

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs. JUANITO DELA CRUZ Y RIVERA, Accused-Appellant.

G.R. No. 177572. February 26, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Of the so-called heinous crimes, none perhaps more deeply provokes feelings of outrage, detestation, and disgust than incestuous rape. It is indeed difficult to find a more perverted form of sexual aberration than this bestial felony. It is undeserving of society's compassion or tolerance.[1]

We are called here to review the Decision rendered by the Court of Appeals in CA-G.R. CR-HC No. 02407 dated 26 October 2006,[2] affirming with modification the Decision of the Manila Regional Trial Court (RTC), Branch 163, in Criminal Cases No. 115031-H, No. 115032-H, No. 115033-H, and No. 115034-H dated 21 February 2000,[3] convicting the accused-appellant Juanito R. dela Cruz of raping his own daughter, AAA,[4] with the use of force and intimidation.

The records bear the following facts:

On 9 November 1998, four separate informations[5] were filed with the RTC against appellant for rape, allegedly committed as follows:

CRIMINAL CASE NO. 115031-H

That sometime in March 1995, in XXX, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, then sixteen (16) years old and by means of force, threat and intimidation, did, then and there, willfully, unlawfully, and feloniously lie and have sexual intercourse with AAA, against her will.

CRIMINAL CASE NO. 115032-H

That during the period January to December 1996, in XXX, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, then seventeen (17) years old and by means of force, threat and intimidation did, then and there, willfully, unlawfully, and feloniously lie and have sexual intercourse with AAA, against her will.

CRIMINAL CASE NO. 115033-H

That during the period January to December 1997, in XXX, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, and by means of force, threat and intimidation did, then and there, willfully, unlawfully, and feloniously lie and have sexual intercourse with AAA, against her will.

CRIMINAL CASE NO. 115034-H

That on or about July 24, 1998, in XXX, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, with lewd designs and by taking advantage of his moral ascendancy over his own daughter, AAA, and by means of force, threat and intimidation did, then and there, willfully, unlawfully, and feloniously lie and have sexual intercourse with AAA, against her will.

Subsequently, these cases were consolidated for joint trial. When arraigned on 21 April 1999, appellant, with the assistance of counsel de oficio, pleaded “Not Guilty” to each of the charges.[6] Thereafter, trial on the merits ensued.

The prosecution presented as witnesses AAA and Dr. Armie Soreto-Umil (Dr. Umil). Their testimonies are as follows:

AAA testified that appellant is her father and BBB is her mother; that appellant and BBB are married; that she is the fourth child in a brood of five children born to appellant and BBB; and that she resided with her family at XXX.[7]

On 8 March 1995, AAA went home from work to celebrate with her family the birthday of her younger brother, CCC. Later that evening, she slept inside the house, while appellant had a drinking session with some friends outside the house. BBB was then peddling several merchandise at the Quirino Memorial Hospital (QMH). Subsequently, appellant entered the house and lay down beside her. Appellant fondled her breast and vagina. She resisted but to no avail because appellant punched her in the stomach and slapped her face. Appellant then placed himself on top of her and inserted his penis into her vagina. Thereafter, DDD, her elder brother, entered the house and saw appellant on top of her. Afraid of appellant, DDD ignored the two. The following day, DDD told AAA that he saw the incident and that he will report it to appellant’s sister, EEE. AAA did not inform BBB of the incident because of her fear that appellant would make good his threat to kill her and the rest of the family members.[8]

Again, in 1996, appellant, with the use of force, threat and intimidation, raped AAA six times on several occasions inside the house. BBB was selling goods at the QMH during the commission of these rapes.[9]

Likewise, in 1997, appellant, by applying the same physical harm, threat and intimidation, sexually assaulted her several times inside the house. BBB was also out of the house when these bestial acts transpired.[10]

On 24 July 1998, at about 1:00 in the morning, AAA and her siblings were sleeping inside a nipa hut owned by her family and located in front of their house, while appellant was drinking liquor with a certain Rey and Benito Casaljay outside the house. After the drinking session, Rey and Benito left appellant. Appellant then entered the nipa hut, woke her up, and started to make sexual advances on her. She tried to resist appellant’s onslaught but failed because appellant punched her in the stomach. Appellant went on top of her and inserted his penis into her vagina. After satisfying his lust, appellant warned her not to tell anyone of the incident or he would kill her and the rest of the family members.[11]

