

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CATALINO MINGMING Y DISCALSO, ACCUSED-APPELLANT.

G.R. No. 174195. December 10, 2008

Ponente: BRION, J.

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BRION, J.:

The subject of this mandatory appeal is the Decision dated July 28, 2005 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 00149[1] which affirmed with modification the decision dated March 22, 2004 of the Regional Trial Court (RTC), Branch 128, Caloocan City, in Criminal Case Nos. C-54195, C-54196, and C-54197.[2] The RTC convicted accused-appellant Catalino Mingming y Discalso[3] (Catalino) of three (3) counts of statutory rape and imposed on him the penalty of reclusion perpetua for each count. The Informations (all dated July 6, 1998) under which he was prosecuted read:

Criminal Case No. C-54195

That sometime on (sic) May, 1998 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully (sic), unlawfully and feloniously succeeded in sexually abusing or having sexual intercourse with one AAA, a virgin, and 10 years of age.

Contrary to Law.

Criminal Case No. C-54196

That on or about the 29[th] day of June, 1998 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully (sic), unlawfully and feloniously succeeded in sexually abusing or having sexual intercourse with one AAA, a virgin, and 10 years of age.

Contrary to Law.

and,

Criminal Case No. C-54197

That on or about the 29[th] of June, 1998 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully (sic), unlawfully and feloniously succeeded in sexually abusing or having sexual intercourse with one AAA, a virgin and 10 years of age.

Contrary to Law.

Catalino was arraigned on September 1, 1998 with the assistance of counsel and pleaded "not guilty" to the charges. At the trial on the merits, the prosecution presented testimonial[4] and documentary[5] evidence, while the defense relied on denial and alibi testified to by the accused himself.

ANTECEDENT FACTS

Ten-year old AAA[6] and her younger brother, CCC, were residents of Barangay Deparo, Caloocan City. They lived in the house of Alfonso Obispo (Alfonso) to whom their father entrusted their care. Catalino was their neighbor.

Sometime in May 1998 at noontime, AAA answered the call of nature outside Alfonso's house.[7] She went to a vacant lot behind a Petron gas station located away from Alfonso's house. While there, Catalino appeared, grabbed and pulled her right ankle, causing her to fall to the ground. AAA tried to break away but Catalino clung to her ankle and pulled her to a portion of the lot with tall grasses where he laid her down on bundles of wood (pahigang kahoy). To subdue her, Catalino covered her mouth and poked a kitchen knife at her neck, at the same time undressing her by removing her shorts and panty. Thereafter, he removed his own shorts, placed himself on top of AAA, and proceeded to have sexual intercourse with her by inserting his penis into her vagina. During the sexual intercourse, Catalino held AAA's hands to prevent her from pushing him. Done with the act, he threatened her, "Huwag kang magsusumbong, papatayin ko kayo." [8] AAA went home and kept what transpired to herself.

The incident was repeated in the morning of June 29, 1998 when Catalino tricked AAA into going to his house, ostensibly to get money for cigarettes he had ordered AAA to buy. Catalino followed her and there, pulled her and again threatened her with a knife.[9] He then undressed her and himself, and proceeded to have sexual intercourse with her. The sexual abuse was repeated on the same day before AAA went home.

This time, AAA reported the incidents to the Obispos. Alfonso, his son (Joel Obispo)[10] and AAA reported the rapes to then Barangay Executive Officer Humphrey Durana,[11] who endorsed the report to the police. SPO1 Emilio E. Mabalot[12] conducted the police investigation and thereafter referred AAA to Dr. Anthony Llamas, a Philippine National Police medico-legal officer, for medical examination. The genital examination disclosed a deep-healed laceration at the 6 o'clock position of her hymen indicating that she was no longer a virgin. The Initial Laboratory Report[13] dated July 2, 1998 states:

GENITAL:

... On separating the same disclosed a congested posterior fourchette and a membranous-type hymen with a deep healed laceration at the 6[o] clock position. External vaginal orifice admits the tip of the examiner's smallest finger.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of application of any form of physical trauma.[14]

BBB,[15] the mother of AAA, learned that her daughter had been sexually molested when she received a letter from the Department of Social Welfare and Development, Caloocan City. She allegedly suffered mental anguish for what happened to AAA and also incurred expenses in filing cases against Catalino.

