

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE ALVIZO AUDINE, ACCUSED-APPELLANT.

G.R. NO. 168649. December 06, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us for review is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00338 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Marikina City, Branch 272, finding accused-appellant Jose Alvizo Audine guilty of two (2) counts of rape committed against his fourteen-year old daughter, AAA[3] and sentencing him to suffer the capital punishment for each count.

On the basis of the complaint filed by AAA, two informations for Rape[4] against accused-appellant were filed with the RTC of Marikina City. The accusatory portions thereof read:

Criminal Case No. 2001-4093-MK

That on or about the 24[th] day of December 1999, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the minor victim, by means of force, coercion and intimidation, with the use of small knife which is a bladed weapon, and with lewd design or intent to cause or gratify his sexual desire upon complainant AAA, a minor and fifteen (15) years old, did then and there willfully, unlawfully and feloniously have sexual intercourse with said complainant against her will and consent which debases, degrades or demeans the intrinsic worth and dignity of said child as a human being.[5]

Criminal Case No. 2001-4094-MK

That on or about the 8[th] day of January 2000, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the minor victim, by means of force, coercion and intimidation, with the use of a small knife which is a bladed weapon, and with lewd design or intent to cause or gratify his sexual desire upon complainant AAA, a minor and fifteen (15) years old, did then and there willfully, unlawfully and feloniously have sexual intercourse with said complainant against her will and consent which debases, degrades or demeans the intrinsic worth and dignity of said child as a human being.[6]

The cases were raffled to Branch 272. Finding probable cause, a warrant of arrest was issued against accused-appellant who was arrested and detained at the Marikina City Police Station.

When arraigned on 10 June 2002, accused-appellant, with the assistance of counsel de oficio, pleaded "not guilty" to the two counts of rape.[7] Thereafter, the cases were consolidated and jointly tried.

During the pre-trial, the following stipulation of facts[8] was entered into by the prosecution and the defense:

- The jurisdiction of this court to try these cases;
- The identity of the accused as AAA;[9]

- The existence and due execution of Medico Legal Report No. M-187-01 issued and prepared by Dr. Ruby Grace D. Sabino dated January 17, 2001;
- The existence of the medico legal examination issued and prepared by Dr. Ruby Grace D. Sabino addressed to the PNP Crime Laboratory;
- The existence and due execution of the initial of the Medico Legal Report No. M-187-01 dated January 16, 2001; and
- The existence of the manifestation of consent signed by the victim and the Department of Social Welfare and Development who is the guardian of the victim.

The prosecution presented four witnesses, namely: private complainant AAA, Dr. Ruby Grace D. Sabino, SPO4 Nenita Sadullo Abanes and Lucila Sulte Arresu. For the defense, only accused-appellant took the stand.

The records bear the following:

It appears from the evidence adduced by the prosecution that AAA, the only daughter of the accused-appellant, was born on August 4, 1985.

On November 7, 1999, the accused-appellant was supposed to bring AAA to the house of his wife's cousin in Bulacan. Instead, he brought her to the house of his own cousin, Arminda Arginosa, at XXX, XXX City.

On December 24, 1999, AAA was alone reading magazines in the house of her aunt when the accused-appellant arrived and ordered her to get his clothes from the master's bedroom. AAA did as told. But the accused-appellant almost at once followed AAA inside the room and pushed her towards the bed. She fought back but the accused-appellant boxed her in the abdomen. The accused-appellant then forcibly took off AAA's dress and shorts. AAA continued resisting the accused-appellant and pleaded with him to stop, but to no avail. The accused-appellant kissed AAA's body, laid on top of her, and inserted his penis into her vagina, satiating his lust. After the violation, the accused-appellant warned AAA not to tell anybody about the rape. AAA feared for her life because the accused-appellant pointed a knife at her before and after the rape incident.

