

JOEMAR ORTEGA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 151085. August 20, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition[1] for Review on Certiorari under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated October 26, 2000 which affirmed in toto the Decision[3] of the Regional Trial Court (RTC) of Bacolod City, Branch 50, dated May 13, 1999, convicting petitioner Joemar Ortega[4] (petitioner) of the crime of Rape.

The Facts

Petitioner, then about 14 years old,[5] was charged with the crime of Rape in two separate informations both dated April 20, 1998, for allegedly raping AAA,[6] then about eight (8) years of age. The accusatory portions thereof respectively state:

Criminal Case No. 98-19083

That sometime in August, 1996, in the Municipality of XXX, Province of YYY, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there, (sic) willfully, unlawfully and feloniously (sic) had carnal knowledge of and/or sexual intercourse with the said AAA, a minor, then about 6 years old, against her will.

CONTRARY TO LAW.[7]

Criminal Case No. 98-19084

That on or about the 1st day of December, 1996, in the Municipality of XXX, Province of YYY, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there, (sic) willfully, unlawfully and feloniously (sic) had carnal knowledge of and/or sexual intercourse with the said AAA, a minor, then about 6 years old, against her will.

CONTRARY TO LAW.[8]

Upon arraignment on September 10, 1998, petitioner pleaded not guilty to the offense charged.[9] Thus, trial on the merits ensued. In the course of the trial, two varying versions arose.

Version of the Prosecution

On February 27, 1990, AAA was born to spouses FFF and MMM.[10] Among her siblings CCC, BBB, DDD, EEE and GGG, AAA is the only girl in the family. Before these disturbing events, AAA's family members were close friends of petitioner's family, aside from the fact that they were good neighbors. However, BBB caught petitioner raping his younger sister AAA inside their own home. BBB then informed their mother MMM who in

turn asked AAA.[11] There, AAA confessed that petitioner raped her three (3) times on three (3) different occasions.

The first occasion happened sometime in August 1996. MMM left her daughter AAA, then 6 years old and son BBB, then 10 years old, in the care of Luzviminda Ortega[12] (Luzviminda), mother of petitioner, for two (2) nights because MMM had to stay in a hospital to attend to her other son who was sick.[13] During the first night at petitioner's residence, petitioner entered the room where AAA slept together with Luzviminda and her daughter. Petitioner woke AAA up and led her to the sala. There petitioner raped AAA. The second occasion occurred the following day, again at the petitioner's residence. Observing that nobody was around, petitioner brought AAA to their comfort room and raped her there. AAA testified that petitioner inserted his penis into her vagina and she felt pain. In all of these instances, petitioner warned AAA not to tell her parents, otherwise, he would spank her.[14] AAA did not tell her parents about her ordeal.

The third and last occasion happened in the evening of December 1, 1996. Petitioner went to the house of AAA and joined her and her siblings in watching a battery-powered television. At that time, Luzviminda was conversing with MMM. While AAA's siblings were busy watching, petitioner called AAA to come to the room of CCC and BBB. AAA obeyed. While inside the said room which was lighted by a kerosene lamp, petitioner pulled AAA behind the door, removed his pants and brief, removed AAA's shorts and panty, and in a standing position inserted his penis into the vagina of AAA.[15] AAA described petitioner's penis as about five (5) inches long and the size of two (2) ballpens. She, likewise, narrated that she saw pubic hair on the base of his penis.[16]

This last incident was corroborated by BBB in his testimony. When BBB was about to drink water in their kitchen, as he was passing by his room, BBB was shocked to see petitioner and AAA both naked from their waist down in the act of sexual intercourse. BBB saw petitioner holding AAA and making a pumping motion. Immediately, BBB told petitioner to stop; the latter, in turn, hurriedly left. Thereafter, BBB reported the incident to his mother, MMM.[17]

MMM testified that when she asked AAA about what BBB saw, AAA told her that petitioner inserted his fingers and his penis into her vagina. MMM learned that this was not the only incident that petitioner molested AAA as there were two previous occasions. MMM also learned that AAA did not report her ordeal to them out of fear that petitioner would spank her. MMM testified that when BBB reported the matter to her, petitioner and Luzviminda already left her house. After waiting for AAA's brothers to go to sleep, MMM, with a heavy heart, examined AAA's vagina and she noticed that the same was reddish and a whitish fluid was coming out from it. Spouses FFF and MMM were not able to sleep that night. The following morning, at about four o'clock, MMM called Luzviminda and petitioner to come to their house. MMM confronted Luzviminda about what petitioner did to her daughter, and consequently, she demanded that AAA should be brought to a doctor for examination.[18]

MMM, together with Luzviminda, brought AAA to Dr. Lucifree Katalbas[19] (Dr. Katalbas), the Rural Health Officer of the locality who examined AAA and found no indication that she was molested.[20] Refusing to accept such findings, on December 12, 1996, MMM went to Dr. Joy Ann Jocson (Dr. Jocson), Medical Officer IV of the Bacolod City Health Office. Dr. Jocson made an unofficial written report[21] showing that there were "abrasions on both right and left of the labia minora and a small laceration at the posterior fourchette." She also found that the minor injuries she saw on AAA's genitals were relatively fresh; and that such abrasions were superficial and could disappear after a period of 3 to 4 days. Dr. Jocson, however, indicated in her certification that her findings required the confirmation of the Municipal Health Officer of the locality.