Catalino denied raping AAA although he admitted knowing her.[16] He claimed that he seldom saw her since he went to work early and came home late.[17] He further claimed that at the time of the alleged first incident, AAA had been with her father and only returned to the Obispos on June 20, 1998.[18] He also claimed that the cases were filed against him because he refused to lend the P3,000.00 that the Obispos needed for their rental payment.[19] In fact, Joel Obispo even remarked to him that "Madamot ka, may mangyayari sa inyo." It was after that incident that Alfonso and Joel had him arrested on the charge of raping AAA. They brought him to the barangay office where a tanod boxed him to force him to admit the rape.[20]

The RTC rejected Catalino's defenses of denial and alibi and found him guilty of three counts of rape. On

appeal,[21] the CA affirmed Catalino's conviction with a modification on the award of damages.[22] The dispositive portion of the appellate court's decision states:

WHEREFORE, premises considered, the decision of the court a quo finding Catalino Mingming y Discalso guilty of three (3) counts of Statutory rape is AFFIRMED with the MODIFICATION that the accused-appellant is sentenced to suffer the penalty of three (3) reclusion perpetua to be served successively and that the accused-appellant is ordered to pay the victim, for each count of rape, the amount of P50,000.00 as civil indemnity and P25,000.00 as exemplary damages, in addition to the P50,000.00 moral damages awarded by the trial court.

Costs against the accused-appellant.

SO ORDERED.[23]

The CA affirmed the RTC decision on the basis of AAA's testimony which it found credible. The CA, in this regard, said:

The testimony of AAA is positive while that of the accused is negative. The positive prevails over the negative. Being a ten-year old minor, AAA, a victim of sexual assault, is credible. She has not yet absorbed the wiles of the world. Her testimony, considering her very young age, was straightforward and candid. It is sufficient to convict the accused.

x x x x x x x x

.... The spontaneity with which the victim has detailed the incidents of rape, the tears she has shed at the stand while recounting her experience, and her consistency almost throughout her account dispel any insinuation of a rehearsed testimony. The eloquent testimony of the victim coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges.[24]

At the same time, the CA disbelieved Catalino's defense that AAA had ill motives and was influenced by Joel Obispo who bore a grudge against Catalino. The CA took note that it was AAA herself who caused the filing of the cases against him.[25] Similarly, the CA discredited the defense's argument that the absence of injuries negated the commission of rape; to the CA, the physical evidence, as established from the medical findings of Dr. Llamas, corroborated her testimony that she had been raped.[26] The CA noted that rape can be established even in the absence of external signs or physical injuries or a medical finding relating to such fact as these are not indispensable requisites in proving a crime of rape.[27]

Catalino filed the present petition after the CA denied his motion for reconsideration in its Resolution dated May 8, 2006.

ASSIGNMENT OF ERRORS

Catalino argues that the CA committed the following errors:

- giving credence to the speculative, incredible, and inconsistent testimony of the private complainant; and
- finding him guilty beyond reasonable doubt of the crime charged.

Jointly discussing these issues in his Brief,[28] Catalino highlights the errors committed by both the CA and the RTC in believing AAA's testimony. He phrased this argument in the following terms:[29]

In prosecution for rape, the testimony of the victim is generally scrutinized with great caution for the crime is usually known to her and the rapist (People vs. Ibay, 312 SCRA 153). In the case at bar, the private complainant's testimony is not convincing.

He advances the view that AAA's testimony suffered from serious flaws that should generate disbelief for being contrary to human experience. Catalino further submits that: AAA's failure to report the rape; her lack of physical injuries; her testimony that he was holding a knife on one hand, and at the same time covering her mouth with the other while he was undressing her; and that she even went to his house after the first incident - all demonstrate the incredibility of her testimony. Catalino posits that the rape charges against him were concocted by AAA because she was mad at him.[30] He particularly emphasizes that the medical findings of Dr. Llamas showed that a mere three (3) days after the alleged rape, the laceration found in AAA's genital organ was already healed,[31] thus medically giving lie to the rape charge.

