

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERMIE M. JACINTO, ACCUSED-APPELLANT.

G.R. No. 182239. March 16, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

Once again, we recite the time-honored principle that the defense of alibi cannot prevail over the victim's positive identification of the accused as the perpetrator of the crime.[1] For it to prosper, the court must be convinced that there was physical impossibility on the part of the accused to have been at the locus criminis at the time of the commission of the crime.[2]

Nevertheless, a child in conflict with the law, whose judgment of conviction has become final and executory only after his disqualification from availing of the benefits of suspended sentence on the ground that he/she has exceeded the age limit of twenty-one (21) years, shall still be entitled to the right to restoration, rehabilitation, and reintegration in accordance with Republic Act No. 9344, otherwise known as "An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council under the Department of Justice, Appropriating Funds Therefor and for Other Purposes."

Convicted for the rape of five-year-old AAA,[3] appellant Hermie M. Jacinto seeks before this Court the reversal of the judgment of his conviction.[4]

The Facts

In an Information dated 20 March 2003[5] filed with the Regional Trial Court and docketed as Criminal Case No. 1679-13-141[1],[6] appellant was accused of the crime of RAPE allegedly committed as follows:

That on or about the 28th day of January, 2003 at about 7:00 o'clock in the evening more or less, at barangay xxx, municipality of xxx, province of xxx and within the jurisdiction of this Honorable Court, [Hermie M. Jacinto], with lewd design did then and there willfully, unlawfully and feloniously had carnal knowledge with one AAA, a five-year old minor child.

CONTRARY TO LAW, with the qualifying/aggravating circumstance of minority, the victim being only five years old.[7]

On 15 July 2003, appellant entered a plea of not guilty.[8] During pre-trial,[9] the defense admitted the existence of the following documents: (1) birth certificate of AAA, showing that she was born on 3 December 1997; (2) police blotter entry on the rape incident; and (3) medical certificate, upon presentation of the original or upon identification thereof by the physician.

Trial ensued with the prosecution and the defense presenting witnesses to prove their respective versions of the story.

Evidence for the Prosecution

The testimonies of AAA,[10] her father FFF,[11] and rebuttal witness Julito Apiki [Julito][12] may be summarized in the following manner:

FFF and appellant have been neighbors since they were born. FFF's house is along the road. That of appellant lies at the back approximately 80 meters from FFF. To access the road, appellant has to pass by FFF's house, the frequency of which the latter describes to be "every minute [and] every hour." Also, appellant often visits FFF because they were close friends. He bore no grudge against appellant prior to the incident.[13]

AAA likewise knows appellant well. She usually calls him kuya. She sees him all the time - playing at the basketball court near her house, fetching water, and passing by her house on his way to the road. She and appellant used to be friends until the incident.[14]

At about past 6 o'clock in the evening of 28 January 2003, FFF sent his eight-year-old daughter CCC to the store of Rudy Hatague to buy cigarettes. AAA followed CCC. When CCC returned without AAA, FFF was not alarmed. He thought she was watching television at the house of her aunt Rita Lingcay [Rita].[15]

Julito went to the same store at around 6:20 in the evening to buy a bottle of Tanduay Rum.[16] At the store, he saw appellant place AAA on his lap.[17] He was wearing sleeveless shirt and a pair of short pants.[18] All of them left the store at the same time.[19] Julito proceeded to the house of Rita to watch television, while appellant, who held the hand of AAA, went towards the direction of the "lower area or place." [20]

AAA recalled that appellant was wearing a chaleko (sando) and a pair of short pants[21] when he held her hand while on the road near the store.[22] They walked towards the rice field near the house of spouses Alejandro and Gloria Perocho [the Perochos].[23] There he made her lie down on harrowed ground, removed her panty and boxed her on the chest.[24] Already half-naked from waist down,[25] he mounted her, and, while her legs were pushed apart, pushed his penis into her vagina and made a push and pull movement.[26] She felt pain and cried.[27] Afterwards, appellant left and proceeded to the Perochos.[28] She, in turn, went straight home crying.[29]

