of inserting his finger in VVV's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is reclusion temporal in its medium period.

The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Art. 366 in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of reclusion temporal in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by prisión mayor. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of RA No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."

In the present case, the factual milieu was different since the offender, Ireno, is the father of the minor victim. Hence, the offenses were committed with the aggravating/qualifying circumstances of minority and relationship, attendant circumstances which were not present in the Chingh case, which in turn, warrants the imposition of the higher penalty of reclusion temporal prescribed by Article 266-B of the RPC. Considering that the RPC already prescribes such penalty, the rationale of unfairness to the child victim that Chingh wanted to correct is absent. Hence, there is no more need to apply the penalty prescribed by R.A. No. 7610."

The Court also increases the civil liability of accused-appellant consistent with prevailing jurisprudence. AAA is entitled to P30,000.00 as civil indemnity and P30,000.00 as moral damages for rape through sexual assault. Exemplary damages in the amount of P30,000.00 is also awarded pursuant to prevailing jurisprudence.[70]

In addition, and in conformity with the current policy, the Court also imposes on all the monetary awards for damages interest at the legal rate of six percent (6%) per annum from the date of finality of this decision until fully paid.[71]

Verily, in criminal cases, an examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion, as an appeal in criminal cases throws the whole case open for review, it being the duty of the court to correct such error as may be found in the judgment appealed from.[72]

WHEREFORE, the trial court's Decision dated May 30, 2012 is AFFIRMED subject to the following MODIFICATIONS:

A. in Criminal Case No. 5642:

1. The penalty of reclusion perpetua is without eligibility for parole in accordance with Republic Act No. 9346;
2. The award of P25,000.00 as exemplary damages is increased to P30,000.00.

B. in Criminal Case No. 5643:

1. Accused-appellant Roger Pedres y Matuciño is convicted of the crime of rape through sexual assault and sentenced to suffer an indeterminate penalty of ten (10) years and one (1) day of prisión mayor, as minimum, to seventeen (17) years and four (4) months of reclusión temporal, as maximum;

2. The award of P25,000.00 as civil indemnity is increased to P30,000.00;

2. The award of P25,000.00 as moral damages is increased to P30,000.00;

3. The award of P10,000.00 as exemplary damages is increased to P30,000.00.

C. Interest at the legal rate of six percent (6%) per annum is imposed on all the monetary awards for damages, from the date of finality of this decision until full payment.

**SO ORDERED.**

Acosta, and, Garcia-Fernandez, JJ., concur.

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[1] pp. 29-44, Rollo

[2] The real name of the rape victim in this case is withheld and fictitious initials are used instead to represent her, her personal circumstances, or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members. (People vs. Cabalquinto, 502 SCRA 419 [2006])

[3] pp. 115-117, Rollo

[4] p. 1, Record, Criminal Case No. 5642

[5] p. 1, Record, Criminal Case No. 5643

[6] pp. 36 and 39-40, Record, Criminal Case No. 5643

[7] pp. 37-39, Record, Criminal Case No. 5642

[8] p. 44, Record, Criminal Case No. 5643

[9] pp. 63-64, Record, Criminal Case No. 5642

[10] pp. 73-74, Record, Criminal Case No. 5642; pp. 52-53, Record, Criminal Case No. 5643

[11] TSN dated February 20, 2009

[12] TSN dated March 27, 2009

[13] TSN dated June 5, 2009

[14] TSN dated October 30, 2009

[15] TSN dated February 19, 2010

[16] TSN dated September 17, 2010

[17] TSN dated June 3, 2011

[18] TSN dated October 11, 2011

[19] pp. 43-44, Rollo

[20] p. 73, Ibid.

[21] pp. 80-82, Ibid.

[22] People vs. Mira, 535 SCRA 543 [2007]

[23] p. 35, Rollo

[24] pp. 8-21, TSN dated February 19, 2010

[25] pp. 35-39, Rollo

[26] pp. 80-81, Rollo

**[27] 421 SCRA 376 [2004]**

[28] People vs. Ramon Cañales Rayles, 528 SCRA 409 [2007]

[29] pp. 82-83, Rollo

**[30] 363 SCRA 510 [2001]**

**[31] 626 SCRA 58 [2010]**

[32] p. 10, TSN dated June 3, 2011

[33] p. 10-12, Ibid

[34] People vs. Bataller, 361 SCRA 302 [2001]

[35] Art. 266-A. Rape, When and How Committed. - Rape is committed -

1) By a man who shall have carnal knowledge of a woman under any the following circumstances:

x x x x x x x x

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.

[36] Art. 266-B. Penalties. - x x x

x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

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;

x x x x x x x x

[37] People vs. Soria, 658 SCRA 483 [2012]

[38] People vs. Villaflores, 669 SCRA 365 [2012]

[39] People vs. Pangilinan, 518 SCRA 358 [2007]

[40] People vs. Garbida, 625 SCRA 98, [2010]

[41] People vs. Osma, Jr., 679 SCRA 428 [2012]

[42] People vs. Rayon, Sr., 689 SCRA 745 [2013]

[43] People vs. Padigos, 687 SCRA 245 [2012]

[44] An Act Prohibiting the Imposition of the Death Penalty in the Philippines

[45] SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

x x x x x x x x

[46] SEC. 3. Person convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[47] Republic Act No. 4103, as amended; "An Act to provide for an indeterminate sentence and parole for all persons convicted of certain crimes by the courts of the Philippine Islands; to create a Board of Indeterminate Sentence and to provide funds therefor and for other purposes;" approved and effective December 5, 1933

[48] People vs. Rarugal, 688 SCRA 646 [2013]

[49] People vs. dela Cruz, 529 SCRA 109 [2007]

[50] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[51] People vs. Castillo, 627 SCRA 452 [2010]

[52] People vs. Fragante, 642 SCRA 566 [2011]

[53] pp. 41-43, Rollo

[54] Art. 266-A. Rape, When and How Committed. - Rape is committed -

x x x x x x x x

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 oral orifice of another person.

[55] People vs. Soria, 658 SCRA 483 [2012]

[56] People vs. Abulon, 530 SCRA 675 [2007]

[57] People vs. Soria, 658 SCRA 483 [2012]

[58] See: FLORDELIZ vs. People, 614 SCRA 225 [2010]

[59] People vs. Corpuz, 577 SCRA 465 [2009]

[60] People vs. Lomaque, 697 SCRA 383 [2013]

[61] People vs. Soria, 658 SCRA 483 [2012]

[62] People vs. Alfonso, 628 SCRA 431 [2010]

[63] People vs. Bonaagua, 650 SCRA 620 [2011]

[64] People vs. Subesa, 660 SCRA 390 [2011]

[65] See; FLORDELIZ vs. People, 614 SCRA 225 [2010]; People vs. Bonaagua, 650 SCRA 620 [2011]; People vs. Subesa, 660 SCRA 390 [2011]

**[66] 645 SCRA 573 [2011]**

[67] SEC. 5. Child Prostitution and Other Sexual Abuse. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

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 subjected to other sexual abuse: Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and 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.

x x x x x x x x

[68] An Act providing for stronger deterrence and special protection against child abuse, exploitation and discrimination, providing penalties for its violation, and for other purposes; otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act;” approved on June 17, 1992

**[69] 650 SCRA 620 [2011]**

[70] People vs. Lomaque, 697 SCRA 383 [2013]

[71] Pielago vs. People, 693 SCRA 476 [2013]

[72] People vs. Bonaagua, 650 SCRA 620 [2011]

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