Catalino finally avers that his defenses of denial and alibi have been amply established and should not be disregarded given that the private complainant's credibility is doubtful.

The Office of the Solicitor General maintains the correctness of Catalino's conviction as the prosecution's evidence -- premised on the credible testimony of AAA -- established his guilt beyond reasonable doubt on all three counts of statutory rape.

OUR RULING

We affirm Catalino's conviction in Criminal Cases No. C-54195 and No. C-54196 but acquit him in Criminal Case No. C-54197.

In undertaking this appellate review, we shall be guided by the outlined considerations and by the principle that an appeal opens the entire case for review.[32]

First, the accused enjoys the constitutional presumption of innocence until final conviction; conviction requires no less than evidence sufficient to arrive at a moral certainty of guilt, not only with respect to the existence of a crime, but, more importantly, of the identity of the accused as the author of the crime.

Second, the prosecution's case must rise and fall on its own merits and cannot draw its strength from the weakness of the defense.

Third, in rape cases, since the conviction of the accused is usually based on the accusation and testimony of the victim-complainant, her testimony should be scrutinized with utmost caution and must show clearly and definitely the commission of the rape and the identity of its perpetrator.

Fourth, the assessment of the credibility of the prosecution witnesses, in general, and of the rape complainant, in particular, is a duty firmly lodged on the trial judge owing to his unique position; he sees, perceives and appreciates details in the case that an appellate reviewing court is realistically deprived of. Accordingly, utmost credit is given to the trial judge's findings in the absence of any showing that he misappreciated, misapprehended, or overlooked any evidentiary fact or circumstance material to the outcome of the case.

Lastly, Catalino was charged with and convicted of three counts of statutory rape that, although tried jointly, must be treated and viewed as separate and distinct from each other. Thus, the elements of the offense must be proven for each count of rape, save only for the element of age which runs commonly for the three counts.

Statutory rape is committed by sexual intercourse with a woman below twelve years of age regardless of her consent, or the lack of it, to the sexual act.[33] Proof of force, intimidation or consent is unnecessary; they are not elements of statutory rape; the absence of free consent is conclusively presumed when the victim is below the age of twelve.[34] At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act.[35] Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3)

the sexual intercourse between the accused and the complainant.

The prosecution presented proof of the presence of the required elements. The age of AAA, who was only 10 years old at the time of the incidents complained of, is shown by her Birth Certificate; she was born on May 3, 1988[36] while the alleged rapes were committed in May and June 1998. On the other hand, the prosecution established Catalino's identification as the perpetrator through the victim's positive identification in court.[37] AAA categorically testified to the act of sexual intercourse, identifying the perpetrator in the process. By established jurisprudence, sexual intercourse is shown by proof of entry or the introduction of the male organ into the female organ; rape is consummated by the mere "touching" or "entry" of the penis into the labia majora or the labia minora of the pudendum of the victim's genitalia.[38] The required physical act and its surrounding details were described by AAA when she testified as quoted below.

On the first rape in May 1998, she stated:

Q

When Taling pulled you in the grassy portion at the back of the Petron, what did he do next?

A

Taling undress[ed] me, sir.

Q

What were you wearing then?

A

I was wearing short[s] and T-shirt.

Q

Did he remove all your clothings?

A

Yes, sir. [TSN, January 26, 1999, p. 7]

x x x

Q

You said that Taling removed his shorts, after Taling removed his shorts, what did he do next?

A

He inserted his penis, sir.

Q

Where did he insert his penis?

A

He inserted his penis into my vagina.

Q

And when he inserted his penis into your vagina, what is your position then?

A

I was lying, sir.

Q

And when he inserted his penis into your vagina, how did you feel?

A

It was painful, sir Id. , p. 8]

On the second rape committed on June 29, 1998, AAA averred:

Q

And when he pulled you inside his house, what happened next?

A

He did something bad to me.

Q

Will you tell us what was bad that he did to you?

A

He again raped me, sir.

Q

When you said he again raped you, what do you mean rape?

A

He undressed me, sir.

Q

And what were you wearing then?

A

I was wearing T-shirt and shorts.

Q

And what clothing did he remove[d] from you?

A

My shorts and panty.

Q

And after he removed your shorts and panty what did he do next?

