

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLDAN ARCOSIBA ALIAS "ENTOY"; ACCUSED-APPELLANT.

G.R. No. 181081. September 04, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an appeal from the Decision[1] dated May 9, 2007 of the Court of Appeals in CA-GR CEB-CR.-H.C. No. 00094 affirming with modification the Decision[2] dated February 25, 2005 of the Regional Trial Court (RTC) of Carigara, Leyte, Branch 13 in Criminal Case No. 4397. The RTC found appellant Roldan Arcosiba guilty beyond reasonable doubt of the crime of rape under Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353,[3] otherwise known as "The Anti-Rape Law of 1997." Pursuant to Section 11[4] of Republic Act No. 7659,[5] the trial court sentenced him to suffer the penalty of reclusion perpetua and to pay the victim civil indemnity and moral damages.

The Information[6] dated May 12, 2004 charging Arcosiba for the crime of rape reads:

x x x x

That on or about the 21[st] day of March, 2004, in the Municipality of [xxx], Province of [xxx], and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs and by use of force and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge with [AAA],[7] a 14 year old girl, against her will, to her damage and prejudice.

Contrary to law.

Arcosiba was arrested and jailed on March 24, 2004.[8] When arraigned on June 22, 2004, he pleaded not guilty.[9] Thereafter, trial ensued.

Based on the testimonies of AAA, the victim herself, and BBB, her friend, the prosecution established that on March 21, 2004, AAA and her friend BBB agreed to watch television at the house of a neighbor. Before proceeding to the house of their neighbor, they decided to pass by the house of AAA. There, they noticed that the door of the house was already open, so they decided to go inside thinking that AAA's older sister was there. AAA, however, noticed that one sack of rice was missing. She tried to look for it thinking that her sister might have kept the same, but to no avail. AAA and BBB were about to go out of the house when they saw Arcosiba in the yard. Out of fear, AAA and BBB retreated to the kitchen. At a distance of four meters, Arcosiba asked AAA of her father's whereabouts. AAA replied that her father was not around. Arcosiba then asked her to go outside. AAA drew nearer to Arcosiba but remained inside the house. At that instance, Arcosiba uttered, "Your father owes a big amount of money and I am the one who is supporting your studies." He then commanded AAA to get out of the house because they have something to talk about. AAA did as ordered while BBB stayed in the kitchen crying.

While at the yard, Arcosiba embraced and kissed AAA. He likewise ordered her to sit on a sack of charcoal. At first, AAA tried to evade Arcosiba's kisses but the latter threatened her. Arcosiba then undressed AAA and

instructed her to lie down on the ground. He was about to rape AAA when he suddenly changed his mind. Instead, he told AAA to proceed to the back of the house. AAA resisted, but Arcosiba dragged her. As ordered, AAA proceeded to the back of the house while being followed by Arcosiba. AAA walked totally naked while Arcosiba had her dress on his face and held her shorts in his hand.

Upon reaching the back portion of the house, Arcosiba ordered AAA to lie down, to which she acceded. Arcosiba then took off his clothes and directed AAA to hold his penis. He ordered her to masturbate his penis. AAA tried to refuse, but Arcosiba threatened to shoot her. After a while, Arcosiba ordered her to stop. He then inserted his penis into her vagina. However, Arcosiba was not able to ejaculate because of the timely arrival of AAA's neighbors who were called by BBB. Arcosiba then tried to bring AAA to the nearby river. AAA resisted but Arcosiba threatened her, saying, "Hurry because if you will not go with me I will kill you."

While on their way to the river, a neighbor saw them and shouted at Arcosiba, prompting the latter to release AAA and flee. AAA, on the other hand, ran towards the house of her neighbor. They reported the incident the following day and she underwent a medical check-up.[10]

The medical certificate issued by Dr. Maribeth R. Aguilar who physically examined AAA on March 22, 2004, showed the following findings:

Findings:

= Upper & Lower Extremities = (-) abrasion/hematoma

= Head & Neck (-) abrasion/hematoma

= Breast

= Back

= Gluteal

area (-) abrasions/hematoma

= Abdomen

= Pelvic Exam :

Ext. [G]en[i]talia Normal

= Hymen = old healed lacerations on the [5 o'clock and 7 o'clock positions]

