

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DEMETRIO SALAZAR, ACCUSED-APPELLANT.

G.R. No. 181900. October 20, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal from the June 8, 2007 Decision[1] of the Court of Appeals (Cebu City) in CA-G.R. CR-H.C. No. 00553 entitled *People of the Philippines v. Demetrio Salazar*, which affirmed with modification the conviction of accused-appellant Demetrio Salazar in Criminal Case Nos. A-1620 and A-1621 for two (2) counts of Statutory Rape.

The Facts

On September 6, 1999, two Informations were filed before the RTC charging accused-appellant with two (2) counts of statutory rape. It was alleged that accused-appellant, on two (2) separate occasions, had raped a 12-year-old girl, AAA.[2] The first Information reads:

That on or about the 18[th] day of May, 1999, at about 10:00 o' clock in the evening more or less at [XXX], Municipality of Lavezares, Province of Northern Samar, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, who is still at large, with abuse of confidence being his step father, entered the bedroom where [AAA] was sleeping, with lewd designs, did, then and there, willfully, unlawfully and feloniously, cover her mouth and by means of force and intimidation, and taking advantage of his superior strength, undressed her, took off her shorts and panty, place on top of her and have sexual intercourse with one [AAA], who is a minor, 12 years of age, all against the will of the latter.

CONTRARY TO LAW.[3]

While the second Information states:

That on or about the 25[th] day of June, 1999, at about 12:00 o' clock midnight more or less at [XXX], Municipality of Lavezares, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is still at large, with abuse of confidence being his step father, entered the bedroom where [AAA] was sleeping, with lewd designs, did, then and there, willfully, unlawfully and feloniously, cover her mouth and by means of force and intimidation, and taking advantage of his superior strength, undressed her, took off her shorts and panty, placed on top of her and have sexual intercourse with one [AAA], who is a minor, 12 years of age, all against the will of the latter.

CONTRARY TO LAW.[4]

On December 6, 1999, in his arraignment, accused-appellant pleaded not guilty. On December 13, 1999, pre-trial of the case was terminated. Accused-appellant escaped from detention until he was caught, and the hearing of the case began on July 27, 2000.[5]

Meanwhile, on February 22, 2000, AAA purportedly executed an Affidavit of Desistance wherein she stated that she was not raped by accused-appellant and that she no longer intends to pursue the cases filed against accused-appellant. During the hearing, she explained that her own mother forced her to execute the affidavit upon threat of harm.[6]

The prosecution established that AAA is the daughter of BBB with whom accused-appellant was cohabiting. AAA, BBB, and accused-appellant all lived in the same one-room house located in XXX, Lavezares, Northern Samar. AAA's biological father, CCC, was serving time at the Bureau of Corrections in Muntinlupa when the incidents occurred.[7]

The first rape occurred at about 10:00 in the evening of May 18, 1999. At the time, AAA was only twelve (12) years old. While BBB was out gambling, AAA who was then sleeping in their house was awakened by accused-appellant who had been drinking. He placed his hand over her mouth, removed her panty, and inserted his penis inside her vagina. AAA felt pain in her vagina and tried to scream but was stifled by accused-appellant's hand over her mouth. She cried instead. Afterwards, accused-appellant stood up and returned to where he was previously sleeping.[8]

When her mother had arrived, AAA told her about the rape. BBB, however, did not believe her and simply dismissed her claims.[9]

On June 25, 1999, at around midnight, accused-appellant again raped AAA. Accused-appellant first slapped her. He then placed a handkerchief inside her mouth, spread her arms, and inserted his penis inside her vagina while kissing her right cheek. After the act, accused-appellant stood up, drank coffee, and proceeded to go to sleep. AAA again told the incident to her mother, who had arrived from another bout of gambling. BBB confronted accused-appellant. After a short argument, BBB again dismissed her daughter's claims.[10]

Later, AAA informed her aunt, DDD, about the second rape. Her aunt brought her to the police station to report the incident. She was later examined by the Municipal Health Officer of Lavezares, Northern Samar.[11]

For his part, accused-appellant interposed the defense of alibi, claiming that on the date of the alleged first rape, he was at his farm at Sitio Napunod, Barangay Caburihan, Lavezares, Northern Samar, making copra. He claimed that the farm is six (6) kilometers away and could only be negotiated by hiking for one (1) hour. He further claimed that he was at the farm from May 15, 1999 to May 23, 1999.[12]