A

He also undressed himself.

x x x

Q

After removing his shorts, what did he do next?

A

He inserted his penis, sir. [Id., p. 15]

Fiscal Ralar to Witness -

Q

Where did he insert his penis?

A

[In]to my vagina. [Id. , p. 16]

Catalino's plea for exoneration

Catalino mainly argues that AAA's testimony is not believable. Arrayed against each other, however, his version of events do not measure up to the same level of credibility that AAA's version has attained for being sincere, consistent, and fully in accord with common human experience.

First , Catalino attacks AAA's testimony for her delay in reporting the rape. This imputed delay, however, can only refer to the rape that occurred in May 1998; she reported the rapes of June 29, 1998 on the same day they were committed. In any case, we do not believe that delay in reporting a rape should directly and immediately translate to the conclusion that the reported rape did not take place; there can be no hard and fast rule to determine when a delay in reporting a rape can have the effect of affecting the victim's credibility. The heavy psychological and social toll alone that a rape accusation exacts on the rape victim already speaks against the view that a delay puts the veracity of a charge of rape in doubt. The effects of threats and the fear that they induce must also be factored in. At least one study shows that the decisive factor for non-reporting and the failure to prosecute a rape is the lack of support - familial, institutional and societal - for the rape victim, given the unfavorable socio-cultural and policy environment.[39] All these, to our mind, speak for themselves in negating the conclusion that a delay in reporting a rape is per se sufficient basis to disbelieve an allegation of rape. The more reasonable approach is to take the delay into account but to disregard it if there are justifiable explanations for the victim's prolonged silence.

In the present case, it appears that AAA was ready to suffer the first rape in silence had it not been from the succeeding sexual attacks that forced her to seek the Obispos' assistance. This was apparent from her testimony when she declared:[40]

Fiscal Ralar to Witness --

Q

Before Taling left when (sic) he sexually abused you at the back of Petron, did he threaten you?

A

Yes, sir.

Q

How did he threaten you?

A

He told me that he will kill us.-

x x x

Q

Why did you not tell your lolo Alfonso what Taling did to you?

A

I was afraid.

Q

To whom are you afraid?

Taling.

Q

Why were you afraid?

A

Because he threatened us sir. [TSN, January 26, 1999, p. 11]

Thus, due to the threats, she remained silent and only broke it when the accused repeated the sexual attack. Apparently, the subsequent attacks brought her silence to the breaking point, forcing her to come out in the open to prevent and avoid further repetitions.

Second, Catalino's second argument focuses on what he saw as incompatibility between the physical (medical) evidence and AAA's testimony since she had healed lacerations when she was medically examined on July 2, 1998 or 4 days after the June 29, 1998 incidents.

This argument assumes that the healed laceration pertains to the June 29, 1998 attacks and forgets that before us are three incidents of rape, the first one occurring at least a month earlier (in May 1998). Additionally, the absence of fresh lacerations in the victim's hymen does not negate sexual intercourse, nor does it prove that she was not raped;^[41] a hymenal laceration or its absence is merely corroborative evidence that is not indispensable to a finding of rape. In the words of the Solicitor General, whether the private complainant sustained injuries other than that noted on her hymen by reason of the commission of the crimes is a collateral matter.^[42] It had nothing to do with proving the elements of the crime.^[43] What is essential is proof of carnal knowledge between the accused and the victim, i.e., that there be at least penile contact with the latter's labia even without the laceration of her hymen.^[44] Ultimately, a conviction for rape rests on the complainant's testimony on the details of the crime. If her testimony meets the test of credibility, that alone is sufficient to convict the accused.^[45]

Third, AAA's presence in Catalino's house (where the second and third rapes allegedly took place) on June 29, 1998 despite having suffered an earlier rape, has to be viewed in the larger context of Catalino's relationship with AAA in order to be fully understood as a circumstance that should not adversely affect AAA's credibility.