= erythema noted on the (R) labia m[i]nora lower 3[rd] &

(L) labia minora middle 3[rd]

S.E. Vaginal canal = no abrasion, no hematoma

Cervix = small, closed

I.E. PPE - I -nulliparous

C - closed, small

U - Small

A - (-) mass / tenderness

D - scanty whitish

Mgt. - Patient is for CVS = Result: No spermatozoa seen[11]

Arcosiba denied the charges against him and testified that on March 21, 2004, he was at the house of his live-in partner's parents together with his live-in partner, Analyn Mocorro, and the latter's nieces, Christine and Julita Mocorro. At about 3:00 p.m. of said day, he went to the crossing of Brgy. Lemon in order to engage in a drinking spree with his friend, Jun-Jun Pigar, a certain Molo, Edwin and Boy. At around 6:00 p.m., he went back to the house of his live-in partner's parents in order to eat some snacks, after which he went back to his friends and they resumed their drinking spree. The drinking spree went on until 9:00 p.m. Thereafter, he went back to the house of his live-in partner's parents, ate and slept thereat together with Analyn, Julita, his nephew and Analyn's mother. The following morning, he went to Calubian, Leyte, on an errand. He was arrested on his way to said place.[12]

After trial, the RTC rendered judgment convicting Arcosiba of the crime of rape under Articles 266-A[13] and 266-B[14] of the Revised Penal Code, as amended. The trial court gave credence to AAA's testimony. It ruled that no woman who is of tender age, would concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble, inconvenience not to mention the trauma of a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished. It also ruled that in light of the positive identification of the accused, his defense of denial and alibi cannot be sustained. The fallo of the decision reads,

WHEREFORE, premises considered, applying Article 266-A and 266-B of the Revised Penal Code as amended, and the amendatory provisions of R.A. 8353, (The Anti-Rape Law of 1997), in relation to Section 11 of R.A. 7659 (The Death Penalty Law), the Court found accused, ROLDAN ARCOSIBA GUILTY beyond reasonable doubt of the crime of RAPE charged under the information and sentenced [him to] suffer the maximum penalty of RECLUSION PERPETUA and to pay civil indemnity in the amount of Fifty Thousand (P50,000.00) Pesos and moral damages in the amount of Twenty[-]Five (P25,000.00) Thousand Pesos to the victim, [AAA]; and

Pay the Cost.

SO ORDERED.[15]

On appeal, the Court of Appeals upheld the trial court's ruling but modified the award of damages by including an award of exemplary damages. The decretal portion of the decision reads:

WHEREFORE, premises considered, the decision of the Regional Trial Court finding the accused, ROLDAN ARCOSIBA GUILTY beyond reasonable doubt of the crime of RAPE and [sentencing him to] suffer the maximum penalty of RECLUSION PERPETUA and to pay civil indemnity in the amount of Fifty Thousand (P50,000.00) Pesos, moral damages in the amount of Twenty[-]Five Thousand (P25,000.00) Pesos and pay the cost to [AAA] is AFFIRMED with MODIFICATION that the private complainant is also entitled to the award of exemplary damages in the amount of Twenty[-]Five Thousand [P]esos (P25,000.00).

SO ORDERED.[16]

The case is now before us for final disposition. In his brief, appellant faults the trial court, to wit:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

II.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCONSISTENT

STATEMENTS OF THE PROSECUTION WITNESSES.[17]

Simply, the issue before us is whether appellant's guilt has been proven beyond reasonable doubt.

In his brief, appellant assails the credibility of the victim. He claims that the victim's testimony is inconsistent.

For the State, the Office of the Solicitor General contends that the testimonies of the prosecution's witnesses, including that of the victim, are credible and worthy of faith and belief.

We affirm appellant's conviction.

This Court has held in the case of *People v. Baligod*[18] that rape is generally unwitnessed and oftentimes, the victim is left to testify for herself. Thus, in resolving rape cases, the victim's credibility becomes the primordial consideration. If a victim's testimony is straightforward, convincing and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility and the accused may be convicted solely on the basis thereof. To ensure that justice is meted out, extreme care and caution is required in weighing the conflicting testimonies of the complainant and the accused.[19]

During trial, AAA recalled the harrowing ordeal she had gone through as follows:

PROSECUTOR MERIN:

x x x x

Q

Do you know the person of Roldan Arcos[i]ba alias Intoy?

