NIEL F. LLAVE,PETITIONER, VS. PEOPLE OF THE PHILIPPINES,RESPONDENT.

G.R. NO. 166040. April 26, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a Petition for Review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 26962 affirming, with modification, the Decision[2] of the Regional Trial Court (RTC) of Pasay City, Branch 109, in Criminal Case No. 02-1779 convicting Petitioner Neil F. Llave of rape.

On September 27, 2002, an Information charging petitioner (then only 12 years old) with rape was filed with the RTC of Pasay City. The inculpatory portion of the Information reads:

> That on or about the 24th day of September 2002, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, NEIL LLAVE Y FLORES, aka NIEL F. LLAVE, a minor over nine (9) years of age and under fifteen (15) but acting with discernment, by means of force threat and intimidation, did then and there willfully, unlawfully, feloniously have carnal knowledge of the complainant, DEBBIELYN SANTOS y QUITALES, a minor, seven (7) years of age, against her will and consent.
>
> Contrary to law.[3]

The Case for the Prosecution

The spouses Domingo and Marilou Santos were residents of Pasay City.[4] One of their children, Debbielyn, was born on December 8, 1994.[5] In 2002, she was a Grade II student at the Villamor Air Base Elementary School in Pasay City[6] and attended classes from 12:00 noon to 6:00 p.m.[7]

Domingo eked out a living as a jeepney driver, while Marilou sold quail eggs at a nearby church.[8] Adjacent to their house was that of Teofisto Bucud, a barbecue vendor who would usually start selling at 6:30 p.m.[9] Next to Teofisto's residence was a vacant house.[10]

Debbielyn testified that on September 24, 2002, she arrived home at past 6:00 p.m. She changed her clothes and proceeded to her mother's store. Marilou asked her daughter to bring home the container with the unsold quail eggs.[11] Debbielyn did as told and went on her way. As she neared the vacant house, she saw petitioner, who suddenly pulled her behind a pile of hollow blocks which was in front of the vacant house. There was a little light from the lamp post.[12] She resisted to no avail.[13] Petitioner ordered her to lie down on the cement. Petrified, she complied. He removed her shorts and underwear then removed his own. He got on top of her.[14] She felt his penis being inserted into her vagina. He kissed her.[15] She felt pain and cried.[16] She was sure there were passersby on the street near the vacant house at the time.

It was then that Teofisto came out of their house and heard the girl's cries. He rushed to the place and saw petitioner on top of Debbielyn, naked from the waist down. Teofisto shouted at petitioner, and the latter fled from

the scene. Teofisto told Debbielyn to inform her parents about what happened.[17] She told her father about the incident.[18] Her parents later reported what happened to the police authorities.[19] Debbielyn told the police that petitioner was a bad boy because he was a rapist.[20]

Teofisto testified that at about 6:25 p.m. on September 24, 2002, he went out of their house to get his barbecue grill. He heard someone moaning from within the adjacent vacant house.[21] He rushed to the place and saw petitioner, naked from waist down, on top of Debbielyn, making pumping motions on her anus.[22] The girl was crying. He shouted at petitioner, "Hoy, bakit ginawa mo 'yan?"[23] Petitioner hurriedly put his shorts on and fled.[24] Neighbors who had heard Teofisto shouting arrived.[25] Later, Teofisto gave a written statement to the police investigator regarding the incident.[26]

Domingo Santos testified that at about 6:30 p.m. that day, he was inside their house. His daughter, Kimberly Rose, suddenly told him that Debbielyn had been raped near the vacant house by petitioner.[27] He rushed to the place and found her daughter crying. When he asked her what happened, she replied that she had been abused. He brought Debbielyn to their house and then left.[28] He then looked for petitioner and found him at his grandmother's house. A barangay tanod brought petitioner to the barangay hall.[29] On September 25, 2002, he brought her daughter to the Philippine General Hospital Child Protection Unit at Taft Avenue, Manila where she was examined by Dr. Mariella S. Castillo.

Dr. Castillo declared on the witness stand that she was a physician at the Child Protection Unit of the Philippine General Hospital. On September 25, 2002, she interviewed the victim who told her "Masakit ang pepe ko," "Ni-rape ako."[30] Dr. Castillo also conducted a genital examination on the child, and found no injury on the hymen and perineum, but found scanty yellowish discharge between the labia minora.[31] There was also a fresh abrasion of the perineal skin at 1 o'clock position near the anal opening.[32] She declared that the findings support the theory that blunt force or penetrating trauma (such as an erect penis, finger, or any other foreign body[33]) was applied to the perineal area[34] not more than six or seven days before.[35] The abrasion could have been caused on September 24, 2002. She found no spermatozoa in the vaginal area or injury at the external genitalia;[36] neither did she find any other injury or abrasion on the other parts of the victim's body.[37] She concluded that her findings were consistent with the victim's claim that she was sexually abused by petitioner.