Upon being informed by EEE of the incidents, BBB, on 30 July 1998, accompanied AAA to the National Bureau of Investigation (NBI) office at Taft Avenue, Manila, and reported the heinous acts of appellant. AAA also executed a Sinumpaang Salaysay regarding the incidents. Thereupon, appellant was arrested and charged with rape.[12]

Dr. Umil narrated that she conducted a genital examination on AAA upon the request of NBI Supervising Agent Rosalina Espina-Chiong. Her findings as stated in her medico-legal report are: (1) no evident sign of any extra-genital physical injuries noted on the body of the subject at the time of the examination; and (2) hymen, intact, but distensible, and its orifice wide (2.5 cm. in diameter) as to allow complete penetration by an

average-sized adult Filipino male organ in full erection without producing hymenal injury.[13]

The prosecution also adduced documentary evidence to buttress the foregoing testimonies of prosecution witnesses, to wit: (1) Sinumpaang Salaysay of AAA;[14] (2) Medico-Legal Report regarding AAA signed and issued by Dr. Umali;[15] and (3) a letter written by appellant in a Marlboro cigarette wrapper addressed to AAA asking her forgiveness.[16]

For its part, the defense proffered the lone testimony of appellant to refute the foregoing accusations.

Appellant divulged that AAA is his daughter and BBB is his wife; that he did not rape AAA on 8 March 1995; that a birthday celebration for one of his children, CCC, was held at their house on 8 March 1995 which was attended by several friends; that he did not rape AAA in 1996, 1997, and on 24 July 1998; that BBB, AAA and his other children resided with him in their house at XXX from 8 March 1995 to 24 July 1998; that he had a drinking spree with Rey and Benito at nighttime during the said periods; and that he wrote a letter to AAA but denied that it was the same one presented by the prosecution.[17]

The defense also offered as its sole documentary evidence the Medico-Legal Report issued and signed by Dr. Umil.

After trial, the RTC rendered a Decision finding appellant guilty of rape as alleged in the four informations. In Criminal Cases No. 115031-H and No. 115032-H, the Court imposed on appellant the penalty of death. In Criminal Cases No. 115033-H and No. 115034-H, appellant was sentenced to reclusion perpetua. The dispositive portion of the decision reads:

WHEREFORE, this Court finds accused Juanito dela Cruz y Rivera, as follows:

1. In Criminal Case No. 115031-H, GUILTY as principal of the offense of qualified rape penalized under then Article 335 of the Revised Penal Code, as amended by R.A. 7659, and sentences him to suffer the supreme penalty of DEATH. Accused is further ordered to pay the offended person, AAA, the amount of Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity plus Fifty Thousand Pesos (P50,000.00) as moral damages.
2. In Criminal Case No. 115032-H, GUILTY as principal of the offense of qualified rape penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659, and sentences him to suffer the supreme penalty of DEATH. Accused is further ordered to pay AAA the amount of Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity plus Fifty Thousand Pesos (P50,000.00) as moral damages.
3. In Criminal Case No. 115033-H, GUILTY as principal of the offense of simple rape penalized under Article 335 of the Revised Penal Code, as amended by R.A. 7659 [Now Art. 266-A and Art. 266-B under R.A. 8353], and sentences him to suffer the penalty of reclusion perpetua. Accused is further ordered to pay AAA the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity plus the amount of Fifty Thousand Pesos (P50,000.00) as moral damages.
4. In Criminal Case No. 115034-H, GUILTY as principal of the offense of simple rape penalized under Article 266-B of the Revised Penal Code, as amended, and sentences him to suffer the penalty of reclusion perpetua. Accused is further ordered to pay AAA the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity and the amount of Fifty Thousand Pesos (P50,000.00) as moral damages.[18]