A

Yes, sir.

Q

Is he inside this courtroom now?

A

Yes, sir.

Q

Where is he?

A

Witness at this juncture is pointing to a person inside the courtroom who when asked of his name identified himself as Roldan Arcos[i]ba.

Q

Why do you know the accused in this case Roldan Arcosiba alias Intoy?

A

Because he is a resident in the brgy. where I [am also residing.]

x x x x

Q

On March 21, 2004 about 7:00 o'clock in the evening where were you?

A

I was in the house of my friend.

Q

Who is that friend who was with you at that time?

A

[BBB].

Q

After you were in the house of [BBB] where did you proceed[?]

A

We went to our house.

x x x x

Q

When you reached your house about 7:00 o'clock in the evening of March 21, 2004 was there any untoward incident that transpired thereat?

A

When we went to our house[,] our house was already opened.

x x x x

Q

When you were already inside your house what[,] if any[,] did you observe?

A

Our rice was missing.

x x x x

Q

And noticing the absence of that 1 sack [of] rice[,] what did you do next?

A

I looked for it because I was thinking that it might have been kept by my sister in the cabinet.

Q

Were you able to find it?

A

No, sir.

Q

What did you do when you were not able to find it?

A

We stayed inside the house and at that time that we were intending to go out I have seen this person (witness referring to the accused).

Q

Where was Roldan Arcos[i]ba when you were trying to go out of your house?

A

He was in our yard.

Q

Was your house lighted at that time?

A

Yes, sir.

x x x x

Q

Noticing the presence of Roldan Arcos[i]ba at your yard[,], what next transpired if any [please] tell the court?

A

We ran together with my friend to the kitchen.

x x x x

Q

You mean you went back inside your house and ran towards the kitchen?

A

Yes, sir.

Q

Is your house a one[-]storey house or a two-storey house?

A

One[-]storey house.

Q

Is that kitchen separated from the main house?

A

It is inside our house.

Q

When you both ran back to your house and proceeded to the kitchen what next transpired if any?

A

This person [of]Roldan Arcos[i]ba uttered words.

Q

What [were] his utterances?

A

He asked where my father was.

Q

When did he utter that[?] [While] you were still facing him or when you ran already?

A

We were still inside our house but not yet in the kitchen.

Q

How far was the accused when he uttered [his] posing query [as] to the whereabouts of your father?

A

From here to the DSWD Officer (Witness indicating a distance of about 4 meters).

Q

After he uttered such statement posing query to the whereabouts of your father what did you do?

A

I said he is not here and then he said come here first.

Q

To whom was he directing [the words "come here"]?

A

Me.

Q

What about [BBB] where was she?

A

Also in the kitchen.

Q

You mean you were separated from each other?

A

Yes, sir.

Q

When the accused directed such statement come here what did you do?

A

I drew near to him[,] but I was still inside our house near the [window].

x x x x

Q

When you drew near to him and stayed by the window what [happened next]?

A

He told me that my father owed him [a] big amount of money.

Q

And when he uttered that what did you say?

A

I said, ["that is not true"].

Q

When you made a retort to that statement that it is not true what [happened next]?

A

He said, "Your father owes a big amount of money and I am the one who is supporting your studies."

Q

What was your answer then?

A

Nothing and I just cried.

Q

After you cried[,] what next transpired[,] if any?

A

Then he said, ["Y]ou get out from that house and we have something to talk [about"].

Q

Did you comply [with] such statement?

A

Yes, sir.

Q

Did you go [out] alone?

A

Yes, sir.

x x x x

Q

When you go out did you go out alone or with the accused already?

Yes, sir.

Q

After you reached that yard where you first saw [the] accused what next transpired[,] if any?

A

He embraced me and kissed me and then he told me to sit down on a sack.

Q

What is [the] sack for?

A

Full of charcoal.

x x x x

Q

You said you were kissed to what portion of your body was kissed?

A

My lips.

Q

What did you do when [he kissed your lips]?

A

I refused.

Q

How did you show your refusal when you were kissed?

A

I was evading to be kissed.

Q

Were you kissed indeed?

A

Yes, sir.

Q

Why?

A

Because he said keep quiet if not I will kill you.