Subsequently, an amicable settlement [22] was reached between the two families through the DAWN Foundation,

an organization that helps abused women and children. Part of the settlement required petitioner to depart from their house to avoid contact with AAA. [23] As such, petitioner stayed with a certain priest in the locality. However, a few months later, petitioner went home for brief visits and in order to bring his dirty clothes for laundry. At the sight of petitioner, AAA's father FFF was infuriated and confrontations occurred. At this instance, AAA's parents went to the National Bureau of Investigation (NBI) which assisted them in filing the three (3) counts of rape. However, the prosecutor's office only filed the two (2) instant cases.

Version of the Defense

Petitioner was born on August 8, 1983 to spouses Loreto (Loreto) and Luzviminda Ortega. [24] He is the second child of three siblings – an elder brother and a younger sister. Petitioner denied the accusations made against him. He testified that: his parents and AAA's parents were good friends; when MMM left AAA and her brothers to the care of his mother, petitioner slept in a separate room together with BBB and CCC while AAA slept together with Luzviminda and his younger sister; he never touched or raped AAA or showed his private parts to her; petitioner did not threaten AAA in any instance; he did not rape AAA in the former's comfort room, but he merely accompanied and helped AAA clean up as she defecated and feared the toilet bowl; in the process of washing, he may have accidentally touched AAA's anus; on December 1, 1996, petitioner together with his parents, went to AAA's house; [25] they were dancing and playing together with all the other children at the time; while they were dancing, petitioner hugged and lifted AAA up in a playful act, at the instance of which BBB ran and reported the matter to MMM, who at the time was with Luzviminda, saying that petitioner and AAA were having sexual intercourse; [26] petitioner explained to MMM that they were only playing, and that he could not have done to AAA what he was accused of doing, as they were together with her brothers, and he treated AAA like a younger sister; [27] BBB was lying; AAA's parents and his parents did not get angry at him nor did they quarrel with each other; petitioner and his parents peacefully left AAA's house at about nine o'clock in the evening; however, at about four o'clock in the morning, petitioner and his parents were summoned by MMM to go to the latter's house; upon arriving there they saw BBB being maltreated by his father as AAA pointed to BBB as the one who molested her; and MMM and Luzviminda agreed to bring AAA to a doctor for examination. [28]

Luzviminda corroborated the testimony of her son. She testified that: her son was a minor at the time of the incident; CCC and BBB were the children of MMM in her first marriage, while AAA and the rest of her siblings were of the second marriage; CCC and BBB are half-brothers of AAA; when MMM entrusted AAA and her brothers to her sometime in August of 1996, she slept with AAA and her youngest daughter in a separate room from petitioner; on December 1, 1996, she was at AAA's house watching television and conversing with MMM, while FFF and Loreto were having a drinking spree in the kitchen; from where they were seated, she could clearly see all the children, including petitioner and AAA, playing and dancing in the dining area; she did not hear any unusual cry or noise at the time; while they were conversing, BBB came to MMM saying that petitioner and AAA were having sexual intercourse; upon hearing such statement, Luzviminda and MMM immediately stood up and looked for them, but both mothers did not find anything unusual as all the children were playing and dancing in the dining area; Luzviminda and MMM just laughed at BBB's statement; the parents of AAA, at that time, did not examine her in order to verify BBB's statement nor did they get angry at petitioner or at them; and they peacefully left AAA's house. However, the following day, MMM woke Luzviminda up, saying that FFF was spanking BBB with a belt as AAA was pointing to BBB nor to petitioner as the one who molested her. At this instance, Luzviminda intervened, telling FFF not to spank BBB but instead, to bring AAA to a doctor for examination. Luzviminda accompanied MMM to Dr. Katalbas who found no indication that AAA was molested. She also accompanied her to Dr. Jocson. After getting the results of the examination conducted by Dr. Jocson, they went to the police and at this instance only did Luzviminda learn that MMM accused petitioner of raping AAA. Petitioner vehemently denied to Luzviminda that he raped AAA. Thereafter, MMM and Luzviminda went to their employer

who recommended that they should seek advice from the Women's Center. At the said Center, both agreed on an amicable settlement wherein petitioner would stay away from AAA. Thus, petitioner stayed with a certain priest in the locality for almost two (2) years. But almost every Saturday, petitioner would come home to visit his parents and to bring his dirty clothes for laundry. Every time petitioner came home, FFF bad-mouthed petitioner, calling him a rapist. Confrontations occurred until an altercation erupted wherein FFF allegedly slapped Luzviminda. Subsequently, AAA's parents filed the instant cases.[29]

The RTC's Ruling

On May 13, 1999, the RTC held that petitioner's defenses of denial cannot prevail over the positive identification of petitioner as the perpetrator of the crime by AAA and BBB, who testified with honesty and credibility. Moreover, the RTC opined that it could not perceive any motive for AAA's family to impute a serious crime of Rape to petitioner, considering the close relations of both families. Thus, the RTC disposed of this case in this wise:

FOR ALL THE FOREGOING, the Court finds the accused Joemar Ortega Y Felisario GUILTY beyond reasonable doubt as Principal by Direct Participation of the crime of RAPE as charged in Criminal Cases Nos. 98-19083 and 98-19084 and there being no aggravating or mitigating circumstance, he is sentenced to suffer the penalty of Two (2) Reclusion Temporal in its medium period. Applying the Indeterminate Sentence Law, the accused shall be imprisoned for each case for a period of Six (6) years and One (1) day of Prision Mayor, as minimum, to Fifteen (15) years of Reclusion Temporal, as maximum. The accused is condemned to pay the offended party AAA, the sum of P100,000.00 as indemnification for the two (2) rapes (sic).

