PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESSIE MARIANO, ACCUSED-APPELLANT.

G.R. No. 168693. June 19, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

For automatic review is the decision[1] dated June 6, 2005 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00922 which affirmed an earlier decision[2] of the Regional Trial Court (RTC) of La Trinidad, Benguet, Branch 9 in Criminal Cases Nos. 98-CR-3081, 98-CR-3082 and 98-CR-3083, finding accused-appellant guilty beyond reasonable doubt of three counts of Rape and sentencing him to suffer the extreme penalty of death.

Pursuant to our pronouncement in People v. Mateo[3] -- which modified the provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed by the trial court is death, reclusion perpetua or life imprisonment -- the aforesaid criminal cases which were elevated to this Court in G.R. Nos. 154995 to 154997 were earlier referred to the CA for appropriate action and disposition.[4] The cases were docketed as CA-G.R. CR-H.C. No. 00922.

Consistent with our decision in People v. Cabalquinto,[5] the real name of the rape victim in this case is withheld and instead fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, are not disclosed in this decision.

In three separate Informations, accused-appellant Jessie Mariano was charged in Criminal Case Nos. 98-CR-3081, 98-CR-3082 and 98-CR-3083, with three (3) counts of rape allegedly committed on September 6 and 13, 1997 and October 5, 1997, respectively, against the ten-year old daughter of his common-law wife.

The Informations were similarly worded, except as to the dates of the commission of the crime, as follows:

> That on or about the 6[th] day of September, 1997 (13[th] day of September, 1997 and 5[th] day of October, 1997), at Taloy Sur, Municipality of Tuba, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a girl below 12 years of age.
>
> That in the commission of the crime, the aggravating circumstance is present as the accused is the common-law husband of the mother of the victim.
>
> **CONTRARY TO LAW.**

On his arraignment on May 13, 1999,[6] accused-appellant, assisted by his counsel, pleaded "Not Guilty" to the crime charged. During the trial on the merits, the prosecution presented the oral testimonies of the victim AAA; AAA's mother BBB; and Dr. Ronald Bandonil, medico-legal officer of the National Bureau of Investigation (NBI), Baguio City.

For its part, the defense presented accused-appellant himself as its lone witness.

The prosecution's version of the incidents is succinctly summarized by the Office of the Solicitor General (OSG) in its Appellee's Brief,[7] which was quoted by the CA in its decision as follows:

