

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICHARD O. SARCIA, ACCUSED-APPELLANT.*G.R. No. 169641. September 10, 2009*

Ponente: LEONARDO-DE CASTRO, J.

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On automatic review is the decision[1] dated My 14, 2005 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00717 which affirmed, with modifications, an earlier decision[2] of the Regional Trial Court (RTC) of Ligao City, Branch 13, in Criminal Case No. 4134, finding herein accused-appellant Richard O. Sarcia alias "Nogi" guilty beyond reasonable doubt of the crime of rape[3] committed against AAA,[4] and sentenced him to suffer the penalty of Reclusion Perpetua and to pay the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and the cost of the suit. However, the CA modified the penalties imposed by the RTC by imposing the death penalty, increasing the award of civil indemnity to P75,000.00, and awarding P25,000.00 as exemplary damages, aside from the P50,000.00 for moral damages.

The crime of rape was allegedly committed sometime in 1996 against AAA, a five (5) year old girl. After almost four (4) years, AAA's father filed a complaint[5] for acts of lasciviousness against herein accused-appellant on July 7, 2000. Upon review of the evidence, the Office of the Provincial Prosecutor at Ligao, Albay upgraded the charge to rape.[6] The Information[7] dated September 5, 2000 reads:

That sometime in 1996 at Barangay Doña Tomasa, Municipality of Guinobatan, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], who was then 6 years of age, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

At his arraignment on October 25, 2000, accused-appellant, with the assistance of his counsel, entered a plea of not guilty.[8] Thereafter, trial on the merits ensued.

The prosecution presented the oral testimonies of the victim AAA; her minor cousin; her father; and Dr. Joana Manatlao, the Municipal Health Officer of Guinobatan, Albay. The defense presented the accused-appellant himself, who vehemently denied committing the crimes imputed to him and Manuel Casimiro, Clerk of Court II of the Municipal Trial Court at Guinobatan, Albay.

On January 17, 2003, the trial court rendered its Decision[9] finding the accused-appellant guilty of the crime of rape and imposed the penalty mentioned above.

The record of this case was forwarded to this Court in view of the Notice of Appeal filed by the accused-appellant.[10]

Accused-appellant filed his Appellant's Brief[11] on July 15, 2004, while the People, through the Office of the

Solicitor General, filed its Appellee's Brief[12] on December 15, 2004.

Pursuant to our pronouncement in *People v. Mateo*,[13] modifying the pertinent provisions of the Revised Rules on Criminal Procedure insofar as they provide for direct appeals from the RTC to this Court in cases in which the penalty imposed by the trial court is death, reclusion perpetua or life imprisonment, and the Resolution dated September 19, 1995 in "Internal Rules of the Supreme Court," the case was transferred, for appropriate action and disposition, to the CA where it was docketed as CA-G.R. CR-H.C. No. 00717.

As stated at the beginning hereof, the CA, in its decision of July 14, 2005, in CA-G.R. CR-H.C. No. 000717, affirmed with modification the judgment of conviction pronounced by the trial court. We quote the fallo of the CA decision:

WHEREFORE, the judgment of conviction is AFFIRMED. The accused, Richard Sarcia y Olivera, is ordered to suffer the penalty of DEATH, and to pay the victim, [AAA], the amount of (1) P75,000.00 as civil indemnity; (2) P50,000.00 as moral damages, and (3) P25,000.00 as exemplary damages.

Let the entire records of this case be elevated to the Supreme Court for review, pursuant to A.M. No. 00-5-03-SC (Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases), which took effect on October 15, 2004.

SO ORDERED.

On September 30, 2005, the case was elevated to this Court for further review.[14]

In our Resolution[15] of November 15, 2005, we required the parties to simultaneously submit their respective supplemental briefs. Accused- appellant filed his Supplemental Brief[16] on April 7, 2006. Having failed to submit one, the Office of the Solicitor General (OSG) was deemed to have waived the filing of its supplemental brief.

In his Brief filed before the CA, accused-appellant raised the following assignment of errors:

I

THE LOWER COURT GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF [AAA], [her cousin] and [her father].

II

THE LOWER COURT GLARINGLY ERRED IN REJECTING THE DEFENSE OF ALIBI INTERPOSED BY THE ACCUSED WHICH IS MORE CREDIBLE.

III

THE LOWER COURT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED RICHARD SARCIA

The evidence for the prosecution is summarized by the OSG in the Appellee's Brief, as follows:

On December 16, 1996, five-year-old [AAA], together with her [cousin and two other playmates], was playing in the yard of Saling Crisologo near a mango tree.

Suddenly, appellant appeared and invited [AAA] to go with him to the backyard of Saling Crisologo's house. She agreed. Unknown to appellant, [AAA's cousin] followed them.