Aggrieved, petitioner appealed the RTC Decision to the CA.[30]

Taking into consideration the age of petitioner and upon posting of the corresponding bail bond for his provisional liberty in the amount of P40,000.00, the RTC ordered the petitioner's release pending appeal.[31]

The CA's Ruling

On October 26, 2000, the CA affirmed in toto the ruling of the RTC, holding that the petitioner's defense of denial could not prevail over the positive identification of the petitioner by the victim AAA and her brother BBB, which were categorical, consistent and without any showing of ill motive. The CA also held that the respective medical examinations conducted by the two doctors were irrelevant, as it is established that the slightest penetration of the lips of the female organ consummates rape; thus, hymenal laceration is not an element of rape. Moreover, the CA opined that petitioner acted with discernment as shown by his covert acts. Finally, the CA accorded great weight and respect to the factual findings of the RTC, particularly in the evaluation of the testimonies of witnesses.

Petitioner filed his Motion for Reconsideration[32] of the assailed Decision which the CA denied in its Resolution[33] dated November 7, 2001.

Hence, this Petition based on the following grounds:

I.

THE HONORABLE COURT OF APPEALS HAS OVERLOOKED CERTAIN FACTS OF SUBSTANCE AND VALUE WHICH IF CONSIDERED MIGHT AFFECT THE RESULT OF THE CASE.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT FAILED TO APPRECIATE THE MEDICAL FINDINGS OF DR. LUCIFREE KATALBAS.

III.

THE FINDINGS OF THE LOWER COURT, AFFIRMED BY THE APPELLATE COURT, THAT PETITIONER-APPELLANT IN FACT COMMITTED AND IS CAPABLE OF COMMITTING THE ALLEGED RAPE WITHIN THE RESIDENCE OF THE VICTIM WHERE SEVERAL OF THE ALLEGED VICTIM'S FAMILY MEMBERS AND THEIR RESPECTIVE MOTHERS WERE PRESENT IS IMPROBABLE AND CONTRARY TO HUMAN EXPERIENCE.

IV.

THE HONORABLE APPELLATE COURT ERRED IN UPHOLDING THE FACTS SET FORTH BY THE ALLEGED VICTIM REGARDING THE CIRCUMSTANCES ATTENDING THE COMMISSION OF RAPE SOMETIME IN AUGUST 1996.[34]

Petitioner argues that, while it is true that the factual findings of the CA are conclusive on this Court, we are not prevented from overturning such findings if the CA had manifestly overlooked certain facts of substance and value which if considered might affect the result of the case. Petitioner stresses that from the testimonies of AAA and BBB, it can be deduced that penetration was achieved; thus, AAA felt pain. Petitioner contends that assuming the allegations of AAA are true that petitioner inserted his fingers and his penis into her vagina, certainly such acts would leave certain abrasions, wounds and/or lacerations on the genitalia of AAA, taking into consideration her age at the time and the alleged size of petitioner's penis. However, such allegation is completely belied by the medical report of Dr. Katalbas who, one day after the alleged rape, conducted a medical examination on AAA and found that there were no signs or indications that AAA was raped or molested. Petitioner submits that the CA committed a grave error when it disregarded such medical report since it disproves the allegation of the existence of rape and, consequently, the prosecution failed to prove its case; thus, the presumption of innocence in favor of the petitioner subsists. Moreover, petitioner opines that like AAA, petitioner is also a child of the barrio who is innocent, unsophisticated and lacks sexual experience. As such, it is incredible and contrary to human reason that a 13- year-old boy would commit such act in the very dwelling of AAA, whose reaction to pain, at the age of six, could not be controlled or subdued. Petitioner claims that poverty was MMM's motive in filing the instant case, as she wanted to extort money from the parents of the petitioner. Petitioner points out that the medical report of Dr. Jocson indicated that the abrasions that were inflicted on the genitalia of AAA were relatively fresh and the same could disappear within a period of 3 to 4 days. Considering that Dr. Jocson conducted the medical examination on December 12, 1996, or after the lapse of eleven (11) days after the alleged incident of rape, and that AAA's parents only filed the instant case after almost a year, in order to deter Luzviminda from filing a case of slander by deed against FFF, it is not inconceivable that MMM inflicted said abrasions on AAA to prove their case and to depart from the initial confession of AAA that it was actually BBB who raped her. Finally, petitioner submits that AAA and BBB were merely coached by MMM to fabricate these stories.[35]

On the other hand, respondent People of the Philippines through the Office of the Solicitor General (OSG) contends that: the arguments raised by the petitioner are mere reiterations of his disquisitions before the CA; the RTC, as affirmed by the CA, did not rely on the testimonies of both doctors since despite the absence of abrasions, rape is consummated even with the slightest penetration of the lips of the female organ; what is relevant in this case is the reliable testimony of AAA that petitioner raped her in August and December of 1996; even in the absence of force, rape was committed considering AAA's age at that time; as such, AAA did not have any ill motive in accusing petitioner; and it is established that the crime of rape could be committed even in the presence of other people nearby. Moreover, the OSG relies on the doctrine that the evaluation made by a trial court is accorded the highest respect as it had the opportunity to observe directly the demeanor of a witness and to determine whether said witness was telling the truth or not. Lastly, the OSG claims that petitioner acted with discernment when he committed the said crime, as manifested in his covert acts.[36]

