

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GENARO CAYABYAB Y FERNANDEZ, APPELLANT.*G.R. NO. 167147. August 03, 2005*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-167147/>**PER CURIAM:**

Appellant Genaro Cayabyab y Fernandez was sentenced to death by the Regional Trial Court of Pasay City, Branch 109, in Criminal Case No. 01-1311, for rape committed against six-year-old Alpha Jane Bertiz.[1]

Alpha Jane was born on November 26, 1994,[2] and the eldest among the six children of Conrado and Metchie Bertiz.[3] She was six years and nine months old when the rape was committed on August 7, 2001.

On that day, at around 6:00 p.m., Alpha Jane was at home in Manlunas St., Lagoon Area, Villamor Airbase, Pasay City, taking care of her younger siblings. Her mother went to buy kerosene, while her father was out. On the guise of teaching arithmetic, appellant went to the victim's house and asked her to lie down on her father's bed. When she refused, appellant removed her clothes and his own clothes, then forced her to lie down on the bed and laid on top of her and inserted his penis into her vagina. Alpha Jane shouted in pain which startled the appellant who sprayed her with tear gas and left.[4]

Her mother, Metchie arrived shortly thereafter and Alpha Jane told her what had happened. She immediately reported the incident to the barangay officials and brought Alpha Jane to the Philippine Air Force General Hospital for medical examination. She also sought assistance from the police at the 521st Air Police Squadron who, after gathering information from the victim, arrested the appellant at his house.[5] Alpha Jane was brought to the PNP Crime Laboratory at Camp Crame the following day,[6] and on August 10, 2001, to the Child Protection Unit (CPU) at UP-PGH[7] for further medical examinations, which both found hymenal abrasions and lacerations, respectively, on the victim's genitalia.[8]

On August 10, 2001, appellant was charged with rape before the Regional Trial Court of Pasay City in an Information that reads:

That on or about the 07[th] day of August 2001, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, GENARO CAYABYAB Y FERNANDEZ, did then and there wilfully, unlawfully, and feloniously by means of force and intimidation have carnal knowledge of ALPHA JEAN BERTIS Y JONGCO, a minor six (6) years of age, against her will and consent.

CONTRARY TO LAW.[9]

When arraigned, appellant pleaded not guilty to the charge. Trial then ensued.

Appellant raised the defenses of denial and alibi. He testified that on August 7, 2001, he was plying his normal route inside the Villamor Airbase as a tricycle driver from 6:00 a.m. until 7:00 p.m.[10] After returning the tricycle to its owner Roberto Gabo at the corner of 14th and 15th Sts., Villamor Airbase, he reached home at around 7:30 p.m and went to sleep after eating dinner.[11] At around 9:30 p.m., he woke up to urinate at the back of their house when three (3) policemen arrested and mauled him.[12] At the headquarters, he was forced to admit

the rape[13] while the victim's father asked for money in exchange for his release, which he refused.[14]

The trial court gave credence to the testimonies of the prosecution witnesses. It found the victim's testimony consistent with the medical findings of the doctors from the PNP Crime Laboratory and CPU, UP-PGH. Moreover, it applied the rule that an unsubstantiated defense of denial and alibi cannot prevail over a positive and categorical testimony of a minor victim. Finally, it appreciated the qualifying circumstance of minority and imposed the penalty of death. The dispositive portion reads:

In view of all the foregoing, the Court opines that the prosecution has proven the guilt of the accused Genaro Cayabyab y Fernandez beyond reasonable doubt for rape as defined and penalized under Article 335, paragraph 3 and 4 as the victim herein is only six (6) years old and hereby sentence accused Genaro Cayabyab y Fernandez to DEATH and to pay civil indemnity in the amount of Php 75,000.00 and moral and exemplary damages in the amount of Php 50,000.00 with subsidiary imprisonment in case of insolvency.

