PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LITO BEJIC Y ANTONI, ACCUSED-APPELLANT.

G.R. NO. 174060. June 25, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00126-MIN, dated 23 May 2006,[1] affirming with modification the Decision of the Regional Trial Court (RTC) of Oroquieta City, 10[th] Judicial Region, Branch 13, in Criminal Case No. 1688-13, dated 15 January 2004,[2] convicting the accused-appellant Lito Bejic y Antoni of the crime of qualified rape committed against his 14-year old daughter AAA;[3] imposing upon him the capital punishment of death; and ordering him to pay P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

On 18 June 2003, an Information[4] was filed with the RTC against appellant for qualified rape allegedly committed as follows:

> That on or about the first week of August, 2002, at nighttime in Barangay XXX, Municipality of XXX, Province of XXX, Philippines, and within the jurisdiction of this Honorable Court, said accused LITO BEJIC y ANTONI by means of force and violence and taking advantage of his moral ascendancy and influence over his 14 year-old daughter named AAA, did then and there, willfully, unlawfully, feloniously, have carnal knowledge of his aforementioned daughter against her will.
>
> CONTRARY TO LAW, with the presence of a qualifying aggravating circumstance of minority of private offended party and the accused is her father.

When arraigned on 15 September 2003, appellant pleaded "Not Guilty" to the charge.[5] Thereafter, trial on the merits ensued.

The prosecution presented as witnesses AAA and her mother BBB. Their testimonies are as follows:

AAA testified that from the last week of July 2002 up to the last day of August 2002, she, together with the rest of her family – herein appellant, BBB, and her five younger siblings - had temporarily resided in the house of BBB's aunt and uncle at Barangay XXX, Municipality of XXX, Province of XXX. They occupied and took care of the said house upon the request of BBB's aunt and uncle who were attending to some concerns in another place. Sometime in the first week of August 2002, at about 7:00 in the evening, she and her three younger siblings slept in the sala of the said house. On the other hand, appellant and BBB, together with AAA's two younger siblings, slept in one of the rooms therein.[6]

When it was nearly midnight, she was roused from her sleep when appellant held her foot. Appellant then crawled towards her, held her hands, and placed himself on top of her body. Appellant covered her mouth with one hand, and took off her short pants and panty using the other hand. Afterwards, appellant spread her thighs, inserted his penis into her vagina, and made a push and pull movement. Although she felt pain when appellant inserted his

penis into her vagina, she was not able to shout because appellant had covered her mouth. Further, she was scared when appellant told her in an angry voice to keep quiet. As she was afraid of appellant, she did not immediately reveal the incident to BBB.[7]

Sometime in the last week of February 2003, AAA's school principal and class adviser visited BBB and informed the latter of their suspicion that AAA might be pregnant. Subsequently, BBB and AAA's school principal brought AAA to a hospital in Ozamis City. After check-up, the doctor confirmed that AAA was indeed pregnant. BBB confronted AAA as to who was responsible for her pregnancy but AAA refused to answer. After being informed by BBB that AAA was pregnant, appellant left them and disappeared. On 4 May 2003, AAA gave birth. Later, AAA confessed to BBB that it was appellant who had raped and impregnated her.[8]

BBB narrated that she and appellant were married on 10 September 1987. From the last week of July 2002 up to the last day of August 2002, she and appellant, together with AAA and their other five young children, stayed at her aunt's house located at Barangay XXX, Municipality of XXX, Province of XXX.[9] She stated that AAA is a good daughter as the latter always stays at home after school, does the laundry, and takes care of her siblings. According to her, AAA does not go to discos and does not have a boyfriend.[10]

In the last week of February 2003, AAA's class adviser and school principal inquired from BBB as to why AAA was noticeably sad in school and her grades got lower. They also asked her why AAA's stomach was growing bigger. These questions prompted her and AAA's class adviser and school principal to bring AAA to a hospital in Ozamis City for a check-up. The doctor confirmed that AAA was pregnant. Further, the doctor told her to take care of the baby and not to harm AAA. BBB confronted AAA as to who was responsible for her pregnancy but the latter merely cried and refused to respond. Thereupon, BBB informed appellant of AAA's pregnancy but the appellant did not react or show any emotion. By reason of appellant's obvious disregard of and insensitivity to the situation of AAA, she suspected that appellant might be responsible for AAA's pregnancy. Thus, she confronted appellant and asked him, "Did you kill our daughter's future?" Instead of answering, the appellant merely bowed his head and cried.[11]

