PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO MANGUBAT, ACCUSED-APPELLANT.

G.R. NO. 172068. August 07, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

On appeal to this Court is the Decision[1] dated January 23, 2006 of the Court of Appeals (CA) in CA-G.R. CR.-HC No. 00186 finding appellant Rolando Mangubat @ "Lando" guilty beyond reasonable doubt of simple rape on two (2) counts and sentencing him to suffer the penalty of reclusion perpetua for each count. The decision affirmed with modifications that of the Regional Trial Court (RTC) of Pinamalayan, Oriental Mindoro, Branch 42, in Criminal Case Nos. P-5788 and 5789 which found appellant guilty of qualified rape on two (2) counts and sentenced him to death for each count.

Appellant had previously been with this Court in G.R. Nos. 154661-62 on account of the penalty of death imposed by the trial court. However, in accordance with our decision in People v. Mateo,[2] the same were referred to the Court of Appeals for intermediate review, whereat it was docketed as CA-G.R. CR.-HC No. 00186. Following the CA's affirmance, albeit with modifications, of the trial court's decision, appellant is again with this Court via the present recourse pursuant to a Notice of Appeal[3] filed by him with the CA.

Conformably with our decision in People v. Cabalquinto[4] and subsequent cases, the real name of the victim in this case is not disclosed herein. Instead, fictitious initials (AAA) are used to represent her. Likewise, the personal circumstances of the victim, as well as any information tending to establish or compromise her identity and those of her immediate family or household members, are also not disclosed in this decision.

The Case

On July 20, 1998, in the RTC of Pinamalayan, Oriental Mindoro, two (2) separate Informations[5] for rape were filed against appellant. Docketed in the same court as Criminal Case Nos. P-5788 and P-5789, the respective Informations alleged as follows:

> In Ciminal Case No. P-5788:
>
> That sometime in the year 1997, more or less nighttime, in barangay Palayan, municipality of Pinamalayan, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force and intimidation, willfully, unlawfully and feloniously did lie, and succeeded in having carnal knowledge of one [AAA], a 10-year-old granddaughter of the accused, to the damage and prejudice of said offended party.
>
> In Criminal Case No. P-5789:
>
> That on or about the 13th day of June, 1998, at 8:00 o'clock in the evening, more or less, in barangay Palayan, municipality of Pinamalayan, Oriental, Mindoro, Philippines and with the jurisdiction of the Honorable Court, the above-named accused, with lewd and unchaste design, by means of force and intimidation, willfully,

> unlawfully and feloniously did lie and succeeded in having carnal knowledge of one [AAA], a 10-year-old granddaughter of the accused, to the damage and prejudice of said offended party.

When arraigned in both cases, appellant entered a common plea of "Not guilty." Thereafter, the cases were heard jointly.

The Evidence

In the ensuing trial, the prosecution presented in evidence the oral testimonies of AAA herself and that of Dra. Adelaida Malaluan, Municipal Health Officer of Pinamalayan, Oriental Mindoro who conducted a physical examination of the victim, plus the documents marked in the course of the proceedings. For its part, the defense adduced in evidence the testimonies of appellant himself and that of BBB, grandmother of the victim and appellant's common-law wife.

The prosecution's version of the incidents was aptly narrated in the CA decision under review, to wit:

> Sometime in 1997, [AAA], who was born on 7 March 1987, was raped by her step-grandfather, appellant Rolando Mangubat, at their house at Barangay Palayan, Pinamalayan, Oriental Mindoro while her grandmother and Rolando's common-law wife, [BBB], was working in Manila. [AAA] knew that Rolando was able to partially insert his penis into her vagina because of the pain that she felt then.
>
> Later, on 13 June 1998, at about 8:00 p.m., [AAA] was invited by her cousin, [CCC], to the latter's house, where they helped one "Kuya" [DDD] check some test papers. After an hour, [AAA's] uncle, [EEE], arrived, and told her "[AAA] tawag ka ni tatay, lagot ka, may garrote ka." Frightened, [AAA] immediately headed for home, and went upstairs to sleep. Thereupon, [EEE] told [AAA] that Rolando was asking if she would eat dinner, to which she replied negatively because she had already taken her dinner.
>
> After the dinner, at around 9:00 p.m., [EEE] and [AAA's] brother went out to watch television at a nearby store, leaving [AAA] and Rolando in the house. Later, Rolando asked [AAA] to get some oil, and rub it to his body, which she did. Also, Rolando ordered [AAA] to lie down on his bed, and to remove her shorts and panty, which she obeyed for fear of bodily harm. Rolando then laid himself on top of [AAA], and inserted his penis in her vagina, Hurt, [AAA] cried, and called out for [BBB], who was in Manila at that time.
>
> [AAA] did not report the incident to her mother for fear that Rolando might kill them. Instead, [AAA] reported the matter to a certain "Bogs" at the Department of Social Welfare and Development (DSWD), which later brought her to Dr. Adelaido Malaluan for a physical examination.
>
> Thereafter, [AAA] was brought to a police headquarter, where she detailed her traumatic experience in the presence of the investigating officer and her grandmother [BBB], who had already learned of the incident. [BBB] confirmed [AAA's] report, and explained that [AAA] bears Rolando's surname, instead of her father's surname, because they caused her surname to be registered after Rolando's, as she was in their custody since her early childhood. [6]