SO ORDERED.[15]

The case was directly elevated to this Court for automatic review. However, pursuant to our decision in *People v. Mateo*[16] modifying the pertinent provisions of the Revised Rules on Criminal Procedure insofar as direct appeals from the Regional Trial Court to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment, this case was transferred to the Court of Appeals,[17] which affirmed in toto the decision of the trial court, thus:

IN VIEW OF ALL THE FOREGOING, the decision of the trial court finding accused-appellant guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the supreme penalty of death is AFFIRMED in toto, and accordingly certifies the case and elevate the entire records to the Supreme Court for review pursuant to Rule 124, Section 13[a] of the Revised Rules on Criminal Procedure, as amended by A.M. No. 00-5-03-SC.

SO ORDERED.[18]

We have painstakingly reviewed the evidence on record and found no cogent reason to disturb the findings of the trial court and the appellate court. There is no doubt that appellant raped Alpha Jane on August 7, 2001 inside their house at Villamor Airbase, Pasay City. This credibility given by the trial court to the rape victim is an important aspect of evidence[19] which appellate courts can rely on because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct, and attitude, during the direct and cross-examination by counsel.

On direct examination, Alpha Jane narrated the incident and positively identified appellant as her assailant, thus:

Fiscal Barrera:

Now at around 6:00 p.m. of August 7, 2001 where were you? A. I was inside our house.

Q.

You mean your house at lagoon area, Villamor Air Base, Pasay City?

A.

Yes, sir.

Q.

What about you mother and father where were they on that date and time?

A.

My mother bought gas while my father was "naglalakad ng spray gun" for painting.

Q.

Who were left in your house on August 7, 2001 at 6:00 p.m. while your mother bought gas and your father was walking with his spray gun used for painting?

A.

My brothers and sisters.

Q.

While in your house on said date and time do you know of any unusual incident that happened to you?

A.

Yes, sir.

Q.

What was that unusual incident that happened to you?

A.

Kuya Jimmy entered our house.

Q.

After Kuya Jimmy entered your house, what happened next?

A.

Kuya Jimmy called for me inside our house.

Q.

What did you do when Kuya Jimmy called for you?

A.

He asked me one plus one and I answered two.

Q.

After that what else happened?

A.

He asked me to lie down on my father's bed.

Q.

Did you follow him?

A.

No, sir, I did not follow.

Q.

And so what else happened?

A.

He removed my clothes "hinubaran niya ako"; he removed my shorts and panty.

Q.

After Kuya Jimmy removed your shorts and panty, what happened?

A.

"Pinatungan po niya ako", he laid on top of me.

Q.

What happened when he laid on top of you?

A.

He inserted his penis inside my private part.

Fiscal Barrera:

What did you do when this Kuya Jimmy inserted his penis to your private part?

A.

I shouted, sir.

Q.

After Kuya Jimmy inserted his penis inside your vagina and you shouted, what happened?

A.

"Pinakawalan niya ako", he released me.

Q.

Then what happened?

A.

"Tinergas niya ako."

Q.

After Kuya Jimmy teargas you, what happened?

A.

I run away.

Q.

Regarding what Kuya Jimmy did to you, did you report it to your mother?

A.

Yes, sir.

Q.

This Kuya Jimmy whom you said went inside your house and removed your shorts and panty and thereafter inserted his penis inside your vagina on August 7, 2001 can you point at him if you see him?

A.

Yes, sir.

Q.

If this Kuya Jimmy Cayabyab is inside the courtroom will you be able to identify him?

A.

Yes, sir.

Q.

Is he inside the courtroom?

Interpreter:

Witness pointed to a person who answered by the name of Genaro Cayabyab.[20]

Despite grueling cross-examination by the defense suggesting extortion by the victim's father, Alpha Jane remained steadfast and consistent that it was appellant who raped her. The victim's testimony was supported by the medico-legal report of the medico-legal experts from the PNP Crime Laboratory and CPU, UP-PGH, to wit:

ANO-GENITAL

EXAMINATION

Hymen: Tanner Stage 2, hymenal transection at 5 o'clock, Type of Hymen: Annullar

...