The second violation occurred on January 8, 2000. AAA was sleeping alone in her room when she felt something pressing on her thigh. It was again the accused-appellant, a knife pointed at her abdomen, who was undressing her. It was the same knife the accused-appellant used during the December 24, 1999 incident. AAA shouted and fought back, but as in the first incident, the accused-appellant again boxed her in the stomach. The accused-appellant masturbated first before inserting his male member into AAA's vagina. At the conclusion of the bestial assault, he threatened to kill AAA and her siblings if she reported the rape to anybody. After the incident, the accused-appellant left for Quezon Province.

As a result of her successive violations, AAA got pregnant. On August 19, 2000, she gave birth to a baby boy, who however died five (5) days later.

Since she was in virtual isolation, AAA went to see medical social worker Lucila Arresu and revealed to the latter that the accused-appellant had raped her. Armed with that information, Lucila called up the Marikina City Police. SPO4 Nenita Abanes interviewed AAA and took down her statement.

On January 16, 2001, Dr. Ruby Grace Sabino conducted a physical examination on AAA. She found the condition of AAA's genitalia exhibiting signs of penetration. According to her, AAA's hymen has "carunculae myrtiformis" or, in layman's term, there is already a rose bead appearance on it, which is an indication that AAA has already given birth.

Interposing disavowal or alibi, the accused-appellant simply denied the charges against him. He claimed that on December 24, 1999 and January 8, 2000, he was in Sariaya, Quezon working in his tailoring shop.

He further testified that in September 1999, AAA was missing for three (3) days. His family searched for her and learnt that she had eloped with her sweetheart BBB.

He claimed that it was not his idea to take AAA anywhere, since she was still studying in Quezon Province. It was AAA's mother who prevailed upon him to bring their daughter to XXX City to prevent AAA from seeing her friends, who had badly influenced her, as well as her boyfriend, with whom she later eloped.[10]

On 5 December 2002, the trial court, convicting accused-appellant of two counts of rape and imposing on him the death penalty for each count, disposed of the cases as follows:

WHEREFORE, in the light of the foregoing, the accused, JOSE ALVIZO AUDINE, is found GUILTY beyond reasonable doubt of two (2) counts of Rape (RA 8353) filed against him and is sentenced to suffer the extreme penalty of DEATH in each case. The accused is further ordered to indemnify the private complaint in the amount of ONE HUNDRED THOUSAND PESOS (PhP100,000.00) and FIFTY THOUSAND PESOS (PhP50,000.00) as moral damages so as to serve as deterrent to this disturbing trend, plus the costs of the suit.[11]

Ignoring accused-appellant's defenses, the trial court ratiocinated:

The accused interposed a number of defenses. First, that of alibi. Jose Audine stated that the December 24, 1999 and January 8, 2000 alleged rape incidents could not be true as he was already in Sariaya, Quezon then, having returned to the province right after taking AAA to her cousin Arminda Arganosa's house in XXX. Second, the accused denied having raped her daughter and stressed that her daughter had ran away with her boyfriend, BBB, in Sariaya, Quezon on September of 1999 giving an implication that the pregnancy could be attributed to that. He only wanted to stop AAA from seeing her "womanizer-cum-addict" boyfriend, BBB. He corroborated AAA's testimony that he filed a rape case in Sariaya, Quezon against BBB.

However, realizing the futility of his defense, the accused shifted his defense in the middle of the trial. According to the accused, his cousin Arminda Arganosa was arrested for illegal possession of a big amount of shabu in Dalampasigan Beach in Dalahican, Sariaya, Quezon, and Arminda suspected that he was behind her arrest. He also accused Arminda of acting as a "pimp" to her daughter as she vowed to get even with Jose Audine, an allegation too incredible to believe considering AAA's pregnancy was very noticeable then. In *People vs. Balgos*, 323 SCRA 372, it was held that an "accused's shift of theory, upon realizing the futility of his earlier defense, rather than help his cause, only further damaged his credibility." [12]

Considering that the penalty it imposed was the death penalty, the trial court forwarded the records of the case to the Supreme Court for automatic review pursuant to Section 10, Rule 122 of the 2000 Rules of Criminal Procedure.[13] However, pursuant to our ruling in *People v. Mateo*, [14] the case was remanded to the Court of Appeals for appropriate action and disposition.