AAA's testimony shows that even before the first rape incident, she was already afraid of Catalino who was a frequent visitor of the Obispos being a drinking buddy of Joel Obispo.^[46] She became afraid of him when he got

mad at her for not obeying his orders to buy liquor.[47] This fear reached the point when she could no longer obey his orders because she was already "too afraid" of him.[48] This fear was further heightened when he threatened to kill them after the first rape.[49]

It was under these circumstances that the rapes of June 29, 1998 took place. AAA testified that in the morning of that day, she passed by Catalino's house and she saw him there doing nothing.[50] At around 8 a.m. of that same day, she and her little brother were alone in the Obispo house when Catalino came on the pretext of asking her to buy cigarettes for him. At the same time, he asked her to get the money (for the cigarettes) at his house.[51] Despite her fears (Kinabahan po ako!), she did as she was told. It was while at Catalino's house that she was attacked.

These facts sufficiently explain why AAA was at Catalino's house in the morning of June 29, 1998. Plainly and simply, she was a defenseless young girl subdued into obedience and submission by a very much older man who had lust in his heart and his loins. The age disparity alone - AAA's 10 years and Catalino's 50 years - speaks volumes about this power relationship and how it facilitated the sexual attacks that took place.

Fourth, Catalino tries to impress upon this Court that AAA filed a rape case because she was mad at him. This argument, however, is not supported by evidence on record and is in fact contradicted by Catalino's own testimony that he had little interaction with AAA because he was always at work.[52] In the normal course of things, anger happens or is aroused by a specific reason; such reason will hardly exist if one has very little interaction with another. Catalino's failure to effectively cite an ill motive for AAA's charges, to our mind, all the more strengthens AAA's credibility and the validity of her charges.

Catalino also contradicts himself when he claimed that the grudge Joel Obispo bore against him is the reason for the rape charges laid; later in his testimony, he admitted that he did not know of any person who would convince AAA to accuse him of rape.[53] Separately from this contradiction, we simply cannot believe that a woman in her right mind would lend her name and concoct a story of repeated rapes to serve the ends of another person's grudge. Even at her young age, AAA knew that the rapes she suffered carry a stigma of shame. For her to come out in the open and publicly describe her experience at a trial can only be taken as a badge of her sincerity and the truth of her charges. As we held in *People v. Dimaano*: [54]

The revelation of an innocent child whose chastity has been abused deserves full credit, as her willingness to undergo the trouble and the humiliation of a public trial is an eloquent testament to the truth of her complaint. In so testifying, she could only have been impelled to tell the truth, especially in the absence of proof of ill motive.

Denial and alibi

Our judicial experience teaches us that denial and alibi are the common defenses used in rape cases. Sexual abuse is denied on the allegation that the accused was somewhere else and could not have physically committed the crime. We have always held that these two defenses are inherently weak and must be supported by clear and convincing evidence in order to be believed. Moreover, being negative defenses, they cannot prevail over the positive testimony of the complainant.[55]

For alibi to prosper it is not enough for the defendant to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time.[56] Alibi necessarily fails when there is positive evidence of the physical presence of the accused at the crime scene.

As the evidence stands, AAA has shown that Catalino was a neighbor whom she knew because he was a regular

visitor of the Obispos and a "drinking buddy" of Joel Obispo;^[57] that Catalino was the one who raped her at a vacant lot at noontime in May 1998;^[58] and it was Catalino who again sexually assaulted her at his (Catalino's) house in the morning of June 29, 1998.^[59] AAA's identification of Catalino as the rapist was positive, clear and categorical.

As against these assertions is Catalino's alibi that he was in Sangandaan, Caloocan City (his place of work) at the time of the rape.^[60] We take judicial notice that Quezon City and Caloocan City are directly adjoining cities whose distance from one another does not render it impossible for Catalino to have been at the scene of the rape in the May 1998 rape. We agree, too, with the CA's finding that, even granting he was at work on June 29, 1998, his alibi that he was in Sangandaan, Caloocan City cannot be given merit because Sangandaan is within the vicinity of the crime scene. He could have easily been at the scene of the crime at the time of its commission.^[61] We likewise give little weight to his claim that he was at work during the June 29, 1998 incidents. This is an uncorroborated claim as he even failed to show by evidence that he was in fact employed.^[62]

Criminal liability

From the evidence presented, we hold that the prosecution amply established the age of the victim. She was ten years old on the dates of the rapes charged as evidenced by her Birth Certificate.

