

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HILARIO OPONG Y TAÑESA, ACCUSED-APPELLANT.

G.R. No. 177822. June 17, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00416 MIN dated 25 October 2006, affirming in toto the Decision[2] of the Davao City Regional Trial Court (RTC), Branch 17, in Criminal Cases No. 43,381-99 and No. 43,382-99, finding accused-appellant Hilario Tañesa Opong guilty of two counts of simple rape.

The factual antecedents are as follows:

On 23 June 1999, two separate informations were filed before the RTC charging appellant with rape,[3] thus:

CRIMINAL CASE NO. 43, 381-99

That on or about May 2, 1999 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA,[4] who is fifteen (15) years of age against her will.

CRIMINAL CASE NO. 43, 382-99

That on or about May 9, 1999 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA, who is fifteen (15) years of age against her will. (Emphases supplied.)

Subsequently, the cases were consolidated for joint trial. When arraigned on 26 November 1999, appellant, with the assistance of counsel de oficio, pleaded "Not guilty" to each of the charges.[5] Trial on the merits thereafter ensued.

The prosecution presented as witnesses AAA, Dr. Danilo Ledesma (Dr. Ledesma), and PO2 Jocris Sarenas (PO2 Sarenas). Their testimonies, taken together, present the following narrative:

Sometime in the year 1999, AAA was employed as a stay-in housemaid by Philippine National Police (PNP) Senior Superintendent Palawan Macadingdang (Supt. Macadingdang) in the latter's family residence at Tagum City, Davao.[6]

On 20 March 1999, per instruction of Mrs. Macadingdang (wife of Supt. Macadingdang), AAA went to Camp Catitipan, Panacan, Davao City, to serve as stay-in housemaid in the quarters of Supt. Macadingdang.[7]

On 2 May 1999, at about 7:00 in the evening, AAA, then 15 years of age, was left alone in the quarters of Supt. Macadingdang since the latter was at Tagum City. She went out of the quarters and sat on a bench located outside

the Senior Officers Quarters Building (SOQB). Appellant, then working as a grass-cutter in Camp Catitipan, approached her and asked for a glass of cold water. She agreed and told him to wait outside the SOQB. She entered the SOQB and proceeded inside her employer's quarters.[8]

While she was filling up a drinking glass with cold water inside the quarters, appellant suddenly barged in. She handed the glass of cold water to appellant who, instead of taking it, held her hands tightly. She shouted for help but appellant covered her mouth and told her to keep quiet otherwise he would kill her. Thereupon, appellant pushed her, causing her to fall on the cemented floor. She tried to resist appellant's advances by kicking and pushing him away, but she was overpowered. Appellant then forcibly removed her panty, put himself on top of her, and repeatedly inserted his penis into her vagina. She felt pain in her vagina. Later that same evening, appellant ravished her again. Appellant warned her not to tell anyone of the incident or he would kill her.[9]

Again, on 9 May 1999, at about 8:30 in the evening, she was left alone inside the quarters. After washing the dishes, she went out of the quarters. Seeing appellant roaming inside the SOQB, she hurriedly went back to the quarters and locked the door. After several minutes, and thinking that appellant might have already left the building, she opened the door of the quarters. Appellant, who was all the while waiting in front of the door of the quarters, forcibly entered the quarters and pushed her. She knelt and pleaded with him not to touch her but to no avail. Appellant removed her panty, placed himself on top of her, and inserted his penis into her vagina. Afterwards, appellant reiterated his threat to kill her if she would tell anyone of the incidents.[10]

On 10 May 1999, Supt. Macadingdang arrived at the quarters but she did not inform him of the incidents because of her fear that appellant would make good his threats to kill her.[11]

On 4 June 1999, Mrs. Macadingdang arrived and stayed at the quarters. As days passed by, Mrs. Macadingdang noticed that she was getting weak and was inefficient in her household tasks. Mrs. Macadingdang inquired from her if she had a problem. She cried and told Mrs. Macadingdang that she was raped by appellant. Subsequently, she and Mrs. Macadingdang relayed to Supt. Macadingdang the incidents.[12]