Q

When you were kissed how did [the] accused try to kiss you tell the Court?

A

He was standing and I was sitting.

Q

Where was his right hand?

A

He was holding my body.

Q

What portion of your body?

A

My left shoulder.

Q

How about his left hand where was it?

A

The same.

x x x x

Q

After he uttered threatening word[s] for you not to evade his kisses what did you do?

A

I did nothing but cry.

Q

Why? Why is it that you were not able to do anything but cry?

A

Because I was afraid.

Q

Why were you afraid?

A

Because he threatened me.

Q

How did he threaten you?

A

He said, "don't cry or I will shoot you."

x x x x

Q

After that statement for you to keep quiet what next thing did the accused do upon your person?

A

He undressed me.

Q

How did he undress you?

A

He took off my apparels and ordered me to lie down?

Q

What were you wearing?

A

[Striped T-shirt and shorts.]

Q

What was taken first by the accused, was it your upper apparel?

A

Short[s].

Q

Were you [wearing a] panty that time?

A

Yes, sir.

Q

After the short[s] was taken was it along with the panty?

A

Yes, sir.

Q

After he was successful in taking off your panty and your short[s] what next did the accused do?

A

He touched me.

Q

What do you mean he touched you?

A

He raped me.

Q

How about the upper apparel was it still intact with his body?

A

Yes, sir.

Q

You said you were made to lie down, to what place where you made to lie down?

A

Beside the sack.

Q

You mean on the ground?

A

Yes, sir.

x x x x

Q

After you [laid] down on the ground as commanded by the accused[,] what next did [the] accused do upon your person?

A

He was intending to rape me but he said let's do it at the back of your house.

Q

After he uttered such statement[,] what did you do?

A

I was resisting but he dragged me.

Q

How did he drag you?

A

He told me to stand up and then told me to go first to the back of my house.

Q

Did you not try to run away after he told you to go to the back of your house?

A

No[,] because he was situated on my back.

Q

You mean he was at your back?

A

Yes, sir.

Q

You mean he was following you?

A

Yes, sir.

Q

How far was the accused upon your person while you proceeded to the back of your house?

A

A meter distance.

Q

Was he holding your body?

A

No, sir.

Q

Were you still half naked that time?

A

I don't have anymore my dress because he placed it on his face.

Q

You mean he put it on his head?

A

My dress only.

Q

How about your short[s]?

A

He took it.

Q

You mean you were totally naked at that time?

A

Yes, I was naked.

Q

Were you able to reach the back of your house?

A

Yes, sir.

Q

To what portion [at] the back of your house did you go?

A

At the back of our comfort room.

Q

Is it near a kitchen?

A

Yes, sir.

Q

How about your companion [BBB] where was she?

A

She ran to her house and had told what happened.

Q

In what period of time when [BBB] ran to her house, was it on the time when you were on your way of going out to your house?

A

When we were already at the back of our house.

Q

You mean at the back of your comfort room?

A

Yes, sir.

Q

After you were at the back of your comfort room what [happened next] if any tell the Court?

A

He told me to lie down and he took off his [shorts].

Q

Did you lie down as instructed?

A

Yes, sir.

Q

Why did you lie down?

A

Because I was ordered.

Q

Why did you not try to run?

A

No, sir.

Q

Why did you not try to run away?

A

Because I was afraid.

Q

Afraid of what?

A

Because he might shoot me.

x x x x

Q

After he was already naked what transpired next[,] if any?

A

He took off his briefs and he let me hold his penis.

Q

While you were already on a lying position.

A

Yes, sir.

Q

Did you hold his penis?

A

I was refusing then but he threatened me.

Q

Threatened you how?

A

The same saying.

Q

What is that?

A

That he will shoot me.

Q

Did you hold his penis?

A

Yes, sir.

Q

What hand was used by you in holding his penis?

A

The two hands.

Q

And what did you do when you [held] his penis with your two hands?

A

He told me to masturbate.

Q

Did you masturbate?

A

Yes, sir.

Q

For how long?

A

It did not take long.

Q

What happened to the penis when you masturbated that?

A

He told me to stop and then he inserted it to my vagina.

Q

What was your relative position when he inserted his penis?

A

Lying.

Q

How did you feel when the penis was inserted to your vagina?

A

Pain.

Q

Did you not try to evade the insertion of his penis to your vagina?

