

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERACLEO ABELLO Y FORTADA, ACCUSED-APPELLANT.

G.R. No. 151952. March 25, 2009

Ponente: BRION, J.

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BRION, J.:

We review in this appeal the decision of the Court of Appeals in CA-G.R. CR No. 23746,[1] which affirmed with modification the joint decision of the Regional Trial Court (RTC), Branch 170, Malabon City, in Criminal Case Nos. 19623-MN, 19624-MN and 19625-MN.[2]

Appellant Heracleo Abello y Fortada (Abello) stands convicted of one (1) count of violation of paragraph 2, Article 266-A of the Revised Penal Code (RPC), as amended;[3] and two (2) counts of violation of sexual abuse under Republic Act (R.A.) No. 7610 (Child Abuse Law). For these crimes, he was sentenced to suffer imprisonment of twelve (12) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, and two reclusion perpetuas, respectively.

The following Informations (all dated July 8, 1998) were filed against the appellant:

Criminal Case No. 19623-MN

That on or about the 8[th] day of July 1998, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being a step-father (sic) of victim AAA,[4] with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously putting his penis inside the mouth of said AAA, against her will and without her consent.

CONTRARY TO LAW.[5]

Criminal Case No. 19624-MN

That on or about the 30[th] day of June 1998, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being a step-father (sic) of victim AAA, a (sic) years old, and Polio Striken (sic), with lewd design by means of violence and intimidation, did then and there willfully, unlawfully and feloniously mashing her breast, against her will and without her consent.[6]

CONTRARY TO LAW.

Criminal Case No. 19625-MN

That on or about the 2[nd] day of July 1998, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being a step-father (sic) of victim AAA, a (sic) 21 years old, and Polio Striken (sic), with lewd design by means of violence and intimidation, did then and there willfully, unlawfully and feloniously mashing her breast, against her will and without her consent.[7]

CONTRARY TO LAW.

Abello, with the assistance of counsel, pleaded not guilty to these charges. The cases were jointly tried since they arose from similar incidents involving the same parties.[8] The prosecution relied on testimony of the victim, AAA, who identified Abello as the perpetrator of the rape and sexual abuses against her. Abello's defense was confined to his denial of the accusations.

The Background Facts

The RTC summarized the facts as follows:

The victim in these cases is twenty-one (21) year old AAA. She contracted polio when she was seven (7) months old. She was not able to study on account of her difficulty in walking. Hence, she could only read and write her name including that of her friends.

On June 30, 1998 at around 4:00 o'clock (sic) in the early morning, AAA was sleeping in their house in Kalyeng Impiyerno, Navotas, Metro Manila along with her sister-in-law and nephew. She was suddenly awakened when Abello ... mashed her breast. Come July 2, 1999 at around 3:00 a.m. Abello again mashed the breast of AAA practically under the same previous situation while the latter was sleeping. In these two occasions AAA was able to recognize Abello because of the light coming from outside which illuminated the house. Then on July 8, 1998, at around 2:00 a.m., Abello this time placed his soft penis inside the mouth of AAA. The latter got awakened when Abello accidentally kneeled on her right hand. AAA exclaimed "Aray" forcing the accused to hurriedly enter his room. He was nevertheless seen by AAA. The victim on the same date reported the incident to her sister-in-law and mother.

Amidst the accusation of raping and twice sexually abusing AAA, Abello interposed the defense of denial. In all of the instances, Abello claimed that he merely stepped on the victim at the sala on his way to his room after retiring home.

The RTC found Abello guilty under the three Informations. The dispositive portion of the decision states:

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

- In Criminal Case No. 19623-MN, the Court finds accused Heracleo Abello y Fortada guilty beyond reasonable doubt of the crime of Violation of Paragraph 2, Article 226-A, Republic Act [No.] 8353 and hereby sentences him to suffer an indeterminate penalty of Seven (7) Years of prision mayor, as minimum, to Thirteen (13) Years of reclusion temporal, as maximum;[9]
- In Criminal Case Nos. 19624-MN and 19625-MN, the Court finds accused Heracleo Abello y Fortada guilty beyond reasonable doubt of two (2) counts of Violation of Section 5, Article III of Republic Act [No.] 7610 and hereby sentences him in each of the two cases to suffer an indeterminate penalty of Four (4) Years of prision correctional (sic), as minimum, to Twelve (12) Years and One (1) Day of prision mayor, as maximum.[10] [Emphasis theirs]