Upon reaching the place, appellant removed [AAA's] shorts and underwear. He also removed his trousers and brief. Thereafter, he ordered [AAA] to lie down on her back. Then, he lay on top of her and inserted his penis into [AAA's] private organ. Appellant made an up-and-down movement ("Nagdapadapa tabi"). [AAA] felt

severe pain inside her private part and said "aray." She also felt an intense pain inside her stomach.

[AAA's cousin], who positioned herself around five (5) meters away from them, witnessed appellant's dastardly act. Horrified, [AAA's cousin] instinctively rushed to the house of [AAA's] mother, her aunt Emily, and told the latter what she had seen. [AAA's] mother answered that they (referring to {AAA and her cousin}) were still very young to be talking about such matters.

Meanwhile, after satisfying his lust, appellant stood up and ordered [AAA] to put on her clothes. Appellant then left.

Perplexed, [AAA's cousin] immediately returned to the backyard of Saling Crisologo where she found [AAA] crying. Appellant, however, was gone. [AAA's cousin] approached [AAA] and asked her what appellant had done to her. When [AAA] did not answer, [her cousin] did not ask her any further question and just accompanied her home.

At home, [AAA] did not tell her mother what appellant had done to her because she feared that her mother might slap her. Later, when her mother washed her body, she felt a grating sensation in her private part. Thereafter, [AAA] called for [her cousin]. [AAA's cousin] came to their house and told [AAA's] mother again that appellant had earlier made an up-and-down movement on top of [AAA]. [AAA's mother], however did not say anything. At that time, [AAA's] father was working in Manila.

Dr. Joana Manatloa is the Municipal Health Officer of Guinobatan, Albay. She testified that: (1) it was the rural health officer, Dr. Reantaso, who conducted a physical examination on [AAA]; (2) Dr. Reantaso prepared and signed a medico-legal certificate containing the result of [AAA's] examination; (3) Dr. Reantaso, however, had already resigned as rural health officer of Guinobatan, Albay; (4) as a medical doctor, she can interpret, the findings in said medico-legal certificate issued to [AAA]; (5) [AAA's] medical findings are as follows: "negative for introital vulvar laceration nor scars, perforated hymen, complete, pinkish vaginal mucosa, vaginal admits little finger with resistance; (6) the finding "negative for introital bulvar laceration nor scars" means, in layman's language, that there was no showing of any scar or wound, and (7) there is a complete perforation of the hymen which means that it could have been subjected to a certain trauma or pressure such as strenuous exercise or the entry of an object like a medical instrument or penis.[17]

On the other hand, the trial court summarized the version of the defense as follows:

Richard Sarcia, 24 years old, single, student and a resident of Dona Tomasa, Guinobatan, Albay denied he raped [AAA]. While he knows [AAA's] parents, because sometimes they go to their house looking for his father to borrow money, he does not know [AAA] herself. His father retired as a fireman from Crispa in 1991 while his mother worked as an agriculturist in the Municipality of Teresa, Antipolo, Rizal. As an agriculturist of the Department of Agriculture, his mother would bring seedlings and attend seminars in Batangas and Baguio. They were residing in Cainta, Rizal when sometime in 1992 they transferred residence to Guinobatan, Albay. His father is from barangay Masarawag while his mother is from barangay Dona Tomasa both of Guinobatan, Albay. After their transfer in Guinobatan, his mother continued to be an agriculturist while his father tended to his 1-hectare coconut land. Richard testified he was between fourteen (14) and fifteen (15) years old in 1992 when they transferred to Guinobatan. Between 1992 and 1994 he was out of school. But from 1994 to 1998 he took his high school at Masarawag High School. His daily routine was at about 4:00 o'clock in the afternoon after school before proceeding home he would usually play basketball at the basketball court near the church in Dona Tomasa about 1 kilometer away from their house. When her mother suffered a stroke in 1999 he and his father took turns taking care of his mother. Richard denied molesting other girls ... and was most surprised when he was accused of raping [AAA]. He knows Saling Crisologo and the latter's place which is more than half kilometer to their house. Richard claimed Salvacion Bobier, grandmother of Mae Christine Camu, whose death on May 7, 2000 was imputed to him and for which a case for Murder under Criminal Case No. 4087 was filed against him with the docile cooperation of [AAA's] parents who are related to Salvacion, concocted and instigated [AAA's] rape charge against him to make the case for Murder against

him stronger and life for him miserable. He was incarcerated on May 10, 2000 for the Murder charge and two (2) months later while he already in detention, the rape case supposedly committed in 1996 was filed against him in the Municipal Trial Court (MTC) of Guinobatan, Albay. He was to learn about it from his sister, Marivic, on a Sunday afternoon sometime on July 20, 2000 when his sister visited him in jail. He naturally got angry when he heard of this rape charge because he did not do such thing and recalled CA Record, pp. 77-105, telling his sister they can go to a doctor and have the child examine to prove he did not rape her. Subsequently, from his sister again he was to learn that the rape case was ordered dismissed.