As to the second alleged rape, accused-appellant alleged that while he was at their house in XXX, AAA was not there. He claimed that AAA and her brother, EEE, asked permission from, and was allowed by, their mother BBB to watch a show at the town proper of Lavezares in the evening of June 25, 1999. AAA and EEE allegedly returned home at 7:00 of the following morning.[13]

At the hearing of the case, the prosecution presented, among others, DDD, as a witness. DDD testified that AAA is her niece. She also presented a Certificate of Baptism wherein it is stated that AAA was born on April 10, 1987.[14]

Dr. Ethel Parane Simeon, the Municipal Health Officer of Lavezares, was also presented as a witness for the prosecution. She testified that she conducted a medical examination of AAA on June 28, 1999. She also identified the Medico-Legal Certificate containing her findings on such medical examination. In the certificate she found hematomas on the labia majora and labia minora of AAA. She also found lacerations at the 3, 6, and 11 o'clock positions in AAA's vagina. She concluded that AAA was raped.[15]

The defense's sole witness was accused-appellant, who alleged that the relatives of the victim's father, CCC, did

not approve of his relationship with BBB. CCC's relatives wanted to take custody of AAA. Accused-appellant claimed that the instant cases were instituted to wrest custody of AAA from BBB and himself.[16]

Thereafter, the RTC issued its Decision dated July 7, 2003, the dispositive portion of which reads:

WHEREFORE, in the light of the prevailing considerations, the court hereby sentences Demetrio Salazar GUILTY beyond reasonable doubt of the two (2) counts of Statutory Rape as defined and penalized by Article 335 of the Revised Penal Code and amended by Republic Act No. 7659 and sentences him to the supreme penalty of DEATH by lethal injection. And indemnity is hereby imposed in the amount of Seventy Five Thousand Pesos (Php 75,000.00); moral and exemplary damages are awarded in the amount of Fifty Thousand Pesos (Php 50,000.00).

Let the records of the entire cases together with the transcript of stenographic notes be forwarded to the Honorable Supreme Court for automatic review.

SO ORDERED.[17]

The records of the case were then transferred to this Court for automatic review. The parties were directed by the Court to submit their respective briefs. However, in a Resolution dated June 7, 2005,[18] the Court transferred the case to the CA by virtue of its ruling in *People v. Mateo*[19] providing for intermediate review by the CA of cases where the penalty imposed by the trial court is death, reclusion perpetua, or life imprisonment.

Thereafter, the CA issued the assailed decision, the dispositive portion of which provides:

WHEREFORE, premises considered, this appeal is DENIED. The Decision dated 07 July 2003 of the Regional Trial Court, 5[th] Judicial Region, Branch 23, Allen, Northern Samar, is AFFIRMED with MODIFICATION that the death penalty imposed on appellant is reduced to reclusion perpetua; appellant is sentenced to suffer the penalty of reclusion perpetua for each count of rape; appellant is likewise ordered to pay the complainant in Criminal Case No. A-1620 the amounts of Fifty Thousand Pesos (P50,000.00) as moral damages, and Fifty Thousand Pesos (P50,000.00) as civil indemnity; and in Criminal Case No. A-1621 the amounts of Fifty Thousand Pesos (P50,000.00) as moral damages, and Fifty Thousand Pesos (P50,000.00) as civil indemnity.

SO ORDERED.[20]

The CA found accused-appellant guilty of two (2) counts of simple rape instead of statutory rape. The CA reasoned that the prosecution failed to adduce evidence to establish that the rape victim was twelve (12) years old at the time of the crimes. Further, the CA stated that a baptismal certificate is not sufficient proof of the age of a person. Thus, the victim's age was not established.[21] The CA then modified the penalty imposed upon accused-appellant³⁴ from death penalty to reclusion perpetua.

Hence, we have this appeal.

The Issues

Accused-appellant, in a Manifestation (In Lieu of Supplemental Brief) dated June 24, 2008,[22] replays and adopts all the defenses and arguments raised in his Brief for the Accused-Appellant dated August 6, 2004,[23] to wit:

ASSIGNMENT OF ERRORS

I.