On 18 February 2005, the Court of Appeals rendered its decision affirming the conviction of accused-appellant, together with the imposition of the death penalty for each count of rape, but modified the awards of civil indemnity and damages. The dispositive portion thereof reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appealed Decision dated December 5, 2002 of the Regional Trial Court of Marikina City, Branch 272, in Criminal Cases Nos. 2001-4093-MK and 2001-4094-MK, finding the accused-appellant JOSE ALVIZO AUDINE guilty beyond reasonable doubt of two counts of rape and sentencing him in each case to suffer the penalty of death is AFFIRMED, with the MODIFICATION that for each count of rape, the accused-appellant is also CONDEMNED to pay the private complainant, AAA, the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

Should no motion for reconsideration be filed in this case by the accused-appellant within the allowable

reglementary period, or after the lapse thereof, let the entire records of this case be forwarded to the Honorable Supreme Court for appropriate action hereon.[15]

On 15 March 2005, accused-appellant filed a motion for reconsideration[16] of the decision but same was denied by the Court of Appeals on 28 June 2005.[17] In accordance with Section 13, paragraph 2 of Rule 124, the entire records of the case were elevated to the Supreme Court for review. Thereupon, the parties were required to submit supplemental briefs within thirty (30) days from notice.[18] Accused-appellant opted not to file a supplemental brief on the ground he had exhaustively argued all the relevant issues in his appellant's brief. On the part of the Office of the Solicitor General, despite notice, no response was received therefrom.

Accused-appellant makes a lone assignment of error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[19]

In trying to discredit private complainant AAA, accused-appellant cites several circumstances that tend to create doubt as to his guilt, to wit: (1) It is quite unimaginable how the accused-appellant could still manage to undress AAA while he was holding her hands and at the same time pointing a knife at her who was then putting up a fight; (2) It is unbelievable that accused-appellant could have penetrated her considering that she was kicking him while he was inserting his penis into her vagina; (3) The failure of AAA to exercise any precaution in securing herself, like locking her room or arming herself with a weapon, to prevent accused-appellant's sexual advances considering her alleged horrible experience with accused-appellant; (4) The delay in reporting the incidents notwithstanding the absence of the accused-appellant who was in the province all the time, renders doubtful her charges of rape; (5) The charges of rape were filed by AAA as revenge against accused-appellant whom she considered as the person who separated her from her lover; (6) AAA's admission that she executed a sworn statement charging BBB with rape which she later recanted, indicates that she can concoct untruthful stories under oath.

In the review of rape cases, we are almost invariably guided by the following principles: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[20]

Accused-appellant's contention that he could not have committed the rapes the way private complainant described them deserves scant consideration. We fully agree with the Court of Appeals when it ruled:

AAA never testified that the accused-appellant undressed her, while he was holding her hands and pointing a knife at her, as the accused-appellant seems to suggest. A plain reading of AAA's testimony during her direct examination shows that such acts of the accused-appellant were done at different points in time.

We also fail to see anything extraordinary or unbelievable in AAA's testimony that despite her act of kicking the accused-appellant he still succeeded in inserting his penis into her vagina. While it may be admitted that AAA's act of kicking made penetration somewhat difficult, it certainly did not render the satyr's maniacal attack irresistible, nor his penetration into the citadel of his daughter's purity anything impossible.[21]

Private complainant is being faulted for not taking the necessary measures to prevent a recurrence of her horrible experience with accused-appellant last 24 December 1999. Her failure to perform what accused-appellant claims she ought to have done cannot be taken against her. A fourteen-year old girl cannot be reasonably expected to exercise or put into place any measure that would avert the repetition of the ordeal with her father. How the victim

comported herself after the incident was not significant as it had nothing to do with the elements of the crime of rape.[22] Not all victims can be expected to act conformably to the usual expectations of everyone. Different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode. It is settled that different people react differently to a given situation or type of situation and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[23] The workings of the human mind when placed under emotional stress are unpredictable.[24] This Court, in *People v. Luzorata*,[25] held:

This Court indeed has not laid down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt x x x.