Denial is appellant's main plea in exculpation. Denying the charges against him, appellant averred that the cases were filed by AAA in retaliation to his having whipped her for refusing to do an errand on June 13, 1998, the date the alleged rape was committed. Appellant added that it was not possible for him to have raped AAA nor could the alleged rape incidents have happened inside their house - a one-room affair with no division - considering that including himself, there were six (6) of them living thereat, namely FFF, appellant's 15-year old son; GGG who is AAA's six-year old brother; AAA's real father HHH who left for Manila in 1997; AAA herself; and the latter's grandmother BBB. On cross-examination, appellant declared being legally married to BBB. Likewise, he admitted having taken cared of AAA since the latter's birth.

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Testifying for the defense, BBB, AAA's grandmother and appellant's common-law wife, belied the accusations hurled against her common-law husband and claimed that on June 13, 1998, while she was doing the laundry, appellant who was then sick with influenza, was in bed. While asserting that her common-law husband was examined at a health clinic and issued a prescription for his sickness, BBB, however, could not present the alleged prescription issued to him. She also denied having executed a sworn statement against appellant and professed that her decision to testify in his favor was because there was no truth to AAA's allegations.

The Trial and Appellate Court's Decisions

In a decision[7] dated March 13, 2002, the trial court, giving more credence to the testimony of AAA and appreciating the special qualifying circumstances of minority and relationship, adjudged appellant guilty beyond reasonable doubt of two (2) counts of qualified rape and sentenced him to the extreme penalty of death for each count. The trial court also ordered appellant to indemnify AAA in the amount of P50,000.00 for each count. More specifically, the decision dispositively reads:

> ACCORDINGLY, the Court finds accused Rolando Mangubat alias "Lando" GUILTY beyond reasonable doubt, as principal of the crime of RAPE, for TWO (2) COUNTS, defined and penalized in Article 335 of the Revised Penal Code, as amended by Republic Act No. 8353 and hereby sentences him to TWO (2) DEATH PENALTIES.
>
> Additionally, accused is ordered to indemnify [AAA] the amount of Fifty Thousand Pesos (Php50,000.00) for each count and to pay the cost.
>
> SO ORDERED.

When directly elevated to this Court for automatic review in view of the penalty imposed, the case, as earlier stated, was transferred to the CA for intermediate review, whereat it was docketed as CA-G.R. CR.-HC No. 00186.

In its decision of January 23, 2006, the CA affirmed, with modifications that of the trial court. While sustaining appellant's conviction on both counts, the CA, based on its finding that the marriage between appellant and AAA's grandmother has not been sufficiently proved, ruled that the offense committed is merely simple rape and accordingly meted on appellant the penalty of reclusion perpetua for each count. The appellate court further ordered appellant to pay AAA P50,000.00 by way of moral damages, in addition to the P50,000.00 civil indemnity awarded by the trial court for each count. We quote the fallo of the appellate court's decision:

> WHEREFORE, the decision rendered by the Regional Trial Court, Branch 42, Pinamalayan, Oriental Mindoro in Criminal Case Nos. P-5788 and P-5789 on 13 March 2002 is AFFIRMED, with the modifications that accused-appellant Rolando Mangubat is found guilty beyond reasonable doubt of two counts of simple rape, for which he is sentenced to suffer the penalty of reclusion of perpetua for each count, and to pay private complaint [AAA] the amounts of P50,000.00, as civil indemnity, and P50,000.00, as moral damages, for each count.
>
> SO ORDERED. [8]

The case is again with us in view of the Notice of Appeal interposed by appellant from the CA decision .