Supt. Macadingdang reported the incidents to the commander of Camp Catitipan, a certain Colonel Velasco. Thereafter, Police Officers Jocris Sarenas and Jesus Mayabason of the Buhangin Police Station, Davao City, arrived at Camp Catitipan and took AAA and appellant to the precinct for investigation. Thereupon, appellant was charged with raping AAA.[13]

Dr. Ledesma, Medico-Legal Officer IV of the Medical Service Office of the City of Davao, personally examined AAA.[14] His findings, as stated in the medico-legal report, are as follows:

FINDINGS

GENERAL PHYSICAL EXAMINATION:

Height : 149.0 cms.

Fairly nourished, normally developed, conscious, coherent, cooperative, ambulatory subject.

Breasts : Fully developed, hemispherical, firm. Areolae, light brown, 3.0 cms. in diameter. Nipples, light brown, protruding, 0.8 cm. in diameter.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora, gaping. Labia minora, coaptated. Fourchette, lax. Vestibule, pinkish, smooth. Hymen, thick, tall, intact, distensible. Hymenal Orifice, annular, admits a tube, 2.5 cms. in

diameter. Vaginal walls, tight. Vaginal rugosities, prominent.

CONCLUSIONS:

- 1) No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
- 2) Hymen, intact, but distensible and its orifice, wide as to allow complete penetration by an average-sized male organ in erection without causing hymenal injury.[15]

The prosecution also proffered documentary evidence to bolster the testimonies of its witnesses, to wit: (1) the medico-legal report with regard to AAA issued and signed by Dr. Ledesma and marked as Exhibit "A";[16] and (2) certification from the Office of the Civil Registrar of Davao City issued and signed by Civil Registrar Marcelino A. Perandos attesting that AAA's date of birth as stated in the Register of Births was on 1 October 1983, marked as Exhibit "B." [17]

For its part, the defense presented the testimonies of appellant, Evangeline Wilson (Wilson), and Supt. Macadingdang to refute the foregoing accusations.

Appellant testified that he started working as a grass-cutter at Camp Catitipan on 27 November 1997. He met AAA for the first time on 27 April 1997 in Camp Catitipan when AAA approached and introduced herself to him. AAA liked him because she constantly sent her regards to him through a girl named Baliling. Except for the whole month of January 1999, he never slept inside the premises of Camp Catitipan. He denied raping AAA on 2 and 9 May 1999. He never entered the SOQB and the quarters of Supt. Macadingdang because it was a prohibited area for a civilian like him.[18]

Wilson, barangay captain of Pangian, Malita, Davao del Sur, narrated that she had known appellant since birth because they both belong to the Manobo tribe. She verified that appellant had good moral character because he never committed any offense since childhood.[19]

Supt. Macadingdang told the court that AAA was his stay-in housemaid at his quarters in Camp Catitipan; that he cannot remember the exact dates of the incidents; that after being informed by his wife and AAA of the incidents, he requested Colonel Velasco to turn over appellant to the police for investigation; and that he cannot remember if he personally asked assistance from the Buhangin Police Station regarding the incidents.[20]

After trial, the RTC rendered a Decision on 19 July 2000 convicting appellant of two counts of simple rape. In each of the two cases, the trial court imposed on appellant the penalty of reclusion perpetua and monetary award by way of damages. The dispositive portion of the decision reads:

WHEREFORE, finding the evidence of the prosecution more than sufficient to prove the guilt of accused beyond reasonable doubt in Criminal Case No. 43,381-99 and in Criminal Case No. 43,382-99 above-mentioned pursuant to Art. 355 of the Revised Penal Code as amended by Republic Act 7659, without any aggravating circumstance attendant in the commission of the offense charged, in the two (2) above-informations, accused, HILARIO OPONG Y TAÑESA, is sentenced to suffer a penalty of RECLUSION PERPETUA, in each of the above- Criminal Case No. 43,381-99 and Criminal Case No. 43,382-99, together with all accessory penalty as provided for by law.