Private complainant narrated in a clear and straightforward manner her harrowing experience. The trial court and the Court of Appeals gave credence to her testimony. She recounted her ordeal as follows:

PROS. REMOLETE

Q:

Instead of bringing you to Bulacan, your father brought you here in XXX?

A:

Yes, sir.

Q:

In that same day and time, do you remember of any unusual incident that happened?

A:

He brought me to the house of his cousin and let me lived there, sir.

Q:

On December 24, 1999 in the afternoon, do you remember of anything unusual incident that happened to you?

A:

Yes, sir.

Q:

Where were you then?

A:

Inside the house of my aunt, sir.

Q:

Her house at XXX?

A:

Yes, sir.

Q:

Who was your companion?

A:

None, sir.

Q:

While alone in that house and you said an unusual incident happened to you, what was that unusual incident that happened to you?

A:

I was raped by my father, sir.

Q:

Will you kindly inform this Honorable Court how that incident happened?

A:

I was alone in the house then my father raped me, sir.

Q:

Do you know where your father came from?

PROS. RAMOLETE:

May I make it of record that the victim is crying Your Honor.

A:

He went out, I thought I was alone in the sala but he suddenly entered, sir.

Q:

When your father suddenly entered, what happened next?

A:

He touched my body and told me not to report it to anybody and he brought me inside the room, sir.

Q:

What particular part of your body did he touch?

A:

On my thigh, sir.

Q:

What were you doing in the sala when your father arrived and touched you?

A:

I was reading magazines, sir. He told me to go inside the room and he told me to get his clothes in the master's bedroom, sir.

Q:

Did you in fact get his shirt inside the master bedroom?

A:

He followed me inside the room and pushed me to the bed, sir.

Q:

What did you do when your father followed you and pushed you in the bed?

A:

I fought back but he boxed me on the abdomen "puson," sir.

Q:

What else did your father do to you if any?

A:

He undressed me, sir.

Q:

How did he undress you?

A:

He pulled my dress and took off my shorts sir.

Q

Were you able to get out of the master's bedroom?

A

No, sir because the door was locked and he was already holding me and I could not free myself.

Q

Who locked the door?

A

My father, sir.

Q

What did you do when your father undressed you?

A

I was fighting and pleading with him not to do it, sir.

Q

Were you able to fight him back?

A

No, sir because he was holding my hand, sir.

Q

Did he listen to your plea?

A

No, sir.

Q

So what happened next?

A

After raping me he left me inside and locked the door, sir.

Q

How did he rape you?

A

He undressed me and kissed the parts of my body and laid on top of me, sir.

Q

What do you mean when you said he placed himself on top of you?

A

He made sexual intercourse, sir.

Q

Go directly to the point.

A

He inserted his penis into my vagina, sir.

Q

Did you feel his penis inside your vagina?

A

Yes, sir.

Q

What did you feel?

A

It was painful, sir.

Q

What did you do while the accused was inserting his penis into your vagina?

A

I was kicking him, sir.

Q

Why did you kick him?

A

So he might not pursue what he was doing to me, sir.

Q

Did he stop that thing being done to you?

A

No, sir.

Q

After that after he inserted his penis into your vagina, what happened?

A

After raping me he told me not to tell it to anybody.

Q

What did you do when he was telling you that?

A

I was afraid, sir.

Q

Afraid of whom?

A

Afraid of my father, sir.

Q

Why were you afraid?

A

Because he was pointing a knife on me, sir.

Q

How big is that knife?

A

It was a small knife, sir.

Q

What kind of knife was it?

A

Kitchen knife, sir, my aunt used in the kitchen, sir.

Q

At what point in time did he point that knife to you after he inserted his penis or before?

A

Before he raped me and afterwards, sir.

Q

Aside from pointing that knife to you, what else did he do if any?

A

When I cried, he slapped me, sir.

Q

Was this incident repeated again?