In its resolution dated July 12, 2006, the Court accepted the appeal and required the parties to file their respective supplemental briefs, if they so desire. In their respective manifestations, the parties waived the filing of supplemental briefs and instead merely adopted their earlier briefs before the CA.

In his Brief, appellant contends that the trial court erred in finding him guilty beyond reasonable doubt of the

crime of rape on two counts and in imposing upon him the penalty of death for each count. The People, however, through the Office of the Solicitor General (OSG), submits that the trial court properly convicted appellant of qualified rape and correctly sentenced him with death in each count.

The appeal must fail.

In the review of rape cases where, most often than not, the credibility of the victim is in issue, the Court consistently relies on the assessment of the trial court.[9] It has long been held that the trial court's evaluation of the credibility of witnesses should be viewed as correct and entitled to the highest respect because it has the opportunity to observe the witnesses' demeanor and deportment on the witness box, and the manner in which they give their testimony.[10] For this reason, the trial court's findings are accorded finality, unless there appears on record some facts or circumstances of weight and substance which that court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the outcome of the case.[11] None of the exceptions obtain herein.

Undoubtedly, AAA was twice sexually violated by appellant - the first, in 1997 when she was barely ten (10) years old and the other, on June 13, 1998 when she was already eleven (11) years old. Both incidents of rape happened inside their house at barangay Palayan, Pinamalayan, Oriental Mindoro.

In a clear, spontaneous and straightforward manner, AAA narrated in tears her harrowing experience with appellant. We quote from the transcripts of stenographic notes AAA's testimonies in both cases:

> In Criminal Case No. P-5788:
>
> "Q - The first to the last time that you were raped by your father in 1997, tell us where was (sic) actually that incident took place?
> A - In our house also, sir.
>
> Q - On that particular occasion when you were in Grade IV when you were raped in your house, what was done by your father?
> A - The same, sir.
>
> Q - In the year 1997, was there fatal (sic) penetration?
> A - On (sic) sir, only one half.
>
> Q - Why do you know only one half (sic) was able to penetrate to your vagina?
> A - Because it was so painful, sir.
>
> Q - What did you feel when the penetration reached one half?
> A - I felt pain, sir.
>
> Q - What did you do when your father was trying to insert his penis to your vagina?
> A - I was crying then because I was apprehensive that he will do what he [had] done to me before.
>
> Q - All in all, how many times were you raped by your father aside from 1997 and when you were in Grade IV?
> A - He was always raping me whenever my mother was in Manila, I cannot count."[12]
>
> In Criminal Case No. P-5789:
>
> "Q - Are you the same [AAA] who filed this case against Rolando Mangubat?
> A - Yes, sir.
>
> Q - Why did you file the case against Rolando Mangubat, your Tatay?

A - Because he raped me. 'Kasi po ginahasa po ako'[13]

Q - Who are left inside the house?
A- The two of us, sir.

Q - When you were alone with your tatay, what happened?
A - After that, tatay called me and told me to get the oil.

Q - Did you get the oil?
A - Yes, sir.

Q - And thereafter, what was done to the oil?
A - My father told me to rub the oil in his body.

Q - While you were rubbing the oil over the body of your tatay, what happened next?
A - After rubbing him with oil, he caused me to lay (sic) in his beddings.

Q - Did you accede to his request?
A - Yes, sir.

Q - While you were lying on his bed, what happened next?
A - He placed himself on top on (sic) me, sir.

Q - Before he placed himself on top of you, what did he tell you to do, if any?
A - He told me to remove my shirt and panty.

Q - Did you obey his command?
A - Yes sir.

Q - Why did you obey his command?
A - Because if I will not obey his order, he will hit me.

Q - Where was your mother on that particular time and date?
A - She was in Manila, sir.

Q - What was she doing in Manila?
A - She was working to support us.

Q - What kind of work was she doing in Manila?
A - Housemaid, sir.

Q - After you were made to lay on the bed and made cause (sic) to remove your panty and short and make (sic) himself on top of you, what else did he do?
A - After placing himself on top of me, he inserted his penis to my vagina.

Q - After placing his penis to your vagina, what did you observe to his penis?
A - "Matigas po".

Q - When the accused inserted his hard penis towards your vagina, what did you... say to your father?
A " None, I continued crying and I was asking for my mother.

Q - Why did you ask for assistance when your mother was working in Manila?
A - "Kasi po hirap na hirap na po lagi akong gingahasa ng aking tatay".