The prosecution likewise adduced sufficient evidence showing the sexual intercourse between Catalino and AAA on the first and second rapes (i.e., one in May 1998 and another on June 29, 1998). We see no reason to doubt the sincerity of AAA's testimony regarding Catalino's sexual attacks. As we have ruled in not a few cases, when a woman, more so if she is a minor, says she has been raped, she says, in effect, all that is necessary to prove that rape was committed.^[63] Courts usually give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, because no woman would be willing to undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation; she does so only in her desire to rectify an injustice and to punish the offender.^[64]

However, we find no evidence of sexual intercourse or penile penetration with respect to the third rape. We stress in this regard that Catalino stands charged and convicted of rape in three criminal cases. For each of these cases, the prosecution must present evidence sufficient to overturn the constitutional presumption of innocence that the accused enjoys as a matter of right. A finding of rape is a conclusion of law that must be supported by clear and convincing evidence of the facts constituting the elements of the crime. Thus, the prosecution must adduce evidence of sexual intercourse in each of the rapes charged.

In the present case, the testimony of AAA on the second and third rape charges immediately followed each other. When the prosecution asked the complainant, what she meant by the word rape, she merely replied that she was "undressed" by Catalino. Follow-up questions had to be asked by the prosecutor to establish that there was penile penetration of Catalino's male organ into AAA's vagina during the second rape, while no such questions were asked with respect to the third rape.^[65] AAA's testimony with respect to the third rape charge merely stated:

Q

How many times did accused Taling rape you on June 29, 1998?

A

Two times, sir. [TSN, January 26, 1999, pp. 16-17]

Fiscal Ralar to Witness -

Q

In what place did he rape you for the second time?

A

In his house, sir.

Q

At what time did the accused rape you for the second time?

A

Also at that time sir. [Id., p. 17]

In *People v. Contreras*, [66] the absence of conclusive proof of the carnal knowledge - that there was introduction of the accused's male organ to the complainant's vagina -- led to the acquittal of the accused in one count of rape. Viewed in this light, we find Catalino's acquittal on the third rape charge to be in order.

In making this conclusion, we are keenly aware that without proof of penetration, the crime committed may still constitute attempted rape or acts of lasciviousness.[67] Attempted rape, however, requires that the offender commence the commission of rape directly by overt acts but does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance.[68] The prosecution must, therefore, establish the following elements of an attempted felony:

- The offender commences the commission of the felony directly by overt acts;
- He does not perform all the acts of execution which should produce the felony;
- The offender's act be not stopped by his own spontaneous desistance;
- The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.[69]

The evidence on record does not show that the above elements are present, The detailed acts of execution showing an attempt to rape are simply lacking. Thus, we cannot hold Catalino liable for attempted rape.

In the same manner, neither can we hold him liable for acts of lasciviousness under Article 336 of the Revised Penal Code, as amended. This crime requires proof of the existence of the following elements:

- That the offender commits any act of lasciviousness or lewdness.
- That it is done under any of the following circumstances:
 - By using force or intimidation; or
 - When the offended party is deprived of reason or otherwise unconscious; or
 - When the offended party is under 12 years of age.
- That the offended party is another person of either sex.[70]

While the second and third elements of the offense are sufficiently established, the element of lascivious conduct or lewd act on the part of the accused is not supported by the available evidence. Hence, we cannot conclude that Catalino committed acts of lasciviousness as defined and penalized under the Revised Penal Code.

The Proper Penalty

Statutory rape is penalized under Article 266-A(1), paragraph (d) of the Revised Penal Code, as amended by

Republic Act No. 8353 or the Anti-Rape Law of 1997. The crime carries the penalty of reclusion perpetua unless attended by the qualifying circumstances defined under Article 266-B.