Barangay Tanod Jorge Dominguez, for his part, testified that on September 24, 2002, Marilou Santos arrived at the barangay hall and reported that her daughter had been raped by petitioner who was then in his aunt's house at Cadena de Amor Street. Barangay Captain Greg Florante ordered him and Barangay Tanod Efren Gonzales to proceed to Cadena de Amor Street and take the boy into custody, and they did as they were told.[38]

The Case for the Accused

Petitioner, through counsel, presented Dr. Castillo as witness. She declared that the abrasions in the perineal area could have been caused while the offender was on top of the victim.[39] She explained that the distance between the anus and the genital area is between 2.5 to 3 centimeters.[40] The abrasion was located at ¼ of an inch from the anal orifice.

Petitioner testified and declared that he was a freshman at the Pasay City South High School.[41] He had been one of the three outstanding students in grade school and received awards such as Best in Mathematics.[42] He also finished a computer course and received a Certificate of Completion from the Philippine Air Force Management Information Center.[43] He denied having raped the private complainant. He declared that at 6:30 p.m. on September 24, 2002, he was outside of their house to buy rice in the carinderia[44] and he saw her on his way back.[45] He also met his father, who asked him what he had done to their neighbor. He was also told that the victim's father was so angry that the latter wanted to kill him.[46] He did not ask his father for the name of the

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angry neighbor. He was also told to pass by Cadena de Amor Street in going to his aunt's house. Petitioner also declared that his mother prodded him to go to his aunt's house[.[47]] Later, Domingo and Barangay Tanod Jorge Dominguez arrived at his aunt's house and brought him to the barangay hall. He did not know of any reason why Debbielyn and her parents would charge him with rape.[48]

Petitioner also declared that he played cards with Debbielyn.[49] While confined at the Pasay City Youth Home during trial, he had a crush on "Issa," a young female inmate. Using a piece of broken glass (bubog) about half-an-inch long, he inscribed her name on his right thigh, left leg and left arm.[50]

Nida Llave testified and identified her son's Certificate of Live Birth, in which it appears that he was born on March 6, 1990.[51] She declared that at about 6:30 p.m. on September 24, 2000, Marilou Santos and Marilyn Bucud arrived in their house looking for her son. According to Marilyn, her son had raped the private complainant. She went to their house to look for her son and came across Domingo Santos who threatened to kill her son. She and her husband proceeded to the house of his sister Josefina at Cadena de Amor Street where petitioner had hidden for a while.[52]

At the conclusion of the trial, the court rendered judgment convicting Neil of the crime charged. The decretal portion of the decision reads:

> FROM ALL THE FOREGOING, the Court opines that the prosecution has proven the guilt of the xxx Niel Llave y Flores beyond reasonable doubt when he forcibly pulled the complainant towards the vacant lot, laid on top of her and had carnal knowledge with the [complainant] against her will and consent who is only seven (7) years old (sic). Moreover, he being a minor, he cannot be meted with the Death penalty.
>
> WHEREFORE, the Court finds the CICL [Child in Conflict with the Law] Niel Llave y Flores guilty beyond reasonable doubt, and crediting him with the special mitigating circumstance of minority, this Court hereby sentences him to prision mayor minimum, Six (6) years and One (1) day to Eight (8) years, and pay civil indemnity of Fifty Thousand Pesos (Php50,000.00).[53]

The trial court declared that based on the evidence of the prosecution that petitioner pushed the victim towards the vacant house and sexually abused her, petitioner acted with discernment. It also considered petitioner's declaration that he had been a consistent honor student.[54]

Petitioner appealed the decision to the CA, where he averred the following in his Brief as appellant therein:

> I
>
> THE LOWER COURT ERRED WHEN IT DISREGARDED THE MATERIAL INCONSISTENCIES OF THE TESTIMONY OF COMPLAINING WITNESS WITH THAT OF THE MEDICAL REPORT ON THE FACTUAL ALLEGATION OF BLEEDING.
>
> II
>
> THE LOWER COURT ERRED WHEN IT GAVE CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESS TEOFISTO BUCUD WHO HAS REASON TO FABRICATE A SCENARIO AGAINST ACCUSED-APPELLANT BECAUSE HE HAS PERSONAL VENDETTA AGAINST THE LATTER'S FAMILY/RELATIVES.
>
> III
>
> THE LOWER COURT ERRED IN UPHOLDING THE THEORY OF THE PROSECUTION OF RAPE BY HAVING CARNAL KNOWLEDGE, BEING CONTRARY TO THE PHYSICAL EVIDENCE.[55]

The CA rendered judgment affirming the decision with modification as to the penalty meted on him.