PROS. ENRIQUEZ:

At this juncture, I would like to make it on record that the witness is shedding tears after making her

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statement."[14]

It is noteworthy that despite rigid cross-examinations, AAA remained consistent and categorical in recounting the sordid details of the two (2) incidents of rape perpetrated against her by appellant. Again, to quote from the transcripts:

Q - But you were able to notice or feel the hard penis of your tatay Lando despite the fact that you did not see it?
A - When I felt the hard penis of my tatay Lando having inserted (sic) to my vagina, I raised my two hands asking for help to my mother (sic).

Q - You noticed that it was hard because you hold the same/
A - He told me to hold it.

Q - And you held it?
A - Yes, madam.

Q - As a matter of fact you guided it towards his waist.
A - No more, madam.

Q - In 1997, which according to you the incident prior to June 13, 1998, you testified that the penetration was only one-half of the penis?
A - Yes, madam.

Q - You felt that the penetration was only one-half because you were at that time emoting, so you have the time to notice that the penetration was only one-half?
A - No, madam.

Q - How could you tell that the penetration was only one-half?
A- Before he inserted his penis, he was slowly inserting it.

Q - While he was inserting his penis during the time, again you were hold (sic) the other one-half which were (sic) penetrating?
A - No, madam.

Q - After June 13, 1998, you were residing at [the house of] your kuya [EEE], Tatay Lando and [GGG]?
A - Yes, madam.

Q - And that you only decided to leave that house after you [were] physically hit by your father?
A - Yes, madam.

Q - And that cause[d] you to tell to Lilian that your Tatay Lando hit you, am I correct?
A - No madam. Aling Lilian assisted me to go to Shirley

Q - When you were already talking with Shirley Pontillar, you told her that your tatay Lando hit you again?
A - Yes, madam.

Q - Because of that sumbong to Shirley Pontilar, she turned you to DSWD?
A - No, madam, Tiya Shirley brought me to the police headquarters.

Q - Your very purpose when you went to the house of Shirley [was] to make "sumbong" that Rolando Magubat hit you again physically, am I correct?
A - Yes, madam, and also when he raped me.[15]

Most importantly, AAA's rape on June 13, 1998 was confirmed by the medical findings of the medico-legal officer who examined her. Thus, Dra. Adelaida Malaluan testified:

"Q - In your medical opinion, what could have caused this complete hymenal laceration at 1 o'clock, 3 o'oclock and 10 o'clock position[s] of the clock[?]
A - It may be due to the penetration of foreign bodies in the vaginal canal.

Q - Is it possible that the same can be caused by an erected penis/
A - Yes, ma'am."[16]

AAA's clear and categorical narration of the sexual assaults against her, free from material inconsistencies and coupled with spontaneous outburst of emotions, deserves full faith and credence. The rule is that when a rape victim's testimony is straightforward and candid, unshaken by rigid cross-examinations and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit.[17] Hence, the testimony of the rape victim alone is sufficient to convict. More so, when, as here, such testimony is corroborated by the physical findings of penetration.[18]

Appellant insists, however, that the evidence is not sufficient to establish his guilt beyond reasonable doubt, most especially the rape which allegedly occurred in 1997. But, as the two courts below found, there is enough evidence on record to sufficiently establish the occurrence of said rape. As shown in her testimony, AAA clearly and categorically stated that appellant was able to partially penetrate his penis into her vagina, and she confirmed that there was indeed such penetration because she felt pain at that time. True, there was no medical certificate presented showing any injury or lacerations in AAA's hymen; nonetheless, such does not negate the possibility of rape. Medical findings are at best corroborative and therefore not indispensable in proving the commission of the crime of rape,[19] inasmuch as the victim's testimony alone, if credible, is sufficient to convict. Besides, for rape to be consummated, full penetration is not necessary. Penile invasion necessarily entails contact with the labia and it suffices that there is proof of the entrance of the male organ with the labia of the pudendum of the female organ. Thus, penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape.[20] Likewise, AAA's failure to specify the exact date of her rape in 1997 is immaterial considering that the exact date of commission of the rape is not an essential element of the crime. For, the gravamen of the offense of rape is the fact of carnal knowledge under any of the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve (12) years of age or is demented.[21] Also, AAA's delay in disclosing her sexual defilement is understandable, given the fact that such procrastination was attributable to her fear for her life and that of her mother. In any event, long silence and delay in reporting the crime of rape have not always been construed as an indication of a false accusation.[22] And this principle applies with greater force where, as in this case, the victim was 10-11 years old at the time of the rape incidents, and was therefore susceptible to intimidation and threats of physical harm.