In the present case, evidence confirms the use of deadly weapon (a knife) during the commission of the offense, this should be a qualifying circumstance that would raise the imposable penalty to reclusion perpetua to death. We cannot, however, recognize this circumstance as qualifying. When the law or rules specify certain circumstances that can aggravate an offense, or circumstances that would attach to the offense a greater penalty than that ordinarily prescribed, such circumstances must be both alleged and proved to justify the imposition of the increased penalty.[71] When a circumstance is not so alleged, it cannot affect the penalty and the corresponding civil liabilities in line with our ruling in *People v. Nuguid*[72] and *People v. Sagarino*. [73]

On the basis of this analysis of the applicable law, we find that the CA and the RTC correctly imposed the penalty of reclusion perpetua for each of the first and second rapes. We also sustain the awards of civil indemnity, moral damages and exemplary damages in the two cases in accordance with prevailing jurisprudence on the matter.[74] Civil indemnity is awarded upon the finding of rape.[75] Similarly, moral damages are awarded to rape complainants without need of pleading or proof of its basis; the law assumes that a rape complainant actually suffered moral injuries entitling her to the award.[76] Exemplary damages, on the other hand, are awarded in rape cases to serve as deterrent against the commission of this bestial offense.[77]

Catalino's acquittal of the third rape charged necessarily carries the deletion of the accompanying awards of civil indemnity and damages made by the lower courts.

WHEREFORE, premises considered, we hereby AFFIRM the decision dated July 28, 2005 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00149 insofar as it finds Catalino Mingming y Discalso guilty of statutory rapes in Criminal Cases No. C-54195 and No. C-54196. We REVERSE and SET ASIDE his conviction in Criminal Case No. C-54197.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 3-16; penned by Associate Justice Amelita G. Tolentino of the Ninth Division with Associate Justice Roberto A. Barrios (deceased) and Associate Justice Vicente S.E. Veloso, concurring.

[2] Penned by Judge Silvestre H. Bello; CA rollo, pp. 17-23; the RTC ordered the accused-appellant to pay for each count of rape the amount of P50,000.00 as civil indemnity, and P25,000 as exemplary damages in addition to the award of P50,000.00 as moral damages.

[3] Also referred to as "Taling" in the records.

[4] During the trial, the prosecution presented five (5) witnesses, namely: (1) AAA; (2) BBB, the complainant's mother; (3) Barangay Executive Officer Durana; (4) SPO1 Mabalot; and (5) Dr. Jonathan Seranillo, before resting its case.

[5] The documentary pieces of evidence and their respective submarkings are: (1) Birth Certificate of AAA (Exh. "A"); (2) Sinumpaang Salaysay dated July 3, 1998 of AAA (Exh. "B"); (3) Referral Slip sent by the Chief Caloocan City Police Station, Sub Station 5, Isaias C. Antonio, to the Office of the City Prosecutor, Caloocan City; (4) Joint Affidavit dated July 3, 1998 of SPO1 Mabalot and Barangay Executive Officer Durana; (5) Entry in the Barangay Blotter dated July 1, 1998 (Exh. "E"); (6) Mission Order dated November 12, 1999 (Exh. "F"); and (7) Medico-legal Report dated July 2, 1998 (Initial Laboratory Report) prepared by Dr. Llamas (Exh. "G").

[6] The real name of the victim as well as those of her immediate family members is withheld per Republic Act (R.A.) No. 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes) and R.A. No. 9262 (An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes).

[7] TSN, January 26, 1999, p. 6, and February 1, 1999, p. 8.

[8] TSN, February 1, 1999, p. 14.

[9] Id., p. 17.

[10] Also referred to as "Boy" in the records.

[11] TSN, July 5, 1999, pp. 1-10; and TSN, July 12, 1999, pp. 2-3.

[12] TSN, June 14, 1999, pp. 2-8.

[13] Records, p. 160.

[14] Dr. Jonathan Seranillo, a Philippine National Police medico-legal officer took the witness stand to testify on the medico-legal report prepared by Dr. Llamas; TSN, November 22, 1999, p. 3.

[15] TSN, July 5, 1999, pp. 10-18.

[16] TSN, July 9, 2001, p. 5.

[17] Id., pp. 8 and 16.

[18] Id., p. 10.

[19] Id., p. 12.

[20] Id., p. 14.

[21] Previously made to this Court, but we transferred the case to the CA for intermediate review via our Resolution dated September 22, 2004, pursuant to *People v. Mateo*, G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[22] Resolution dated September 22, 2004; rollo, p. 29.

[23] Rollo, pp. 15-16.

[24] Id., pp. 11-12.

[25] Id., p. 14.

[26] Ibid.

[27] Ibid.

[28] Brief for the Accused-Appellant; CA rollo, pp. 32-42.