> WHEREFORE, the decision subject of the instant appeal is hereby MODIFIED in that the accused-appellant is sentenced to an indeterminate penalty of two (2) years and four (4) months of prision correccional medium as the minimum to eight (8) years and one (1) day of prision mayor medium as the maximum. Additionally, the accused-appellant is ordered to pay the complaining witness the amount of P50,000 by way of moral damages and P20,000 by way of exemplary damages.
>
> SO ORDERED.[56]

Petitioner filed a Motion for the Reconsideration,[57]contending that the prosecution failed to adduce proof that he acted with discernment; hence, he should be acquitted. The appellate court denied the motion in a Resolution[58] dated November 12, 2004 on the following finding:

> As regards the issue of whether the accused-appellant acted with discernment, his conduct during and after the "crime" betrays the theory that as a minor, the accused-appellant does not have the mental faculty to grasp the propriety and consequences of the act he made. As correctly pointed out by the prosecution, the fact that forthrightly upon discovery, the accused-appellant fled the scene and hid in his grandmother's house intimates that he knew that he did something that merits punishment.
>
> Contrary to the urgings of the defense, the fact that the accused-appellant is a recipient of several academic awards and is an honor student further reinforces the finding that he [is] possessed [of] intelligence well beyond his years and is thus poised to distinguish, better at least than other minors his age could, which conduct is right and which is morally reprehensible.[59]

Petitioner now raises the following issues and arguments in the instant petition before this Court:

> ISSUES
>
> I
>
> WHETHER OR NOT EVIDENCE WAS SUFFICIENT TO CONVICT PETITIONER BEYOND REASONABLE DOUBT.
>
> II
>
> WHETHER OR NOT PETITIONER, WHO WAS A MINOR ABOVE 9 YEARS BUT BELOW 15 YEARS OF AGE AT THE TIME OF THE CRIME, ACTED WITH DISCERNMENT.
>
> III
>
> WHETHER OR NOT PETITIONER WAS DENIED DUE PROCESS OF LAW.
>
> ARGUMENTS
>
> I
>
> THE MATERIAL INCONSISTENCIES BETWEEN THE TESTIMONY OF COMPLAINING WITNESS WITH THE MEDICAL REPORT BELIE THE FINDING OF RAPE.
>
> II
>
> PRIVATE COMPLAINANT IS NOT A CREDIBLE WITNESS.
>
> III
>
> PETITIONER ACTED WITHOUT DISCERNMENT.
>
> IV

THE TESTIMONY RELIED UPON BY THE PROSECUTION IS HEARSAY.

V

THE COMPLAINT IS FABRICATED.

VI

PETITIONER WAS DENIED DUE PROCESS OF LAW.[60]

The issues raised by the petitioner in this case may be summarized as follows: (1) whether he was deprived of his right to a preliminary investigation; (2) whether he had carnal knowledge of the private complainant, and if in the affirmative, whether he acted with discernment in perpetrating the crime; (3) whether the penalty imposed by the appellate court is correct; and (4) whether he is liable to pay moral damages to the private complainant.

On the first issue, petitioner avers that he was deprived of his right to a preliminary investigation before the Information against him was filed.

On the second issue, petitioner claims that the prosecution failed to prove beyond reasonable doubt that he had carnal knowledge of Debbielyn. He insists that her testimony is inconsistent on material points. He points out that she claimed to have felt pain in her vagina when petitioner inserted his penis to the point that she cried; this, however, is negated by Dr. Castillo's report stating that there was no evidence of injury on the victim's external genitalia. Petitioner maintains that as against the victim's testimony and that of Dr. Castillo's report, the latter should prevail.

According to petitioner, mere touching of the female organ will not suffice as factual basis of conviction for consummated rape. Moreover, the victim's testimony lacks credibility in view of her admission that, while she was being allegedly ravished by him, there were passersby along the street. Besides, petitioner avers, an abrasion may be caused by an invasion of the body through the protective covering of the skin. Petitioner insists that the prosecution failed to prove the cause of the abrasion.

Petitioner also claims that the victim was tutored or coached by her parents on her testimony before the trial court. Dr. Castillo testified that when she interviewed Debbielyn, the latter admitted to her that she did not understand the meaning of the word "rape" and its Filipino translation, "hinalay," and that the genital examination of the girl was at the insistence of the latter's parents.

Petitioner avers that Teofisto Bucud's testimony has no probative weight because and had an ill-motive to testify against him. Petitioner stated, on cross-examination, that his uncle, Boy, had the house rented by Teofisto demolished. Petitioner avers that the witness persuaded the victim's parents to complain against him, as gleaned from the testimony of Police Investigator Milagros Carroso.

For its part, the Office of the Solicitor General (OSG) avers that petitioner was subjected to an inquest investigation under Section 7, Rule 112 of the Revised Rules of Criminal Procedure, as gleaned from the Certification of the City Prosecutor incorporated in the Information. It avers that the absence of external injuries does not negate rape; neither is it necessary that lacerations be found on the hymen of a victim. Rape is consummated if there is some degree of penetration within the vaginal surface. Corroborative evidence is not necessary to prove rape. As long as the testimony of the victim is credible, such testimony will suffice for conviction of consummated rape. When the victim testified that she was raped, she was, in effect, saying all that is necessary to prove that rape was consummated. Petitioner's evidence to prove ill-motive on the part of Teofisto Bucud in testifying against him is at best flimsy. Moreover, it is incredible that the victim and her parents would charge petitioner with rape solely on Teofisto's proddings.