On cross-examination, Richard admitted [AAA's] mother, is also related to his father, [AAA mother's] father, being a second cousin of his father. Richard is convinced it is not the lending of money by his father to the AAA's family as the motive for the latter to file the rape case against him but the instigation of Saivacion Bobier.

Manuel A. Casimiro, Clerk of Court II of the Municipal Trial Court (MTC), Guinobatan, Albay, testified on the records of Criminal Case No. 7078 filed in MTC Guinobatan, Albay against Richard Sarcia for Rape in relation to RA 7610 relative to the alleged withdrawal of said rape case but the accused through counsel failed to formally offer the marked exhibits relative to said case.[18]

Accused-appellant alleges that the trial court erred in convicting him, as the prosecution was not able to prove his guilt beyond reasonable doubt. He assailed the credibility of the prosecution witnesses, AAA, her cousin and her father on the following grounds: (1) the testimonies of AAA and her cousin were inconsistent with each other; (2) the victim was confused as to the date and time of the commission of the offense; (3) there was a four-year delay in filing the criminal case, and the only reason why they filed the said case was "to help Saivacion Bobier get a conviction of this same accused in a murder case filed by said Saivacion Bobier for the death of her granddaughter Mae Christine Camu on May 7, 2000." Accused-appellant stressed that the same Saivacion Bobier helped AAA's father in filing the said case for rape. Accused-appellant also claimed that the prosecution failed to prove that he employed force, threats or intimidation to achieve his end. Finally, accused-appellant harped on the finding in the medical certificate issued by Dr. Reantaso and interpreted by Dr. Joana Manatlao, stating "negative for introital bulvar laceration nor scar which means that there was no showing of any scar or wound."

In his Appellee's Brief accused-appellant pointed out the inconsistencies between AAA's and her cousin's testimonies as follows: (1) the cousin testified that she played with AAA at the time of the incident, while AAA testified that she was doing nothing before accused-appellant invited her to the back of the house of a certain Saling; (2) the cousin testified that when she saw accused-appellant doing the push-and-pull motion while on top of AAA, the latter shouted in a loud voice contrary to AAA's testimony that when accused-appellant was inside her and started the up-and-down motion, she said "aray"; (3) when the cousin returned to AAA after telling the latter's mother what accused-appellant had done to AAA, she found AAA crying. AAA however testified that, after putting on her clothes, she invited the cousin to their house; and (4) the cousin testified that other children were playing at the time of the incident, but AAA testified that there were only four of them who were playing at that time.

As it is oft-repeated, inconsistencies in the testimonies of witnesses, which refer only to minor details and collateral matters, do not affect the veracity and weight of their testimonies where there is consistency in relating the principal occurrence and the positive identification of the accused. Slight contradictions in fact even serve to strengthen the credibility of the witnesses and prove that their testimonies are not rehearsed. Nor are such inconsistencies, and even improbabilities, unusual, for there is no person with perfect faculties or senses.[19] The alleged inconsistencies in this case are too inconsequential to overturn the findings of the court a quo. It is important that the two prosecution witnesses were one in saying that it was accused-appellant who sexually abused AAA. Their positive, candid and straightforward narrations of how AAA was sexually abused by accused-

appellant evidently deserve full faith and credence. When the rape incident happened, AAA was only five (5) years old; and when she and her cousin testified, they were barely 9 and 11 years old, respectively. This Court has had occasion to rule that the alleged inconsistencies in the testimonies of the witnesses can be explained by their age and their inexperience with court proceedings, and that even the most candid of witnesses commit mistakes and make confused and inconsistent statements. This is especially true of young witnesses, who could be overwhelmed by the atmosphere of the courtroom. Hence, there is more reason to accord them ample space for inaccuracy.[20]

Accused-appellant capitalizes on AAA's inability to recall the exact date when the incident in 1996 was committed. Failure to recall the exact date of the crime, however, is not an indication of false testimony, for even discrepancies regarding exact dates of rapes are inconsequential and immaterial and cannot discredit the credibility of the victim as a witness.[21] In *People v. Purazo*,[22] We ruled:

We have ruled, time and again that the date is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman. As such, the time or place of commission in rape cases need not be accurately stated. As early as 1908, we already held that where the time or place or any other fact alleged is not an essential element of the crime charged, conviction may be had on proof of the commission of the crime, even if it appears that the crime was not committed at the precise time or place alleged, or if the proof fails to sustain the existence of some immaterial fact set out in the complaint, provided it appears that the specific crime charged was in fact committed prior to the date of the filing of the complaint or information within the period of the statute of limitations and at a place within the jurisdiction of the court.