FFF heard AAA crying and calling his name from downstairs.[30] She was without slippers.[31] He found her face greasy.[32] There was mud on her head and blood was oozing from the back of her head.[33] He checked for any injury and found on her neck a contusion that was already turning black.[34] She had no underwear on and he saw white substance and mud on her vagina.[35] AAA told him that appellant brought her from the store[36] to the grassy area at the back of the house of the Perochos;[37] that he threw away her pair of slippers, removed her panty, choked her and boxed her breast;[38] and that he proceeded thereafter to the Perochos.[39]

True enough, FFF found appellant at the house of the Perochos.[40] He asked the appellant what he did to AAA.[41] Appellant replied that he was asked to buy rum at the store and that AAA followed him.[42] FFF went home to check on his daughter,[43] after which, he went back to appellant, asked again,[44] and boxed him.[45]

Meanwhile, at around 7:45 in the evening of even date, Julito was still watching television at the house of Rita.[46] AAA and her mother MMM arrived.[47] AAA was crying.[48] Julito pitied her, embraced her, and asked what happened to her, to which she replied that appellant raped her.[49] Julito left and found appellant at the Perochos.[50] Julito asked appellant, "Bads, did you really rape the child, the daughter of [MMM]?" but the latter ignored his question.[51] Appellant's aunt, Gloria, told appellant that the policemen were coming to which the appellant responded, "Wait a minute because I will wash the dirt of my elbow (sic) and my knees." [52] Julito did find the elbows and knees of appellant with dirt.[53]

On that same evening, FFF and AAA proceeded to the police station to have the incident blotted.[54] FFF also had AAA undergo a physical check up at the municipal health center.[55] Dr. Bernardita M. Gaspar, M.D., Rural

Health Physician, issued a medical certificate[56] dated 29 January 2003. It reads:

Injuries seen are as follows:

1. Multiple abrasions with erythema along the neck area.
2. Petechial hemorrhages on both per-orbital areas.
3. Hematoma over the left upper arm, lateral area
4. Hematoma over the upper anterior chest wall, midclavicular line
5. Abrasion over the posterior trunk, paravertebral area
6. Genital and peri-anal area soiled with debris and whitish mucoid-like material
7. Introitus is erythematous with minimal bleeding
8. Hymenal lacerations at the 5 o'clock and 9 o'clock position

Impression

MULTIPLE SOFT TISSUE INJURIES

HYMENAL LACERATIONS

Upon the recommendation of Dr. Gaspar,[57] AAA submitted herself to another examination at the provincial hospital on the following day. Dr. Christine Ruth B. Micabalo, Medical Officer III of the provincial hospital, attended to her and issued a medico-legal certificate dated 29 January 2003,[58] the pertinent portion of which reads:

P.E. = Findings is consistent with Dr. Bernardita M. Gaspar findings except No. 6 and 7 there is no bleeding in this time of examination. (sic)[59]

Evidence for the Defense

Interposing the defense of alibi, appellant gave a different version of the story. To corroborate his testimony, Luzvilla Balucan [Luzvilla] and his aunt Gloria took the witness stand to affirm that he was at the Perochos at the time of the commission of the crime.[60] Luzvilla even went further to state that she actually saw Julito, not appellant, pick up AAA on the road.[61] In addition, Antonia Perocho [Antonia], sister-in-law of appellant's aunt, Gloria,[62] testified on the behavior of Julito after the rape incident was revealed.[63]

Appellant claimed that he lives with his aunt, not with his parents whose house stands at the back of FFF's house.[64] He denied that there was a need to pass by the house of FFF in order to access the road or to fetch water.[65] He, however, admitted that he occasionally worked for FFF,[66] and whenever he was asked to buy something from the store, AAA always approached him.[67]

At about 8 o'clock in the morning of 28 January 2003, appellant went to the Perochos to attend a birthday party. At 6:08 in the evening, while the visitors, including appellant and his uncle Alejandro Perocho [Alejandro], were gathered together in a drinking session, appellant's uncle sent him to the store to buy Tanduay Rum. Since the store is only about 20 meters from the house, he was able to return after three (3) minutes. He was certain of the time because he had a watch .[68]