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The OSG insists that the petitioner acted with discernment before, during, and after the rape based on the undisputed facts. The submission of the OSG follows:

> Petitioner argues that since he was only 12 years old at the time of the alleged rape incident, he is presumed to have acted without discernment under paragraph 3 of Article 12 of the Revised Penal Code. Under said provision, the prosecution has the burden of proving that he acted with discernment. In the instant case, petitioner insists that there was no evidence presented by the prosecution to show that he acted with discernment. Hence, he should be exempt from criminal liability.
>
> Petitioner's arguments are bereft of merit.
>
> Discernment, as used in Article 12(3) of the Revised Penal Code is defined as follows: "the discernment that constitutes an exception to the exemption from criminal liability of a minor under fifteen (15) years of age but over nine (9), who commits an act prohibited by law, is his mental capacity to understand the difference between right and wrong" (People v. Doquena, 68 Phil. 580 [1939]). For a minor above nine but below fifteen years of age, he must discern the rightness or wrongness of the effects of his act (Guevarra v. Almodova, G.R. No. 75256, January 26, 1989).
>
> Professor Ambrocio Padilla, in his annotation of Criminal Law (p. 375, 1998 Ed.), writes that "discernment is more than the mere understanding between right and wrong. Rather, it means the mental capacity of a minor between 9 and 15 years of age to fully appreciate the consequences of his unlawful act" (People v. Navarro, [CA] [51 O.G. 4062]). Hence, in judging whether a minor accused acted with discernment, his mental capacity to understand the difference between right and wrong, which may be known and should be determined by considering all the circumstances disclosed by the record of the case, his appearance, his attitude and his behavior and conduct, not only before and during the commission of the act, but also after and even during the trial should be taken into consideration (People v. Doquena, supra).
>
> In the instant case, petitioner's actuations during and after the rape incident, as well as his behavior during the trial showed that he acted with discernment.
>
> The fact appears undisputed that immediately after being discovered by the prosecution's witness, Teofisto Bucud, petitioner immediately stood up and ran away. Shortly thereafter, when his parents became aware of the charges against him and that private complainant's father was looking for him, petitioner went into hiding. It was not until the Barangay Tanod came to arrest him in his grandmother's house that petitioner came out in the open to face the charges against him. His flight as well as his act of going into hiding clearly conveys the idea that he was fully aware of the moral depravity of his act and that he knew he committed something wrong. Otherwise, if he was indeed innocent or if he was not least aware of the moral consequences of his acts, he would have immediately confronted private complainant and her parents and denied having sexually abused their daughter.
>
> During the trial, petitioner submitted documentary evidence to show that he was a consistent honor student and has, in fact, garnered several academic awards. This allegation further bolstered that he acted with discernment, with full knowledge and intelligence. The fact that petitioner was a recipient of several academic awards and was an honor student further reinforces the finding that he was possessed of intelligence well beyond his years and thus was able to distinguish, better than other minors of his age could, which conduct is right and which is morally reprehensible. Hence, although appellant was still a minor of twelve years of age, he possessed intelligence far beyond his age. It cannot then be denied that he had the mental capacity to understand the difference between right and wrong. This is important in cases where the accused is minor. It is worthy to note that the basic reason behind the enactment of the exempting circumstances under Article 12 of the Revised Penal Code is the complete absence of intelligence, freedom of action, or intent on the part of the accused. In expounding on intelligence as the second element of dolus, the Supreme Court 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" (Guevarra v. Aldomovar, 169 SCRA 476 [1989], at page 482).
>
> The foregoing circumstances, from the time the incident up to the time the petitioner was being held for trial, sufficiently satisfied the trial court that petitioner acted with discernment before, during and after the rape incident. For a boy wanting in discernment would simply be gripped with fear or keep mum. In this case, petitioner was fully aware of the nature and illegality of his wrongful act. He should not, therefore, be exempted from criminal liability. The prosecution has sufficiently proved that petitioner acted with discernment.[61]

In reply, petitioner asserts that the only abrasion found by Dr. Castillo was on the peri-anal skin and not in the labia of the hymen. He further insists that there can be no consummated rape absent a slight penetration on the female organ. It was incumbent on the prosecution to prove that the accused acted with discernment but failed. The mere fact that he was an honor student is not enough evidence to prove that he acted with discernment.

The petition is not meritorious.

On the first issue, petitioner's contention that he was deprived of his right to a regular preliminary investigation is barren of factual and legal basis. The record shows that petitioner was lawfully arrested without a warrant. Section 7, Rule 112 of the Revised Rules of Criminal Procedure provides:

> SEC. 7. When accused lawfully arrested without warrant. - When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.
>
> Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.
>
> After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided for in this Rule.