The CA affirmed Abello's conviction on appeal but modified the penalties imposed. The dispositive portion of its decision reads:

WHEREFORE, the appealed judgement (sic) is hereby AFFIRMED subject to the following MODIFICATIONS:

- In Criminal Case No. 19623-MN, appellant is hereby sentenced to suffer an indeterminate penalty of twelve (12) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum; Appellant is further ordered to pay complainant, AAA, moral damages in the amount of P50,000.00
- In Criminal Case Nos. 19624-MN and 19625-MN, appellant is hereby sentenced to suffer the penalty of reclusion perpetua in each of the two cases.[11]

The Issues

Abello contends in his Brief that:[12]

- The court a quo erred in not absolving the accused-appellant of the crime of violation of paragraph 2, Article 266-A of the Revised Penal Code, as amended;
- The court a quo has committed an error in not exculpating the accused-appellant of the crime of violation of Section 5, Article III of R.A. No. 7610.[13]

He emphasizes that it was impossible for him to have committed these crimes considering that: (a) he is AAA's stepfather who has a healthy sexual relationship with her mother; (b) AAA was not alone during these alleged incidents; and (c) AAA admitted that she was asleep when these incidents happened making it likely that she could have just dreamed of them.

The Office of the Solicitor General maintains the correctness of Abello's conviction on the basis of AAA's positive and candid narration covering the elements constituting the crimes of rape by sexual assault and sexual abuse.

Our Ruling

We affirm Abello's conviction on all three charges.

Determining the guilt or innocence of an accused, based solely on the victim's testimony, is not an easy task in reviewing convictions for rape and sexual abuse cases. For one, these crimes are usually committed in private so that only the two direct parties can attest to what happened; thus, the testimonies are largely uncorroborated as to the exact details of the rape, and are usually in conflict with one another. With this in mind, we exercise utmost care in scrutinizing the parties' testimonies to determine who of them is believable. Oftentimes, we rely on the surrounding circumstances as shown by the evidence, and on common human experience.

We carefully reviewed AAA's testimony in light of the issues Abello raised in his appeal, and in light of matters he did not raise but which materially affect his innocence or culpability. After due consideration, we find no reason to doubt the veracity of AAA's testimony and her version of the events that led to the filing of the present charges.

In her testimony, AAA positively and unequivocally narrated the details of her rape and sexual abuse she suffered in Abello's hands, as follows:

Q: Do you remember any unusual incident that happened on June 30, 1999, inside your mother's house at around 4:00 o'clock (sic)?

A: I remembered on that date that he hold (sic) my breast, sir.

Q: Who hold (sic) your breast?

A: He is the one, sir. (Witness pointed to the accused.)

Q: What else did he do to you at that time?

A: That was again repeated on July 2 more or less 3:00 o'clock (sic), sir.

Q: What did he do to you on July 2 at 3:00 o'clock (sic)?

A: The same he mashed my breast, sir.

Q: Was that repeated?

A: On July 8 at around 2:00 o'clock in the morning, sir.

Q: What happened then?

A: He placed his penis on (sic) my mouth, sir.

Q: While his penis was inside your mouth, what else was he doing to you?

A: He suddenly entered the room of my mother because I saw him and I was sure that it was him who was doing that to me, sir.

Q: When was that when the accused placed his penis inside your mouth?

A: I was sleeping at that time, sir.

Q: Were you awoken (sic)?

A: Yes, sir.

Q: When you were awakened, what did you see?

A: His organ was in my mouth while I was sleeping, I got awoken (sic) because I felt pain after he accidentally kneeled on my right hand and because of that I cried "aray," x x x

x x x

Q: So, it cannot take one minute or thirty seconds that the penis of the accused was inserted on (sic) your mouth open?

A: I notice that my mouth was open, Your Honor.

Q: So, you were not sure whether it lasted for one second or one minute?

A: It lasted for one second, Your Honor.

Q: And you were awakened?

A: Yes, Your Honor.

Q: How do you know that it was the penis of the accused?

A: I saw it, Your Honor.

Q: Whom did you see?

A: Him, you honor.

Q: While the penis was inside your mouth, were you sleeping or awoken already?