> Private complainant AAA was born on February 24, 1987. She was just ten (10) years old and a Grade 4 pupil of the University of Baguio at the time she encountered her harrowing experience with the accused-appellant Jessie Mariano y Isla on September 6, 13 and October 5, 1997. She was born out of wedlock by BBB. AAA had no relation with accused-appellant aside from the fact that he was the live-in partner of her natural mother. Since July 1997, she lived with her mother (BBB) and accused-appellant in a rented house located at Taloy Sur, Tuba, Benguet. The house is a one-room affair where they sleep, cook and eat. It has an area of about five (5) by four (4) meters, with only one (1) window and with no electricity. On weekdays, she lived at her aunt's (sister of BBB) house at No. 31 Holy Ghost Proper, Sumulong Street, Baguio City where her school is nearly situated. On Saturdays and Sundays, she lived with her mother and accused-appellant.
>
> On the other hand, accused-appellant Jessie Mariano was the common-law husband of BBB (natural mother of minor AAA). In July 1996, the two (2) went to Manila and stayed there as live-in partners. Minor AAA, in the meantime, lived in Baguio City where she attended her school.
>
> Sometime in 1997, accused-appellant and BBB returned to Taloy Sur, Tuba, Benguet and decided to stay together as common-law husband and wife.
>
> On September 6, 1997, in their rented house at Taloy Sur, Tuba, Benguet, BBB, accused-appellant, AAA and her younger cousin slept together. AAA laid with her cousin on her right side, while accused-appellant was on her left side with the three of them in the mattress. AAA was then on the other side of accused-appellant. While they were asleep, around 11:00 o'clock that night, AAA was suddenly awakened when she felt that her pants and panty were slowly being lowered by someone. As she opened her eyes, she vividly saw accused appellant who was seated beside her, putting down her pants and panty.
>
> When accused-appellant noticed that AAA had awakened, he immediately held her hands behind her back as they were facing each other. As AAA's pants and panty were removed, accused-appellant slowly lifted her left leg, held his penis and thereupon forces his penis into her `pipit' (vernacular term of `vagina' in the Ilocano dialect). Upon insertion of the penis, Jocelyn immediately grimaced in pain albeit accused-appellant continued to pump his penis into her vagina. After around five (5) minutes, she felt as if water came out from the penis.
>
> Satiated, accused-appellant pulled out his penis from AAA's vagina and carefully put back her panty and pants, with a warning not to tell what happened to her mother, "Haan mo nga ibagbaga ti inaramid ko ti sabali!' ("Do not tell what I did to anyone!"). Accused-appellant just laid down in bed. Without remorse, he easily fell asleep as if nothing had happened. Meanwhile, AAA felt so helpless. She simply cried herself to sleep. The next day, her mother accompanied her to school but she could not disclose the incident for fear of the accused-appellant.
>
> On September 13, 1997 - - which was a Friday - - accused-appellant fetched AAA in her school around 4:30 o'clock in the afternoon. AAA was initially reluctant but when he told her that her mother (BBB) would tell her something at their house, she eventually decided to go with him. Before they went home, they first proceeded to her Auntie's house, located at 31-B Holy Ghost Proper, Sumulong Street, Baguio City, to get her clothes. Thereafter, the two (2) proceeded to Taloy Sur, Tuba, Benguet. When they reached home, her mother never told her anything contrary to what accused-appellant told her in school.
>
> On the night of that particular day, when they went to sleep, AAA lay with her mother on her right side, her younger cousin on her left side while accused-appellant was positioned on the other side of BBB. Around 12:00 o'clock of that night, AAA was again awakened when the accused-appellant surreptitiously carried her and laid her down on the floor about one (1) meter away from her mother and cousin. AAA was laid on her side facing accused-appellant who, after carefully removing her short pants and panty, lifted her left leg.

> Wasting no time, accused-appellant inserted his penis into her vagina. Again, as he rhythmically pumped his penis into her vagina, AAA silently bore and endured the grimacing pain. After satisfying his lust, accused-appellant slowly pulled out his penis and carefully put back AAA's panty and short pants. Thereafter, he carried her back to the bed to lay beside her mother. Indeed, AAA was unable to resist accused-appellant's sexual assault due to the latter's strength and, of course, for fear of her life. As in the first experience, she just cried.
>
> On the night of October 5, 1997, at Taloy Sur, Tuba, Benguet - which was a Sunday, AAA had the third sexual encounter. On that night, AAA went to sleep, with accused-appellant and BBB in bed. She slept between the latter two (2). While asleep, she was again awakened when someone was slowly pulling and carrying her away from the mattress at a distance of one (1) meter. She vividly saw accused-appellant laying her down on the floor. Accused-appellant hurriedly pulled down her short pants and panty, and in an instant, pulled out his penis and forced it into her vagina. She cannot recall how long he inserted his penis into her vagina, as she was grimacing in pain. At one instance, though, she managed to pinch her mother (BBB) who just moved, without noticing what was then transpiring. Nonetheless, accused-appellant put up AAA's panty and pants, and carefully carried and brought her back in bed with her mother. Thereafter, AAA silently cried in the darkness of the night. Accused-appellant, on the other hand, proceeded to the bedpan and urinated.
>
> On October 6, 1997, AAA stayed at her aunt's house at No. 31 Holy Ghost Proper, Sumulong Street, Baguio City. She continuously stayed in that place until October 29, 1997. During that period, she never told her aunt or anybody about the harrowing experience because she was afraid of accused-appellant and she was mindful of the humiliation she would hear from her relatives.
>
> In the afternoon of October 29, 1997, BBB fetched AAA at her aunt's house. BBB asked her daughter why she refused to go with accused-appellant when he fetched her. It was then that AAA mustered enough courage to disclose to her mother the sexual assaults committed against her on September 6, 13 and October 5, 1997. BBB was shocked and angry about what happened to her daughter. She, then, immediately wrote a letter to her sister to accompany AAA for a medical check-up.
>
> On October 30, 1997, AAA's uncles and aunt accompanied her to the National Bureau of Investigation in Baguio City for medical examination.
>
> On November 3, 1997, at the National Bureau of Investigation in Baguio City, Dr. Ronald Bandonil, a medico-legal officer, conducted a physical and genital examination on AAA. The minor was accompanied by a representative of the Department of Social Welfare and Development-Cordillera Autonomous Region (DSWD-CAR), together with the minor's aunt and uncles. Upon examination, Dr. Ronald Bandonil found and concluded (Exhibit `D') that the minor's labia majoria and labia minora were both coaptated, which means that the liplike structures at the outside of the vaginal area were in close contact with each other. Moreover, the area that surrounded her vaginal opening was inflamed, congested or swollen as it was reddish which is a reaction to a trauma caused by a hard, rigid instrument which may be a finger or the penis of a male. Likewise, there is a possible attempt on penetration by an instrument and if it is a male erect penis, it must be the size of a fully grown adult finger.