As gleaned from the Certification[62] of the City Prosecutor which was incorporated in the Information, petitioner did not execute any waiver of the provisions of Article 125 of the Revised Penal Code before the Information was filed. He was arraigned with the assistance of counsel on October 10, 2002, and thereafter filed a petition for bail.[63] Petitioner's failure to file a motion for a preliminary investigation within five days from finding out that an Information had been filed against him effectively operates as a waiver of his right to such preliminary investigation.[64]

On the second issue, a careful review of the records shows that the prosecution adduced evidence to prove beyond reasonable doubt that petitioner had carnal knowledge of the private complainant as charged in the Information. In People v. Morata[65] the Court ruled that penetration, no matter how slight, or the mere introduction of the male organ into the labia of the pudendum, constitutes carnal knowledge. Hence, even if the penetration is only slight, the fact that the private complainant felt pains, points to the conclusion that the rape was consummated.[66]

From the victim's testimony, it can be logically concluded that petitioner's penis touched the middle part of her vagina and penetrated the labia of the pudendum. She may not have had knowledge of the extent of the

penetration; however, her straightforward testimony shows that the rape passed the stage of consummation.[67] She testified that petitioner dragged her behind a pile of hollow blocks near the vacant house and ordered her to lie down. He then removed her shorts and panty and spread her legs. He then mounted her and inserted his penis into her vagina:

> Fiscal Barrera:
>
> Q: From what time up to what time?
> A: From 12:00 o'clock noon up to 6:00 p.m.
>
> Q: September 24, 2002 and going over the calendar, it was Tuesday. Did you go to school from 12:00 o'clock noon up to 6:00 p.m.?
> A: Yes, Sir, on the same date I went to school.
>
> Q: At about 6:00 p.m., Sept. 24, 2002, where were you?
> A: I went home.
>
> Q: And by whom you are referring to your house at 1-C Carnation St., R. Higgins, Maricaban, Pasay City?
> A: Yes, Sir.
>
> Q: And what did you do after you went home?
> A: I changed my clothes and then I proceeded to the store of my mother.
>
> Q: And where is that store of your mother where you went?
> A: It is near our house, walking distance.
>
> Q: What is your mother selling in that store?
> A: She sells quail eggs.
>
> Q: And were you able to immediately go to the store of your mother where she was selling quail eggs?
> A: Yes, sir.
>
> Q: And that was past 6:00 p.m. already?
> A: Yes, sir.
>
> Q: And what happened when you went to the store where your mother is selling quail eggs past 6:00 p.m.?
> A: My mother asked me to bring home something.
>
> Q: What were these things you were asked by your mother to bring home?
> A: The things she used in selling.
>
> Q: And did you obey what your mother told you to bring home something?
> A: Yes, Sir.
>
> Q: And what happened to you in going to your house?
> A: Totoy pulled me.
>
> Q: Pulled you where?
> A: Totoy pulled me towards an uninhabited house.
>
> Q: What happened after Totoy pulled you in an uninhabited house?
> A: He told me to lie down on the cement.
>
> Q: What happened after he laid you down on the cement?
> A: He removed my shorts and panty. He also removed his shorts.
>
> Q: After Totoy removed your shorts and panty and he also removed his shorts, what happened next?

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A: He inserted his penis inside my vagina.

Q: What did you feel when Totoy inserted his penis inside your vagina?
A: It was painful.

Q: Aside from inserting his penis inside your vagina, what else did you do to you?
A: He kissed me on my lips.

Q: After Totoy inserted his penis inside your vagina and kissed you on your lips, what did you do?
A: I cried.

Q: What happened when you were crying when he inserted his penis inside your vagina and kissed you on your lips. What happened next?
A: Somebody heard me crying.

Q: Who heard you crying?
A: Kuya Teofe, Sir.

Q: What happened after you cried and when somebody heard you crying?
A: Totoy ran away.

Q: After Totoy ran away, what happened next?
A: When Totoy ran away, I was left and Kuya Teofe told me to tell the matter to my parents.

Q: Did you tell your parents what Totoy did to you?
A: Yes, Sir.[68]

On cross-examination, the victim was steadfast in her declarations:

ATTY. BALIAD:

Q: Again, in what particular position were you placed by Totoy when he inserted his penis inside your vagina?
A: I was lying down.

Q: Aside from lying down, how was your body positioned at that time?
A: He placed on top of me.

Q: After he placed on top of you, what else did he do to you, if any?
A: He started to kiss me and then he inserted his penis inside my vagina.

Q: Did you feel his penis coming in into your vagina?
A: Yes, Sir.

Q: Are you sure that his penis was inserted inside your vagina?
A: Yes, Sir.[69]

When questioned on cross-examination whether she could distinguish a vagina from an anus, the victim declared that she could and proceeded to demonstrate. She reiterated that the penis of petitioner penetrated her vagina, thus, consummating the crime charged:

Atty. Baliad:

Q: Do you recall having stated during the last hearing that the accused, Neil Llave or "Totoy" inserted his penis in your vagina, do you recall that?
A: Yes, Sir.