ATTY. LARRACAS:

Objection Your Honor.

PROS. RAMOLETE:

I will reform my question.

Q

At noontime of January 8, 2000, where were you Miss Witness?

A

I was at home, sir.

Q

Who were your companions, if any?

A

None, sir.

Q

Do you remember of any incident that happened to you?

A

Yes, sir.

Q

What was that unusual incident?

A

I was raped again by my father, sir.

Q

Will you kindly inform his Honorable Court what happened?

A

I was sleeping at that time, sir.

Q

Where were you sleeping?

A

Inside the room, sir.

Q

Whose room?

A

My aunt and my room, sir.

Q

Were you awakened from your sleep?

A

Yes, sir.

Q

Why were you awakened from your sleep?

A

I felt something pressing on my thigh, sir.

Q

Upon feeling something pressing your thigh, what did you do?

A

I was able to stand when I saw my father, sir.

Q

What happened next?

A

He pointed his knife to me again and undressed me, sir.

Q

At what part of your body did he point that knife to you?

A

To my abdomen, sir.

Q

Was that the same knife that he used on December 24, 1999?

A

Yes, sir.

Q

What did you feel when he pointed that knife to your abdomen?

A

I was frightened that he might repeat again what he did to me, sir.

Q

What else transpired?

A

He repeated raping me, sir.

Q

What did you do when he pointed that knife in your stomach?

A

I shouted and fought him but he boxed me in the stomach, sir.

Q

What happened next?

A

I found it difficult to fight him back, sir.

Q

What happened next?

A

He was able to insert his penis into my vagina, sir.

Q

How did he insert his penis into your vagina?

A

At first, he masturbated and then he inserted his penis into my vagina, sir.

Q

What was his position when he inserted his penis into your vagina?

A

He was on top of me, sir.

Q

Did you feel his penis inserted into your vagina?

A

Yes, sir.

Q

What did you feel?

A

I was hurt, sir.

Q

What did you do when your father inserted his penis into your vagina?

A

I tried to fight but he was pointing his knife at me, sir.

Q

Were you able to do anything?

A

None, sir.

Q

After that what happened next?

A

He left the house and went home to the province sir.

Q

What did you do after he was through with his act?

A

I was afraid because everytime he finished what he did to me, he threatened me not to report the matter to anybody or else he will kill me and my siblings, sir.[26]

After a review of the testimony of the private complainant, We find no compelling reason to reverse the findings of the trial court, as affirmed by the Court of Appeals. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate

court to evaluate properly testimonial evidence.[27] In the case at bar, there being overwhelming evidence showing that on 24 December 1999 and 8 January 2000 appellant had carnal knowledge of private complainant by means of force, coercion and intimidation, we have no reason not to apply the rule and to apply the exception.

Accused-appellant interposed the defense of denial and alibi. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected.[28] For the defense of alibi to prosper, it is imperative that the accused establish two elements: (1) he was not at the locus delicti at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.[29]

In the case at bar, accused-appellant claimed that on 24 December 1999 and 8 January 2000, he was in Sariaya, Quezon working in his tailoring shop. He, however, did not present any witness to corroborate such claim. Unsubstantiated by clear and convincing evidence, his alibi is self-serving and deserves no weight in law; thus, same must necessarily fail. An alibi must be supported by credible corroboration from disinterested witnesses, and where such defense is not corroborated, it is fatal to the accused.[30] Uncorroborated alibi must be disregarded.[31]

Accused-appellant further argues that the delay in reporting the incidents renders doubtful private complainant's charges of rape.

We are not persuaded. The delay and initial reluctance of a rape victim to make public the assault on her virtue is neither unknown nor uncommon. Particularly in incestuous rape, this Court has consistently held that delay in reporting the offense is not indicative of a fabricated charge.[32] It has been repeatedly held that the delay in reporting a rape incident due to death threats cannot be taken against the victim.[33] The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained. In this case, private complainant, who was fourteen years old when she was ravished, satisfactorily explained why she did not immediately report the matter to anybody. She revealed that she is afraid of her father and that the latter threatened to kill her and her siblings if she would divulge the sexual attack on her.[34] Accused-appellant, being her father, exercises moral ascendancy and influence over her. Thus, her reluctance that caused the delay should not be taken against her. Neither can it be used to diminish her credibility nor undermine the charge of rape.