On the other hand, the defense' version is hinged mainly on the testimony of its lone witness, accused-appellant himself. The gist of his testimony as culled by the CA from the decision of the trial court is quoted hereunder:

> Accused Jessie Isla Mariano in his defense testified that he is 47 years old, married and a resident of Gerona, Tarlac which is also his birthplace. In 1996, he was then employed as a hauler driver by the Saturn Cement Marketing Corporation which hauls cement from the Northern Cement Corporation in Sison, Pangasinan. In the same year, he met BBB who works as a waitress in one of the drinking places at Sison, Pangasinan. He then stopped thereat for a drink of beer and he was served by BBB. He then invited BBB for a drink and to join him which she did. After becoming familiar with each other, they agreed to live-in together. He was dismissed

> from his job but he was able to get another job along Marcos Highway, so that in 1997, he and BBB rented a house in Taloy, Sur, Tuba, Benguet where he, BBB and her daughter, AAA, lived together. He denied the accusations of AAA that he raped her on September 6 and 13, 1997 because he was sleeping and woke up only in the morning. On October 5, 1997 he testified that he and BBB were the only ones who slept together because AAA went to her grandparents to stay there and in fact in the afternoon of October 5, 1997, he, BBB and AAA went to the house of the latter's grandparents to get vegetables which are grown by BBB's brothers and they left AAA there. He also denied the sleeping arrangement testified to by AAA because he always slept beside BBB. He however stated that he cannot exactly remember if it was on October 5, 1997 that AAA was in her grandparents' house or who were his companions when he slept on the night of October 5, 1997. He admits fetching AAA from the house of her aunt in Holy Ghost, Baguio City and that he has been fetching AAA from school about five times whenever BBB or her sisters are unable. He knows Denver and Karen Omorfe and remembers that they at one time slept with them at Taloy, Sur, Tuba, Benguet. He left the house in Taloy Sur between February and March 1998. [H]e does not know why AAA filed these cases against him. He and AAA do not talk much with each other nor did he quarrel with her, although he may have had serious quarrels and misunderstandings with BBB. He does not also know either (sic) AAA was telling the truth or lying.[8]

On July 2, 2001, the trial court rendered its decision[9] convicting accused-appellant of three counts of rape and sentencing him as follows:

> WHEREFORE, the Court finds Jessie Mariano y Isla "GUILTY" beyond reasonable doubt of the crime of rape in three (3) counts as charged in the three (3) Informations, aggravated by the fact that Jessie Mariano y Isla is the common-law husband of the mother of the victim and sentences him to suffer the penalty of DEATH for each of rape as charged; to indemnify AAA, the victim the amount of Seventy Five Thousand (P75,000.00) Pesos for each count of rape and to pay AAA the sum of Fifty Thousand (P50,000.00) Pesos for each count of rape as moral damages.
>
> Pursuant to Adm. Circular No. 92-A of the Office of the Court Administrator, the Provincial Jail Warden of Benguet Province is directed to transfer the said accused Jessie Mariano y Isla to the custody of the Bureau of Corrections, City of Muntinlupa, Metro Manila.
>
> In relation to Section 1, Rule 111 of the Rules of Court, the corresponding filing fee for the amount of Fifty Thousand (P50,000.00) herein awarded as moral damages for each count of rape shall constitute a first lien on this judgment.
>
> Furnish a copy of this Decision to the Provincial Jail Warden of Benguet Province for his information and guidance.
>
> Let the records of these cases be transmitted to the Supreme Court for automatic review and judgment within the period provided by law.
>
> SO ORDERED.