On 21 March 2003, appellant told BBB that he would go to Ozamis City. Since then, appellant never returned. On 4 May 2003, AAA delivered a baby. Three days thereafter, AAA admitted to BBB that appellant had raped and impregnated her.[12]

In addition to the foregoing testimonies, the prosecution also submitted the birth certificate of AAA showing that the latter was born on 13 September 1988 to prove that AAA was merely 14 years old when the incident occurred.[13] It also submitted the marriage contract of BBB and appellant to bolster the fact that they are legally married.[14]

To refute the aforementioned allegations, the defense proffered the sole testimony of appellant.

Appellant alleged that his family temporarily resided at the house of BBB's aunt situated at Barangay XXX, Municipality of XXX, Province of XXX, from July 2002 up to August 2002, upon the request of the said aunt. He, however, chose to remain at their family residence located at Barangay XXX, Municipality of XXX, Province of XXX, because he was then harvesting corn and tending their animals. He visited his family during daytime at BBB's aunt's house to deliver their daily needs but always returned to their family residence at nighttime. He did not notice any unusual incident while visiting his family in August 2002. Nonetheless, he and BBB often quarreled about money matters which prompted him to leave for Ozamis City to look for a job. From Ozamis City, he went to Margosatubig, Zamboanga del Sur, after being informed of his mother's death. He had no knowledge nor was he informed of the fact that AAA was pregnant when he left his family and proceeded to Ozamis City. Further, he has no idea why AAA would accuse him of rape.[15]

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On 15 January 2004, the RTC rendered its Decision finding appellant guilty beyond reasonable doubt of the crime of qualified rape as defined and penalized under Articles 266-A and B of the Revised Penal Code, thus:

> WHEREFORE, finding accused Lito Bejic y Antoni guilty beyond reasonable doubt of qualified incestuous rape, the court sentences him to death and orders him to pay his daughter civil indemnity in the sum of P75,000.00 and moral damages in the sum of P50,000.00. With costs.[16]

The case was automatically elevated to this Court for review by reason of the death penalty imposed on appellant. However, pursuant to our ruling in People v. Mateo,[17] the case was transferred and referred to the Court of Appeals for proper disposition.

On 23 May 2006, the Court of Appeals promulgated its Decision affirming with modification the assailed RTC Decision. Aside from increasing the amount of moral damages from P50,000.00 to P75,000.00, it also ordered the appellant to pay AAA the amount of P25,000.00 as exemplary damages. The decretal portion of the appellate court's decision reads:

> WHEREFORE, the decision of the Regional Trial Court of Oroquieta City, Br. 13, in Crim. Case No. 1688-13 convicting herein appellant Lito Bejic y Antoni of the crime of qualified rape and sentencing him to death and ordering him to pay civil indemnity of P75,000.00 is hereby AFFIRMED, with the MODIFICATION that the award of moral damages in the amount of P50,000.00 is increased to P75,000.00 and that Appellant is further ordered to pay the additional sum of P25,000.00 as exemplary damages.[18]

Before us, appellant assigns the following errors:

> **I.**
>
> THE TRIAL COURT ERRED IN NOT FINDING AS INCREDIBLE THE PRIVATE COMPLAINANT'S ALLEGATION OF HAVING BEEN RAPED.
>
> II.
>
> THE TRIAL COURT ERRED IN NOT FINDING AS IMPROBABLE FOR THE ACCUSED-APPELLANT TO HAVE RAPED THE PRIVATE COMPLAINANT.
>
> III.
>
> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[19]