Also in *People v. Salalima*,[23] the Court held:

Failure to specify the exact dates or time when the rapes occurred does not ipso facto make the information defective on its face. The reason is obvious. The precise date or time when the victim was raped is not an element of the offense. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code. As long as it is alleged that the offense was committed at any time as near to the actual date when the offense was committed an information is sufficient. In previous cases, we ruled that allegations that rapes were committed "before and until October 15, 1994" "sometime in the year 1991 and the days thereafter" "sometime in November 1995 and some occasions prior and/or subsequent thereto" and "on or about and sometime in the year 1988" constitute sufficient compliance with Section 11, Rule 110 of the Revised Rules on Criminal Procedure.

In this case, AAA's declaration that the rape incident took place on December 15, 1996 was explained by the trial court, and we quote:

The rape took place in 1996. As earlier noted by the Court the date December 15, 1996 mentioned by [AAA] may have been arbitrarily chosen by the latter due to the intense cross-examination she was subjected but the Court believes it could have been in any month and date in the year 1996 as in fact neither the information nor [AAA's] sworn statement mention the month and date but only the year.[24]

Likewise, witnesses' credibility is not affected by the delay in the filing of the case against accused-appellant. Neither does the delay bolster accused-appellant's claim that the only reason why this case was filed against him was "to help Salvacion Bobier get a conviction of this same accused-appellant in the case of murder filed by Salvacion Bobier for the death of her granddaughter Mae Christine Camu on May 7, 2000."

The rape victim's delay or hesitation in reporting the crime does not destroy the truth of the charge nor is it an indication of deceit. It is common for a rape victim to prefer silence for fear of her aggressor and the lack of courage to face the public stigma of having been sexually abused. In *People v. Coloma*[25] we even considered an 8-year delay in reporting the long history of rape by the victim's father as understandable and not enough to render

incredible the complaint of a 13-year-old daughter. Thus, in the absence of other circumstances that show that the charge was a mere concoction and impelled by some ill motive, delay in the filing of the complainant is not sufficient to defeat the charge. Here, the failure of AAA's parents to immediately file this case was sufficiently justified by the complainant's father in the latter's testimony, thus:

Q

But, did you not say, please correct me if I am wrong, you got angry when your wife told you that something happened to Hazel way back in 1996?

A

Yes, sir.

Q

Yet, despite your anger you were telling us that you waited until June to file this case?

A

After I heard about the incident, I and my wife had a talk for which reason that during that time we had no money yet to use in filing the case, so we waited. When we were able to save enough amounts, we filed the case.[26]

Accused-appellant also contends that he could not be liable for rape because there is no proof that he employed force, threats or intimidation in having carnal knowledge of AAA. Where the girl is below 12 years old, as in this case, the only subject of inquiry is whether "carnal knowledge" took place. Proof of force, intimidation or consent is unnecessary, since none of these is an element of statutory rape. There is a conclusive presumption of absence of free consent when the rape victim is below the age of twelve.[27]

Accused-appellant harps on the medical report, particularly the conclusion quoted as follows: "negative for introital bulvar laceration nor scars, which means, in layman language, that there was no showing of any scar or wound." The Court has consistently ruled that the presence of lacerations in the victim's sexual organ is not necessary to prove the crime of rape and its absence does not negate the fact of rape. A medical report is not indispensable in a prosecution for rape.[28] What is important is that AAA's testimony meets the test of credibility, and that is sufficient to convict the accused.

Accused-appellant's defense of denial was properly rejected. Time and time again, we have ruled that denial like alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove. Furthermore, it cannot prevail over the positive and unequivocal identification of appellant by the offended party and other witnesses. Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the appellants' defense of denial and alibi.[29] The shallow hypothesis put forward by accused-appellant that he was accused of raping AAA due to the instigation of Salvacion Bobier hardly convinces this Court. On this score, the trial court aptly reached the following conclusion:

...True, Salvacion Bobier actively assisted AAA's family file the instant case against the accused, but the Court believes [AAA's] parents finally decided to file the rape case because after they have come to realize after what happened to Mae Christine Camu that what previously [AAA and her cousin] told her mother and which the latter had continually ignored is after all true.

AAA was barely 9 years of age when she testified. It has been stressed often enough that the testimony of rape victims who are young and immature deserve full credence. It is improbable for a girl of complainant's age to fabricate a charge so humiliating to herself and her family had she not been truly subjected to the painful

experience of sexual abuse. At any rate, a girl of tender years, innocent and guileless, cannot be expected to brazenly impute a crime so serious as rape to any man if it were not true.[30] Parents would not sacrifice their own daughter, a child of tender years at that, and subject her to the rigors and humiliation of public trial for rape, if they were not motivated by an honest desire to have their daughter's transgressor punished accordingly.[31] Hence, the logical conclusion is that no such improper motive exists and that her testimony is worthy of full faith and credence.