In its decision dated June 6, 2005 in CA-G.R. CR-H.C. No. 00922, the CA affirmed the judgment of conviction against accused-appellant. From the CA, the said case was elevated to this Court for automatic review. In its Resolution of August 16, 2005, the Court resolved to require the parties to submit their respective supplemental briefs, if they so desire.

In a Manifestation[10] dated October 17, 2005, plaintiff-appellee, through the OSG, informed the Court that it would no longer file a supplemental brief, as its position in the present case has been thoroughly expounded in its Appellee's Brief filed with the CA. For his part, accused-appellant opted not to file any Supplemental Brief or Manifestation. Thus, this case was submitted for decision on the basis of the Appellant's Brief and Appellee's Brief filed with the CA.

In his Appellant's Brief[11] before the CA, accused-appellant raised the following arguments:

> - WHETHER OR NOT THE PROSECUTION FAILED TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE ACCUSED AND/OR FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT FOR INSUFFICIENCY OF EVIDENCE.
>
> - WHETHER OR NOT THE TESTIMONY OF THE VICTIM IS TAINTED WITH MATERIAL CONTRADICTIONS AND INCONSISTENCIES BELYING THE TRUTHFULNESS OF HER TESTIMONY AND INDUBITABLY AFFECTING HER CREDIBILTY.

Accused-appellant insists that the prosecution failed to prove his guilt beyond reasonable doubt for the crime of rape. He assails the credibility of AAA, branding her testimony as inconsistent and contradictory with that of Dr. Bandonil, the medico-legal expert. According to the accused-appellant, no penetration took place, as the medico-legal findings showed that the swelling of her hymen was caused most probably by a small, hard and rigid instrument like a finger and not a male organ, and nothing in AAA's testimony would suggest that his finger was inserted in her vagina. He also contends that AAA merely fabricated a story of rape and describes AAA's account of how the sexual assault was committed as highly improbable and contrary to common human experience.

The appeal must fail.

Accused-appellant draws attention to the fact that based on the medico-legal findings,[12] there is no showing that AAA's hymen was penetrated. In claiming that the testimony of Dr. Bandonil was favorable to him, accused-appellant capitalized on the doctor's testimony that a normal erect Filipino male organ could not possibly be the instrument that caused the swelling of the hymen but most probably a small, hard rigid instrument like a finger. However, Dr. Bandonil also did not rule out the possibility of a penis coming into contact with the vagina of the victim that resulted in the redness and swelling of the hymen, thus:

> COURT:
>
> The Court would like to know from you, doctor, when you said a while ago that the labia majora and labia minora are coaptated and you also said there were some swelling and redness on the hymen?
>
> A: Yes, your Honor.
>
> xxx xxx xxx
>
> Q:
>
> And you stated awhile ago that there was swelling of the hymen and redness which might have been caused by a hard, rigid object?
>
> A: Yes, sir.
>
> Q: Which you claim may also have been, which might refer to a sex organ of a male?
>
> A: Yes, your Honor.
>
> Q: Possibly the penis, are you referring to the penis?
>
> A: That is a possibility, your Honor.
>
> xxx xxx xxx
>
> Q:
>
> So you are telling that there was a possible attempt on penetration but it only did not reach the vaginal canal, it

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only reached the hymen?

A:

If it is a male, fully erected human male adult organ, it would not be the instrument. It would be more of a smaller, hard, rigid instrument like a finger. The male organ will not be the probable instrument in this examination.

xxx xxx xxx

PROSECUTOR PATARAS:

Q:

Doctor, suppose that the male erect penis is too small, could it cause the injury you have found?