Appellant's aunt, Gloria, the lady of the house, confirmed that he was in her house attending the birthday party; and that appellant went out between 6 and 7 in the evening to buy a bottle of Tanduay from the store. She recalled that appellant was back around five (5) minutes later. She also observed that appellant's white shorts and white sleeveless shirt were clean.[69]

At 6:30 in the evening,[70] Luzvilla, who was also at the party, saw appellant at the kitchen having a drink with his uncle Alejandro and the rest of the visitors.[71] She went out to relieve herself at the side of the tree beside the

road next to the house of the Perochos.[72] From where she was, she saw Julito, who was wearing black short pants and black T-shirt, carry AAA.[73] AAA's face was covered and she was wiggling.[74] This did not alarm her because she thought it was just a game.[75] Meanwhile, appellant was still in the kitchen when she returned.[76] Around three (3) minutes later, Luzvilla saw Julito, now in a white T-shirt,[77] running towards the house of Rita.[78] AAA was slowly following behind.[79] Luzvilla followed them.[80] Just outside the house, Julito embraced AAA and asked what the appellant did to her.[81] The child did not answer.[82]

Luzvilla also followed FFF to the Perochos. She witnessed the punching incident and testified that appellant was twice boxed by FFF. According to her, FFF tapped the left shoulder of the appellant, boxed him, and left. FFF came in the second time and again boxed appellant. This time, he had a bolo pointed at appellant. Appellant's uncle Alejandro, a barangay councilor, and another Civilian Voluntary Organization (CVO) member admonished FFF.[83]

On sur-rebuttal, Antonia testified that, at 7 o'clock in the evening, she was watching the television along with other people at the house of Rita. Around 7:10, Julito, who was wearing only a pair of black short pants without a shirt on, entered the house drunk. He paced back and forth. After 10 minutes, AAA came in crying. Julito tightly embraced AAA and asked her what happened. AAA did not answer. Upon Antonia's advice, Julito released her and went out of the house.[84]

Appellant further testified that at past 7 o'clock in the evening, FFF arrived, pointed a finger at him, brandished a bolo, and accused him of molesting AAA. FFF left but returned at around 8 o'clock in the evening. This time, he boxed appellant and asked again why he molested his daughter.[85]

On 26 March 2004, the Regional Trial Court rendered its decision,[86] the dispositive portion of which reads:

WHEREFORE, finding accused Hermie M. Jacinto guilty beyond reasonable doubt of rape committed upon a 5-year old girl, the court sentences him to death and orders him to pay [AAA] P75,000.000 as rape indemnity and P50,000.00 as moral damages. With costs[87]

The defense moved to reopen trial for reception of newly discovered evidence stating that appellant was apparently born on 1 March 1985 and that he was only seventeen (17) years old when the crime was committed on 28 January 2003.[88] The trial court appreciated the evidence and reduced the penalty from death to reclusion perpetua.[89] Thus:

WHEREFORE, the judgment of the court imposing the death penalty upon the accused is amended in order to consider the privileged mitigating circumstance of minority. The penalty impos[a]ble upon the accused, therefore[,] is reduced to reclusion perpetua. xxx

Appealed to this Court, the case was transferred to the Court of Appeals for its disposition in view of the ruling in *People v. Mateo* and the Internal Rules of the Supreme Court allowing an intermediate review by the Court of Appeals of cases where the penalty imposed is death, reclusion perpetua, or life imprisonment.[90]

On 29 August 2007, the Court of Appeals AFFIRMED the decision of the trial court with the following MODIFICATIONS:

xxx that Hermie M. Jacinto should suffer the Indeterminate penalty of from six (6) years and one (1) day to twelve (12) years of prision mayor, as minimum, to seventeen (17) and four (4) months of reclusion temporal, as maximum. Appellant Hermie M. Jacinto is ordered to indemnify the victim in the sum of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P25,000.00 as exemplary damages and to pay the costs.[91]