In view of the death penalty it imposed on appellant in Criminal Cases No. 115031-H and 115032-H, the RTC forwarded the records of the cases to us for automatic review. However, pursuant to our ruling in *People v. Mateo*,^[19] we remanded the cases to the Court of Appeals for disposition. On 26 October 2006, the appellate court promulgated its Decision affirming with modifications the RTC decision. It held that appellant is liable only for simple rape and not qualified rape in Criminal Cases No. 115031-H and No. 115032-H because the qualifying

circumstance of AAA's minority was not duly proven by the prosecution. Thus:

WHEREFORE, the February 12, 2000 Joint Decision, as far as Criminal Case No. 115033-H and Criminal Case No. 115034-H are concerned, is hereby AFFIRMED.

In Criminal Case No. 115031-H and Criminal Case No. 115032-H, finding the accused guilty beyond reasonable doubt of two acts of simple rape, the Court hereby sentences him to suffer the penalty of Reclusion Perpetua, to pay civil indemnity in the amount of P50,000.00, and to pay moral damages in the amount of P50,000.00 in each case.[20]

In his Brief, appellant assigns the following errors:

I.

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE UNBELIEVABLE AND UNCORROBORATED TESTIMONY OF COMPLAINANT AAA;

II.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT JUANITO DELA CRUZ OF FOUR (4) COUNTS OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[21]

Rape is committed when the accused has carnal knowledge of the victim by force or intimidation and without consent.[22]

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.[23]

We have painstakingly reviewed the records and found that appellant had carnal knowledge of AAA through force and intimidation on the dates stated in the informations. In her court testimony, AAA positively and categorically identified the appellant as the one who ravished her, viz:

Q.

Now, on July 24, 1998 at about 1:00 in the morning, do you remember where [you were]?

A.

Yes, mam.

Q.

Where were you then?

A.

I was in our house, mam.

Q.

Where is your house located?

A.

At XXX.

Q.

Do you recall of an unusual incident that happened on July 24, 1998 at your house?

A.

Yes, mam.

Q.

What was that unusual incident?

A.

At 1:00 in the early morning my father “ginapangan niya ako.”

Q.

What do you mean “ginapangan ka?”

A.

He raped me, mam.

Q.

How did your father rape you?

A.

He inserted his penis inside my vagina.

Q.

When he inserted his penis into your vagina, what did you do?

A.

I was not able to do anything because he already hurt me.

Q.

What do you mean he hurt you?

A.

I was struggling and he boxed me on my stomach.

Q.

And, after that raped (sic) incident, what happened?

A.

I was shocked, mam.

Q.

Was that the first time that your father raped you?

A.

No, mam.

Q.

When was the first time?

A.

On March 8, 1995, mam.

Q

Why do you recall March 8, 1995 as the first time that your father raped you?

A

That time I was at my work and I went home because my brother is (sic) celebrating his birthday.

Q

When did that rape that happened on March 8, 1995?

A

In our house, mam.

x x x x

Q

Now, on March 8, 1995 when your father raped you, what did you do, if any?

A

I cannot do anything, mam, because he get (sic) what he wants.

COURT:

Q

When you were raped on March 8, 1995, what did you do when you were being raped?

A

I was struggling away from him but he harmed me.

FISCAL:

Q

How did your father hurt you?

A

He boxed me on my stomach.

Q

And, after that raped (sic) incident, what happened?

A

I keep silent, mam.

Q

Did you not try to tell your mother about that incident?

A

No, mam.

Q

Why did you not tell your mother?

A

I was afraid, mam.

Q

Why?

A

Because he was threatening to kill my family.

x x x x

Q.

What about in the year 1996, was there an unusual incident that happened between you and your father?

A.

Yes, mam, there is.

Q.

Can you recall on what month?

A.

I cannot remember, mam.

Q.

But the same incident happened in 1996?

A.

Yes, mam.

Q.

If you can recall, how many times did he rape you in the year 1996?

A.

Six (6) times, mam.

x x x x

Q.

Was that six (6) times done on one occasion?

A.

No, mam.

Q.

So, there were several rapes?

A.

Yes, mam.

Q.