A

I did not.

Q

After the penis was inserted to your vagina was the accused able to ejaculate?

A

No, sir.

Q

Why?

A

It did not take long because a person arrived.

Q

[Who is that person?]

A

Kuya Bombom.

Q

Who is he?

A

My neighbor.

Q

When your neighbor Kuya Bombom arrived what did the accused do?

A

He immediately stood up and he intended to bring me to the river.

Q

Did you go along with the accused?

A

I was refusing.

Q

Because you refused, what did the accused do?

A

He said, "Hurry because if you will not go with me I will kill you." [20]

There appears nothing inconsistent with AAA's testimony. Despite being merely 14 years old she subjected herself to the glare of public prosecution for rape, positively identified appellant as her rapist and candidly revealed the ugly details of the deplorable violation of her person. Her testimony appears straightforward and clear. It is thus correct that both the trial and appellate courts gave credence to her testimony and they both regarded her as a credible witness. Absent any showing that the lower courts had overlooked certain facts of substance and value which, if considered might affect the result of the case, we find no basis to doubt or dispute, much less overturn, the findings of credibility by both courts.

Compared to the evidence presented by the prosecution consisting notably of the positive identification of the appellant not only by AAA herself but by two other witnesses, the appellant's defense of denial is inherently weak and dubious. As often stressed, a mere denial constitutes negative evidence and warrants the least credibility or none at all absent any strong evidence of non-culpability. It cannot prevail over the positive and credible declarations of the victim and her witnesses testifying on affirmative matters.

As to the award of damages, both courts are consistent with the prevailing jurisprudence on simple rape and correctly imposed P50,000 as civil indemnity. Conformably too, the Court of Appeals correctly modified the award by including an award for exemplary damages in the amount of P25,000 in conformity with Article 2230 of the Civil Code which provides that in criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances which in this case is AAA's minority.

WHEREFORE, the Decision dated May 9, 2007 of the Court of Appeals in CA-GR CEB-CR.-H.C. No. 00094 is AFFIRMED. This Court finds appellant Roldan Arcosiba guilty beyond reasonable doubt of the crime of rape and

sentences him to suffer the penalty of reclusion perpetua and to indemnify the victim the sums of P50,000 as civil indemnity, P50,000 as moral damages, and P25,000 as exemplary damages. Costs against accused-appellant.

SO ORDERED.

Carpio Morales, Brion, Del Castillo, and Abad, JJ., concur.

[1] Rollo, pp. 3-16. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Antonio L. Villamor concurring.

[2] CA rollo, pp. 50-63. Penned by Presiding Judge Crisostomo L. Garrido.

[3] AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES, approved on September 30, 1996.

[4] SEC. 11. Article 335 of the same Code is hereby amended to read as follows:

"Art. 335. When and how rape is committed.-- Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

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

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

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

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

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

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.
2. when the victim is under the custody of the police or military authorities.
3. when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
4. when the victim is a religious or a child below seven (7) years old.
5. when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

6. when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

7. when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

[5] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES, approved on December 13, 1993.

[6] Records, p. 1.

[7] The real name of the victim is withheld; see *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426.

[8] Records, p. 15.

[9] *Id.* at 30.

[10] Rollo, pp. 5-6.

[11] Exhibit "A-1," folder of exhibits.

[12] Rollo, pp. 7-8.

[13] ART. 266-A. Rape, When and How Committed.â€- Rape is committed â€-

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

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

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

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

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

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

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

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

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

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

1. When the victim is under eighteen (18) years of age, and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.
2. When the victim is under the custody of the police or military authorities or any law enforcement or penal institution.
3. When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity.
4. When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime.
5. When the victim is a child below seven (7) years old.
6. When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV) / Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim.
7. When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime.
8. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability.
9. When the offender knew of the pregnancy of the offended party at the time of the commission of the crime.
10. When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

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

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

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

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

Reclusion temporal shall also be imposed if the rape is committed by any of the ten aggravating/qualifying circumstances mentioned in this article.

[15] CA rollo, p. 63.

[16] *Id.* at 132.

[17] *Id.* at 34.

[18] G.R. No. 172115, August 6, 2008.

[19] *Id.* at 5.

[20] TSN, July 21, 2004, pp. 3-20.

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