Moreover, pursuant to Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil indemnity, above-accused, is furthermore ordered to pay complainant, AAA the amount of P50,000.00 in each of the two (2) counts of rape or a total amount of P100,000.00 by way of civil indemnity, another amount of P50,000.00 by way of moral damages or a total amount of P100,000.00; still another amount of P50,000.00 or a total amount of P100,000.00 by way of exemplary damages, to give example to the public as a deterrent in the further commission of said abominable and despicable offenses.[21]

On 11 August 2000, appellant filed a Notice of Appeal with the RTC stating that he would appeal his conviction to this Court.[22]

On 14 August 2000, the RTC issued an Order forwarding the records of the instant case to us for review.[23]

On 9 March 2005, we issued a Resolution[24] remanding the present case to the Court of Appeals for proper disposition pursuant to our ruling in *People v. Mateo*. [25] On 25 October 2006, the Court of Appeals promulgated its Decision affirming in toto the Decision of the RTC. Thus:

Appellant has not shown that departure from the findings of facts of the trial court is proper.

WHEREFORE, the Joint Judgment of the trial court is affirmed in toto.[26]

Before us, appellant assigns the following errors:

I.

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO PRIVATE COMPLAINANT'S CLAIM THAT SHE WAS RAPED DESPITE THE FACT THAT THE CHARGE WAS BELIED BY THE RESULT OF THE MEDICAL EXAMINATION.

II.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.

III.

ON THE ASSUMPTION THAT ACCUSED-APPELLANT SEXUALLY ASSAULTED THE PRIVATE COMPLAINANT, THE CRIME HE COMMITTED WAS ONLY ATTEMPTED RAPE.[27]

In reviewing rape cases, this Court is guided by three principles, to wit: (1) an accusation of rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense.[28]

As a result of these guiding principles, the credibility of the complainant becomes the single most important issue.[29] If the testimony of the victim is credible, convincing and consistent with human nature, and the normal course of things, the accused may be convicted solely on the basis thereof.[30]

We have carefully examined AAA's court testimony and found it to be credible and trustworthy. Her positive identification of appellant as the one who ravished her on 2 and 9 May 1999 and her direct account of the bestial acts are clear and consistent,[31] viz:

FISCAL EVANGELIO:

Q. Sometime on May 2, 1999, at about 7:00 o'clock in the evening, AAA, can you recall where were you?

A. Yes, I can still recall.

Q. Please tell the court, where were you at that time?

A. I was sitting at the outside of the Senior Officer's quarter.

Q. At that time, where was Sr. Supt. Palawan Macadindang and his wife and family?

A. His wife was at that time in Manila, while Col. Macadindang was in Tagum.

Q. At that time, who were your companion in the house, if any?

ATTY. RAMIREZ:

What time?

FISCAL EVANGELIO:

About 7:00 o'clock, if there are any on May 2, 1999.

A. I was alone.

Q. While sitting at the outside, according to you on that place of senior officers quarter, Camp Catitipan, please tell the court, what happened, if any?