With respect to appellant's defenses of denial and alibi, the same cannot prevail over the positive and categorical statements of AAA. Denial, when unsubstantiated by clear and convincing evidence, is negative, self-serving and merits no weight in law and cannot, therefore, be given greater evidentiary value than the testimony of credible witnesses testifying in the affirmative.[23] Verily, an affirmative testimony is far stronger than a negative testimony, especially so when it comes from the mouth of a credible witness,[24] as AAA in this case. On the other hand, alibi is often viewed with suspicion and received with great caution not only because it is inherently weak and unreliable but also because it is easy to fabricate. Appellant's alibi that he was sick in bed at the time of the rape on June 13, 1998 is much too flimsy an excuse to be believed, while his claim that AAA accused him of rape as a revenge for his having physically maltreated her is utterly preposterous and downright unworthy of belief. Mere resentment is not so compelling as to have motivated a young girl to accuse a person who practically took care of her since birth and whom she already considers as her tatay, of such a serious crime as rape. Indeed, it is highly inconceivable how a young girl of ten,[25] like AAA, could have concocted a story of defloration,

suffer the embarrassment of recounting in a public trial the harrowing details of her experience and thereby open herself and her family to gossip, just because she was whipped by her ravisher for not doing an errand for him, as appellant would want us to believe. As this Court observed in People v. Dimacuha:[26]

> No woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child-victims are given full-faith and credit, since when a girl says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity. In assessing the testimony of the child victim, the standards used for adults should not apply. Rather her testimony should be viewed as a narration of a minor who barely understands sex and sexuality.

On the whole, we are thus convinced that when AAA testified during trial that she has been raped, she said, in effect, all that was necessary to show that she has indeed been raped.

We now review the penalty imposed.

Carnal knowledge of a minor under 12 years of age is rape as defined under Article 266-A[27] of the Revised Penal Code (RPC), as amended. Under Article 266-B[28] of the same law, rape is qualified 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, in which case the death penalty shall be imposed.

Here, the two Informations against the appellant alleged the special qualifying circumstances of minority of AAA and her relationship to the appellant. Proof of these special qualifying circumstances is necessary to justify the imposition of the supreme penalty of death.

In the prosecution of criminal cases, especially those involving the penalty of death, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established.[29] Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself, otherwise, there can be no conviction of the crime in its qualified form.[30]

As a special qualifying circumstance raising the penalty for rape to death, the minority of the victim and her relationship to the offender must be alleged in the criminal complaint or information and proved conclusively and indubitably as the crime itself.[31]

Here, while AAA's minority was properly alleged and proved, the same is not true as regards the parties' relationship.

AAA was described in the criminal indictments as the appellant's granddaughter. But this cannot be so because AAA herself testified, and such testimony was confirmed by no less than her grandmother BBB, that appellant is the common-law husband of BBB and that AAA's biological father is BBB's son from a previous relationship. As the CA correctly found:

> xxx The prosecution failed to prove its allegation that Rolando is [AAA's] grandfather. [AAA] herself admitted that Rolando is [BBB's] common-law husband, and, therefore, not her grandfather. Hence, Rolando cannot be considered an ascendant, or a relative by affinity within the third civil degree of [AAA] xxx[32]

We hasten to add that appellant cannot even be considered as AAA's step-grandfather which should have been indicative of a relationship by affinity[33] for the same reason that he and AAA's grandmother only lived in a common-law relationship. In fact, appellant cannot even be considered as AAA's grandfather by affinity, precisely

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because appellant is a mere common-law spouse of AAA's grandmother. As ruled by this Court in People v. Mamac:[34]

> At the most, appellant can be described as the common-law husband of Bernadette's grandmother. As such, appellant is not 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 Bernadette. In a similar case, we ruled that courts must not bring cases within the provision of a law which are not embraced by it to the end that no person who is clearly not within the terms of the statute can be brought within them. Expressio unius est exclusio alterius.

The OSG insists, however, that appellant's and BBB's admissions regarding their marriage duly established the relationship between AAA and appellant as the latter's granddaughter by affinity.