A: I got awoken because of the placement of his penis on (sic) my mouth, sir.

Q: Was his penis soft or hard?

A: I got hold of it, Your honor.

x x x

Q: How were you able to hold the penis?

A: I hold (sic) the penis to push it out on (sic) my mouth, Your honor.[14]

We note that both the RTC and CA found AAA's testimony to be positive, direct, and categorical, while the RTC found the defense's version too strained to be believed for being contrary to human experience; the RTC refused to accept the claim that Abello was prosecuted for rape and sexual abuse simply because he stepped with his knees on her stepdaughter's hand.[15] A material point we noted is that Abello could not say why AAA would falsely accuse him.[16] The substance and tenor of the testimony and the element of motivation are critical points for us since a straightforward, categorical and candid narration by the victim deserves credence if no ill motive can be shown driving her to falsely testify against the accused.[17]

Our consideration of Abello's defense of denial and his other arguments lead us to reject them for the following reasons:

First, the issue of his credibility is reduced to a choice between the offended party's positive testimony and the denial of the accused. In this case, AAA categorically and unmistakably identified Abello as her rapist and sexual abuser;[18] the identification was positive because the scene was illuminated by a light coming from outside the parties' house at the time of the incidents.[19] She also testified that during the rape, she saw Abello suddenly enter the room of her mother after she yelled in pain when he stepped with his knee on her hand.[20] Settled jurisprudence tells us that the mere denial of one's involvement in a crime cannot take precedence over the positive testimony of the offended party.[21]

Abello likewise admitted that in the wee hours of the mornings of June 30, July 2, and July 8, 1998, he passed by the sala of their house where AAA and her companions were sleeping.[22] This admission shows that he had the opportunity and the means to commit these crimes in terms of his location and close proximity to AAA who, together with her companions, were then sleeping.

Second, we flatly reject Abello's argument that his relationship with AAA insulates him from the crimes charged. Our judicial experience tells us that in handling these types of cases, the relationship between the offender and the offended party has never been an obstacle to the commission of the crime against chastity. Although alarming to admit, this kind and degree of relationship is now quite common in these types of crimes. Studies show a rising incidence of family and domestic violence where 98.8% of the victims are women; an estimated 26.7% of these cases involve sexual abuse, while 33% involve incest committed against children.[23] In these cases, the male spouse, the father of the victim, or close male relatives, have been identified as frequent abusers. [24]

Third, we find the claim that AAA could have just dreamed of the incidents complained of, to be preposterous. It is highly unlikely that a woman in her right mind would expose and declare herself a victim of rape and sexual abuse, when she would thereby open herself to the humiliating experience of a public trial and to the possible social stigma of being a victim of rape and sexual abuse. In the normal course, a woman will not expose herself to these risks unless she is certain of what happened and she seeks to obtain justice against the perpetrator. We note in this regard AAA's categorical testimony that she filed the criminal charges because she did not know what to do; she thus reported the incidents to her mother and sister-in-law who thereafter sought police assistance.[25]

The record also shows that AAA lived a sheltered life cared for by her relatives because of her polio.[26] Unless the contrary is shown, it is highly unusual for her to have the worldly sophistication to invent or fabricate the charges she made, particularly one made against her stepfather. A charge against one's stepfather, too, is unusual in our socio-cultural context because of the respect we give our elders, and is only understandable if there is a deeply felt cause for complaint. We particularly note that no imputation has been made at any time in the case that AAA is not normal, save for her physical disability, or has a strained relationship with her stepfather prior to the acts charged.

Based on these considerations and in the absence of clear indications of errors in giving credence to AAA's

testimony, we find no reason to disturb the factual findings of the RTC and the CA.

Rape by sexual assault

R.A. No. 8353 which took effect on October 22, 1997 introduced into the Philippine legal system the concept of rape by sexual assault. This amendment not only reclassified rape as a crime against persons, but also expanded the definition of rape from the traditional concept of a sexual intercourse committed by a man against an unwilling woman.