However, Republic Act (R.A.) No. 9344,[37] or the Juvenile Justice and Welfare Act of 2006, was enacted into law on April 28, 2006 and it took effect on May 20, 2006.[38] The law establishes a comprehensive system to manage children in conflict with the law[39] (CICL) and children at risk[40] with child-appropriate procedures and comprehensive programs and services such as prevention, intervention, diversion, rehabilitation, re-integration and after-care programs geared towards their development. In order to ensure its implementation, the law, particularly Section 8[41] thereof, has created the Juvenile Justice and Welfare Council (JJWC) and vested it with certain duties and functions[42] such as the formulation of policies and strategies to prevent juvenile delinquency and to enhance the administration of juvenile justice as well as the treatment and rehabilitation of the CICL. The law also provides for the immediate dismissal of cases of CICL, specifically Sections 64, 65, 66, 67 and 68 of R.A. No. 9344's Transitory Provisions.[43]

The said Transitory Provisions expressly provide:

Title VIII

Transitory Provisions

SECTION 64. Children in Conflict with the Law Fifteen (15) Years Old and Below. -- Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs, as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

SECTION 65. Children Detained Pending Trial. -- If the child is detained pending trial, the Family Court shall also determine whether or not continued detention is necessary and, if not, determine appropriate alternatives for detention. If detention is necessary and he/she is detained with adults, the court shall immediately order the transfer of the child to a youth detention home.

SECTION 66. Inventory of "Locked-up" and Detained Children in Conflict with the Law. -- The PNP, the BJMP and the BUCOR are hereby directed to submit to the JJWC, within ninety (90) days from the effectivity of this Act, an inventory of all children in conflict with the law under their custody.

SECTION 67. Children Who Reach the Age of Eighteen (18) Years Pending Diversion and Court Proceedings. -- If a child reaches the age of eighteen (18) years pending diversion and court proceedings, the appropriate diversion authority in consultation with the local social welfare and development officer or the Family Court in consultation with the Social Services and Counseling Division (SSCD) of the Supreme Court, as the case may be, shall determine the appropriate disposition. In case the appropriate court executes the judgment of conviction, and unless the child in conflict with the law has already availed of probation under Presidential Decree No. 603 or other similar laws, the child may apply for probation if qualified under the provisions of the Probation Law.

SECTION 68. Children Who Have Been Convicted and are Serving Sentences. -- Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable laws.

Ostensibly, the only issue that requires resolution in this case is whether or not petitioner is guilty beyond reasonable doubt of the crime of rape as found by both the RTC and the CA. However, with the advent of R.A.

No. 9344 while petitioner's case is pending before this Court, a new issue arises, namely, whether the pertinent provisions of R.A. No. 9344 apply to petitioner's case, considering that at the time he committed the alleged rape, he was merely 13 years old.

In sum, we are convinced that petitioner committed the crime of rape against AAA. In a prosecution for rape, the complainant's candor is the single most important factor. If the complainant's testimony meets the test of credibility, the accused can be convicted solely on that basis.[44] The RTC, as affirmed by the CA, did not doubt AAA's credibility, and found no ill motive for her to charge petitioner of the heinous crime of rape and to positively identify him as the malefactor. Both courts also accorded respect to BBB's testimony that he saw petitioner having sexual intercourse with his younger sister. While petitioner asserts that AAA's poverty is enough motive for the imputation of the crime, we discard such assertion for no mother or father like MMM and FFF would stoop so low as to subject their daughter to the tribulations and the embarrassment of a public trial knowing that such a traumatic experience would damage their daughter's psyche and mar her life if the charge is not true.[45] We find petitioner's claim that MMM inflicted the abrasions found by Dr. Jocson in the genitalia of AAA, in order to extort money from petitioner's parents, highly incredible. Lastly, it must be noted that in most cases of rape committed against young girls like AAA who was only 6 years old then, total penetration of the victim's organ is improbable due to the small vaginal opening. Thus, it has been held that actual penetration of the victim's organ or rupture of the hymen is not required.[46] Therefore, it is not necessary for conviction that the petitioner succeeded in having full penetration, because the slightest touching of the lips of the female organ or of the labia of the pudendum constitutes rape.[47]

However, for one who acts by virtue of any of the exempting circumstances, although he commits a crime, by the complete absence of any of the conditions which constitute free will or voluntariness of the act, no criminal liability arises.[48] Therefore, while there is a crime committed, no criminal liability attaches. Thus, in *Guevarra v. Almodovar*,[49] we held:

[I]t is worthy to note the basic reason behind the enactment of the exempting circumstances embodied in Article 12 of the RPC; the complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused. In expounding on intelligence as the second element of *dolus*, Albert has stated:

"The second element of *dolus* is intelligence; without this power, necessary to determine the morality of human acts to distinguish a licit from an illicit act, no crime can exist, and because . . . the infant (has) no intelligence, the law exempts (him) from criminal liability."

It is for this reason, therefore, why minors nine years of age and below are not capable of performing a criminal act.

In its Comment [50] dated April 24, 2008, the OSG posited that petitioner is no longer covered by the provisions of Section 64 of R.A. No. 9344 since as early as 1999, petitioner was convicted by the RTC and the conviction was affirmed by the CA in 2001. R.A. No. 9344 was passed into law in 2006, and with the petitioner now approximately 25 years old, he no longer qualifies as a child as defined by R.A. No. 9344. Moreover, the OSG claimed that the retroactive effect of Section 64 of R.A. No. 9344 is applicable only if the child-accused is still below 18 years old as explained under Sections 67 and 68 thereof. The OSG also asserted that petitioner may avail himself of the provisions of Section 38 [51] of R.A. No. 9344 providing for automatic suspension of sentence if finally found guilty. Lastly, the OSG argued that while it is a recognized principle that laws favorable to the accused may be given retroactive application, such principle does not apply if the law itself provides for conditions for its application.