Q: And likewise, you testified that you feel that the penis of Neil entered your vagina?

A: Yes, Sir.

Q: Could you distinguish vagina from your anus?
A: Yes, Sir.

Q: Where is your "pepe?"
A: (Witness pointing to her vagina.)

Q: Where is your anus?
A: (Witness pointing at her back, at the anus.)

Q: In your statement, am I correct to say that Neil, the accused in this case penetrated only in your vagina and not in your anus?
A: Yes, Sir.

Q: So that, your anus was not even touched by the accused neither by his penis touched any part of your anus?
A: He did not insert anything on my anus, Sir.[70]

While it is true that Dr. Castillo did not find any abrasion or laceration in the private complainant's genitalia, such fact does not negate the latter's testimony the petitioner had carnal knowledge of her. The absence of abrasions and lacerations does not disprove sexual abuses, especially when the victim is a young girl as in this case.[71] According to Dr. Castillo, the hymen is elastic and is capable of stretching and reverting to its original form. [72]The doctor testified that her report is compatible with the victim's testimony that she was sexually assaulted by petitioner:

Atty. Baliad:

Q: Do you recall having stated during the last hearing that the accused, Neil Llave or "Totoy" inserted his penis in your vagina, do you recall that?
A: Yes, Sir.

Q: And likewise, you testified that you feel (sic) that the penis of Neil entered your vagina?
A: Yes, Sir.

Q: Could you distinguish vagina from your anus?
A: Yes, Sir.

Q: Where is your "pepe"'
A: (Witness pointing to her vagina.)

Q: Where is your anus?
A: (Witness pointing at her back, at the anus.)

Q: In your statement, am I correct to say that Neil, the accused in this case penetrated only in your vagina and not in your anus?
A: Yes, Sir.

Q: So that, your anus was not even touched by the accused neither by his penis touched any part of your anus?
A: He did not insert anything on my anus, Sir.

x x x x

Fiscal Barrera:

Q: Based on your testimony doctor, and the medico genital examination propounded on the report that the victim here, Debbielyn Santos is complaining that around 6:00 in the evening of September 24, 2002, she was

sexually abused and that on the following day, September 25, you interviewed her and stated to you that her genitalia was hurting and in binocular (sic) "masakit ang pepe ko, ni-rape ako," would your findings as contained in this Exh. B and C be compatible with the allegation if the minor victim that she was sexually abused on September 24. 2002 at around 6:00 p.m.?

Atty. Baliad:
Objection, Your Honor. The one who narrated the incident is the mother.

Court:
What is your objection?

Atty. Baliad:

The objection, Your Honor, is the question propounded is that it was the minor who made the complaint regarding the allegation.

Fiscal Barrera:
The answer were provided"..

Court:
The doctor is being asked whether or not her findings is compatible with the complaint of the minor. Overruled. Answer.

Witness:
A It is compatible with the allegation of the minor.

Fiscal Barrera:
Confronting you again with your two (2) medico-genital documents, the Provincial and Final Report mark[ed] in evidence as Exhs. B and C, at the lower portion of these two exhibits there appears to be a signature above the typewritten word, Mariella Castillo, M.D., whose signature is that doctor?
A Both are my signatures, Sir.[73]

Dr. Castillo even testified that the abrasion near the private complainant's anal orifice could have been caused by petitioner while consummating the crime charged:

Fiscal Barrera:

Q: With your answer, would it be possible doctor that in the process of the male person inserting his erect penis inside the vagina, in the process, would it be possible that this abrasion could have been caused while in the process of inserting the penis into the vagina touch the portion of the anus where you find the abrasion?
A: It is possible, Sir.

Q: Now, are you aware, in the course of your examination, that the alleged perpetrator is a 12-year-old minor?
A: I only fount it out, Sir, when I testified.

Q: Do you still recall your answer that a 12-year-old boy could cause an erection of his penis?
A: Yes, sir.

Q: To enlight[en] us doctor, we, not being a physician, at what age could a male person can have erection?
A: Even infants have an erection.[74]

Petitioner' s contention that the private complainant was coached by her parents into testifying is barren of merit. It bears stressing that the private complainant testified in a straightforward and spontaneous manner and remained steadfast despite rigorous and intensive cross-examination by the indefatigable counsel of the petitioner. She spontaneously pointed to and identified the petitioner as the perpetrator.