The second paragraph of Article 266-A of the RPC, as amended defines rape by sexual assault as committed by any person who, under any of the circumstance mentioned in paragraph 1 ... shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

The elements of rape by sexual assault are:

- (1) That the offender commits an act of sexual assault;
- (2) That the act of sexual assault is committed by any of the following means:
 - (a) By inserting his penis into another person's mouth or anal orifice; or

x x x
- (3) That the act of sexual assault is accomplished under any of the following circumstances:
 - (a) By using force or intimidation;
 - (b) When a woman is deprived of reason or otherwise unconscious;

x x x[27]

AAA's testimony covers the commission of the sexual assault through the insertion of Abello's male organ into her mouth; AAA also consistently identified Abello as the perpetrator of the sexual assault. These statements satisfy the first and second elements of the rape.

Her testimony that she was roused from sleep with Abello's male organ inserted in her mouth, goes into the third element of the crime.[28] In this respect, we observe that both the RTC and the CA failed to notice the variance between the allegations in the Information for rape and that proven at the trial on the mode of committing the offense. The Information alleges "force and intimidation" as the mode of commission, while AAA testified during the trial that she was asleep at the time it happened and only awoke to find Abello's male organ inside her mouth.

This variance is not fatal to Abello's conviction for rape by sexual assault. In *People v. Corpuz*, [29] we ruled that a variance in the mode of commission of the offense is binding upon the accused if he fails to object to evidence showing that the crime was committed in a different manner than what was alleged. In the present case, Abello did not object to the presentation of evidence showing that the crime charged was committed in a different manner than what was stated in the Information. Thus, the variance is not a bar to Abello's conviction of the crime charged in the Information.

Acts of lasciviousness

Abello was convicted of two (2) counts of sexual abuse under Section 5 (b), Article III of R.A. No. 7610, which defines and penalizes acts of lasciviousness committed against a child:

Section 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.

x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 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; and

The essential elements of this provision are:

- The accused commits the act of sexual intercourse or lascivious conduct.
- The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
- The child whether male or female, is below 18 years of age. [30]

Paragraph (h), Section 2 of the Implementing Rules and Regulations of R.A. 7610[31] (implementing rules) defines lascivious conduct as a crime committed through the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others. Records show that AAA duly established this element when she positively testified that Abello fondled her breasts on two separate occasions while she slept.

The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse. This second element requires evidence proving that: (a) AAA was either exploited in prostitution or subjected to sexual abuse and (b) she is a child as defined under R.A. No. 7610.

In *Olivarez v. Court of Appeals*,[32] we explained that the phrase, "other sexual abuse" in the above provision covers not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult. In the latter case, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's will.[33]

In the present case, the prosecution failed to present any evidence showing that force or coercion attended Abello's sexual abuse on AAA; the evidence reveals that she was asleep at the time these crimes happened and only awoke when she felt her breasts being fondled. Hence, she could have not resisted Abello's advances as she was unconscious at the time it happened. In the same manner, there was also no evidence showing that Abello compelled her, or cowed her into silence to bear his sexual assault, after being roused from sleep. Neither is there evidence that she had the time to manifest conscious lack of consent or resistance to Abello's assault.

More importantly, AAA cannot be considered a child under Section 3(a) of R.A. No. 7610 which reads:

(a) "Children" refers to person 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; [Emphasis supplied]

The implementing rules elaborated on this definition when it defined a "child" as one who is below 18 years of age or over said age who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of herself fully because of a physical or mental disability or condition or of protecting

herself from abuse.

While the records show that the RTC, the CA and the investigating prosecutor who filed the corresponding Informations, considered AAA's polio as a physical disability that rendered her incapable of normal function, no evidence was in fact presented showing the prosecution's compliance with the implementing rules. Specifically, the prosecution did not present any evidence, testimonial or documentary, of any medical evaluation or medical finding from a qualified physician, psychologist or psychiatrist attesting that AAA's physical condition rendered her incapable of fully taking care of herself or of protecting herself against sexual abuse. Under the circumstances, we cannot consider AAA a child under Section 3(a) of R.A. No. 7610.

In arriving at this conclusion, we consider that since R.A. No. 7610 is a special law referring to a particular class in society, the prosecution must show that the victim truly belongs to this particular class to warrant the application of the statute's provisions. Any doubt in this regard we must resolve in favor of the accused.

From another perspective, we also note that no evidence has been adduced showing that AAA's physical disability prevented her from resisting Abello's attacks; the evidence only reveals that Abello took advantage of the opportunity presented to him (i.e., that AAA and her companions who were then asleep) to commit the sexual abuses; this inference is supported by the fact that he stopped his sexual assault when AAA started to awaken. It can also be reasonably deduced from these circumstances that Abello sought to commit the sexual abuses with impunity -- without AAA's knowledge and without any interference on her part.