And, where did these six (6) rapes that happened in 1996 took place?

A.

In our house also, mam.

Q.

Also in XXX?

A.

Yes, mam.

x x x x

Q.

What about in 1997, do you recall of an unusual incident that happened between you and your father?

A.

Yes, mam.

Q.

What was that unusual incident?

A.

About the rape, mam.

Q.

When was that if you can recall?

A.

I cannot remember, mam, what I remember was only the last raped (sic).

COURT:

Q.

But, how many times have you been raped in 1997?

A.

Many times, your Honor.

Q.

You cannot count it?

A.

No, your Honor.

x x x x

Q.

Now, madam witness, in the first occasion that you were raped by your father, did he tell you anything before raping you?

A.

None, sir.

Q.

In other words, you would like to tell the court that he does not say anything he just raped you without saying anything?

A.

First, he was not able to say anything but after he raped me he said something.

Q.

And, what did he tell you?

A.

She (sic) told me not to report the incident because she (sic) will kill my family.

Q.

Is that all what your father told you?

A.

Yes, your Honor.

x x x x

Q.

You did not tell (sic) your father why he is doing it to you?

A.

I told him but he did not listen to me.

x x x x

Q.

You said that you were punched in the stomach by your father prior to the sexual attacked (sic) on you on July 24, 1998, isn't it? Other than being punched at the stomach, what else did he do, if any?

A.

Sinasampal po.

Q.

How did you describe the pain when you were hit at the stomach?

A.

I lost consciousness, sir.

Q.

So, it was very strong, is that correct?

A.

Yes, sir.

Q.

And, he did it with the clench[ed] fist, is that correct?

A.

Yes, sir.

Q.

And, how many times did he club you?

A.

Two (2) times, sir.[24]

It is a well-settled doctrine that the testimony of a youthful rape victim is given full weight and credence considering that when a girl says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[25] It is against human nature for a young 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.[26]

Further, the testimony of Dr. Umil corroborated the testimony of AAA on relevant and substantial points.[27]

The testimonies of AAA and Dr. Umil are in harmony with the documentary evidence submitted by the prosecution. The RTC and the Court of Appeals found their testimonies to be “credible, true and sufficiently reliable.” Both courts also found no ill motive on their part to testify against appellant.[28]

The rule is that the findings 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 respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the trial court’s findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[29]

Appellant, however, alleges in his first assigned error several inconsistencies in the testimony of AAA, to wit: (1) AAA testified that she was with her five siblings inside the house when she was raped by appellant on 8 March 1995, while in her subsequent testimony she stated that only DDD was present when she was raped by appellant on the said date; (2) AAA told the court that she was with her five siblings inside the house when she was raped by appellant on 24 July 1998, while in her later testimony she narrated that her siblings were out of the house when she was raped by appellant on the said date; and (3) AAA disclosed that during the rape on 24 July 1998 she saw Rey and Benito outside the house staring at appellant who was then on top of her, while in her other testimony she recounted that she merely learned from EEE that Rey and Benito saw appellant on top of her on the same date.[30]

The credibility of a rape victim is not impaired by some inconsistencies in her testimony.[31] Such inconsistencies are inconsequential when they refer to minor details that have nothing to do with the essential fact of the commission of the crime – carnal knowledge through force and intimidation.[32]

The supposed contradictions cited by appellant refer to minor details and are evidently beyond the essential fact of the commission of rape because they do not pertain to the actual sexual assault itself – that very moment when appellant was forcing himself on AAA. Besides, these minor inconsistencies even bolster the credibility of AAA as one could hardly doubt that her testimony was contrived.[33]

Appellant further claims that AAA’s testimony does not jibe with her Sinumpaang Salaysay and with the testimony of Dr. Umil as shown by the following: (1) In her Sinumpaang Salaysay, AAA stated that she was raped by appellant on 8 March 1995 and on 24 July 1998, while in her court testimony she revealed that she was raped by appellant six times in 1996 and several times in 1997; and (2) AAA divulged that appellant punched her in the stomach and slapped her during the incidents but Dr. Umil testified that no contusions, abrasions or other physical injuries were found on AAA’s body during the latter’s physical examination.[34]