The guilt of accused-appellant having been established beyond reasonable doubt, we discuss now the proper penalty to be imposed on him.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,[32] was the governing law at the time the accused-appellant committed the rape in question. Under the said law, the penalty of death shall be imposed when the victim of rape is a child below seven years of age. In this case, as the age of AAA, who was five (5) years old at the time the rape was committed, was alleged in the information and proven during trial by the presentation of her birth certificate, which showed her date of birth as January 16, 1991, the death penalty should be imposed.

However, this Court finds ground for modifying the penalty imposed by the CA. We cannot agree with the CA's conclusion that the accused-appellant cannot be deemed a minor at the time of the commission of the offense to entitle him to the privileged mitigating circumstance of minority pursuant to Article 68(2)[33] of the Revised Penal Code. When accused appellant testified on March 14, 2002, he admitted that he was 24 years old, which means that in 1996, he was 18 years of age. As found by the trial court, the rape incident could have taken place "in any month and date in the year 1996." Since the prosecution was not able to prove the exact date and time when the rape was committed, it is not certain that the crime of rape was committed on or after he reached 18 years of age in 1996. In assessing the attendance of the mitigating circumstance of minority, all doubts should be resolved in favor of the accused, it being more beneficial to the latter. In fact, in several cases, this Court has appreciated this circumstance on the basis of a lone declaration of the accused regarding his age.[34]

Under Article 68 of the Revised Penal Code, when the offender is a minor under 18 years, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. However, for purposes of determining the proper penalty because of the privileged mitigating circumstance of minority, the penalty of death is still the penalty to be reckoned with.[35] Thus, the proper imposable penalty for the accused-appellant is reclusion perpetua.

It is noted that the Court is granted discretion in awarding damages provided in the Civil Code, in case a crime is committed. Specifically, Article 2204 of the Civil Code provides that "in crimes, the damages to be adjudicated may be respectively increased or lessened according to the aggravating or mitigating circumstances." The issue now is whether the award of damages should be reduced in view of the presence here of the privileged mitigating circumstance of minority of the accused at the time of the commission of the offense.

A review of the nature and purpose of the damages imposed on the convicted offender is in order. Article 107 of the Revised Penal Code defines the term "indemnification," which is included in the civil liability prescribed by Article 104 of the same Code, as follows:

Art. 107. Indemnification-What is included. — Indemnification for consequential damages shall include not only those caused the injured party, but also those suffered by his family or by a third person by reason of the crime.

Relative to civil indemnity, *People v. Victor*[36] ratiocinated as follows:

The lower court, however, erred in categorizing the award of P50,000.00 to the offended party as being in the nature of moral damages. We have heretofore explained in *People v. Gementiza* that the indemnity authorized by our criminal law as civil liability *ex delicto* for the offended party, in the amount authorized by the prevailing judicial policy and aside from other proven actual damages, is itself equivalent to actual or compensatory damages in civil law. It is not to be considered as moral damages thereunder, the latter being based on different jural foundations and assessed by the court in the exercise of sound discretion.

One other point of concern has to be addressed. Indictments for rape continue unabated and the legislative response has been in the form of higher penalties. The Court believes that, on like considerations, the jurisprudential path on the civil aspect should follow the same direction. Hence, starting with the case at bar, if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the present amended law, the indemnity for the victim shall be in the increased amount of not less than P75,000.00. This is not only a reaction to the apathetic societal perception of the penal law, and the financial fluctuations over time, but also an expression of the displeasure of the Court over the incidence of heinous crimes against chastity. (Emphasis Supplied)

The Court has had the occasion to rule that moral damages are likewise compensatory in nature. In *San Andres v. Court of Appeals*,^[37] we held:

xxx Moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. (Emphasis Supplied)

In another case, this Court also explained:

What we call moral damages are treated in American jurisprudence as compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong (25 C.J.S. 815).^[38] (Emphasis Supplied)

Thus, according to law and jurisprudence, civil indemnity is in the nature of actual and compensatory damages for the injury caused to the offended party and that suffered by her family, and moral damages are likewise compensatory in nature. The fact of minority of the offender at the time of the commission of the offense has no bearing on the gravity and extent of injury caused to the victim and her family, particularly considering the circumstances attending this case. Here, the accused-appellant could have been eighteen at the time of the commission of the rape. He was accorded the benefit of the privileged mitigating circumstance of minority because of a lack of proof regarding his actual age and the date of the rape rather than a moral or evidentiary certainty of his minority.

In any event, notwithstanding the presence of the privileged mitigating circumstance of minority, which warrants the lowering of the public penalty by one degree, there is no justifiable ground to depart from the jurisprudential trend in the award of damages in the case of qualified rape, considering the compensatory nature of the award of civil indemnity and moral damages. This was the same stance this Court took in *People v. Candelario*,^[39] a case decided on July 28, 1999, which did not reduce the award of damages. At that time, the damages amounted to P75,000.00 for civil indemnity and P50,000.00 for moral damages, even if the public penalty imposed on the accused was lowered by one degree, because of the presence of the privileged mitigating circumstance of minority.