In light of these conclusions, we cannot hold Abello liable under R.A. No. 7610. However, we still find him liable for acts of lasciviousness under Article 336 of the RPC, as amended.

In *Olivarez*, we emphasized that the character of the crime is not determined by the caption or preamble of the information or from the specification of the provision of law alleged to have been violated; the crime committed is determined by the recital of the ultimate facts and circumstances in the complaint or information.^[34] In the present case, although the two Informations wrongly designated R.A. No. 7610 as the law violated; the allegations therein sufficiently constitute acts punishable under Article 336 of the RPC whose elements are:

- That the offender commits any act of lasciviousness;
- That the offended party is another person of either sex; and
- That it is done under any of the following circumstances:
 - By using force or intimidation; or
 - When the offended party is deprived of reason or otherwise unconscious; or
 - When the offended party is under 12 years of age or is demented.^[35]

The presence of the first and second elements of the offense has been earlier discussed, albeit in the consideration of a charge under R.A. No. 7610. The prosecution established these elements through AAA's testimony that her breasts were fondled while she was asleep. While she did not actually see Abello fondling her (as the fondling was done while she was asleep and stopped when she awakened), she related that she identified Abello because she saw him enter her mother's room immediately after she felt her breasts fondled and after he stepped with his knees on her hand.^[36] AAA also testified that Abello was illuminated by a light coming from outside their house.^[37] Further, the perpetrator could only be Abello as the only other occupants of the house at the time were her mother, her sister-in-law and her young nephew who were all asleep.^[38] The third element was proven by her testimony that, on two occasions, Abello mashed her breasts while she was sleeping.^[39]

As we discussed above, the Informations alleged the element of violence and intimidation as the mode of committing the sexual abuses, contrary to what the prosecution established during the trial that AAA was asleep on the two occasions when the offenses were committed. Pursuant to our above discussions citing Corpuz,[40] the deficiencies in the allegations will not relieve Abello of liability under the circumstances of this case.

The Penalty

The three Informations all alleged the stepfather-stepdaughter relationship between AAA and Abello. Relationship as an alternative circumstance under Article 15 of the RPC, as amended, and is an aggravating circumstance in crimes against chastity and in rape.[41] This modifying circumstance, however, was not duly proven in the present case due to the prosecution's failure to present the marriage contract between Abello and AAA's mother. If the fact of marriage came out in the evidence at all, it was via an admission by Abello of his marriage to AAA's mother. This admission, however, is inconclusive evidence to prove the marriage to AAA's mother,[42] as the marriage contract still remains the best evidence to prove the fact of marriage.[43] This stricter requirement is only proper as relationship is an aggravating circumstance that increases the imposable penalty, and hence must be proven by competent evidence.

Rape by sexual assault is penalized by prision mayor which has a range of six (6) years and one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be within the full range of the penalty that is one degree lower than prision mayor, in this case, prision correccional which has a range of penalty from six (6) months and one (1) day to six (6) years. In the absence of any mitigating or aggravating circumstance, the maximum of the indeterminate penalty shall be taken within the medium period of prision mayor, or eight (8) years and one (1) day to ten (10) years.[44] Hence, Abello may be sentenced to suffer an indeterminate penalty ranging from six (6) months and one (1) day to six (6) years of prision correccional, as minimum, to eight (8) years and one (1) day to ten (10) years, as maximum, for the crime of rape.

The imposable penalty for acts of lasciviousness under Article 336 of the RPC, as amended, is prision correccional. Under Scale No. 1 of Article 71 of this law, one degree lower from prision correccional is arresto mayor which has a range of penalty from one (1) month and one (1) day to six (6) months. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of arresto mayor. Absent any mitigating or aggravating circumstance in the case, the maximum of the indeterminate penalty shall be taken from the medium period of prision correccional or two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. Accordingly, Abello may be meted an indeterminate penalty ranging from one (1) month and one (1) day to six (6) months of arresto mayor, as minimum, to two (2) years, four (4) months and one (1) day to four (4) years and two (2) months of prision correccional, as maximum, for each count of acts of lasciviousness.