We have steadfastly ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement are not fatal defects to justify a reversal of judgment of conviction. Such discrepancies do not necessarily discredit the witness since ex-parte affidavits are almost always incomplete. Sworn statements taken ex-parte are generally considered to be inferior to the testimony given in open court.[35]

The fact that Dr. Umil found no contusions or abrasions on AAA’s body during the latter’s physical examination does not render improbable the occurrence of rape because settled is the doctrine that absence of external signs or physical injuries does not negate the commission of rape.[36]

Anent the second assignment of error, appellant argues that it is improbable for appellant to rape AAA in the

presence of the latter's siblings; that the informations in Criminal Cases No. 115032-H and 115033-H which allege that the rapes were committed "during the period January to December 1996," and "during the period January to December 1997," respectively, are defective because it does not specifically state the exact dates of the commission of rapes; that AAA is not a credible witness because she did not immediately inform BBB nor the police authorities of the incidents; that the failure of AAA to immediately report the incidents implies that no rapes were committed and that the sexual contacts between him and AAA were voluntary and consensual; that AAA's testimony that she reported the 8 March 1995 incident to EEE is unbelievable because if such was true then the instant case would have been filed earlier and the subsequent rapes could have been avoided; that he never admitted having written the letter on a Marlboro cigarette wrapper to AAA and thus the said letter cannot be used as evidence against him because its due execution and authenticity was not proven; and that the qualifying circumstance of minority of AAA during the incidents was not proven because the latter's birth certificate was not presented in court.[37]

Lust is no respecter of time and place. Thus, we held that rape can be committed inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping.[38] It is not impossible, nor incredible, for AAA's siblings to be in deep slumber and not to be awakened while appellant was raping her.[39]

Failure to specify the exact dates or time when the rapes occurred does not ipso facto make the information defective on its face. The reason is obvious. The date or time of the commission of rape is not a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.[40]

In several cases, we sustained complaints and informations in prosecutions for rape which merely alleged the month and year of its commission.[41] Hence, the allegations in the informations regarding Criminal Cases No. 115032-H and 115033-H which state that rapes were committed "during the period January to December 1996" and "during the period January to December 1997" are sufficient to affirm the conviction of appellant.

We have ruled that the failure of the rape victim to immediately report the rape is not necessarily an indication of a fabricated charge.[42] It is not uncommon for young girls like AAA to conceal for some time the assault on their virtues because of the rapist's threat on their lives, more so when the rapist is living with her as in this case.[43] AAA testified that appellant threatened to kill her and the other family members should she report what he had done to her. AAA's delay in reporting the sexual violations is therefore understandable and cannot undermine her credibility.

Appellant's letter written on a Marlboro cigarette wrapper asking AAA's forgiveness is admissible in evidence against him. AAA testified that after the instant case was filed in the RTC, BBB visited appellant once in jail. During the said visit, appellant handed to BBB a letter written on a Marlboro cigarette wrapper and thereafter instructed BBB to give the said letter to her. BBB gave her the said letter and told her "pinaabot ng tatay mo." In the said letter, appellant asked her to forgive him for what he did to her as he was only drunk at that time. She knows that the letter was written by appellant because she is familiar with his handwriting and signature.[44] AAA positively identified the letter itself during her direct examination and this was formally offered as documentary evidence for the prosecution.[45]

More importantly, appellant himself readily admitted that the letter is the same letter he wrote for AAA.[46] He also confirmed that the handwriting therein is his.[47] Although later, he would deny the same on the basis that he

does not use the Marlboro cigarette brand, but only Winston cigarette brand,[48] we still give more weight to his admission of the said letter since it was given voluntarily and spontaneously. His subsequent denial is not only based on flimsy grounds but also an obvious attempt to cover-up his earlier damaging testimony. As to the contents of the letter, verily, no one would ask for forgiveness unless he has committed a wrong and a plea for forgiveness may be considered analogous to an attempt to compromise, which offer of compromise by the appellant may be received in evidence as an implied admission of guilt pursuant to Section 27, Rule 130 of the Revised Rules on Evidence.[49]

We agree, however, with appellant's contention, as affirmed by the Office of the Solicitor General and the Court of Appeals, that the RTC erred in appreciating the qualifying circumstance of minority of AAA and in imposing the maximum penalty of death in Criminal Cases No. 115031-H and 115032-H.