The Trial Court gravely erred in giving full faith and credence to the testimony of the prosecution witness x x x and in totally ignoring/disregarding the version of the defense.

II.

The Trial Court gravely erred in convicting him of the crime charged despite the fact that his guilt was not proven beyond reasonable doubt.

The Ruling of the Court

The appeal is bereft of merit.

First Issue:

The victim's Affidavit of Desistance cannot be given any weight

Accused-appellant claims that the instant case should have been dismissed by the trial court, considering that AAA had executed an affidavit of desistance exonerating accused-appellant from the crimes charged. The CA, however, did not give any weight to such affidavit on the following reasoning:

The affidavit of desistance relied upon by appellant could not be given any probative weight considering that it was not duly sworn to. Further, when private complainant was confronted about it, she testified that her mother threatened to kill her should she refuse to execute the affidavit.[24]

In any event, AAA's purported Affidavit of Desistance cannot cause the dismissal of the case. It must be pointed out that the alleged affidavit was executed after the case had already been instituted. Thus, the Court already had acquired jurisdiction over the case and control over the proceedings. As the Court ruled in *People v. Montes*: [25]

As admitted by appellant, the alleged Affidavit of Desistance of the victim was never identified by her, but submitted in court only after the institution of the rape cases. Such being the case, the Affidavit -- even when construed as a pardon in the erstwhile "private crime" of rape -- is not a ground for the dismissal of the criminal cases, since the actions have already been instituted. To justify the dismissal of the Complaints, the pardon should have been made prior to the institution of the criminal actions. (Emphasis supplied.)

In *People v. Ramirez, Jr.*, [26] the Court was even more circumspect:

As a rule, a recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable.

Indeed, the Affidavit of Desistance of private complainant is highly suspect. Apparently, she executed it on the basis of a consideration of P5,000, which was later increased to P100,000. After her testimony had been rendered, however, appellant refused to pay the amount agreed upon, thereby prompting her to recant the Affidavit.

She had stated therein that "the accused is indeed innocent of the crimes charge[d] since in truth, he never molested me sexually as charged." Such statement was a mere legal conclusion, bereft of any details or other indicia of credibility, much less truth. More likely, it emanated not from this young girl's mouth, but from a trained legal mind. Moreover, while she affirmed her Affidavit on the stand, she also declared, on clarificatory question from the judge, that she was 14 years old when she was molested and raped by appellant. These facts raise doubts as to the reliability of her statements in her Affidavit.

At this point, we reiterate that, by itself, an affidavit of desistance or pardon is not a ground for the dismissal of an action, once it has been instituted in court. In the present case, private complainant lost the right or absolute privilege to decide whether the rape charge should proceed, because the case had already reached and must therefore continue to be heard by the court a quo. (Emphasis supplied.)

Applying *People v. Ramirez, Jr.* to the instant case, we find that accused-appellant's contention³⁴ that AAA's

Affidavit of Desistance merits the dismissal of the case³⁴has no basis.

Second Issue:

AAA's testimony should be given full weight and credence

Next, accused-appellant questions the trial court's reliance on the testimony of AAA. Citing *People v. Domogoy*,^[27] accused-appellant posits that AAA's testimony must be received with caution.

It must be stressed, however, that the victim in *People v. Domogoy* was twenty-one (21) years old. Here, the contention is that AAA was only twelve (12) years old at the time that she was raped. This difference is pivotal in light of our ruling in *People v. Montes*:^[28]

In a litany of cases, this Court has ruled that the testimonies of child-victims of rape are to be given full weight and credence. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape, if what she claims is not true. Her candid narration of how she was raped bears the earmarks of credibility, especially if no ill will -- as in this case -- motivates her to testify falsely against the accused. It is well-settled that when a woman, more so when she is a minor, says she has been raped, she says in effect all that is required to prove the ravishment. The accused may thus be convicted solely on her testimony -- provided it is credible, natural, convincing and consistent with human nature and the normal course of things.

While in the more recent *People v. Basmayor*,^[29] the Court ruled:

This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being the subject of 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 generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.

Clearly, the trial court correctly gave great weight to the testimony of AAA.