On 19 November 2007, the Court of Appeals gave due course to the appellant's Notice of Appeal.[92] This Court required the parties to simultaneously file their respective supplemental briefs.[93] Both parties manifested that

they have exhaustively discussed their positions in their respective briefs and would no longer file any supplement.[94]

Before the Court of Appeals, appellant argued that "THE COURT A QUO GRAVELY ERRED IN CONVICTING HEREIN ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF RAPE"[95] by invoking the principle that "if the inculpatory facts and circumstances are capable of two or more reasonable explanations, one of which is consistent with the innocence of the accused and the other with his guilt, then the evidence does not pass the test of moral certainty and will not suffice to support a conviction." [96]

Our Ruling

We sustain the judgment of conviction.

In the determination of the innocence or guilt of a person accused of rape, we consider the three well-entrenched principles:

(1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the 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 be allowed to draw strength from the weakness of the evidence for the defense.[97]

Necessarily, the credible, natural, and convincing testimony of the victim may be sufficient to convict the accused.[98] More so, when the testimony is supported by the medico-legal findings of the examining physician.[99]

Further, the defense of alibi cannot prevail over the victim's positive identification of the perpetrator of the crime,[100] except when it is established that it was physically impossible for the accused to have been at the locus criminis at the time of the commission of the crime.[101]

I

A man commits rape by having carnal knowledge of a child under twelve (12) years of age even in the absence of any of the following circumstances: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; or (c) by means of fraudulent machination or grave abuse of authority.[102]

That the crime of rape has been committed is certain. The vivid narration of the acts culminating in the insertion of appellant's organ into the vagina of five-year-old AAA and the medical findings of the physicians sufficiently proved such fact.

AAA testified:

PROS. OMANDAM:

x x x x

Q You said Hermie laid you on the ground, removed your panty and boxed you, what else did he do to you?

A He mounted me.

Q When Hermie mounted you, was he facing you?

A Yes.

Q When he mounted you what did he do, did he move?

A He moved his ass, he made a push and pull movement.

Q When he made a push and pull movement, how were your legs positioned?

A They were apart.
Q Who pushed them apart?
A Hermie.
Q Did Hermie push anything at you?
A Yes.
Q What was that?
A His penis.
Q Where did he push his penis?
A To my vagina.
Q Was it painful?
A Yes.
Q What was painful?
A My vagina.
Q Did you cry?
A Yes.[103]

The straightforward and consistent answers to the questions, which were phrased and re-phrased in order to test that AAA well understood the information elicited from her, said it all - she had been raped. When a woman, more so a minor, says so, she says in effect all that is essential to show that rape was committed.[104] Significantly, youth and immaturity are normally badges of truth and honesty.[105]

Further, the medical findings and the testimony of Dr. Micabalo[106] revealed that the hymenal lacerations at 5 o'clock and 9 o'clock positions could have been caused by the penetration of an object; that the redness of the introitus could have been "the result of the repeated battering of the object;" and that such object could have been an erect male organ.[107]

The credible testimony of AAA corroborated by the physician's finding of penetration conclusively established the essential requisite of carnal knowledge.[108]

II

The real identity of the assailant and the whereabouts of the appellant at the time of the commission of the crime are now in dispute.

The defense would want us to believe that it was Julito who defiled AAA, and that appellant was elsewhere when the crime was committed.[109]

We should not, however, overlook the fact that a victim of rape could readily identify her assailant, especially when he is not a stranger to her, considering that she could have a good look at him during the commission of the crime.[110] AAA had known appellant all her life. Moreover, appellant and AAA even walked together from the road near the store to the situs criminis[111] that it would be impossible for the child not to recognize the man who held her hand and led her all the way to the rice field.

We see no reason to disturb the findings of the trial court on the unwavering testimony of AAA.