A. While I was seated there, this Junjun approach me.

Q. Who is this Junjun you are referring to?

A. Hilario Opong.

Q. If that Hilario Opong or Junjun is in court, can you identify him by pointing to him?

A. I can point to him. (witness pointing to accused Hilario Opong).

Q. Now, do you know this accused personally?

A. We were not so acquainted with each other at that time; I can just remember his face.

Q. You said, Hilario Opong approached you now, what did he tell you, if any?

A. He told me at that time, that he was asking for cold water.

Q. What was your response?

A. I told him that if you want to ask for water, do not enter, just wait here because it is prohibited to enter.

Q. What happen (sic) next, after you told him that it is (sic) not allowed of you to enter?

A. I went inside the room and I took water when I was already inside the room, I look back, he was already there.

Q. Where, what do you mean he was already there?

A. In the room.

Q. Whose room are you referring to?

A. In the house where I was working at that time.

Q. How far is that room to the place where you sat outside?

A. Quite far.

Q. When you said, he entered in the room, what did he do to you?

A. When I tendered to him the glass of water, he held my hand tightly.

Q. Please demonstrate how the accused held your hand?

A. (witness demonstrating by holding the right hand of the interpreter supposed to be her hand tightly and twisted it with her left hand).

Q. What happened next?

A. I shouted, sir.

Q. How did you shout?

A. I ask for help.

Q. What transpired next?

A. He covered my mouth.

Q. How did he cover your mouth?

A. (witness demonstrating with his left hand by covering her mouth).

Q. Under that situation, what transpired next?

A. He told me to keep quiet, if I will make noise, he will kill me.

Q. After he told you those words, what transpired next?

A. He pushed me.

Q. To what place did he push you?

A. In the room.

Q. In what part of the room?

A. He pushed me to the room where I frequently sleep.

Q. And what happened to you, when you were pushed by the accused?

A. I fell down facing upward on the cemented floor.

Q. When you fell down to the cemented floor what happened next to you?

A. I put (sic) him by kicking him.

Q. After kicking him or resisting him what happened?

A. When I kicked him, he was too strong for me and he forcibly removed my panty.

Q. By the way, what clothes were you wearing at that time?

A. I was wearing skirt.

Q. While the accused according to you was removing your panty, what did you do?

A. I repeatedly kick him but he was too strong for me.

x x x x

FISCAL EVANGELIO:

Q. After you were according to you overpowered by the accused because he is strong, what happened next?

A. After he sexually abused (tamastamasan) my womanhood . . .

x x x x

FISCAL EVANGELIO:

Q. How did the accused do it or sexually abused you?

ATTY. RAMIREZ:

We object to the term sexually abused, it is tamastamasan.

FISCAL EVANGELIO:

Q. Exactly what did the accused do to you in simple layman's language?

A. He forcibly inserted his penis to my vagina.

Q. How many times when he forcibly entered his penis to your vagina, how did he do it?

A. He was riding on me, he was placing himself on top of me when he inserted his penis.

Q. While he was on top of you, what did you do?

A. When he was already on top of me, he forcibly inserted his penis into my vagina.

x x x x

FISCAL EVANGELIO:

I will repeat.

Q. What was the position, how did the accused placed his penis into your vagina, how?

ATTY. RAMIREZ:

It was already answered, inserted.

FISCAL EVANGELIO:

Alright.

Q. Now, how many times did the accused sexually abused you that evening on May 2, 1999?

A. Two times.

Q. Tell the court, why is it that there was a second time?

A. Because he repeated it; I feel (sic) the first time, I felt the pain and yet, he again did it to me. He repeated it, what he did to me.

Q. After that incident on May 2, what happened?

A. After he did that act to me, he again reminded or confronted that if I will tell somebody about it, he will kill me.

Q. AAA, please describe to the court, what was the lighting condition at that time of the room, where you said, you were sexually abused by the accused?