We are not persuaded.

Section 6 of R.A. No. 9344 clearly and explicitly provides:

SECTION 6. Minimum Age of Criminal Responsibility. -- A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

Likewise, Section 64 of the law categorically provides that cases of children 15 years old and below, at the time of the commission of the crime, shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer (LSWDO). What is controlling, therefore, with respect to the exemption from criminal liability of the CICL, is not the CICL's age at the time of the promulgation of judgment but the CICL's age at the time of the commission of the offense. In short, by virtue of R.A. No. 9344, the age of criminal irresponsibility has been raised from 9 to 15 years old. [52]

Given this precise statutory declaration, it is imperative that this Court accord retroactive application to the aforementioned provisions of R.A. No. 9344 pursuant to the well-entrenched principle in criminal law - *favorabilia sunt amplianda adiosa restringenda*. Penal laws which are favorable to the accused are given retroactive effect. [53] This principle is embodied in Article 22 of the Revised Penal Code, which provides:

Art. 22. Retroactive effect of penal laws. -- Penal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws, a final sentence has been pronounced and the convict is serving the same.

We also have extant jurisprudence that the principle has been given expanded application in certain instances involving special laws. [54] R.A. No. 9344 should be no exception.

In fact, the legislative intent for R.A. No. 9344's retroactivity is even patent from the deliberations on the bill in the Senate, quoted as follows:

Sections 67-69 On Transitory Provisions

Senator Santiago. In Sections 67 to 69 on Transitory Provisions, pages 34 to 35, may I humbly propose that we should insert, after Sections 67 to 69, the following provision:

ALL CHILDREN WHO DO NOT HAVE CRIMINAL LIABILITY UNDER THIS LAW PENDING THE CREATION OF THE OFFICE OF JUVENILE WELFARE AND RESTORATION (OJWR) AND THE LOCAL COUNCIL FOR THE PROTECTION OF CHILDREN (LCPC) WITHIN A YEAR, SHALL BE IMMEDIATELY TRANSFERRED TO DSWD INSTITUTIONS, AND DSWD SHALL UNDERTAKE DIVERSION PROGRAMS FOR THEM, PRIORITIZING THE YOUNGER CHILDREN BELOW 15 YEARS OF AGE AND THE LIGHTER OFFENSES.

The only question will be: Will the DSWD have enough facilities for these adult offenders?

Senator Pangilinan, Mr. President, according to the CWC, the DSWD does not have the capability at the moment. It will take time to develop the capacity.

Senator Santiago. Well, we can say that they shall be transferred whenever the facilities are ready.

Senator Pangilinan. Yes. Mr. President, just a clarification. When we speak here of children who do not have criminal liability under this law, we are referring here to those who currently have criminal liability, but because of the retroactive effect of this measure, will now be exempt. It is quite confusing.

Senator Santiago. That is correct.

Senator Pangilinan. In other words, they should be released either to their parents or through a diversion program, Mr. President. That is my understanding.

Senator Santiago. Yes, that is correct. But there will have to be a process of sifting before that. That is why I was proposing that they should be given to the DSWD, which will conduct the sifting process, except that apparently, the DSWD does not have the physical facilities.

Senator Pangilinan. Mr. President, conceptually, we have no argument. We will now have to just craft it to ensure that the input raised earlier by the good Senator is included and the capacity of the DSWD to be able to absorb these individuals. Likewise, the issue should also be incorporated in the amendment.

The President. Just a question from the Chair. The moment this law becomes effective, all those children in conflict with the law, who were convicted in the present Penal Code, for example, who will now not be subject to incarceration under this law, will be immediately released. Is that the understanding?

Senator Pangilinan. Yes, Mr. President.

Senator Santiago. They would immediately fall under

Senator Pangilinan. The diversion requirements, Mr. President.

Senator Santiago. Yes.

The President. But since the facilities are not yet available, what will happen to them?

Senator Santiago. Well, depending on their age, which has not yet been settled provides, for example, for conferencing family mediation, negotiation, apologies, censure, et cetera. These methodologies will apply. They do not necessarily have to remain in detention.

Senator Pangilinan. Yes, that is correct, Mr. President. But it will still require some sort of infrastructure, meaning, manpower. The personnel from the DSWD will have to address the counseling. So, there must be a transition in terms of building the capacity and absorbing those who will benefit from this measure.

The President. Therefore, that should be specifically provided for as an amendment.

Senator Pangilinan. That is correct, Mr. President.

The President. All right. Is there any objection? [Silence] There being none, the Santiago amendment is accepted. [55]

x x x x

PIMENTEL AMENDMENTS

x x x x

Senator Pimentel.

x x x x

Now, considering that laws are normally prospective, Mr. President, in their application, I would like to suggest to the Sponsor if he could incorporate some kind of a transitory provision that would make this law

apply also to those who might already have been convicted but are awaiting, let us say, execution of their penalties as adults when, in fact, they are juveniles.

Senator Pangilinan. Yes, Mr. President. We do have a provision under the Transitory Provisions wherein we address the issue raised by the good Senator, specifically, Section 67. For example, "Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer." So that would be giving retroactive effect.