Republic Act No. 7659 is the law applicable for the rapes committed in March 1995 and on several occasions during the period of January to December 1996, as respectively alleged in Criminal Cases No. 115031-H and 115032-H. The said law states that the death penalty shall be imposed if the rape victim is a minor and the offender is a parent. The qualifying circumstances of minority of the victim and the latter's relationship with the offender must be alleged and proven to warrant the imposition of death penalty.[50]

The informations specifically alleged that AAA was a minor when she was raped by appellant. Nonetheless, the prosecution failed to prove such allegation with sufficient evidence.

AAA solely testified that she was fifteen years old when appellant raped her on March 1995, and sixteen years old when appellant defiled her again six times during the period of January to December 1996.[51] Appellant neither denied nor objected to the said testimony of AAA.

In *People v. Tabanggay*,[52] a case almost identical herein, we held as insufficient evidence of minority the bare testimony of the two rape victims, who were sisters, that they were 13 and 14 years of age, respectively, when their father raped them. We emphasized therein that there must be independent evidence proving the age of the victims other than their own testimonies and the absence of denial by the accused. The victims' original or duly certified birth certificate, or baptismal certificate, or school records would suffice as competent evidence of their age. The prosecution presented a photocopy of one of the victim's birth certificate but we gave no probative value to it because it was neither duly certified nor formally offered in evidence. In conclusion, we ruled therein that the prosecution failed to prove the minority of the rape victims.

Applying the foregoing jurisprudence to the case at bar, the bare testimony of AAA as to her age is not sufficient proof that she was a minor when appellant raped her on the given dates. There must be independent evidence showing her minority other than her bare testimony and the absence of denial by the appellant. The independent proof may consist of her original or duly certified birth certificate, or her baptismal certificate or school records.

A photocopy of AAA's birth certificate is included in the records of the present case.[53] Nevertheless, the same was neither properly identified nor formally offered in evidence. Hence, no probative value can be given to it. Aside from the said birth certificate, no other documentary evidence was adduced to prove the age of AAA.

With respect to appellant's failure to object on the aforesaid testimony of AAA, we decreed in *People v. Pruna*,[54] that the failure of the accused to object to the testimonial evidence regarding the rape victim's age shall not be taken against him. In *People v. Tipay*[55] and *People v. Pecayo, Sr.*,[56] we also pronounced that the lack of denial on the part of accused as regards the rape victim's age does not excuse the prosecution from discharging its burden of proving the minority of the rape victim. As the qualifying circumstance of minority alters the nature of the crime of rape and increases the penalty thereof, it must be proved with equal certainty and

clearness as the crime itself.[57]

Since the qualifying circumstance of AAA's minority was not duly proven by the prosecution, appellant should be held liable only for simple rape in Criminal Cases No. 115031-H and 115032-H.[58] Consequently, the penalty therein should be reduced to reclusion perpetua pursuant to Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659.[59]

Finally, we concur with the disposition of the Court of Appeals that appellant should pay AAA civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00 pursuant to prevailing jurisprudence.[60] However, aside from these damages, appellant should also pay AAA exemplary damages in the amount of P25,000.00 in order to deter other fathers with perverse tendencies or aberrant sexual behaviors from sexually abusing their own daughters.[61]

WHEREFORE, after due deliberation, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 02407 dated 26 October 2006 is hereby AFFIRMED with the MODIFICATION that appellant is also ordered to pay AAA exemplary damages in the amount of P25,000.00 for each of the four cases.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] *People v. Baculi*, 316 Phil. 916, 917 (1995).

[2] Penned by Associate Justice Jose Catral Mendoza with Associate Justices Elvi John S. Asuncion and Sesinando E. Villon, concurring; rollo, pp. 3-19.

[3] Penned by Judge Librado S. Correa; CA rollo, pp. 16-25.