The Civil Liability

A victim of rape by sexual assault is entitled to an award of P30,000 as civil indemnity and P30,000 as moral damages.[45] Civil indemnity is separate and distinct from the award of moral damages which is automatically granted in rape cases.[46] Moral damages are additionally awarded without need of further pleading or proof; it is presumed that the victim necessarily suffered injury due to the odiousness of the crime.[47]

For acts of lasciviousness, AAA is awarded P20,000 as civil indemnity and P30,000 as moral damages for each count in line with existing jurisprudence.[48]

The Court further awards exemplary damages in the amount of P25,000 for the rape through sexual assault committed upon AAA and P2,000 for each count of acts of lasciviousness.[49] Article 2230 of the Civil Code

allows an award of exemplary damages when the crime is committed with one or more aggravating circumstances.

Although not alleged in the Informations (as now required by Sections 8 and 9, Rule 110 of the 2000 Revised Rules of Criminal Procedure),[50] the aggravating circumstance of dwelling was nonetheless proven during the trial when AAA testified that she was sexually abused by Abello while she was asleep in their house.[51]

Additionally, Article 266-B of the RPC, as amended, recognizes knowledge by the offender of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime, as a qualifying circumstance. Again, this knowledge by Abello of AAA's polio was duly proven during the trial; this matter was not alleged in the Information.[52]

These aggravating and qualifying circumstances of dwelling and Abello's knowledge of AAA's physical disability may be appreciated in awarding the victim exemplary damages in line with our ruling in *People v. Catubig*[53] where we held that the presence of an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to an award of exemplary damages.

WHEREFORE, premises considered, the decision dated January 3, 2002 of the Court of Appeals in CA-G.R. CR No. 23746 is AFFIRMED with the following MODIFICATIONS in that:

(1) In Criminal Case No. 19623, we find appellant Heracleo Abello y Fortada GUILTY of rape by sexual assault defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, as amended. We sentence him to suffer an indeterminate prison term of six (6) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum. He is ORDERED to pay AAA P30,000.00 as civil liability; P30,000.00 as moral damages and P25,000.00 as exemplary damages;

(2) In Criminal Case Nos. 19624-MN and 19625-MN, we find appellant Heracleo Abello y Fortada GUILTY of acts of lasciviousness, defined and penalized under Article 336 of the Revised Penal Code, as amended. For each count, he is sentenced to an indeterminate prison term of six (6) months of arresto mayor, as minimum, to four (4) years and two (2) months of prision correccional, as maximum. He is further ORDERED to pay AAA the amounts of P20,000.00 as civil indemnity; P30,000.00 as moral damages and P2,000.00 as exemplary damages, in each case.

SO ORDERED.

Tinga[**], (Acting Chairperson), Austria-Martinez, Corona, and Velasco, Jr., JJ. concur.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 592 dated March 19, 2009.

[1] Dated January 3, 2002; CA rollo, pp. 80-92; penned by Associate Justice Oswaldo D. Agcaoili (ret.) with Associate Justice Jose L. Sabio, Jr. and Associate Justice Mariano C. del Castillo, concurring.

[2] Dated November 22, 1999; id., pp. 12-15; penned by Hon. Benjamin T. Antonio.

[3] Republic Act No. 8353 (New Rape Law) .

[4] The real name of the victim as well as those of her immediate family members are withheld per Republic Act (R.A.) No. 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes) and R.A. No. 9262 (An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes).

[5] I Records, p. 1.

[6] II Records, p. 1.

[7] Id., p. 2.

[8] In Criminal Case No. 19623-MN, the defense stipulated on the marking of the prosecution's exhibits, i.e. Sworn Statement of AAA (Exhibit "A") and a Referral Slip issued by the Navotas Police Department (Exhibit "B"). These markings were adopted in Criminal Case Nos. 19624-MN and 19625-MN per Joint Order dated September 24, 1998, II Records, p. 6.

[9] This should be Article 266-A of R.A. No. 8353.

[10] CA r ollo, p. 15.

[11] Id., p. 92.

[12] Id. , pp. 26-40.

[13] Id. , p. 28.

[14] TSN, January 19, 1999, pp. 4-6.

[15] Rollo, pp. 14 - 15 and 84.

[16] TSN, July 26, 1999, p. 4.

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