Senator Pimentel. Of cases that are still to be prosecuted.

Senator Pangilinan. Yes.

Senator Pimentel. What about those that have already been prosecuted? I was trying to cite the instance of juvenile offenders erroneously convicted as adults awaiting execution.

Senator Pangilinan. Mr. President, we are willing to include that as an additional amendment, subject to style.

Senator Pimentel. I would certainly appreciate that because that is a reality that we have to address, otherwise injustice will really be . . .

Senator Pangilinan. Yes, Mr. President, we would also include that as a separate provision.

The President. In other words, even after final conviction if, in fact, the offender is able to prove that at the time of the commission of the offense he is a minor under this law, he should be given the benefit of the law.

Senator Pimentel. Yes, Mr. President. That is correct.

Senator Pangilinan. Yes, Mr. President. We accept that proposed amendment. [56]

The Court is bound to enforce this legislative intent, which is the dominant factor in interpreting a statute. Significantly, this Court has declared in a number of cases, that intent is the soul of the law, viz.:

The intent of a statute is the law. If a statute is valid it is to have effect according to the purpose and intent of the lawmaker. The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to the intent. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act. Intent is the spirit which gives life to a legislative enactment. In construing statutes the proper course is to start out and follow the true intent of the legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature.[57]

Moreover, penal laws are construed liberally in favor of the accused.[58] In this case, the plain meaning of R.A. No. 9344's unambiguous language, coupled with clear lawmakers' intent, is most favorable to herein petitioner. No other interpretation is justified, for the simple language of the new law itself demonstrates the legislative intent to favor the CICL.

It bears stressing that the petitioner was only 13 years old at the time of the commission of the alleged rape. This was duly proven by the certificate of live birth, by petitioner's own testimony, and by the testimony of his mother. Furthermore, petitioner's age was never assailed in any of the proceedings before the RTC and the CA. Indubitably, petitioner, at the time of the commission of the crime, was below 15 years of age. Under R.A. No. 9344, he is exempted from criminal liability.

However, while the law exempts petitioner from criminal liability for the two (2) counts of rape committed against AAA, Section 6 thereof expressly provides that there is no concomitant exemption from civil liability. Accordingly, this Court sustains the ruling of the RTC, duly affirmed by the CA, that petitioner and/or his parents are liable to pay AAA P100,000.00 as civil indemnity. This award is in the nature of actual or compensatory damages, and is mandatory upon a conviction for rape.

The RTC, however, erred in not separately awarding moral damages, distinct from the civil indemnity awarded to the rape victim. AAA is entitled to moral damages in the amount of P50,000.00 for each count of rape, pursuant to Article 2219 of the Civil Code, without the necessity of additional pleading or proof other than the fact of rape. Moral damages are granted in recognition of the victim's injury necessarily resulting from the odious crime of rape.[59]

A final note. While we regret the delay, we take consolation in the fact that a law intended to protect our children from the harshness of life and to alleviate, if not cure, the ills of the growing number of CICL and children at risk in our country, has been enacted by Congress. However, it has not escaped us that major concerns have been raised on the effects of the law. It is worth mentioning that in the Rationale for the Proposed Rule on Children Charged under R.A. No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, it was found that:

The passage of Republic Act No. 9344 or the Juvenile Justice and Welfare Act of 2006 raising the age of criminal irresponsibility from 9 years old to 15 years old has compounded the problem of employment of children in the drug trade several times over. Law enforcement authorities, Barangay Kagawads and the police, most particularly, complain that drug syndicates have become more aggressive in using children 15 years old or below as couriers or foot soldiers in the drug trade. They claim that Republic Act No. 9344 has rendered them ineffective in the faithful discharge of their duties in that they are proscribed from taking into custody children 15 years old or below who openly flaunt possession, use and delivery or distribution of illicit drugs, simply because their age exempts them from criminal liability under the new law.[60]

The Court is fully cognizant that our decision in the instant case effectively exonerates petitioner of rape, a heinous crime committed against AAA who was only a child at the tender age of six (6) when she was raped by the petitioner, and one who deserves the law's greater protection. However, this consequence is inevitable because of the language of R.A. No. 9344, the wisdom of which is not subject to review by this Court.[61] Any perception that the result reached herein appears unjust or unwise should be addressed to Congress. Indeed, the Court has no discretion to give statutes a meaning detached from the manifest intent and language of the law. Our task is constitutionally confined only to applying the law and jurisprudence to the proven facts, and we have done so in this case.[62]

WHEREFORE, in view of the foregoing, Criminal Case Nos. 98-19083 and 98-19084 filed against petitioner Joemar F. Ortega are hereby DISMISSED. Petitioner is hereby referred to the local social welfare and development officer of the locality for the appropriate intervention program. Nevertheless, the petitioner is hereby ordered to pay private complainant AAA, civil indemnity in the amount of One Hundred Thousand Pesos (P100,000.00) and moral damages in the amount of One Hundred Thousand Pesos (P100,000.00). No costs.

Let a copy of this Decision be furnished the two Houses of Congress and the Juvenile Justice and Welfare Council (JJWC).

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Chico-Nazario, JJ., concur.

[*] Additional member replacing Associate Justice Ruben T. Reyes per Raffle dated July 30, 2008.

[1] Rollo, pp. 12-32.

[2] Penned by Associate Justice Ruben T. Reyes (now a member of this Court), with Associate Justices Mariano M. Umali and Rebecca De Guia-Salvador concurring; id. at 35-52.