A. The room was well-lighted because the light was on.

Q. You said, you shouted for help, what happened if any to your shouts?

A. Nobody heard me during that time.

x x x x

Q. Now, on May 9, 1999, AAA, at about 8:30 in the evening, can you recall where were you?

A. I can still recall.

Q. Where were you?

A. I was still at the Senior Officer's Quarter and I was washing plates.

Q. Where was your male employer Sr. Police Superintendent at that time?

A. He was again in Tagum.

Q. How about his wife?

A. At that time, his wife has not yet return to Davao City, she was still in Manila.

Q. Their children, if any?

A. Their children are already of age and they were not in the house at that time.

Q. Now, you said that you were washing plates at that time, what happened while you were washing plates at that time?

A. I did not observe that "he" had already entered and went near me.

Q. Who is this "he" you are referring to?

A. Junjun.

Q. Again pointing him out, who is he if he is in court?

A. (witness pointing to the same person in this case Hilario Opong).

Q. This time on May 9, 1999, how did the accused abused (sic) you in that evening?

A. At that time, I observe that he was already there, I ran towards the room.

Q. When you ran towards the room, what did the accused do?

A. And I lock (sic) the door.

Q. What happened next after you lock (sic) the door?

A. I waited for a while before I went out.

Q. And when you went out, what happened?

A. When I open the door at that instance, he was already there and he immediately rushed to me.

Q. And what happened, when he rushed to you?

A. He locked the door and at that time, I kneeled in front of him.

Q. And why did you kneel in front of him?

A. I pleaded to him that he will not do it again.

Q. Despite your plea, what happened?

A. He did not mind my plea and instead he pushed me towards the cemented floor.

Q. And what happened after he pushed you on the cemented floor?

A. When he pushed me, I fell down on the cemented floor and my body was bent.

Q. What was your position at that time when you landed to the floor bent?

A. Because at that time, I was kneeling.

Q. While in the cemented floor what happened to you?

A. He did it again, he forcibly removed my panty.

Q. While he was removing your panty, what action did you take?

A. I kicked him, but it was useless because he was too strong for me.

Q. And since you overpowered, what happened next?

A. Then he placed himself on top of me and inserted his penis to my vagina.

x x x x

Q. And what did he do with his pants, when he inserted his penis to you?

A. He unzipped first his pants before he inserted his penis into my vagina.[32]

Well-entrenched is the rule that the testimony of a minor rape victim, such as AAA, is given full weight and credence considering that no young woman would concoct a story of defloration, 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. Youth and immaturity are badges of truth.[33]

It is also significant to note that the RTC gave full credence to the foregoing testimony of AAA as she relayed her painful ordeal in a candid manner. It found the testimonies of AAA to be "lucid, frank and irrefutable." [34] Jurisprudence instructs that when the credibility of a witness is of primordial consideration, as in this case, 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 because the trial court has had the unique opportunity to observe the demeanor of the witnesses and was in the best position to discern whether they were telling the truth. When the trial court's findings have been affirmed by the appellate court, as in the present case, said findings are generally binding upon this Court.[35]

Appellant, however, alleges in his first and second assigned errors that AAA liked him and that AAA sent him messages of regards through a girl named Baliling; that AAA was motivated by anger and revenge in charging him with rape because he ignored her show of affection; and that such ill motive on the part of AAA renders her testimony incredible.[36]

Motives such as resentment, hatred, or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.[37] Further, ill motives become inconsequential if the rape victim gave an affirmative and credible declaration, which clearly established the liability of the accused.[38]

AAA categorically identified appellant as the one who raped her on 2 and 9 May 1999. Her account of the incidents, as found by the RTC, the Court of Appeals, and by this Court, was sincere and honest. On the contrary, appellant was not able to present any proof as to the ill motives of AAA. There is no evidence on record showing that AAA had feelings for appellant and that appellant's disregard of AAA's affection led her to accuse him of

rape. The girl named Baliling was not even presented during the trial to confirm appellant's claim that AAA indeed sent him messages of regards.

Appellant, nonetheless, asseverates that AAA's delay in reporting the incidents to her employers for almost one month from their alleged commission casts serious doubts on the veracity of her testimony.[39]

It is not uncommon for young rape victims to conceal for some time the assault on their virtues because of the rapist's threat on their lives.[40] Thus, this Court has repeatedly held that delay in reporting an incident of rape due to death threats does not affect the credibility of the complainant nor can it be taken against her.[41] The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained.[42]

AAA, who was barely fifteen years old when she was defiled, satisfactorily explained why she did not immediately report the incidents to anybody. She testified that appellant repeatedly threatened to kill her if she would divulge the sexual attacks on her.[43] Further, appellant was always present near the quarters where AAA stayed because he worked therein regularly as a grass-cutter. Appellant's constant presence near AAA's quarters evidently intimidated the latter.