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It is inconceivable that the private complainant, then only a seven- year old Grade II pupil, could have woven an intricate story of defloration unless her plaint was true.[75] The Presiding Judge of the trial court observed and monitored the private complainant at close range as she testified and found her testimony credible. Case law is that the calibration by the trial court of the evidence on record and its assessment of the credibility of witnesses, as well as its findings of facts and the conclusions anchored on said findings, are accorded conclusive effect by this Court unless facts and circumstances of substance were overlooked, misconstrued or misinterpreted, which, if considered would merit a nullification or reversal of the decision. We have held that when the offended party is young and immature, from the age of thirteen to sixteen, courts are inclined to give credence to their account of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed if the matter to which they testified is not true.[76]

Neither do we lend credence to petitioner's claim that the charge against him is but a fabrication and concoction of the private complainant's parents. Indeed, petitioner admitted in no uncertain terms that the spouses had no ill-motive against him. Thus, Neil testified as follows:

> Fiscal Barrera:
>
> Q: As you testified earlier that you have played post cards with Debbielyn Santos alias Lyn-lyn and you have no quarrel or misunderstanding with Lyn-lyn. Do you know of any reason why Lyn-lyn complaint (sic) against you for sexual abuse?
> A: I don't know of any reason, Sir.
>
> Q: You also testified that you do not have any quarrel or misunderstanding with Lyn-lyn's parents, spouses Domingo Santos, Jr. and Marilou Santos, do you think of any reason as to why they would file a complaint against you for molesting their 7-year-old daughter?
> A: I do not know of any reason why they filed a complaint against me, Sir.
>
> Fiscal Barrera:
> That would be all, Your Honor.[77]

There is no evidence that the parents of the offended party coached their daughter before she testified. No mother or father 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.[78]

On the other hand, when the parents learned that their daughter had been assaulted by petitioner, Domingo tried to locate the offender and when he failed, he and his wife reported the matter to the barangay authorities. This manifested their ardent desire to have petitioner indicted and punished for his delictual acts.

That petitioner ravished the victim not far from the street where residents passed by does not negate the act of rape committed by petitioner. Rape is not a respecter of time and place. The crime may be committed by the roadside and even in occupied premises.[79] The presence of people nearby does not deter rapists from committing the odious act.[80] In this case, petitioner was so daring that he ravished the private complainant near the house of Teofisto even as commuters passed by, impervious to the fact that a crime was being committed in their midst.

Case law has it that in view of the intrinsic nature of rape, the only evidence that can be offered to prove the guilt of the offender is the testimony of the offended party. Even absent a medical certificate, her testimony, standing alone, can be made the basis of conviction if such testimony is credible. Corroborative testimony is not essential to warrant a conviction of the perpetrator.[81] Thus, even without the testimony of Teofisto Bucud, the testimonies of the offended party and Dr. Castillo constitute evidence beyond reasonable doubt warranting the

conviction of petitioner.

Teofisto's testimony cannot be discredited by petitioner simply because his uncle caused the demolition of the house where Teofisto and his family were residing. It bears stressing that Teofisto gave a sworn statement to the police investigator on the very day that the petitioner raped Debbielyn and narrated how he witnessed the crime being committed by the petitioner.[82] In the absence of proof of improper motive, the presumption is that Teofisto had no ill-motive to so testify, hence, his testimony is entitled to full faith and credit.[83]

The trial court correctly ruled that the petitioner acted with discernment when he had carnal knowledge of the offended party; hence, the CA cannot be faulted for affirming the trial court's ruling.

Article 12, paragraph 3 of the Revised Penal Code provides that a person over nine years of age and under fifteen is exempt from criminal liability, unless he acted with discernment. The basic reason behind the exempting circumstance is complete absence of intelligence, freedom of action of the offender which is an essential element of a felony either by dolus or by culpa. Intelligence is the power necessary to determine the morality of human acts to distinguish a licit from an illicit act.[84] On the other hand, discernment is the mental capacity to understand the difference between right and wrong. The prosecution is burdened to prove that the accused acted with discernment by evidence of physical appearance, attitude or deportment not only before and during the commission of the act, but also after and during the trial.[85] The surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong. Such circumstance includes the gruesome nature of the crime and the minor's cunning and shrewdness.

In the present case, the petitioner, with methodical fashion, dragged the resisting victim behind the pile of hollow blocks near the vacant house to insure that passersby would not be able to discover his dastardly acts. When he was discovered by Teofisto Bucud who shouted at him, the petitioner hastily fled from the scene to escape arrest. Upon the prodding of his father and her mother, he hid in his grandmother's house to avoid being arrested by policemen and remained thereat until barangay tanods arrived and took him into custody.

The petitioner also testified that he had been an outstanding grade school student and even received awards. While in Grade I, he was the best in his class in his academic subjects. He represented his class in a quiz bee contest.[86] At his the age of 12, he finished a computer course.