The fact of delay does not necessarily lead to an acquittal. In several cases we have decided,[35] the delay lasted for two years or more; nevertheless, the victims were found to be credible. As above-mentioned, we found the delay to be reasonable and sufficiently explained. The testimony of the victim herself has convinced the Court that her accusation has a ring of truth sufficient to justify the conviction of appellant.

The defense tried to impute ill motive on private complainant claiming that the latter filed the two cases of rape to exact revenge because he separated private complainant from her lover-boyfriend.

We find this hard to believe. Motives such as feuds, resentment and revenge have never swayed us from giving full credence to the testimony of a minor complainant.[36] This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.[37] It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.[38] Youth and immaturity are generally badges of truth.[39] Full weight and credit should, indeed, be accorded AAA's testimony. It is very unlikely for her to accuse her father of so heinous a crime if it were not true. Her credibility was bolstered beyond reproach by her spontaneous emotional breakdown during trial.[40]

So traumatized by her horrific experience with her father, private complainant testified that, in the event her father is found guilty, she will not regret or repent if he is sentenced to death because she only wants justice for what he did to her.[41] Furthermore, her refusal to reveal in the Birth Certificate the name of the father of her child indicates that it was accused-appellant who sired her son. She testified:

ATTY. LARRACAS:

Q. You did not indicate the name of your father as the father of your child?

A. No, ma'am.

Q. Why did you not place the name of your father?

A. Because his name if I would place the name of my father it will be shameful and embarrassing if they find out that the father of my child is my father, ma'am.[42]

A child of tender years will not make these declarations unless the bestial attacks on her were not truly perpetrated by her father.

The contention of the defense that private complainant cannot be considered a credible witness because she has the propensity to concoct untruthful stories under oath in light of her admission that she executed a sworn statement charging BBB with the crime of rape which she later recanted, deserves scant consideration.

Private complainant explained to the satisfaction of this Court that she was merely forced by her father to execute a sworn statement against BBB that the latter raped her.[43] It is very apparent that she was under her father's moral authority and influence. This ascendancy, together with the threats from her father, is so great that private complainant failed to resist or overcome it.

The pertinent provisions of the Revised Penal Code relative to the case on hand are Articles 266-A and 266-B, which read:

Art. 266-A. Rape; When and How Committed. – Rape is committed –

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

a) Through force, threat, or intimidation;

x x x x

Art. 266-B. Penalties. –

x x x x

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

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

For one to be convicted of qualified rape, at least one of the aggravating/qualifying circumstances mentioned in Article 266-B of the Revised Penal Code must be alleged in the information and duly proved during the trial.[44] In the instant case, since the special qualifying circumstances of the victim's minority and her relationship with the offender have been properly alleged in the informations and established during trial, the imposition of the death penalty for each count of rape is justified.

With the effectivity,[45] however, of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted on accused-appellant shall be reclusion perpetua. Said section reads:

SECTION 2. In lieu of the death penalty, the following shall be imposed:

- (a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
- (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on accused-appellant, he is not eligible for parole following Section 3 of said law which provides:

SECTION 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

As regards the award of damages for each count of rape, the same must be modified. The P100,000.00 awarded by the trial court as civil indemnity[46] was properly reduced by the Court of Appeals to P75,000.00 which is the amount awarded if the crime is qualified by circumstances which warrant the imposition of the death penalty.[47] With respect to moral damages, the amount of P50,000.00 awarded by both the trial court and the Court of Appeals must be increased to P75,000.00 without need of pleading or proof of basis thereof.[48] Moreover, the P25,000.00 awarded by the Court of Appeals as exemplary damages was proper due to the presence of the qualifying circumstances of minority and relationship.[49]

WHEREFORE, all the foregoing considered, the decision of the Court of Appeals dated 18 February 2005 finding accused-appellant Jose Alvizo Audine guilty beyond reasonable doubt of two counts of qualified rape is **AFFIRMED** with the **MODIFICATION** that each penalty of death imposed on appellant is reduced to reclusion perpetua without eligibility to parole pursuant to Republic Act No. 9346. He is also ordered to pay private complainant AAA, for each count of rape, the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages. Costs against accused-appellant.
SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Garcia, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring; rollo, pp. 3-19.