[3] Penned by Judge Roberto S. Chiongson; id. at 54-75.

[4] Also referred to as Jomar Ortega, Joemar Ortiga and Joemart Ortiga in other pleadings and documents.

[5] As the birth certificate shows that petitioner was born on August 8, 1983 (records, p. 157), he was only thirteen (13) years old in August and December 1, 1996. He was already fourteen (14) years old at the time of the filing of the two Informations charging him of rape.

[6] Per this Court's Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC, as well as our ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419), pursuant to Republic Act No. 9262 also known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members other than the accused are to be withheld and fictitious initials are instead used to protect the victim's privacy. Likewise, the exact address of the victim is to be deleted (*People v. Rentoria*, G.R. No. 175333, September 21, 2007, 533 SCRA 708).

[7] CA rollo, pp. 21-22.

[8] Id. at 23-24.

[9] RTC Order dated September 10, 1998; records, p. 83.

[10] Certificate of Live Birth of AAA; id. at 167.

[11] TSN, October 26, 1998, pp. 8-33.

[12] Also referred to as Luzviminda Ortiga in other pleadings and documents.

[13] TSN, November 6, 1998, p. 13.

[14] Id. at 13-19.

[15] Id. at 33-50.

[16] Id. at 73-74.

[17] *Supra* note 11, at 9-34.

[18] TSN, October 28, 1998, pp. 21-64.

[19] Also referred to as Dr. Lucifre Katalbas or Dr. Katalbas in other pleadings and documents.

[20] Records, pp. 155-155-A.

[21] Id. at 112.

[22] *Supra* note 16, at 65. Please also see Certification dated February 5, 1998, attesting to the fact that an amicable settlement was entered into by the two families; records, p. 156.

[23] TSN, January 19, 1999, pp. 4-13.

[24] *Supra* note 5.

[25] TSN, March 16, 1999, pp. 3-26.

[26] Petitioner's Counter-Affidavit dated January 6, 1998; records, pp. 158-159.

[27] TSN, March 25, 1999, pp. 7-8.

[28] Supra note 25, at 17-24.

[29] TSN, January 26, 1999, pp. 8-87.

[30] Notice of Appeal and Urgent Motion for Release on Recognizance pending Appeal dated May 17, 1999; records, pp. 251-252.

[31] Release Order dated June 11, 1999; id. at 275.

[32] Rollo, pp. 76-83.

[33] Id. at 53.

[34] Id. at 21-22.

[35] Supra note 1. Please see also Petitioner's Reply dated February 10, 2003; id at. 113-119.

[36] OSG's Comment dated May 27, 2002; id. at 96-107.

[37] Entitled AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES.

[38] Declarador v. Gubaton, G.R. No. 159208, August 18, 2006, 499 SCRA 341, 350.

[39] SECTION 4. Definition of Terms. -- The following terms as used in this Act shall be defined as follows:

x x x x

(e) "Child in Conflict with the Law" refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

x x x x

[40] (d) "Child at Risk" refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to, the following:

- (1) being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse, are unwilling, or, unable to provide protection for the child;
- (2) being exploited including sexually or economically;
- (3) being abandoned or neglected, and after diligent search and inquiry, the parent or guardian cannot be found;
- (4) coming from a dysfunctional or broken family or without a parent or guardian;
- (5) being out of school;
- (6) being a street child;
- (7) being a member of a gang;
- (8) living in a community with a high level of criminality or drug abuse; and
- (9) living in situations of armed conflict.

[41] SECTION 8. Juvenile Justice and Welfare Council (JJWC). -- A Juvenile Justice and Welfare Council (JJWC) is hereby created and attached to the Department of Justice and placed under its administrative

supervision. The JJWC shall be chaired by an Undersecretary of the Department of Social Welfare and Development. It shall ensure the effective implementation of this Act and coordination among the following agencies:

- (a) Council for the Welfare of Children (CWC);
- (b) Department of Education (DepEd);
- (c) Department of the Interior and Local Government (DILG);
- (d) Public Attorney's Office (PAO);
- (e) Bureau of Corrections (BUCOR);
- (f) Parole and Probation Administration (PPA);
- (g) National Bureau of Investigation (NBI);
- (h) Philippine National Police (PNP);
- (i) Bureau of Jail Management and Penology (BJMP);
- (j) Commission on Human Rights (CHR);
- (k) Technical Education and Skills Development Authority (TESDA);
- (l) National Youth Commission (NYC); and
- (m) Other institutions focused on juvenile justice and intervention programs.

The JJWC shall be composed of representatives, whose ranks shall not be lower than director, to be designated by the concerned heads of the following departments or agencies:

- (a) Department of Justice (DOJ);
- (b) Department of Social Welfare and Development (DSWD);
- (c) Council for the Welfare of Children (CWC);
- (d) Department of Education (DepEd);
- (e) Department of the Interior and Local Government (DILG);
- (f) Commission on Human Rights (CHR);
- (g) National Youth Commission (NYC); and
- (h) Two (2) representatives from NGOs, one to be designated by the Secretary of Justice and the other to be designated by the Secretary of Social Welfare and Development.

The JJWC shall convene within fifteen (15) days from the effectivity of this Act. The Secretary of Justice and the Secretary of Social Welfare and Development shall determine the organizational structure and staffing pattern of the JJWC.

The JJWC shall coordinate with the Office of the Court Administrator and the Philippine Judicial Academy to ensure the realization of its mandate and the proper discharge of its duties and functions, as herein provided.