Besides, in several cases we have decided,[44] the delay in reporting the rape incidents lasted for months and even for years; nevertheless, the victims were found to be credible. Thus, AAA's delay in reporting the incidents for one month, being reasonable and sufficiently explained, should not be taken against her. Neither can it be used to diminish her credibility nor undermine the charge of rape.

Appellant argues that AAA's accusation of rape is not consistent with the result of Dr. Ledesma's medico-legal report which states that AAA's hymen was unbroken and completely intact.[45]

An intact hymen does not negate a finding that the victim was raped,[46] and a freshly broken hymen is not an essential element of rape.[47]

In *People v. Gabayron*,[48] we sustained the conviction of accused for rape even though the victim's hymen remained intact after the incidents because medical researches show that negative findings of lacerations are of no significance, as the hymen may not be torn despite repeated coitus. It was noted that many cases of pregnancy had been reported about women with unruptured hymens, and that there could still be a finding of rape even if, despite repeated intercourse over a period of years, the victim still retained an intact hymen without signs of injury.

In *People v. Capt. Llanto*,[49] citing *People v. Aguinaldo*,[50] we likewise affirmed the conviction of the accused for rape despite the absence of laceration on the victim's hymen since medical findings suggest that it is possible for the victim's hymen to remain intact despite repeated sexual intercourse. We elucidated that the strength and dilatability of the hymen varies from one woman to another, such that it may be so elastic as to stretch without laceration during intercourse; on the other hand, it may be so resistant that its surgical removal is necessary before intercourse can ensue.

In *People v. Palicte*[51] and in *People v. Castro*,[52] the rape victims involved were minors. The medical examination showed that their hymen remained intact even after the rape. Even then, we held that such fact is not proof that rape was not committed.

In the case at bar, Dr. Ledesma explained that AAA's hymen remained intact after the incidents because her hymen is elastic and distensible. In fact, it is capable of admitting a test tube 2.5 cm. in diameter which is equivalent to an average-sized adult Filipino male organ. He concluded that an erect average male organ is capable of penetrating such vagina without causing hymenal injury.[53]

It also bears stressing that a medico-legal report is not indispensable to the prosecution of a rape case, it being

merely corroborative in nature.[54] The credible disclosure of AAA that appellant raped her is the most important proof of the commission of the crime.[55]

Apropos the third issue, appellant claims that his penis did not penetrate AAA's vagina; that AAA did not feel pain when his penis allegedly penetrated her vagina; that no blood came out of AAA's vagina after the alleged penetration; that AAA admitted she did not see his penis when it allegedly penetrated her vagina; that he was still single, twenty-two years of age, and sexually inexperienced during the alleged incidents; and that the foregoing circumstances only show a mere attempt on AAA's virtue and not consummated rape.

Rape is consummated from the moment the offender has carnal knowledge of the victim.[56] Carnal knowledge is synonymous with sexual intercourse.[57] There is carnal knowledge if there is the slightest penetration of the sexual organ of the female by the sexual organ of the male.[58] All the elements of the offense, namely, (a) that the offender had carnal knowledge of a woman; and (b) that the same was committed by using force and intimidation,[59] were already present and nothing more was left for the offender to do, having performed all the acts necessary to produce the crime and accomplish it. Full penetration of the vagina is not essential; any penetration of the female organ by the male organ, however slight, is sufficient. Entry of the penis into the labia or lips of the female organ, even without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction for consummated rape. Thus, complete or full penetration of the vagina is not required for rape to be consummated. Any penetration, in whatever degree, is enough to raise the crime to its consummated stage.[60]

On the other hand, in attempted rape, there was no penetration of the female organ because not all acts of execution were performed as the offender merely commenced the commission of the felony directly by overt acts.[61]

It is apparent from the records that appellant had carnal knowledge of AAA because his penis penetrated her vagina. During the incidents, appellant pushed her causing her to fall on a cemented floor. She tried to resist appellant's advances by kicking him but to no avail. Appellant then removed her panty, placed himself on top of her, and forcibly inserted his penis into her vagina.[62] She felt pain during the repeated insertions.[63] The foregoing established facts obviously show that the rape was consummated and not attempted.