IMPRESSIONS

Evidence of blunt force or penetrating trauma.
(Exh. "L", p. 8, Records)

Dr. Baluyut explained that in her findings, the terms hymenal transection at 5 o'clock and laceration at 5 o'clock are synonymous (TSN, November 20, 2001, p. 6). Dr. Baluyut further explained that there was prior injury to the victim's hymen which might have been caused by the insertion of a blunt object such as an erected penis which was compatible with the victim's claim that she had been raped (TSN, November 20, 2001, pp. 6-7).[21]

The trial court correctly imposed the death penalty.

Rape, such as committed against a "child below seven (7) years old", is a dastardly and repulsive crime which merit no less than the penalty of death pursuant to Article 266-B of the Revised Penal Code. This special qualifying circumstance of age must be specifically pleaded or alleged with certainty in the information and proven during the trial; otherwise the penalty of death cannot be imposed.

In the case of *People v. Pruna*,[22] this Court took note of conflicting pronouncements concerning the appreciation of minority, either as an element of the crime or as a qualifying circumstance. There were a number of cases where no birth certificate was presented where the Court ruled that the age of the victim was not duly proved.[23] On the other hand, there were also several cases where we ruled that the age of the rape victim was sufficiently established despite the failure of the prosecution to present the birth certificate of the offended party to prove her age.[24] Thus, in order to remove any confusion, we set in *Pruna* the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

- The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
- In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
- If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
 - a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
 - b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
 - c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
- In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and

clearly admitted by the accused.⁷⁸

- It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.[25]

To paraphrase Pruna, the best evidence to prove the age of a person is the original birth certificate or certified true copy thereof; in their absence, similar authentic documents may be presented such as baptismal certificates and school records. If the original or certified true copy of the birth certificate is not available, credible testimonies of the victim's mother or a member of the family may be sufficient under certain circumstances. In the event that both the birth certificate or other authentic documents and the testimonies of the victim's mother or other qualified relative are unavailable, the testimony of the victim may be admitted in evidence provided that it is expressly and clearly admitted by the accused.

In Pruna, no birth certificate or any similar authentic document, such as the baptismal certificate of the victim was presented to prove her age. The trial court based its finding that Lizette was 3 years old when she was raped on the Medico-Legal Report, and the fact that the defense did not contest her age and questioned her qualification to testify because of her tender age. It was however noted that the Medico-Legal Report never mentioned her age and only the testimony of her mother was presented to establish Lizette's age. The Court found that there was uncertainty as to the victim's exact age, hence, it required that corroborative evidence, such as her birth certificate, baptismal certificate or any other authentic document should be introduced in evidence in order that the qualifying circumstance of "below seven (7) years old" is appreciated.

Unlike in Pruna, the trial court in this case made a categorical finding that Alpha Jane was only 6 years old at the time she was raped, based not only on the testimonies of the complainant and her mother, but also on the strength of the photocopy of Alpha Jane's birth certificate. It is well to note that the defense did not object to the presentation of the birth certificate; on the contrary it admitted the same "as to fact of birth".

We are not unaware of our ruling in *People v. Mantis*[26] that a mere photocopy of the birth certificate, in the absence of any showing that the original copy was lost or destroyed, or was unavailable, without the fault of the prosecution, does not prove the victim's minority, for said photocopy does not qualify as competent evidence for that purpose.

However, there are other exceptions to the "best evidence rule" as expressly provided under Section 3, Rule 130 of the Rules of Court, which reads:

Sec. 3. Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.
[Emphasis supplied]

Without doubt, a certificate of live birth is a public record in the custody of the local civil registrar who is a public officer. Clearly, therefore, the presentation of the photocopy of the birth certificate of Alpha Jane is admissible as secondary evidence to prove its contents. Production of the original may be dispensed with, in the trial court's discretion, whenever in the case at hand the opponent does not bona fide dispute the contents of the document and no other useful purpose will be served by requiring production.[27]

In the case at bar, the defense did not dispute the contents of the photocopied birth certificate; in fact it admitted the same. Having failed to raise a valid and timely objection against the presentation of this secondary evidence the same became a primary evidence, and deemed admitted and the other party is bound thereby.[28]

In fine, we find that the prosecution sufficiently proved that Alpha Jane was only six-years-old, being born on November 26, 1994, when the rape incident happened on August 7, 2001.