Evidently, the admissions are invoked by the People to justify the imposition of the penalty of death on appellant. We are not persuaded. The qualifying circumstance of relationship cannot be established by mere testimony or even by the accused's very own admission. So it is that in People v. Pascual Balbarona,[35] the Court ruled:

> Circumstances that qualify a crime and increase its penalty to death cannot be the subject of stipulation. An accused cannot be condemned to suffer the extreme penalty of death on the basis of stipulations or his own admissions. This strict rule is warranted by the seriousness of the penalty of death.

Here, apart from the admissions of appellant and BBB, no further and/or independent proof was proffered by the prosecution to establish the fact of their marriage with certainty. Lest it be forgotten, elementary is the doctrine that upon the prosecution lies the burden of proving all the elements of a crime including the qualifying circumstances.[36] The prosecution cannot rely on the defense to prove its case.

Given the reality that the prosecution in this case failed to prove the alleged special qualifying circumstance of relationship, appellant can only be adjudged guilty of simple rape punishable by reclusion perpetua.

All told, the Court rules and so holds that the crime committed by appellant is only simple rape on two counts, as defined in Article 266-A of the RPC, as amended, for which he should be meted the penalty of reclusion perpetua for each count. In any event, Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines" which was signed into law on June 24, 2006, prohibits the imposition of the death penalty.

Lastly, with regard to appellant's civil liability, we affirm the award of P50,000.00 as civil indemnity for each count as it is automatically imposed upon the accused without need of proof other than the fact of the commission of rape.[37] We likewise affirm the award of moral damages in the amount of P50,000.00 for each count considering that the same is also automatically granted in rape cases without need of further proof other than the commission of the crime because it is assumed that a rape victim has actually suffered moral injuries entitling her to such award.[38]

WHEREFORE, the assailed CA decision in CA-G.R. CR.-HC No. 00186 is AFFIRMED in all respects.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Penned by Justice Santiago Javier Ranada and concurred in by Justices Mario L. Guarina and Roberto A.

Barrios (deceased); CA Rollo, pp. 114-122.

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

[3] CA Rollo, p. 130.

[4] G.R. No. 167693, September 19, 2006.

[5] CA Rollo, pp. 9-10 & 11-12.

[6] Id. at 115-116.

[7] Id. at 26-27.

[8] Id. at 122.

[9] People v. Bernie Teodoro, G.R. No. 170473, October 12, 2006.

[10] People v. Alviz, G.R. Nos. 144551-55, June 29, 2004, 433 SCRA 164, 172.

[11] People v. Wilson Suarez, et al., G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333.

[12] TSN, Nov. 16, 1998, pp. 9-10.

[13] Id. at p. 3.

[14] Id. at pp. 5-6.

[15] Id. at pp. 14-16.

[16] TSN, September 28, 1998, pp. 4-5.

[17] People v. Chito P. Ucab, G.R. No. 133227, October 10, 2002, 390 SCRA 564, 572.

[18] Supra note 11.

[19] People v. Federico Arnaiz, G.R. No. 171447, November 29, 2006.

[20] People v. Jouriel Dimacuha, G.R. Nos. 152592-93, February 13, 2004, 422 SCRA 688, 693.

[21] People v. Avelino Latag, G.R. Nos. 140411-13, December 11, 2003, 418 SCRA 122.

[22] People v. Wilson Suarez, et al., supra.

[23] People v. Alviz, supra at p. 172.

[24] People v. Federico Arnaiz, supra.

[25] AAA was ten years old when the first rape occurred in 1997 and eleven at the time of the second rape on June 13, 1998. She was also eleven when the two (2) Informations were filed on July 20, 1998 and at the time she testified in court.

[26] supra

[27] In part, said Article reads:

Article 266-A. Rape; When and How Committed. - Rape is committed:

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

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a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or otherwise consciousness;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

xxx xxx xxx

[28] Said Article pertinently provides:

Article 266-B. Penalties. -

xxx xxx xxx

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

- 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;

xxx xxx xxx

[29] People v. Ruperto Ramos, G.R. No. 142577 December 27, 2002, 394 SCRA 452, 469.

[30] Id.

[31] People v. Pascual Balbarona, G.R. No. 146854, April 28, 2004, 428 SCRA 127.

[32] Rollo, p. 121.

[33] See People v. Mamac, G.R. No. 130332, May 31, 2000, 332 SCRA 547, 556.

[34] Id.

[35] Supra.

[36] People v. Ruperto Ramos, supra.

[37] People v. Esperida, G.R. Nos. 139637-38 January 22, 2003, 395 SCRA 679, 686.

[38] People v. Cayabyab, G.R. No. 167147, August 3, 2005 465 SCRA 681, 693.

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