Anent the first issue, appellant contends that the testimony of AAA is not credible based on the following reasons: (1) the prosecution failed to present the medical certificate showing that AAA was indeed pregnant, or at the very least, that her hymen suffered lacerations indicating that the latter was no longer a virgin; (2) the prosecution failed to present the attending physician of AAA who could have testified, in the absence of the medical certificate, that he had indeed examined AAA and found the latter to be pregnant, or in lieu of the attending physician, the teacher or principal who allegedly accompanied AAA and BBB during the check-up; and (3) the prosecution failed to present the birth certificate of the child delivered by AAA, or in lieu of such certificate, the testimony of the midwife or the doctor who assisted AAA in delivering the baby.[20]

Appellant also asserts that the above-stated persons are vital witnesses to establish the fact of AAA's pregnancy. Further, the presentation of the said persons as witnesses, as well as the birth and medical certificates, are material to prove qualified rape.[21]

We reject the foregoing asseverations.

Article 266-A of the Revised Penal Code as amended by Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, identifies the acts constituting rape, to wit:

> ART. 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:
>
> - Through force, threat or intimidation;
>
> - When the offended party is deprived of reason or otherwise unconscious;
>
> - By means of fraudulent machination or grave abuse of authority; and
>
> - When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

The elements of rape under paragraph 1 of Article 266-A are: (1) the offender is a man who had carnal knowledge of a woman; and (2) he accomplished such act through force or intimidation upon her; or she is deprived of reason or otherwise unconscious; or she is under 12 years of age or is demented.[22]

The gravamen of rape is carnal knowledge or sexual intercourse with a woman against her will or without her consent.[23]

In determining the guilt or innocence of the accused in cases of rape, the victim's testimony is crucial in view of the intrinsic nature of the crime in which only two persons are normally involved. The accused may be convicted on the basis of the victim's lone and uncorroborated testimony provided it is clear, positive, convincing, and consistent with human nature. Hence, the victim's testimony must be scrutinized with extreme caution.[24]

We have assiduously reviewed the records and found that the prosecution has sufficiently and convincingly proved that appellant had carnal knowledge of AAA through force and intimidation in the first week of August 2002. In her court testimony, AAA positively and categorically identified the appellant as the one who ravished her, viz:

> PROS. OMANDAM:
>
> Q
>
> What is the name of your mother?
>
> A
>
> BBB.
>
> Q
>
> And your father?
>
> A
>
> Lito Bejic.

Q

The accused in this case is Lito Bejic, is he your father?

A

Yes.

Q

Why did you file a case against your father?

A

Because he raped me.

Q

Where (sic) were you raped by your father?

A

In the first week of August.

Q

What year was that?

A

2002.

Q

Where did it happen?

A

In the house of my grandmother.

Q

Where is the house of your grandmother?

A

In Barangay XXX, Municipality of XXX, Province of XXX.

Q

Will you kindly tell us why you were in the house of your grandmother when you said earlier that you are a resident of Barangay XXX, Municipality of XXX, Province of XXX?

A

Because we lived there temporarily.

Q

What time was it when you were raped by your father?

A

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In the middle of the night.

Q

What were you doing before you were raped by your father?

A

I was sleeping.

Q

What time did you sleep that night?

A

7:00 o'clock.

Q

Who were with you when you went to sleep that night?

A

My three younger siblings.

Q

What are their names?

A

X, Y, and Z.

Q

Where were you sleeping?

A

In the sala.

Q

Your mother was in the house that night?

A

Yes.

Q

Where was your mother sleeping?

A

In the bedroom.

Q

Who was with her?

A

My father and two of my younger siblings.

Q

What happened while you were sleeping?

A

I [was] suddenly awakened.

Q

Why?

A

Because somebody held my foot.

Q

What happened next?

A

The man crawled and held my hand.

Q

You mean he used his hands and knees to get near you?

A

Yes.

Q

Do you know who was that person who held your feet and crawled beside you?

A

Yes, my father.

Q

What happened next?

A

He put himself on top of me.

Q

What happened next?

A

He covered my mouth.

Q

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How did he cover your mouth?

A

With one hand.

Q

What did he do with his other hand?

A

He took off my short pants and panty.

Q

Your father was able to remove your short pants and panty?

A

Yes.

Q

What happened next?

A

One of his hands moved my thighs.