[4] 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 victims, 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).

[5] CA rollo, pp. 4-11.

[6] Records, p. 41.

[7] TSN, 18 May 1999, pp. 3-6.

[8] *Id.* at 5-7.

[9] *Id.* at 7-8.

[10] *Id.* at 8-9.

[11] *Id.* at 4-5.

[12] *Id.* at 12.

[13] TSN, 11 May 1999, pp. 3-10.

[14] Records, pp. 85-86.

[15] *Id.* at 87.

- [16] Id. at 84.
- [17] TSN, 11 August 1999, pp. 2-21.
- [18] CA rollo, p. 25.
- [19] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [20] Rollo, p. 18.
- [21] CA rollo, p. 37.
- [22] *People v. Durano*, G.R. No. 175316, 28 March 2007, 519 SCRA 466, 477.
- [23] *People v. Gregorio, Jr.*, G.R. No. 174474, 25 May 2007, 523 SCRA 216, 229; *People v. Padilla*, G.R. No. 142899, 31 March 2004, 426 SCRA 648, 655.
- [24] TSN, 18 May 1999, pp. 4-24.
- [25] *People v. Guillermo*, G.R. No. 173787, 23 April 2007, 521 SCRA 597, 608-609.
- [26] *People v. Astrologo*, G.R. No. 169873, 8 June 2007, 524 SCRA 477, 486-487.
- [27] TSN, 11 May 1999, pp. 3-10, 87.
- [28] Records, pp. 114-116; CA rollo, pp. 13-14.
- [29] *People v. Santiago*, G.R. No. 175326, 28 November 2007, pp. 15-16.
- [30] CA rollo, pp. 43-54.
- [31] *People v. Butron*, 338 Phil. 856, 866 (1997).
- [32] *People v. Biong*, 450 Phil. 432, 445 (2003).
- [33] *People v. Pangilinan*, G.R. No. 171020, 14 March 2007, 518 SCRA 358, 385-386.
- [34] *People v. Astrologo*, supra note 26.
- [35] *People v. Santiago*, supra note 29 at 384-385; *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 729, citing *People v. Layno*, 332 Phil. 612, 625 (1996).
- [36] *People v. Boromeo*, G.R. No. 150501, 3 June 2004, 430 SCRA 533, 546.
- [37] *People v. Astrologo*, supra note 26.
- [38] *People v. Santiago*, supra note 29 at 382-383.
- [39] *People v. Mangitngit*, G.R. No. 171270, 20 September 2006, 502 SCRA 560, 576.
- [40] *People v. Ibañez*, G.R. No. 174656, 11 May 2007, 523 SCRA 136, 142-143.
- [41] Id.; *People v. William Ching*, G.R. No. 177150, 22 November 2007, p. 11; *People v. Macabata*, 460 Phil. 409, 421 (2003), citing *People v. Aspuria*, 440 Phil. 41, 45-46 (2002); *People v. Abellano*, 440 Phil. 288, 291 (2002); *People v. Morfi*, 435 Phil. 166, 170 (2002).
- [42] *People v. Gregorio, Jr.*, supra note 23 at 229.
- [43] Id.

[44] TSN, 18 May 1999, pp. 9-11.

[45] Id. at 10-11.

[46] TSN, 11 August 1999, pp. 17-18.

[47] Id.

[48] Id. at 18

[49] *People v. Yparraguire*, 390 Phil. 366, 378 (2000).

[50] *People v. William Ching*, supra note 41 at 12.

[51] TSN, 18 May 1999, p. 15.

[52] 390 Phil. 67, 92 (2000).

[53] Records, p. 15.

[54] 439 Phil. 440, 471 (2002).

[55] 385 Phil. 689 (2000).

[56] 401 Phil. 239 (2000).

[57] *People v. Alipar*, 407 Phil. 81, 97 (2001).

[58] *People v. Layugan*, G.R. Nos. 130498-98, 28 April 2004, 428 SCRA 98, 116.

[59] Id.

[60] *People v. Astrologo*, supra note 26 at 490-491.

[61] Id.

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