The certainty of the child, unusually intelligent for one so young, that it was accused, whom she called "kuya" and who used to play basketball and fetch water near their house, and who was wearing a sleeveless shirt and shorts at the time he raped her, was convincing and persuasive. The defense attempted to impute the crime to someone else - one Julito Apiki, but the child, on rebuttal, was steadfast and did not equivocate, asserting that it was accused who is younger, and not Julito, who is older, who molested her.[112]

In a long line of cases, this Court has consistently ruled that the determination by the trial court of the credibility

of the witnesses deserves full weight and respect considering that it has "the opportunity to observe the witnesses' manner of testifying, their furtive glances, calmness, sighs and the scant or full realization of their oath,"[113] unless it is shown that material facts and circumstances have been "ignored, overlooked, misconstrued, or misinterpreted." [114]

Further, as correctly observed by the trial court:

xxx His and his witness' attempt to throw the court off the track by imputing the crime to someone else is xxx a vain exercise in view of the private complainant's positive identification of accused and other corroborative circumstances. Accused also admitted that on the same evening, Julito Apiki, the supposed real culprit, asked him "What is this incident, Pare?", thus corroborating the latter's testimony that he confronted accused after hearing of the incident from the child." [115]

On the other hand, we cannot agree with the appellant that the trial court erred in finding his denial and alibi weak despite the presentation of witnesses to corroborate his testimony. Glaring inconsistencies were all over their respective testimonies that even destroyed the credibility of the appellant's very testimony.

Appellant testified that it was his uncle Alejandro Perocho who sent him to store to buy Tanduay; that he gave the bottle to his uncle; and that they had already been drinking long before he bought Tanduay at the store.

This was contradicted by the testimony of his aunt Gloria, wife of his uncle Alejandro. On cross-examination, she revealed that her husband was not around before, during, and after the rape incident because he was then at work.[116] He arrived from work only after FFF came to their house for the second time and boxed appellant.[117] It was actually the fish vendor, not her husband, who asked appellant to buy Tanduay.[118] Further, the drinking session started only after the appellant's errand to the store.[119]

Neither was the testimony of Luzvilla credible enough to deserve consideration.

Just like appellant, Luzvilla testified that Alejandro joined the drinking session. This is contrary to Gloria's statement that her husband was at work.

Luzvilla's testimony is likewise inconsistent with that of sur-rebuttal witness Antonia Perocho. Antonia recalled that Julito arrived without a shirt on. This belied Luzvilla's claim that Julito wore a white shirt on his way to the house of Rita. In addition, while both the prosecution, as testified to by AAA and Julito, and the defense, as testified to by Gloria, were consistent in saying that appellant wore a sleeveless shirt, Luzvilla's recollection differ in that Julito wore a T-shirt (colored black and later changed to white), and, thus, a short-sleeved shirt.

Also, contrary to Luzvilla's story that she saw AAA walking towards Rita's house three (3) minutes after she returned to the Perochos at 6:38 in the evening, Antonia recalled that AAA arrived at the house of Rita at 7:30. In this respect, we find the trial court's appreciation in order. Thus:

xxx. The child declared that after being raped, she went straight home, crying, to tell her father that Hermie had raped her. She did not first drop into the house of Lita Lingkay to cry among strangers who were watching TV, as Luzvilla Balucan would have the court believe. When the child was seen at the house of Lita Lingkay by Julito Apiki and Luzvilla Balucan, it was only later, after she had been brought there by her mother Brenda so that Lita Lingkay could take a look at her ? just as Julito Apiki said.[120]

Above all, for alibi to prosper, it is necessary that the corroboration is credible, the same having been offered preferably by disinterested witnesses. The defense failed thuswise. Its witnesses cannot qualify as such, "they being related or were one way or another linked to each other." [121]

Even assuming for the sake of argument that we consider the corroborations on his whereabouts, still, the defense

of alibi cannot prosper.