A:

If it is a small organ, it is possible as long as the organ is as large as a fully grown adult finger.[13]

We find that the medical findings of Dr. Bandonil are not incompatible with the victim's claim of rape. He categorically declared that the possible cause for the swelling of the victim's hymen could be the male organ which would connote that accused-appellant's penis indeed touched the labia of AAA's organ. The mere touching by the male organ of the labia of the pudendum of the woman's private part is sufficient to consummate rape.[14] The fact that there was no deep penetration of the victim's vagina and that her hymen was intact does not negate rape, since this crime is committed even with the slightest penetration of a woman's sex organ.[15] Significantly, in a number of cases, we held that where penetration was not fully established, the Court had anchored its conclusion that the rape was nevertheless committed on the victim's testimony that she felt pain.[16] Here, AAA repeatedly testified that accused-appellant inserted his penis into her vagina as a consequence of which she felt pain.[17] Her testimony has established without a doubt that accused-appellant's penis managed to come into contact with her vagina. This, at least, could be nothing but the result of the penile penetration sufficient to constitute rape.

An examination of AAA's testimony shows that she testified in a categorical, straightforward, spontaneous and frank manner. Despite the grueling and intensive cross-examination by counsel of accused-appellant, AAA remained intractable and consistent as she unfolded to the court how she was ravished by accused-appellant. AAA remained steadfast even as the trial court noted that she cried more than once during her testimony as she vividly recalled the harrowing experiences she had to endure:

COURT:

Take note that witness appears to be covering her face and appears to be shedding tears.

PROSECUTOR PATARAS:

May we make of record that the complainant-witness is crying while pointing to the accused in this case.

ATTY. SANTOS:

May we also put on record that the already cried while she started testifying, not only when she pointed to the witness, your Honor.

PROSECUTOR PATARAS:

We join that manifestation, your Honor.

> COURT:
>
> Make it of record that after pointing to Jessie Mariano, the witness cried as manifested by counsel for accused.[18]

The crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience.[19] Indeed, recalling and relating the heartrending past will trigger copious tears as a consequence. AAA's account of how accused-appellant defiled her was so replete with details that the Court finds accused-appellant's assertion that AAA merely fabricated a story of rape highly improbable, if not incredible. A rape victim who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness.[20]

Here, the trial court made the following observations:

> xxx. The testimony of the offended girl was given in a straightforward manner unimpaired by material discrepancies and contradictions and consistent with ordinary human experience. Her testimony under the grueling examination by the prosecution as well as the defense undoubtedly bears the imprint of truth and therefore must be accepted.[21]

We have time and again said that the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect since it has the opportunity to examine their demeanor on the witness stand.[22] For this reason, the trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.[23] We find nothing on record that would compel us to deviate from such well-entrenched rule so as to overturn the trial court's assessment of the credibility of the victim AAA.

Accused-appellant's contention that the rape could not have happened because he and AAA were sleeping with other persons, including AAA's mother, in the same room when the alleged rape incidents took place does not hold water. The crime of rape may be committed even when the rapist and the victim are not alone. Rape may take only a short time to consummate, given the anxiety of its discovery, especially when committed near sleeping persons oblivious to the goings on. Thus, the Court has held that rape is not impossible even if committed in the same room while the rapist's spouse is sleeping or in a small room where other family members also sleep.[24]

Accused-appellant next argues that AAA could have easily summoned help and assistance as her shouts could have been heard by other people who were sleeping with them. He then concludes that her failure to shout for help is contrary to human nature and negates the existence of rape. This Court finds his argument specious and hardly credible.

It is of no moment that AAA failed to shout for help when she was being sexually assaulted while her mother was sleeping beside her in the same room. The behavior and reaction of every person cannot be predicted with accuracy. It is an accepted maxim that different people react differently to a given situation or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling experience. Not every rape victim can be expected to act conformably to the usual expectations of everyone. Some may shout; some may faint; and some be shocked into insensibility, while others may openly welcome the intrusion. Behavioral psychology teaches us that people react to similar situations dissimilarly. There is no standard form of behavior when one is confronted by a shocking incident. The workings of the human mind when placed under emotional stress are unpredictable.[25] This is true specially in this case where the victim is a child of tender age under the moral ascendancy of the perpetrator of the crime.