That no blood came out of AAA's vagina after the penetrations and that AAA did not see appellant's penis during the sexual attack does not negate rape, because these facts are not elements of the offense. Appellant's averment that he could not have successfully raped AAA because he was then single, twenty-two years of age, and sexually inexperienced is flimsy and deserves scant consideration. We take judicial notice of the fact that several young adults, such as appellant, and even minors have been charged with and convicted of rape.

We shall now determine the propriety of the penalties imposed by the RTC as affirmed by the Court of Appeals.

Article 266-B of the Revised Penal Code provides that the penalty for rape committed through force and intimidation, as in this case, is reclusion perpetua. Hence, the trial court and the appellate court were correct in sentencing appellant to reclusion perpetua for each of the two counts of rape in Criminal Cases No. 43,381-99 and No. 43,382-99.

Both courts were also correct in holding that appellant is liable for civil indemnity in the amount of P50,000.00, and moral damages amounting to P50,000.00 for each of the two counts of rape pursuant to prevailing jurisprudence.[64]

Nonetheless, we differ from their ruling that appellant is entitled to exemplary damages.

Exemplary damages may be awarded only when one or more aggravating circumstances are alleged in the

information and proved during the trial.[65] One of the circumstances which aggravate/qualify the crime of rape is when the victim is a minor and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.[66] The minority of the rape victim and her relationship with the offender must be both alleged in the information and proved during the trial in order to be appreciated as an aggravating/qualifying circumstance.[67]

Although the information in the instant case alleged that AAA was a minor during the incidents, there was, however, no allegation and proof that appellant was her ascendant or relative, or one who exercised moral ascendancy over her. Since relationship, as contemplated by law, between AAA and appellant was not duly established, the award of exemplary damages is not warranted.[68]

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00416 MIN dated 25 October 2006 is hereby AFFIRMED with MODIFICATION. The sentence imposed and the award of civil indemnity and moral damages are affirmed, but the award of exemplary damages is deleted. No costs.

SO ORDERED.

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

* Per Special Order No. 507, dated 28 May 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Arturo D. Brion to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program.

[1] Penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Edgardo A. Camello and Mario V. Lopez concurring; rollo, pp. 4-18.

[2] Penned by Judge Renato A. Fuentes; CA rollo, pp. 16-29.

[3] Records, pp. 1 & 11.

[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 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.)

[5] Records, p. 25.

[6] TSN, 6 March 2000, pp. 3-4.

[7] Id.

[8] Id. at 4-5.

[9] Id. at 5-10.

[10] Id. at 10-12.

[11] Id. at 10.

[12] Id. at 12-13.

[13] Id. at 13-15.

[14] TSN, 21 January 2000, pp. 2-6.