Q

What happened when your thighs were moved by your father?

COURT:

Ask leading questions.

PROS. OMANDAM:

Q

How did your father move your thigh?

INTERPRETER:

Witness demonstrated, using her right hand, held her knee and moved it to the right.

PROS. OMANDAM:

Q

So when your father moved your thigh sidewise your legs parted?

A

Yes.

Q

Then what happened next?

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A

He inserted his sex organ to mine.

Q

When your father inserted his sex organ to your vagina what did he do?

A

He made a push and pull movement.

Q

When your father was making a push and pull movement with his sex organ what else did he do to you?

A

He pinned both my hands.

Q

When your father was doing this did he say anything to you?

A

Yes.

Q

What did he say?

A

He said keep quiet.

Q

Can you tell us the tone of his voice?

A

He was angry.

Q

Can you tell us why you did not shout or struggle when your father was raping you?

A

Because I was afraid of him.

Q

Are you sure that the person who raped you during that time was your father?

A

Yes.

Q

When your father was raping you how far was his face to you?

A

Approximately 6 inches (witness demonstrated).

Q

Can you tell us if your father was totally naked at that time?

A

No

Q

How about from the waist down, was he naked?

A

I was not able to see if he was naked. I remember that he just put himself on top of me and inserted his sex organ into my sex organ.

Q

The following day, did you confide the incident to your mother or anybody?

A

No.

Q

Will you kindly tell us why you did not confide to your mother?

A

Because I was scared.

Q

Of whom were you scared?

A

My father.

x x x x

Q

How old were you when you were raped?

A

14.

Q

What do you feel now about that rape incident?

A

> I am sad and ashamed.[25] (Italics supplied).

It is a well-settled doctrine that the testimony of a child-victim is given full weight and credence considering that when a woman, especially a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are badges of truth and sincerity.[26]

We also held in several cases that no young woman, especially of tender age, would concoct a story of defloration at the hands of her own father, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. It is highly improbable that a girl of tender years, not yet exposed to the ways of the world, would impute to her own father a crime so serious as rape if what she claims is not true.[27] This is more true in our society since reverence and respect for the elders is deeply rooted in Filipino children and is even recognized by law. Thus, it is against human nature for a 14-year old girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father.

The fact that AAA cried during her testimony[28] reinforces the truth of the rape charge for the display of such emotion indicates the pain that she felt when asked to recount her traumatic experience.[29]

It should also be underscored that the RTC gave full faith and credence to the foregoing testimony of AAA as she recounted her painful ordeal in a sincere and candid manner. Likewise, the RTC found no ill motive on the part of AAA or BBB to charge appellant with such heinous act. The appellant himself admitted that AAA is a good daughter and that he had absolutely no idea why AAA and BBB would charge him with rape.[30] Thus, the RTC observed:

> AAA, complainant, 15 years old, spoke almost in a monotone, with a look of infinite sadness in her eyes, something which could only be expected as she was testifying against her own father. She could not look at him and she looked like she was carrying the world on her shoulders. Her demeanor, the stillness in her voice, her sadness and everything else about her shouted confirmation of the truth of her testimony. There was nothing in her testimony on direct and cross-examination that would make the court, or anyone else for that matter, disbelieve her.[31]

Jurisprudence dictates that when the credibility of a witness is a primordial consideration, as in the present case, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect if not conclusive effect. This is because the trial court has had the unique opportunity to observe the demeanor of a witness and was in the best position to discern whether they were telling the truth.[32] Given these considerations, we find no compelling reason to depart from the RTC findings.

In addition to the foregoing testimony of AAA, her mother, BBB, as earlier demonstrated, corroborated AAA's testimony on material and substantial points.