The principal consideration for the award of damages, under the ruling in *People v. Salome*^[40] and *People v. Quiachon*^[41] is the penalty provided by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender.

Regarding the civil indemnity and moral damages, *People v. Salome* explained the basis for increasing the amount

of said civil damages as follows:

The Court, likewise, affirms the civil indemnity awarded by the Court of Appeals to Sally in accordance with the ruling in *People v. Sambrano* which states:

"As to damages, we have held that if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall P75,000.00 ... Also, in rape cases, moral damages are awarded without the need 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 trial court's award of P50,000.00 as moral damages should also be increased to P75,000 pursuant to current jurisprudence on qualified rape."

It should be noted that while the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous. Consequently, the civil indemnity for the victim is still P75,000.00.

People v. Quiachon also ratiocinates as follows:

With respect to the award of damages, the appellate court, following prevailing jurisprudence, correctly awarded the following amounts; P75,000.00 as civil indemnity which is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty; P75,000.00.00 as moral damages because the victim is assumed to have suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof, x x x

Even if the penalty of death is not to be imposed on the appellant because of the prohibition in R.A. No. 9346, the civil indemnity of P75,000.00 is still proper because, following the ratiocination in *People v. Victor*, the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. The Court declared that the award of P75,000.00 shows "not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time but also the expression of the displeasure of the court of the incidence of heinous crimes against chastity."

The litmus test therefore, in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually imposed is reduced to reclusion perpetua.

As to the award of exemplary damages, Article 2229 of the Civil Code provides that exemplary or corrective damages are imposed in addition to the moral, temperate, liquidated or compensatory damages. Exemplary damages are not recoverable as a matter of right. The requirements of an award of exemplary damages are: (1) they may be imposed by way of example in addition to compensatory damages, and only after the claimant's right to them has been established; (2) they cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; (3) the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner.[42] Since the compensatory damages, such as the civil indemnity and moral damages, are increased when qualified rape is committed, the exemplary damages should likewise be increased in accordance with prevailing jurisprudence.[43]

In sum, the increased amount of P75,000.00 each as civil indemnity and moral damages should be maintained. It is also proper and appropriate that the award of exemplary damages be likewise increased to the amount of P30,000.00 based on the latest jurisprudence on the award of damages on qualified rape. Thus, the CA correctly awarded P75,000.00 as civil indemnity. However the award of P50,000.00 as moral damages is increased to P75,000.00[44] and that of P25,000.00 as exemplary damages is likewise increased to P30,000.00.[45]

Meanwhile, when accused-appellant was detained at the New Bilibid Prison pending the outcome of his appeal before this Court, Republic Act (R.A.) No. 9344, the Juvenile Justice and Welfare Act of 2006 took effect on May 20, 2006. The RTC decision and CA decision were promulgated on January 17, 2003 and July 14, 2005, respectively. The promulgation of the sentence of conviction of accused-appellant handed down by the RTC was not suspended as he was about 25 years of age at that time, in accordance with Article 192 of Presidential Decree (P.D.) No. 603, The Child and Youth Welfare Code^[46] and Section 32 of A.M. No. 02-1-18-SC, the Rule on Juveniles in Conflict with the Law^[47] Accused-appellant is now approximately 31 years of age. He was previously detained at the Albay Provincial Jail at Legaspi City and transferred to the New Bilibid Prison, Muntinlupa City on October 13, 2003.

R.A. No. 9344 provides for its retroactive application as follows:

Sec. 68. Children Who Have Been Convicted and are Serving Sentence. - Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. x x x

The aforequoted provision allows the retroactive application of the Act to those who have been convicted and are serving sentence at the time of the effectivity of this said Act, and who were below the age of 18 years at the time of the commission of the offense. With more reason, the Act should apply to this case wherein the conviction by the lower court is still under review. Hence, it is necessary to examine which provisions of R.A. No. 9344 shall apply to accused-appellant, who was below 18 years old at the time of the commission of the offense.

Sec. 38 of R.A. No. 9344 provides for the automatic suspension of sentence of a child in conflict with the law, even if he/she is already 18 years of age or more at the time he/she is found guilty of the offense charged. It reads:

Sec. 38. Automatic Suspension of Sentence. - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That suspension of sentence shall still be applied even if the juvenile is already eighteen (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court on Juvenile in Conflict with the Law.

The above-quoted provision makes no distinction as to the nature of the offense committed by the child in conflict with the law, unlike P.D. No. 603 and A.M. No. 02-1-18-SC.^[48] The said P.D. and Supreme Court (SC) Rule provide that the benefit of suspended sentence would not apply to a child in conflict with the law if, among others, he/she has been convicted of an offense punishable by death, reclusion perpetua or life imprisonment. In construing Sec. 38 of R.A. No. 9344, the Court is guided by the basic principle of statutory construction that when the law does not distinguish, we should not distinguish.^[49] Since R.A. No. 9344 does not distinguish between a minor who has been convicted of a capital offense and another who has been convicted of a lesser offense, the Court should also not distinguish and should apply the automatic suspension of sentence to a child in conflict with the law who has been found guilty of a heinous crime.