- [15] Records, p. 9.
- [16] Id.
- [17] Id. at 47.
- [18] TSN, 14 April 2000, pp. 2-7.
- [19] TSN, 20 June 2000, pp. 2-3.
- [20] Id. at 4-9.
- [21] Records, p. 29.
- [22] Id. at 81.
- [23] Id. at 82.
- [24] CA rollo, p. 34.
- [25] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [26] Rollo, p. 19.
- [27] CA rollo, p. 62.
- [28] *People v. Mangitngit*, G.R. No. 171270, 20 September 2006, 502 SCRA 560, 572.
- [29] *People v. Andales*, 466 Phil. 873, 883 (2004).
- [30] Id. at 888.
- [31] TSN, 6 March 2000, pp. 3-15.
- [32] TSN, 6 March 2000, pp. 4-11.
- [33] *People v. Arsayo*, G.R. No. 166546, 26 September 2006, 503 SCRA 275, 287.
- [34] CA rollo, p. 25.
- [35] *People v. Bejic*, G.R. No. 174060, 25 June 2007, 525 SCRA 488, 504.
- [36] CA rollo, pp. 67-71.
- [37] *People v. Audine*, G.R. No. 168649, 6 December 2006, 510 SCRA 531, 549.
- [38] *People v. Santos*, G.R. No. 172322, 8 September 2006, 501 SCRA 325, 343.
- [39] *People v. Arsayo*, supra note 33.
- [40] Id. at 289.
- [41] Id; *People v. Salome*, G.R. No. 169077, 31 August 2006, 500 SCRA 659, 670; *People v. Audine*, supra note 37 at 548; *People v. Montefalcon*, 364 Phil. 646, 656 (1999); *People v. Suarez*, G.R. Nos. 153573-76, 15 April 2005, 456 SCRA 333, 346.
- [42] Id.
- [43] TSN, 6 March 2000, pp. 10 & 12.

[44] *People v. Arsayo*, supra note 33 at 290; *People v. Dimaano*, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 663; *People v. Salvador*, 444 Phil. 325, 332 (2003); *People v. Suarez*, supra note 41 at 347.

[45] CA rollo, p. 27.

[46] *People v. Almaden*, 364 Phil. 634, 643 (1999).

[47] *People v. Teodoro*, G.R. No. 170473, 12 October 2006, 504 SCRA 304, 315.

[48] 343 Phil. 593 (1997).

[49] 443 Phil. 580 (2003).

[50] 375 Phil. 295 (1999).

[51] G.R. No. 101088, 27 January 1994, 229 SCRA 543, 548.

[52] 274 Phil. 80 (1991).

[53] TSN, 21 January 2000, p. 5.

[54] *People v. Lou*, 464 Phil. 413, 423 (2004).

[55] *People v. Bohol*, 415 Phil. 749, 761 (2001).

[56] *People v. Orita*, G.R. No. 88724, 3 April 1990, 184 SCRA 105, 114; *People v. Campuhan*, 385 Phil. 912, 915 (2000); *People v. Arango*, G.R. No. 168442, 30 August 2006, 500 SCRA 259, 279.

[57] *People v. Almendral*, G.R. No. 126025, 6 July 2004, 433 SCRA 440, 452.

[58] *Black's Law Dictionary, De Luxe (Fourth Edition)*, p. 268.

[59] *People v. Candaza*, G.R. No. 170474, 16 June 2006, 491 SCRA 280, 298; Article 266-A (1)(a) of the Revised Penal Code, as amended.

[60] *Id.*

[61] *Id.*; *People v. Bon*, G.R. No. 166401, 30 October 2006, 506 SCRA 168, 188-189.

[62] TSN, 6 March 2000, pp. 3-15.

[63] *Id.* at 9.

[64] *People v. Candaza*, supra note 59 at 298; *People v. Balbarona*, G.R. No. 146854, 28 April 2004, 428 SCRA 127, 145; *People v. Antivola*, 466 Phil. 394, 418 (2004).

[65] *People v. Cachapero*, G.R. No. 153008, 20 May 2004, 428 SCRA 744, 758, citing *Talay v. Court of Appeals*, 446 Phil. 256, 278-279 (2003); *People v. Villanueva*, 440 Phil. 409, 425 (2002); *People v. Catubig*, 416 Phil. 102, 119 (2001).

[66] Article 266-B(1), Revised Penal Code.

[67] *People v. Ching*, G.R. No. 177150, 22 November 2007, 538 SCRA 117, 131.

[68] *People v. Cachapero*, supra note 65.

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