The non-presentation of the medical certificate verifying the pregnancy of AAA, and of the birth certificate of the child of AAA, does not in any way negate the fact that appellant had, indeed, carnal knowledge of AAA through force and intimidation. It is well-entrenched in our case law that the rape victim's pregnancy and resultant childbirth are irrelevant in determining whether or not she was raped. Pregnancy is not an essential element of the crime of rape. Whether the child which the rape victim bore was fathered by the accused, or by some unknown individual, is of no moment. What is important and decisive is that the accused had carnal knowledge of the victim against the latter's will or without her consent, and such fact was testified to by the victim in a truthful manner.[33]

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Neither is the testimony of the doctor, teacher, and school principal of AAA required in proving that the latter was raped by appellant. Their corroborative testimonies are not crucial for the conviction of appellant in light of the positive, straightforward and credible testimonies of AAA and BBB.

Apropos the second issue, appellant interposes the defense of denial and alibi. According to him, although it is true that his family temporarily resided at Barangay XXX, Municipality of XXX, Province of XXX (BBB's aunt's house), from the last week of July 2002 up to the last day of August 2002, he remained at their family residence at Barangay XXX, Municipality of XXX, Province of XXX during the said period in order to harvest and tend their animals. He insists that he never slept with his family at BBB's aunt's house during the same period. As such, it was impossible for him to commit the crime charged.

Denial is inherently a weak defense, as it is negative and self-serving. It cannot prevail over the positive identification and testimony of witnesses unless buttressed by strong evidence of non-culpability. Corollarily, alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission. Physical impossibility refers to the distance between the place where the accused was when the crime happened and the place where it was committed, as well as the facility of the access between the two places.[34]

In the case at bar, appellant admits that it would take him only thirty minutes to reach BBB's aunt's house, the place where the rape was committed, coming from their family residence.[35] In fact, according to his own testimony, he was able to deliver the daily needs of his family during daytime before heading back to their family residence at nighttime.[36] Thus, even assuming that appellant indeed stayed at his family residence and never slept at BBB's aunt's house from the last week of July 2002 up to the last day of August 2002, it was not physically impossible for him to be at BBB's aunt's house on the night the rape was committed. Obviously, he could easily reach BBB's aunt's house at any time to perpetrate the crime charged. Worse, he did not present any witness or documents to support his alibi.

In rape cases, while denial and alibi are legitimate defenses, bare assertions thereof cannot overcome the categorical testimony of the victim.[37] As the appellant failed to substantiate his defenses of denial and alibi, the emphatic and plausible testimonies of AAA and BBB must prevail.

Regarding the third issue, appellant argues that the prosecution failed to establish that it was he who raped AAA; that the rape took place during midnight and, as such, there was prevailing darkness; that there was nothing in the testimony of AAA which indicates that there was a lamp or any source of light inside the house which would have enabled her to identify the person who raped her; that when AAA was asked if the rapist was naked from waist down, she stated that she could not tell; and that these circumstances show that there was zero-visibility during the occurrence of the rape which should have prevented AAA from identifying her rapist.

The contention is bereft of merit.

AAA was unwavering in her assertion that appellant was the person who defiled her. Her unequivocal and consistent identification of appellant was patent in her testimony, to wit:

> PROS. OMANDAM:
>
> Q
>
> Are you sure that the person who raped you during that time was your father?

A

Yes.

Q

When your father was raping you how far was his face to you?

A

Approximately 6 inches (witness demonstrated).

x x x x

ATTY. CHIONG

Q

What was that man doing when you awakened that evening?

A

He held my feet.

Q

At that precise moment, can you recall if your siblings who were sleeping side by side with you were still there?

A

I did not notice.

Q

You did not notice because it was very dark at that time?

A

Yes, sir.

Q

And so you could not clearly see the face of the man who held your thigh?

A

No, sir.

COURT:

Q

So why did you say it was your father when you could not see in the dark?

A

Because when the man put himself on top of me his face was so close to my face.

x x x x

PROS. OMANDAM:

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Q

You said your house at the time you were raped was dark, is that correct?

A

Yes.

Q

But even if it was dark you could still recognize the person who raped you?

A

Yes.

Q

And who was that person who raped you?

A

My father.

Q

Do you entertain any doubt that he is not the one who raped you?

A

No.

Q

Are you sure that he is the person who raped you?