Anent the award of damages, we sustain the award of P75,000.00 as civil indemnity consistent with the prevailing jurisprudence that if the crime is qualified by circumstances which warrant the imposition of the death penalty by applicable amendatory laws, the accused should be ordered to pay the complainant the amount of P75,000.00 as civil indemnity.

The Court notes that the trial court awarded P50,000.00 as moral and exemplary damages. Moral damages is distinct from exemplary damages, hence must be awarded separately. The award of moral damages is automatically granted in rape cases without need of further proof other than the commission of the crime because it is assumed that a rape victim has actually suffered moral injuries entitling her to such award.[29] However, the award of P50,000.00 must be increased to P75,000.00 in accord with prevailing jurisprudence.[30] As regards exemplary damages, we held in *People v. Catubig*[31] that the presence of an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to an award of exemplary damages. Conformably, we award the amount of P25,000.00 as exemplary damages in accord with the prevailing jurisprudence.[32]

WHEREFORE, the decision of the Regional Trial Court of Pasay City, Branch 109, in Criminal Case No. 01-1311, as affirmed in toto by the Court of Appeals in CA-G.R. CR.-H.C. No. 00258, finding appellant Genaro Cayabyab y Fernandez guilty beyond reasonable doubt of the crime of rape and imposing the penalty of DEATH[33] is AFFIRMED with the MODIFICATION that appellant is further ordered to pay the victim P75,000.00 as moral damages and P25,000.00 as exemplary damages.

SO ORDERED.

Davide, Jr., CJ., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Also spelled as Alpha "Jean" Bertiz in some parts of the records.

[2] Records, p. 9.

[3] TSN, 23 January 2002, p. 9.

[4] TSN, 16 January 2002, pp. 3-4.

[5] TSN, 23 January 2002, pp. 4-5.

[6] Id. at 13.

[7] Id. at 7.

[8] Records, pp. 8 & 10.

[9] Id. at 2.

[10] TSN, 27 February 2002, pp. 8-9.

[11] Id. at 9-10.

[12] Id. at 10-11.

[13] Id. at 12.

[14] Id. at 13-14.

[15] Rollo, p. 33. Penned by Judge Lilia C. Lopez.

[16] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[17] Docketed as CA-G.R. CR.-H.C. No. 00258.

[18] Rollo, p. 163. Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta.

[19] *People v. Paranzo*, 375 Phil. 796, 814 (1999).

[20] TSN, 16 January 2002, pp. 3-4.

[21] Rollo, p. 95.

[22] 439 Phil. 440 [2002].

[23] Id. at 465-468.

[24] Id. at 468-470.

[25] Id. at 470-471.

[26] G.R. Nos. 150613-14, June 29, 2004, 433 SCRA 236, 249.

[27] *Estrada v. Desierto*, G.R. Nos. 146710-15 & 146738, 3 April 2001, 356 SCRA 108, 138.

[28] *People v. Boras*, G.R. No. 127495, 22 December 2000, 348 SCRA 638, 645.

[29] *People v. Antonio*, G.R. No. 157269, 3 June 2004, 430 SCRA 619, 627.

[30] *People v. Soriano*, G.R. Nos. 142779-95, 29 August 2002, 388 SCRA 140, 172.

[31] 416 Phil. 102, 120.

[32] *People v. Galigao*, G.R. Nos. 140961-63, 14 January 2003, 395 SCRA 195, 209.

[33] Three (3) Justices of the Court maintain their position that Republic Act No. 7659 is unconstitutional insofar as it prescribes the death penalty, nevertheless they submit to the ruling of the majority that the law is constitutional, hence the death penalty may be lawfully imposed in this case.

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