In People v. Doqueña,[87] the Court held that the accused-appellant therein acted with discernment in raping the victim under the following facts:

> Taking into account the fact that when the accused Valentin Doqueña committed the crime in question, he was a 7[th] grade pupil in the intermediate school of the municipality of Sual, Pangasinan, and as such pupil, he was one of the brightest in said school and was a captain of a company of the cadet corps thereof, and during the time he was studying therein he always obtain excellent marks, this court is convinced that the accused, in committing the crime, acted with discernment and was conscious of the nature and consequences of his act, and so also has this court observed at the time said accused was testifying in his behalf during the trial of this case.[88]

The CA ordered petitioner to pay P50,000.00 as moral damages and P20,000.00 as exemplary damages. There is no factual basis for the award of exemplary damages. Under Article 2231, of the New Civil Code, exemplary damages may be awarded if the crime was committed with one or more aggravating circumstances. In this case, no aggravating circumstance was alleged in the Information and proved by the People; hence, the award must be deleted.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. The decision of the Court of Appeals in CA-G.R. CR No. 26962 is AFFIRMED WITH MODIFICATION that the award of exemplary

damages is DELETED.
SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, and Austria-Martinez, JJ., concur.
Chico-Nazario., J., on official leave.

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[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Conrado M. Vasquez, Jr. and Hakim S. Abdulwahid, concurring.

[2] Penned by Judge Lilia C. Lopez.

[3] Records, p. 2.

[4] TSN, November 18, 2000, p. 2.

[5] Exhibit "H-2," records, p. 153,

[6] TSN, October 24, 2002, p. 4.

[7] TSN, November 4, 2002, p. 11.

[8] Id.

[9] November 11, 2002, p. 4

[10] Exhibits "M" and "5," records, pp. 158-159.

[11] TSN, November 4, 2002, pp. 11-12.

[12] Id. at 19.

[13] Id. at 18.

[14] Id. at 12 and 20.

[15] Id. at 20.

[16] Id. at 13.

[17] Id. at 13-17.

[18] Id. at 17.

[19] Id. at 18.

[20] TSN, November 6, 2002, p. 6.

[21] TSN, November 11, 2001, p. 5.

[22] Id. at 6-7.

[23] TSN, November 13, 2002, p. 10.

[24] TSN, November 11, 2002, p. 6.

[25] Id. at 7.

[26] Exhibit "K," records, p. 156.

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[27] TSN, November 18, 2002, pp. 4-5.

[28] Id. at 12-13.

[29] Id. at 5-6.

[30] TSN, October 30, 2002, p. 7.

[31] Exhibit "B," records, p. 147.

[32] TSN, October 30, 2002, p. 10.

[33] Id. at 15.

[34] Exhibit "G," records, p. 152.

[35] TSN, October 30, 2002, p. 21.

[36] Exhibit "B," records, p. 147.

[37] TSN, October 30, 2002, p. 21.

[38] TSN, November 19, 2002, pp. 2-5.

[39] TSN, November 21, 2002, p. 18.

[40] Id. at 22.

[41] Id. at 43.

[42] Id. at 54-55.

[43] Exhibit "12," records, p. 91.

[44] TSN, November 21, 2002, p. 45.

[45] Id. at 48.

[46] Id. at 46-47.
[47]Id. at 70.

[48] Id. at 72.

[49] Id. at 49.

[50] Records, p. 52; TSN, October 29, 2002, pp. 6-7.

[51] Exhibit "I," records, p. 154.

[52] TSN, November 21, 2002, pp. 8-9.

[53] Records, p. 269.

[54] Id.

[55] CA rollo, p. 53.

[56] Id. at 135.

[57] Id. at 138-156.

[58] Id. at 191-193.

[59] Id. at 192-193.

[60] Rollo, pp. 14-15.

[61] Rollo, pp. 128-131.

[62] Records, p. 1.

[63] Id. at 13-17.

[64] See People v. Arce, Jr., 417 Phil. 18 (2001).

[65] G.R. No. 140011-16, March 12, 2001, 354 SCRA 259, 275.

[66] People v. Rafales, G.R. No. 133477, January 21, 2000, 323 SCRA 13, 27.

[67] See People v. Morata, supra.

[68] TSN, November 4, 2002, pp. 11-13.

[69] Id. at 20.

[70] TSN, November 6, 2002, pp. 2-3.

[71] People v. Osing, G.R. No. 138959, January 16, 2001, 349 SCRA 310, 318.

[72] TSN, October 30, 2002, pp. 22-23.

[73] TSN, October 30, 2002, pp. 13-14.

[74] TSN, November 21, 2002, p. 23.

[75] See People v. Pardillo, Jr., 346 Phil. 971, 984 (1997).

[76] People v. Doqueña, 68 Phil. 580, 583 (1939).

[77] TSN, November 21, 2002, pp. 71-72.

[78] People v. Morata, supra at 269.

[79] People v. Belga, G.R. No. 129769, January 19, 2001, 349 SCRA 678.

[80] Id. at 683-684.

[81] See People v. Reñola, 367 Phil. 415 (1999).

[82] Exhibit "K," records, p. 156.

[83] People v. Jamiro, 344 Phil. 700, 720 (1997).

[84] Guevarra v. Almodovar, G.R. No. 75256, January 26, 1989, 169 SCRA 476.

[85] People v. Doqueña, supra at 583.

[86] TSN, November 21, 2001, p. 56.

[87] Supra note 76.

[88] Id. at 582.

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