A

Yes.[38]

As can be gleaned from the foregoing, the appellant's face was very close and near to that of AAA while the rape was taking place, as the distance between their faces was merely six inches. At such short proximity, it is evident that AAA needed no lamp or any source of light inside the house in order to identify her attacker. Moreover, she recognized appellant's voice when the latter told her in an "angry voice" to keep quiet while the bestial act was transpiring.[39]

The fact that AAA could not tell whether appellant was naked from waist down during the rape does not succor the latter' cause. Rape victims do not cherish keeping in their memory an accurate account of the manner in which they were sexually violated.[40] Thus, errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience so humiliating and painful as rape.[41] In addition, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation.[42] Hence, AAA should not and cannot be expected to remember with precision whether appellant was naked from the waist down at the time of the rape. Further, such information is immaterial, as it has nothing to do with the elements of rape.

The appellant is guilty of qualified rape and not just simple rape. Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, states the circumstances which qualify or aggravate the crime of rape, viz:

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ART. 266-B. Penalties.-Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion perpetua to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

5) When the victim is a child below seven (7) years old;

6) When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

10) When the offender knew of the mental disability, emotional disorder, and/or physical handicap of the offended party at the time of the commission of the crime.

Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prision mayor to reclusion perpetua.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion temporal.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall

> be reclusion temporal to reclusion perpetua.
>
> When by reason or on the occasion of the rape, homicide is committed, the penalty shall be reclusion perpetua.
>
> Reclusion temporal shall also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article. (Emphases supplied.)

The qualifying circumstances must be alleged in the information.[43] And in incestuous rape, as in the case at bar, the minority of the victim and her relationship with the offender must be clearly established as the commission of the crime itself.[44]

In the instant case, it was specifically alleged in the information that AAA was 14 years old at the time she was raped by appellant. It was also categorically alleged therein that accused-appellant is her father.[45] In proving the minority of AAA at the time she was raped, the prosecution presented the certified true copy of AAA's birth certificate showing that she was born on 13 September 1988.[46] Thus, she was 14 years old when she was raped by appellant in the first week of August 2002. AAA and BBB affirmed this fact in their respective testimonies during the trial.[47] As regards AAA's paternal relation with appellant, the prosecution submitted the same certified true copy of AAA's birth certificate naming appellant as her father and BBB as her mother. The prosecution also submitted the marriage contract of appellant and BBB which stated that they were legally married on 19 September 1987.[48] Moreover, AAA testified that appellant was her father, a fact ratified by BBB in her own court statement. Significantly, appellant admitted that AAA is his daughter; that AAA was a minor at the time she was raped; and that BBB is his legal wife.[49]

Since the qualifying circumstances of minority and relationship were duly proven in the present case, the penalty imposable on appellant is death under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, in relation to Section 11 of Republic Act No. 7659,[50] otherwise known as the "Death Penalty Law."

However, in view of the effectivity of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty to be meted on appellant shall be reclusion perpetua in accordance with Section 2 thereof which reads:

> SECTION 2. In lieu of the death penalty, the following shall be imposed:
>
> a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
>
> b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

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

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

We also sustain the award of damages made by the Court of Appeals in favor of AAA. The award of civil indemnity in the amount of P75,000.00 is the correct amount to be awarded if the crime is qualified by circumstances which warrant the imposition of the death penalty. With respect to moral damages, the amount of P75,000.00 was fitting even though it was not pleaded or its basis established by evidence, pursuant to prevailing jurisprudence.[51] Further, the award of exemplary damages in the amount of P25,000.00 was authorized due to the presence of the qualifying circumstances of minority and relationship.[52]
WHEREFORE, the Decision of the Court of Appeals in CA-G.R. C.R.-H.C. No. 00126-MIN dated 23 May 2006

is hereby AFFIRMED WITH MODIFICATION. It is AFFIRMED insofar as the conviction of appellant and the amount of damages are concerned, but the sentence imposed upon appellant is MODIFIED in accordance with Republic Act No. 9346, prohibiting the imposition of the death penalty. Thus, appellant is sentenced to reclusion perpetua without parole. No costs.

SO ORDERED.

Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Garcia, and Velasco,Jr., JJ., concur.
Quisumbing, J., on official leave.
Nachura, J., No part. filed pleading as Sol Gen.