[2] Records, pp. 81-100.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with that of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006.

[4] Article 266-B, Subparagraph 1 of Republic Act No. 8353.

[5] Records, p. 1.

- [6] Id. at 7.
- [7] Id. at 38.
- [8] Id. at 43.
- [9] Erroneously placed name of AAA as accused. Identity of accused should be Jose Alvizo Audine.
- [10] Rollo, pp. 134-136.
- [11] Records, p. 100.
- [12] Id. at 97-98.
- [13] Id. at 103.
- [14] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [15] Rollo, pp. 16-17.
- [16] Id. at 150-155.
- [17] Id. at 162.
- [18] Id. at 21.
- [19] Id. at 49.
- [20] People v. Capareda, G.R. No. 128363, 27 May 2004, 429 SCRA 301, 324.
- [21] Rollo, p. 10.
- [22] People v. Binarao, G.R. Nos. 134573-75, 23 October 2003, 414 SCRA 117, 129-130.
- [23] People v. Salome, G.R. No. 169077, 31 August 2006.
- [24] People v. Sagun, 363 Phil. 1, 16 (1999).
- [25] 350 Phil. 129, 134 (1998).
- [26] TSN, 19 August 2002, pp. 8-18.
- [27] People v. Escultor, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.
- [28] People v. Sanchez, 426 Phil. 19, 31 (2002).
- [29] People v. Flora, 389 Phil. 601, 611 (2000).
- [30] People v. Ballesteros, G.R. No. 120921, 29 January 1998, 285 SCRA 438, 447.
- [31] People v. Sanchez, 320 Phil. 60, 77 (1995).
- [32] People v. Silvano, 368 Phil. 676, 705 (1999).
- [33] People v. Lucas, G.R. No. 80102, 22 January 1990, 181 SCRA 316, 325.
- [34] TSN, 19 August 2002, p. 18.
- [35] People v. Dimaano, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 663; People v. Salvador, 444 Phil. 325, 332 (2003).

- [36] *People v. Leonor*, G.R. No. 132124, 8 June 2004, 431 SCRA 223, 235.
- [37] *People v. Villafuerte*, G.R. No. 154917, 18 May 2004, 428 SCRA 427, 433.
- [38] *People v. Andales*, G.R. Nos. 152624-25, 5 February 2004, 422 SCRA 253, 265.
- [39] *People v. Espinosa*, G.R. No. 138742, 15 June 2004, 432 SCRA 86, 99.
- [40] TSN, 19 August 2002, pp. 9 and 36; *People v. Marcellana*, 426 Phil. 739, 749 (2002).
- [41] *Id.* at 36.
- [42] *Id.* at 47.
- [43] *Id.* at 42, 62-63.
- [44] *People v. Caliso*, 439 Phil. 492, 507-508 (2002).
- [45] Republic Act No. 9346 took effect immediately after its publication in two newspapers of general circulation, namely *Malaya* and *Manila Times* on 29 June 2006 in accordance with Section 5 thereof.
- [46] The amount of civil indemnity to be awarded the victim of a heinous offense remains at P75,000.00 despite the prohibition of the imposition of the death penalty because the penalty provided for by law for heinous offenses is still death. (*People v. Salome*, *supra* note 22.)
- [47] *People v. Barcena*, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 561.
- [48] *People v. Alfaro*, G.R. Nos. 136742-43, 30 September 2003, 412 SCRA 293, 309.
- [49] *People v. Quiachon*, G.R. No. 170236, 31 August 2006.

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