Moreover, given the fact that the CA upheld the findings of the trial court on the factual issues of the case, the Court is bound by the trial court's assessment of the witnesses, as the Court held in *People v. Ducabo*:^[30]

It is well-entrenched that the findings of the trial court on the credibility of a witness deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. We have recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies, because of their unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals. Thus, except for compelling reasons, we are doctrinally bound by the trial court's assessment of the credibility of witnesses. (Emphasis supplied.)

Third Issue:

Accused-appellant is guilty of simple rape

The relevant portions of Article 266-A of the Revised Penal Code define the crime of rape, as follows:

Chapter Three

Rape

Article 266-A. Rape: When And How Committed.³⁴Rape is committed:

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 otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- 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. (Emphasis supplied.)

In order for the accused to be found guilty of the crime of statutory rape in this jurisdiction, the Court held in *People v. Tamos*[31] that two (2) elements must concur: (1) that the offender had carnal knowledge of the victim; and (2) that the victim is below twelve (12) years old, thus:

The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age. Article 335 of the Revised Penal Code is now in Article 266-A, par. 1-d, in view of the amendments introduced by R.A. 8353. Statutory rape is committed by having carnal knowledge of a woman under par. d, "when the offended party is under 12 years of age."

Here, while it is undisputed that the first element is present, accused-appellant questions the presence of the second. Conformably, the CA ruled that indeed the fact that the victim was twelve (12) years old at the time of the commission of the crimes was not sufficiently established.[32] However, contrary to such finding of the CA, this Court has ruled in *People v. Ramos*[33] that in statutory rape cases, a baptismal certificate is sufficient to prove the age of the victim.

Thus, without a doubt, the baptismal certificate of AAA that was presented during the trial of the case coupled with the testimony of DDD, the aunt of AAA, sufficiently established that the victim was twelve years old at the time the crimes were committed. Having been born on April 10, 1987, when the first rape occurred on May 18, 1999, AAA was exactly 12 years, one month, and 8 days old at the first rape incident.

Considering, however, that AAA was already 12 years old when she was raped, the second element for statutory rape that "that the victim is below twelve (12) years old" is not present. Consequently, the finding of the appellate court for simple rape is correct, not on the ground of the age of AAA not being proved, but on the fact that she was no longer below 12 years of age at the time the crime was committed.

Fourth Issue:

Reclusion Perpetua is the proper penalty

The crime of simple rape having been established, the next question is what penalty should be imposed upon accused-appellant.

At the time the crimes were committed by accused-appellant, the penalty for the crime of simple rape was contained in Art. 266-B of the Revised Penal Code:

Article 266-B. Penalty.³⁴Rape 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 become reclusion perpetua to death.

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

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

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

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x. (Emphasis supplied.)

Thus, simple rape, when qualified by the circumstance that the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim, would be properly punishable with the death penalty. Otherwise put, when the two circumstances of minority and relationship concur, then the proper imposable penalty shall be death--now qualified by Republic Act No. 9346.[34]

In the instant case, aside from minority of the victim it was alleged in the informations filed before the trial court that accused-appellant is the victim's stepfather. Minority of AAA and her relation to accused-appellant was the qualifying circumstance that the trial court considered in imposing the penalty of death on accused-appellant. However, in order to become the victim's stepfather, accused-appellant must necessarily have been legally married to AAA's mother. This was not the case. No evidence was adduced during the trial to establish that AAA's mother and accused-appellant were ever legally married. Moreover, although the fact that accused-appellant was the common-law husband of the victim's mother, such circumstance cannot be appreciated, although proved during the trial, as it was not alleged in the informations and would thereby violate the constitutional right of accused-appellant to be informed of the charges against him. Thus, we held in *People v. Negosa*:[35]

We agree with the appellant's contention that he is guilty only of simple statutory rape and not of rape in its qualified form under Article 335, paragraph 3 of the Revised Penal Code, as amended. The prosecution was burdened to prove the allegation in the Information that the appellant was the stepfather of the victim. However, the prosecution failed to prove the same. The evidence on record shows that the appellant was merely the common-law husband of the victim's mother. This special qualifying circumstance, that the appellant was the common-law husband of the mother of the victim, was not alleged in the Information. Even if such special qualifying circumstance was proved, it cannot be appreciated against the appellant in order to qualify the crime; otherwise, the appellant would be deprived of his right to be informed of the charge lodged against him. This was the ruling of the Court in *People vs. Lizada*, thus:

We agree with the accused-appellant that he is guilty only of two counts of simple rape, instead of qualified rape. The evidence on record shows that the accused-appellant is the common-law husband of x x x, the mother of the private complainant. The private complainant, as of October 1998, was still 13 years old, and under Article 335 as amended by Republic Act 7659, the minority of the private complainant, concurring with the fact that the accused-appellant is the common-law husband of the victim's mother, is a special qualifying circumstance warranting the imposition of the death penalty. However, the said circumstance was not alleged in the Informations as required by Section 8, Rule 110 of the Revised Rules on Criminal Procedure which was given retroactive effect by this Court because it is favorable to the accused. Hence, even if the prosecution proved the special qualifying circumstance of minority of the private complainant and relationship, the accused-appellant being the common-law husband of her mother, accused-appellant is guilty only of simple rape. Under the given law, the penalty for simple rape is reclusion perpetua. (Emphasis supplied.)

Consequently, the CA imposed the correct penalty of reclusion perpetua against accused-appellant as provided

under Art. 266-B in relation to Art. 266-A, paragraph (a) of the Revised Penal Code, there being no qualifying circumstances.

In line with prevailing jurisprudence, exemplary damages of PhP 30,000 in each case shall be awarded to AAA.[36]

WHEREFORE, the appeal is DENIED. The June 8, 2007 CA Decision in CA-G.R. CR-H.C. No. 00553 is hereby AFFIRMED, with the MODIFICATION that accused-appellant is found guilty of two (2) counts of simple rape, and is ordered to pay the offended party, AAA, PhP 30,000 as exemplary damages for each count of rape, in addition to the award of PhP 50,000 as civil indemnity and PhP 50,000 as moral damages, also for each count of rape.

No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 3-17. Penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Isaias P. Dicdican and Stephen C. Cruz.

[2] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] CA rollo, p. 11.

[4] Id. at 12.

[5] Id. at 23.

[6] Rollo, p. 14.

[7] Id. at 6.

[8] CA rollo, p. 24.

[9] Rollo, p. 6.

[10] CA rollo, p. 25.

[11] Id.

[12] Id. at 29.

[13] Id.

[14] Id. at 26.

[15] Id. at 25-26.

[16] Id. at 29.

[17] Id. at 34.

[18] Id. at 135.

[19] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

[20] Rollo, p. 16.

[21] Id. at 15.

[22] CA rollo, pp. 30-31.

[23] Id. at 55-76.

[24] Rollo, p. 14.

[25] G.R. Nos. 148743-45, November 18, 2003, 416 SCRA 103, 121.

[26] G.R. Nos. 150079-80, June 10, 2004, 431 SCRA 666, 676.

[27] G.R. No. 116738, March 22, 1999, 305 SCRA 75.

[28] Supra note 25, at 116.

[29] G.R. No. 182791, February 10, 2009, 578 SCRA 369, 383.

[30] G.R. No. 175594, September 28, 2007, 534 SCRA 458, 467.

[31] G.R. No. 142740, August 6, 2003, 408 SCRA 403, 410.

[32] Rollo, pp. 14-15.

[33] G.R. No. 179030, June 12, 2008, 554 SCRA 423, 430-431.

The Court held thus:

The age of the victim is an essential element of statutory rape; thus, it must be proved by clear and convincing evidence.

In *People v. Pruna*, the Court laid down the following guidelines in determining the age of the victim:

- The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
- In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
- If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
 - a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

- In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

- It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

- The trial court should always make a categorical finding as to the age of the victim. (Emphasis supplied.)

[34] However, by virtue of Republic Act No. (RA) 9346 entitled An Act Prohibiting the Imposition of the Death Penalty in the Philippines, which took effect on June 24, 2006, the penalty of reclusion perpetua should now be imposed in lieu of the death penalty, and the offender is not entitled to parole under RA 4180 or the Indeterminate Sentence Law.

[35] G.R. Nos. 142856-57, August 25, 2003, 409 SCRA 539, 552-553.

[36] See *People v. Lindo*, G.R. No. 189818, August 9, 2010; *People v. Garbida*, G.R. No. 188569, July 13, 2010.

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