To further impugn the credibility of the victim, accused-appellant cites her failure to immediately disclose the

incident to anyone, as in fact she told her mother about the incidents only on October 29, 1997 while the alleged rape first happened as early as September 6, 1997.

AAA was merely 10 years old at the time the rape incidents took place. Considering her age, innocence and lack of experience, AAA's actions were nothing unusual or abnormal. Moreover, the accused-appellant was the common-law husband of the victim's mother. The victim lived under the same roof with accused-appellant. Accused-appellant's constant presence was thus enough to cow AAA into silence. Furthermore, it is not proper to judge the action of children, like AAA, who have undergone traumatic experiences, by the norms of behavior expected of mature individuals under the same circumstances. Their reactions to harrowing incidents may not be uniform.[26] 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 by any modicum of doubt.[27]

Accused-appellant then resorts to pointing out inconsistencies in the testimony of AAA, such as her testimony that the room was lit by moonlight which enabled her to see the time despite the fact that the windows made of galvanized iron as well as the door were closed. Accused-appellant maintained that it would be impossible for the moonlight to filter through the opaque windows and door which were both closed.[28] These inconsistencies alluded to are too trivial to merit consideration, as they refer to minor and irrelevant matters. For sure, it is of little or no significance at all as to what was the exact time when the rape incidents happened. It is too petty, as well, to quibble over the possibility of the moonlight passing through the opaque windows. What is important is that AAA was able to positively identify accused-appellant as her abuser. AAA could not have erred in identifying her mother's live-in partner because of the proximity of their relationship and their familiarity with one another.

Inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declarations, their veracity, or the weight of their testimonies. Such minor flaws may even enhance the worth of a testimony, for they guard against memorized falsities. Besides, a rape victim cannot be expected to recall vividly all the sordid details of the violation committed against her virtue.[29]

Well-settled is the rule that testimonies of young victims of rape deserve full credence and should not be so easily dismissed as a mere fabrication.[30] The Court's attention has not been called to any dubious reason or improper motive on the part of AAA that would have impelled her to falsely charge accused-appellant with a heinous crime as rape. Accused-appellant even unabashedly admitted that private complainant had no ill or devious motive for charging him with rape. Where no compelling and cogent reason is established that would explain why the complainant was so driven as to blindly implicate an accused, the testimony of a young girl of having been the victim of a sexual assault cannot be discarded.[31]

On all these premises, we are impelled to affirm the trial court's and the CA's conviction of accused-appellant for the rape of AAA.

We note that the rape incidents in this case occurred prior to the effectivity of Republic Act No. 8353 (The Anti-Rape Law of 1997) which took effect on October 22, 1997 and classified the crime of rape as a crime against persons. Applicable then is the old provision -- Section 11 of R.A. No. 7659 (The Death Penalty Law) -- which reads as follows:

> SEC. 11. Article 335 of the same Code is hereby amended to read as follows:
>
> x x x x x x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

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

To justify the imposition of the death penalty, the information must specifically allege the qualifying circumstances of minority and relationship. Moreover, the prosecution must prove during the trial the presence of these qualifying circumstances with the same certainty as the crime itself.[32]

The Informations alleged that accused-appellant is the common-law husband of BBB who is AAA's mother. They also alleged that AAA was below 12 years old when accused-appellant raped her. During the trial, the prosecution proved AAA's minority by presenting in evidence her birth certificate. The document clearly states that AAA was born on February 24, 1987.[33] AAA was thus 10 years old when accused-appellant raped her on September 6 and 13 and October 5, 1997. Accused-appellant and BBB categorically admitted in their testimonies that they are live-in partners.[34] Thus, the trial court and the CA did not err in sentencing accused-appellant to death.

In view, however, of the passage of R.A. No. 9346,[35] otherwise known as the Anti-Death Penalty Law, which prohibits the imposition of death penalty, the penalty of reclusion perpetua without eligibility for parole should instead be imposed.[36] Accordingly, accused-appellant shall be sentenced to reclusion perpetua without eligibility for parole in lieu of the penalty of death.