[29] Id., p. 37.

[30] TSN, February 1, 1999, p. 7.

[31] See Supplemental Brief; rollo, pp. 27-32.

[32] *People v. Tonyacao*, G.R. Nos. 134531-52, July 7, 2004, 433 SCRA 513, 521; *People v. Castillo*, G.R. No. 132895, March 10, 2004, 425 SCRA 136, 159; *People v. Arves*, G.R. Nos. 134628-30, October 13, 2000, 343 SCRA 123, 138; and *People v. Castillo*, G.R. Nos. 131592-93, February 15, 2000, 325 SCRA 613, 619.

[33] *People v. Jalosjos*, G.R. Nos. 132875-76, November 16, 2001, 369 SCRA 179, 219.

[34] *People v. Escultor*, G.R. Nos. 149366-67, May 27, 2004, 429 SCRA 651, 667.

[35] *People v. Jalosjos*, *supra* note 33, p. 219.

[36] Record, p. 152.

[37] TSN, January 26, 1999, p. 5.

[38] *People v. Aguiluz*, G.R. No. 133480, March 15, 2001, 354 SCRA 465, 472.

[39] Justice and Healing: Twin Imperatives for the Twin Laws Against Rape by Atty. Soliman M. Santos, Jr., Merci Llarinas-Angeles, and Roberto M. Ador, Philippine Legislators' Committee on Population and Development Foundation, Inc. <http://www.childprotection.org.ph> as of September 30, 2008.

[40] TSN, January 26, 1999, pp. 10-11.

[41] *People v. Aguiluz*, *supra* note 38, p. 472.

[42] Brief for the Plaintiff-Appellee, pp. 9-10.

[43] *Id.*, p. 10.

[44] *People v. Aguiluz*, *supra* note 38, p. 472

[45] *Ibid.*

[46] TSN, February 1, 1999, pp. 5-6.

[47] *Id.*, p. 6.

[48] *Id.*, p. 7.

[49] TSN, January 26, 1999, p. 11, and TSN, February 1, 1999, p. 14.

[50] TSN, January 26, 1999, pp. 5-6.

[51] *Id.*, pp. 12-13.

[52] TSN, July 9, 2001, p. 17.

[53] *Id.*, pp. 12 and 17.

[54] G.R. No. 168168, September 14, 2005, 469 SCRA 647, 658.

[55] *People v. Bon*, G.R. No. 166401, October 20, 2006, 506 SCRA 168, 185.

[56] *Id.*, pp. 185-186.

[57] TSN, February 1, 1999, p. 6.

[58] TSN, January 26, 1999, p. 6.

[59] *Id.*, pp. 12 and 15.

- [60] TSN, July 9, 2001, p. 24.
- [61] CA Decision dated July 28, 2005, p. 10.
- [62] TSN, July 9, 2001, pp. 24-25.
- [63] *People v. De Guzman*, G.R. Nos. 140333-34, December 11, 2001, 372 SCRA 95, 109.
- [64] *Id.*, pp. 109-110.
- [65] TSN, January 26, 1999, p. 15.
- [66] G.R. Nos. 137123-34, August 23, 2000, 338 SCRA 622, 640.
- [67] *People v. Abanilla*, G.R. Nos. 148673-75, October 17, 2003, 413 SCRA 654, 666.
- [68] *Ibid.*
- [69] *People v. Contreras*, *supra* note 66, p. 644.
- [70] *Id.*, p. 646.
- [71] *People v. Nuguid*, G.R. No. 148991, January 21, 2004, 420 SCRA 533, 559.
- [72] *Ibid.*
- [73] G.R. Nos. 135356-58, September 4, 2001, 364 SCRA 438, 449.
- [74] *People v. Limos*, G.R. Nos. 122114-17, January 20, 2004, 420 SCRA 183, 205; SEE: *People v. Moriño*, G.R. No. 176265, April 30, 2008; and *People v. Jusayan*, 428 SCRA 228 (2004).
- [75] *People v. Jalosjos*, *supra* note 33, p. 220.
- [76] *People v. Dimaano*, *supra* note 56, p. 670.
- [77] *People v. Sagarino*, *supra* note 73, p. 450.

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