Moreover, the legislative intent, to apply to heinous crimes the automatic suspension of sentence of a child in conflict with the law can be gleaned from the Senate deliberations^[50] on Senate Bill No. 1402 (Juvenile Justice

and Delinquency Prevention Act of 2005), the pertinent portion of which is quoted below:

If a mature minor, maybe 16 years old to below 18 years old is charged, accused with, or may have committed a serious offense, and may have acted with discernment, then the child could be recommended by the Department of Social Welfare and Development (DSWD), by the Local Council for the Protection of Children (LCPC), or by my proposed Office of Juvenile Welfare and Restoration to go through a judicial proceeding; but the welfare, best interests, and restoration of the child should still be a primordial or primary consideration. Even in heinous crimes, the intention should still be the child's restoration, rehabilitation and reintegration. xxx (Italics supplied)

Nonetheless, while Sec. 38 of R.A. No. 9344 provides that suspension of sentence can still be applied even if the child in conflict with the law is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt, Sec. 40 of the same law limits the said suspension of sentence until the said child reaches the maximum age of 21, thus:

Sec. 40. Return of the Child in Conflict with the Law to Court. - If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the condition of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years, (emphasis ours)

To date, accused-appellant is about 31 years of age, and the judgment of the RTC had been promulgated, even before the effectivity of R.A. No. 9344. Thus, the application of Sees. 38 and 40 to the suspension of sentence is now moot and academic.[51] However, accused-appellant shall be entitled to appropriate disposition under Sec. 51 of R.A. No. 9344, which provides for the confinement of convicted children as follows:

Sec. 51. Confinement of Convicted Children in Agricultural Camps and Other Training Facilities. - A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

The civil liability resulting from the commission of the offense is not affected by the appropriate disposition measures and shall be enforced in accordance with law.[52]

WHEREFORE, the decision of the CA dated July 14, 2005 in CA- G.R. CR-H.C. No. 00717 is hereby AFFIRMED with the following MODIFICATIONS: (1) the penalty of death imposed on accused-appellant is reduced to reclusion perpetua;[53] and (2) accused-appellant is ordered to pay the victim the amount of P75,000.00 and P30,000.00 as moral damages and exemplary damages, respectively. The award of civil indemnity in the amount of P75,000.00 is maintained. However, the case shall be REMANDED to the court a quo for appropriate disposition in accordance with Sec. 51 of R.A. 9344.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Brion, Peralta, Bersamin, Del Castillo, and Abad, JJ., concur.

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justice Roberto A. Barrios (ret.) and

Associate Justice Amelita G. Tolentino concurring; rollo, pp. 3-33.

[2] Penned by Judge Jose S. Saflez; CA Record, pp. 21-30.

[3] Under Art. 335 of the Revised Penal Code as amended by Rep. Act No. 7659.

[4] The real name of the victim is withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262; and Section 40 of A.M. No. 04-10-11-SC. See our ruling in *People v. Cabalquinto*, G. R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] RTC Record, p. 1.

[6] *Id.* at 12.

[7] *Id.* at 13.

[8] *Id.* at 22.

[9] *Supra* note 2.

[10] CA Record, p. 31.

[11] *Id.* at 49-56.

[12] *Id.* at 73-105.

[13] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

[14] Rollo, p. 1.

[15] *Id.* at 34.

[16] *Id.* at 40-44.

[17] CA Record, pp. 77-105.

[18] *Id.* at 49-55.

[19] *People v. Perreras, et al.*, G.R. No. 139622, July 31, 2001, 362 SCRA 202, 210.

[20] *People v. Amazon, et al.*, G.R. Nos. 136251, 138606 & 138607, January 16, 2001, 349 SCRA 218, 230.

[21] *People v. Lilo*, G. R. Nos. 140736-39, February 4, 2003, 396 SCRA 674, 680.

[22] G.R. No. 133189, May 5, 2003, 402 SCRA 541, 550.

[23] G.R. No. 137969-71, August 15, 2001, 363 SCRA 192, 201.

[24] CA Record, p. 29.

[25] G.R. No. 95755, May 18, 1993, 222 SCRA 255.

[26] TSN, July 12, 2001, p. 20.

[27] *People v. Rote*, G.R. No. 146188, December 11, 2003, 418 SCRA 275, 285.

[28] *People v. Dizon*, G.R. No. 129236, October 17, 2001, 367 SCRA 417, 428.

[29] *People v. Sansaet*, G.R. No. 139330, February 6, 2002, 376 SCRA 426, 432.