[42] SECTION 9. Duties and Functions of the JJWC. -- The JJWC shall have the following duties and functions:

- (a) To oversee the implementation of this Act;
- (b) To advise the President on all matters and policies relating to juvenile justice and welfare;
- (c) To assist the concerned agencies in the review and redrafting of existing policies/regulations or in the formulation of new ones in line with the provisions of this Act;
- (d) To periodically develop a comprehensive 3 to 5-year national juvenile intervention program, with the participation of government agencies concerned, NGOs and youth organization;
- (e) To coordinate the implementation of the juvenile intervention programs and activities by national government agencies and other activities which may have an important bearing on the success of the entire national juvenile intervention program. All programs relating to juvenile justice and welfare shall be adopted in consultation with

the JJWC;

(f) To formulate and recommend policies and strategies in consultation with children for the prevention of juvenile delinquency and the administration of justice, as well as for the treatment and rehabilitation of the children in conflict with the law;

(g) To collect relevant information and conduct continuing research and support evaluations and studies on all matters relating to juvenile justice and welfare, such as, but not limited to:

(1) the performance and results achieved by juvenile intervention programs and by activities of the local government units and other government agencies;

(2) the periodic trends, problems and causes of juvenile delinquency and crimes; and

(3) the particular needs of children in conflict with the law in custody.

The data gathered shall be used by the JJWC in the improvement of the administration of juvenile justice and welfare system.

The JJWC shall set up a mechanism to ensure that children are involved in research and policy development.

(h) Through duly designated persons and with the assistance of the agencies provided in the preceding section, to conduct regular inspections in detention and rehabilitation facilities and to undertake spot inspections on their own initiative in order to check compliance with the standards provided herein and to make the necessary recommendations to appropriate agencies;

(i) To initiate and coordinate the conduct of trainings for the personnel of the agencies involved in the administration of the juvenile justice and welfare system and the juvenile intervention program;

(j) To submit an annual report to the President on the implementation of this Act; and

(k) To perform such other functions as may be necessary to implement the provisions of this Act.

[43] JJWC's Council Resolution No. 3, Series of 2006 entitled GUIDELINES TO IMPLEMENT THE TRANSITORY PROVISIONS OF R.A. 9344, dated July 11, 2006.

[44] *People of the Philippines v. Jose Magbanua*, G.R. 176265, April 30, 2008.

[45] *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 401.

[46] *People v. Villarama*, 445 Phil. 323, 340 (2003).

[47] *People v. Bascugin*, G.R. No. 144195, May 25, 2004, 429 SCRA 140, 150, citing *People v. Clopino*, 290 SCRA 432 (1998).

[48] REYES, THE REVISED PENAL CODE, BOOK I, 14TH ED., 1998, p. 204, citing Guevara.

[49] G.R. No. 75256, January 26, 1989, 169 SCRA 476, 482 (Citations omitted) (Emphasis supplied).

[50] Rollo, pp. 128-133.

[51] Sec. 38 of R.A. No. 9344 provides, to wit:

SECTION 38. Automatic Suspension of Sentence. -- Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

[52] Office of the Court Administrator (OCA) Circular No. 115-2006 entitled GUIDELINES ON THE TRANSITORY PROVISIONS OF R.A. 9344 OR THE JUVENILE JUSTICE AND WELFARE ACT, dated August 10, 2006.

[53] *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 718.

[54] *Go v. Dimagiba*, G.R. No. 151876, June 21, 2005, 460 SCRA 451, citing *People v. Langit*, 392 Phil. 94, 119 (2000), *Gonzales v. Court of Appeals*, 343 Phil. 297, 306 (1997), *People v. Ganguso*, 320 Phil. 324, 340 (1995), and *People v. Simon*, 234 SCRA 555, 570 (1994).

This doctrine follows the rule enunciated under Art. 10 of the Revised Penal Code which provides that the provisions thereof apply supplementarily to special laws.

[55] Deliberations of the Senate on Senate Bill No. 1402, November 9, 2005, pp. 47-50 (Emphasis supplied).

[56] Deliberations of the Senate on Senate Bill No. 1402, November 22, 2005, pp. 27-29 (Emphasis supplied).

[57] *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 160528, October 9, 2006, 504 SCRA 91, 101-102, citing *Inding v. Sandiganbayan*, 434 SCRA 388 (2004), *National Tobacco Administration v. Commission on Audit*, 370 Phil. 793 (1999), and *Philippine National Bank v. Office of the President*, 322 Phil. 6, 14, (1996); *Ongsiako v. Gamboa*, 86 Phil. 50, 57 (1950); *Torres v. Limjap*, 56 Phil. 141, 145-146 (1931) citing *SUTHERLAND, STATUTORY CONSTRUCTION*, Vol. II, pp. 693-695.

[58] *Celino, Sr. v. Court of Appeals*, G.R. No. 170562, June 29, 2007, 526 SCRA 195, 202, citing *People v. Ladjalam*, 395 Phil. 1 (2000).

[59] *People v. Blancaflor*, 466 Phil. 86, 103 (2004), citing *People v. Viajedor*, 401 SCRA 312 (2003).

[60] A.M. No. 07-8-2-SC - Rule on Children Charged Under Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, effective November 5, 2007, p. 23.

[61] *People v. Garcia*, 424 Phil. 158, 190 (2002), citing *People v. Ladjalam*, *supra* note 58.

[62] *Evangelista v. Sistoza*, 414 Phil. 874, 881 (2001), citing *People v. Ladjalam*, *id.*

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