[1] Penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo A. Carmello and Ramon R. Garcia concurring; rollo, pp. 4-23.

[2] CA rollo, pp. 13-16.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. People v. Cabalquinto, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 421-426.

[4] Records, p. 2.

[5] Id. at 25.

[6] TSN, 10 October 2003, pp. 3-4.

[7] Id. at 4-7.

[8] Id. at 8-10.

[9] TSN, 28 October 2003, pp. 2-4.

[10] Id. at 6-7.

[11] Id. at 5-10.

[12] Id. at 10-11.

[13] Records, p. 10.

[14] Id. at 35.

[15] TSN, 13 January 1994, pp. 2-8.

[16] CA rollo, p. 16.

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

[18] Rollo, p. 22.

[19] CA rollo, p. 28.

[20] Id. at 34-35.

[21] Id.

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[22] People v. Manambay, G.R. No. 130684, 5 February 2004, 422 SCRA 73, 81.

[23] People v. Bautista, G.R. No. 140278, 3 June 2004, 430 SCRA 469, 488.

[24] People v. Padilla, G.R. No. 142899, 31 March 2004, 426 SCRA 648, 655.

[25] TSN, 6 October 2003, pp. 3-8.

[26] People v. Padilla, supra note 24 at 662.

[27] People v. Audine, G.R. No. 168649, 6 December 2006, p. 18; People v. Fucio, G.R. Nos. 151186-95, 13 February 2004, 422 SCRA 677, 683; People v. Dimacuha, G.R. Nos. 152592-93, 13 February 2004, 422 SCRA 688, 693.

[28] TSN, 6 October 2003, p. 17.

[29] People v. Pacheco, G.R. No. 142887, 2 March 2004, 424 SCRA 164, 174.

[30] TSN, 13 January 2004, pp. 5-6.

[31] Records, p. 48.

[32] People v. Blancaflor, G.R. No. 130586, 29 January 2004, 421 SCRA 354, 359.

[33] People v. Alberio, G.R. No. 152584, 6 July 2004, 433 SCRA 469, 477; People v. Macapal, Jr., G.R. No. 155335, 14 July 2005, 463 SCRA 387, 407.

[34] People v. Aguila, G.R. No. 171017, 6 December 2006, p. 18.

[35] TSN, 13 January 2004, p. 6.

[36] Id. at 3.

[37] People v. Cachapero, G.R. No. 153008, 20 May 2004, 428 SCRA 744, 757.

[38] TSN, 6 October 2003, pp. 6, 15-16 and 19-20.

[39] Id. at 6.

[40] People v. Mantis, G.R. Nos. 150613-14, 29 June 2004, 433 SCRA 236, 248.

[41] People v. Tonyacao, G.R. No. 134531-32, 7 July 2004, 433 SCRA 513, 529-530.

[42] People v. Malones, G.R. Nos. 124388-90, 11 March 2004, 425 SCRA 318, 336-337.

[43] People v. Blancaflor, supra note 31 at 364-365.

[44] People v. Orillosa, G.R. Nos. 148716, 7 July 2004, 433 SCRA 689, 699.

[45] People v. Cabalquinto, supra note 3.

[46] TSN, 28 October 2003, pp. 2-4.

[47] TSN, 6 October 2003, p. 3 and 28 October 2003, p. 5.

[48] Records, p. 10.

[49] TSN, 13 January 2004, pp. 2-4.

[50] SEC. 11. Article 335 of the same Code is hereby amended to read as follows: ART. 335. When and how rape

is committed.-Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;

- When the woman is deprived of reason or otherwise unconscious; and

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

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

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

> 1) when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
>
> 2) when the victim is under the custody of the police or military authorities.
>
> 3) When the rape is committed in full view of the husband, parent, any of the children of other relatives within the third degree of consanguinity.
>
> 4) When the victim is a religious or a child below seven (7) years old.
>
> 5) When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
>
> 6) When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
>
> 7) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

[51] People v. Soriano, 436 Phil. 719, 757 (2002); People v. Sambrano, 446 Phil. 145, 162 (2003).

[52] People v. Audine, supra note 27 at 21.

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