[30] *People v. Segovia*, G.R. No. 138974, September 19, 2002, 389 SCRA 420, 427.

[31] *People v. Las Pittas, Jr.*, G.R. No. 133444, February 20, 2002, 377 SCRA 377, 389.

[32] Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 which restored the death penalty for heinous crimes effective December 31, 1993, states:

Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

xxx xxx xxx

3. When the woman is under twelve years of age or is demented.

xxx xxx xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances."

xxx xxx xxx

4. When the victim is a religious or child below seven (7) years old.

[33]ART. 68. - Penalty to be imposed upon a person under eighteen years of age. - When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

xxx xxx xxx

2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by the law shall be imposed, but always in the proper penalty.

[34] *People v. Calpito*, G.R. No. 123298, November 27, 2003, 416 SCRA 491, 496.

[35] *People v. Qititorio*, G.R. No. U 6765, January 28, 1998, 285 SCRA 196, 220,

[36] G.R. No. 127903, July 9, 1998, 292 SCRA 186, 200-201.

[37] G.R. No. L-59493, August 21, 1982, 116 SCRA 81, 85.

[38] *Bagumbayan Corp. v. Intermediate Appellate Court*, G.R. No. L-66274, September 30, 1984, 132 SCRA 441, 446.

[39] G.R.No. 125550, July 28, 1999, 311 SCRA 475.

[40] G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676

[41] G.R. No. 170236, August 31, 2006, 500 SCRA 704, 720

[42] *Gatmaitan v. Gonzales*, G.R. No. 149226, June 26, 2006, 461 SCRA 591, 605; *Octot v. Ybañez*, G.R. No. L-48643, January 18, 1982, 111 SCRA 84.

[43] *People v. Veluz*, G.R. No. 167755, November 28, 2008; *People v. Sambrano*, G.R. No. 143708, February 24, 2003, 398 SCRA 106, 117.

[44] *Ibid.*

[45] *People v. Regalario*, G. R. No. 174483, March 31, 2009.

[46] ART. 192. Suspension of Sentence and Commitment of Youthful Offender. - If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him, the court, shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court upon application of the youthful offender and if it finds that the best interest of the public as well as that of the offender will be served thereby, may suspend all further proceedings and commit such minor to the custody or care of the Department of Social Welfare and Development and/or to any training institution operated by the government or any other responsible person until he shall have reached twenty-one years of age, or for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare and Development or the government training institution or responsible persons under whose care he has been committed.

Upon receipt of the application of the youthful offender for suspension of his sentence, the court may require the Department of Social Welfare and Development to prepare and submit to the court a social case study report over the offender and his family.

The youthful offender shall be subject to visitation and supervision by the representative of the Department of Social Welfare and Development or government training institution as the court may designate subject to such conditions as it may prescribe.

The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to one who is convicted for an offense punishable by death or life imprisonment or to one who is convicted for an offense by the Military Tribunals. (As amended by P.D. Nos. 1179 and 1210) (Emphasis ours).

[47] Sec. 32. Automatic Suspension of Sentence and Disposition Orders. ~ The sentence shall be suspended without need of application by the juvenile in conflict with the law. The court shall set the case for disposition conference within fifteen (15) days from the promulgation of sentence which shall be attended by the social worker of the Family Court, the juvenile, and his parents or guardian ad litem. It shall proceed to issue any or a combination of the following disposition measures best suited to the rehabilitation and welfare of the juvenile; care, guidance, and supervision orders; Drug and alcohol treatment; Participation in group counseling and similar activities; Commitment to the Youth Rehabilitation Center of the DSWD or other centers for juvenile in conflict with the law authorized by the Secretary of DSWD.

The Social Services and Counseling Division (SSCD) of the DSWD shall monitor the compliance by the juvenile in conflict with the law with the disposition measure and shall submit regularly to the Family Court a status and progress report on the matter. The Family Court may set a conference for the evaluation of such report in the presence, if practicable, of the juvenile, his parents or guardian, and other persons whose presence may be deemed necessary.

The benefits of suspended sentence shall not apply to a juvenile in conflict with the law who has once enjoyed suspension of sentence, or to one who is convicted of an offense punishable by death, reclusion perpetua or life imprisonment, or when at the time of promulgation of judgment the juvenile is already eighteen (18) years of age or over. (Emphasis ours)

[48] See Notes Nos. 46 and 47.

[49] *People v. Sandiganbayan*, G.R. Nos. 147706-07, February 16, 2005, 451 SCRA 413, 421.

[50] Senate Bill No. 1402 on Second Reading by the 13th Congress, 2nd Regular Session, No. 35, held on November 9, 2005, amendments by Senator Miriam Defensor- Santiago .

[51] Padua v. People, G.R. No. 1658546. July 23, 2008, 559 SCRA 519, 534-535.

[52] Sections 38 and 39 of R.A. No. 9344.

[53] Supra Note35.

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