As to the damages, we have held that if the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be P75,000.00. Thus, the award of P75,000.00 as civil indemnity made by the courts a quo is in line with existing case law. Also, in rape cases, moral damages are awarded without need of proof other than the fact of rape, because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the moral damages awarded in the instant case should be increased from P50,000.00 to P75,000.00 pursuant to current jurisprudence on qualified rape.[37] Lastly, exemplary damages in the amount of P30,000 is also called for,[38] by way of public example, and to protect the young from sexual abuse.[39]

WHEREFORE, the decision dated June 6, 2005 of the CA is hereby AFFIRMED with the following MODIFICATIONS:

(1)

Accused-appellant Jessie Mariano is sentenced to reclusion perpetua for each count of rape, conformably with R.A. No. 9346, without eligibility for parole; and

(2)

He is ordered to indemnify the heirs of AAA for each count of rape as follows: (a) P75,000.00 as civil indemnity; (b) P75,000.00 as moral damages; and (c) P30,000.00 as exemplary damages.

Costs de oficio.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Chico-Nazario, Velasco, Jr., Nachura, Brion, Peralta, and Bersamin, JJ., concur.
Carpio Morales, J., on official leave.

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* On official leave.

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios (ret.) and Amelita G. Tolentino, concurring; rollo, pp. 3-37.

[2] CA rollo, pp. 24-35.

[3] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

[4] In our Resolution of August 24, 2004, rollo, p. 2.

[5] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[6] Records, Vol. II, p. 44.

[7] CA rollo, pp. 89-111.

[8] Id. at 142-143.

[9] Supra note 2.

[10] Rollo, pp. 39-40.

[11] CA rollo, pp. 48-63.

[12] Records, Vol. 3, p. 12.

[13] TSN, July 4, 2000, pp. 8-10.

[14] People v. Mahinay, G.R. No. 122485, February 1, 1999, 302 SCRA 455, 479.

[15] People v. Gabayron, G.R. No. 102018, August 21, 1997, 278 SCRA 78, 93.

[16] People v. Tampos, G.R. No. 142740, August 6, 2003, 408 SCRA 403, 415.

[17] TSN, September 13, 1999, pp. 8-10, 16-17.

[18] TSN, December 9, 1999, pp. 3, 6.

[19] People v. Gecomo, G.R. Nos. 115035-36, February 23, 1996, 254 SCRA 82, 96.

[20] People v. Madraga, G.R. No. 129299, November 15, 2000, 344 SCRA 628, 639.

[21] Rollo, p. 33.

[22] People v. Ulgasan, G.R. Nos. 131824-26, July 11, 2000, 335 SCRA 441, 449.

[23] People v. Suarez, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 345.

[24] People v. Manuel, G.R. Nos. 107732-33, September 19, 1994, 236 SCRA 545, 554.

[25] People v. Aspuria, G.R. Nos. 139240-43, November 12, 2002, 391 SCRA 404, 411.

[26] People v. Alimon, G.R. No. 87758, June 28, 1996, 257 SCRA 658, 674.

[27] People v. Aspuria, supra note 26.

[28] CA rollo, p. 61.

[29] People v. Nardo, G.R. No. 133888, March 1, 2001, 353 SCRA 339, 356.

[30] People v. Sabardan, G.R. No. 132135, May 21, 2004, 429 SCRA 9, 27.

[31] People v. Hermanes, G.R. No. 139416, March 12, 2002, 379 SCRA 170, 175.

[32] People v. Boromeo, G.R. No. 150501, June 3, 2004, 430 SCRA 533, 552.

[33] Records, Vol. 1, p. 32

[34] TSN, February 29, 2000, p. 3; November 14, 2000, p. 3.

[35] Approved on June 24, 2006.

[36] Supra note 5.

[37] People v. Sambrano, G.R. No. 143708, February 24, 2003, 398 SCRA 106, 117.

[38] People v. Ramon Regalario, et al., G.R. No. 174483, March 31, 2009.

[39] Supra note 37.

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