We reiterate, time and again, that the court must be convinced that it would be physically impossible for the accused to have been at the locus criminis at the time of the commission of the crime.[122]

Physical impossibility refers to distance and the facility of access between the situs criminis and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed.[123]

In *People v. Paraiso*, [124] the distance of two thousand meters from the place of the commission of the crime was considered not physically impossible to reach in less than an hour even by foot.[125] Inasmuch as it would take the accused not more than five minutes to rape the victim, this Court disregarded the testimony of the defense witness attesting that the accused was fast asleep when she left to gather bamboo trees and returned several hours after. She could have merely presumed that the accused slept all throughout.[126]

In *People v. Antivola*, [127] the testimonies of relatives and friends corroborating that of the appellant that he was in their company at the time of the commission of the crime were likewise disregarded by this Court in the following manner:

Ruben Nicolas, the appellant's part-time employer, and Marites Capalad, the appellant's sister-in-law and co-worker, in unison, vouched for the appellant's physical presence in the fishpond at the time Rachel was raped. It is, however, an established fact that the appellant's house where the rape occurred, was a stone's throw away from the fishpond. Their claim that the appellant never left their sight the entire afternoon of December 4, 1997 is unacceptable. It was impossible for Marites to have kept an eye on the appellant for almost four hours, since she testified that she, too, was very much occupied with her task of counting and recording the fishes being harvested. Likewise, Mr. Nicolas, who, admittedly was 50 meters away from the fishpond, could not have focused his entire attention solely on the appellant. It is, therefore, not farfetched that the appellant easily sneaked out unnoticed, and along the way inveigled the victim, brought her inside his house and ravished her, then returned to the fishpond as if he never left.[128] (Emphasis supplied.)

As in the cases above cited, the claim of the defense witnesses that appellant never left their sight, save from the 5-minute errand to the store, is contrary to ordinary human experience. Moreover, considering that the farmland where the crime was committed is just behind the house of the Perochos, it would take appellant only a few minutes to bring AAA from the road near the store next to the Perochos down the farmland and consummate the crime. As correctly pointed out by the Court of Appeals, appellant could have committed the rape after buying the bottle of Tanduay and immediately returned to his uncle's house.[129] Unfortunately, the testimonies of his corroborating witnesses even bolstered the fact that he was within the immediate vicinity of the scene of the crime.[130]

Clearly, the defense failed to prove that it was physically impossible for appellant to have been at the time and place of the commission of the crime.

All considered, we find that the prosecution has sufficiently established the guilt of the appellant beyond reasonable doubt.

III

In the determination of the imposable penalty, the Court of Appeals correctly considered Republic Act No. 9344 (Juvenile Justice and Welfare Act of 2006) despite the commission of the crime three (3) years before it was enacted on 28 April 2006.

We recognize its retroactive application following the rationale elucidated in *People v. Sarcia*:^[131]

[Sec. 68 of Republic Act No. 9344]^[132] allows the retroactive application of the Act to those who have been convicted and are serving sentence at the time of the effectivity of this said Act, and who were below the age of 18 years at the time of the commission of the offense. With more reason, the Act should apply to this case wherein the conviction by the lower court is still under review.^[133] (Emphasis supplied.)

Criminal Liability; Imposable Penalty

Sec. 6 of Republic Act No. 9344 exempts a child above fifteen (15) years but below eighteen (18) years of age from criminal liability, unless the child is found to have acted with discernment, in which case, "the appropriate proceedings" in accordance with the Act shall be observed.^[134]

We determine discernment in this wise:

Discernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act.^[135] Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case.^[136]

xxx The surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong.^[137] Such circumstance includes the gruesome nature of the crime and the minor's cunning and shrewdness.^[138]

In the present case, we agree with the Court of Appeals that: "(1) choosing an isolated and dark place to perpetrate the crime, to prevent detection[;] and (2) boxing the victim xxx, to weaken her defense" are indicative of then seventeen (17) year-old appellant's mental capacity to fully understand the consequences of his unlawful action.^[139]

Nonetheless, the corresponding imposable penalty should be modified.

The birth certificate of AAA^[140] shows that she was born on 3 December 1997. Considering that she was only five (5) years old when appellant defiled her on 28 January 2003, the law prescribing the death penalty when rape is committed against a child below seven (7) years old^[141] applies.

The following, however, calls for the reduction of the penalty: (1) the prohibition against the imposition of the penalty of death in accordance with Republic Act No. 9346;^[142] and (2) the privileged mitigating circumstance of minority of the appellant, which has the effect of reducing the penalty one degree lower than that prescribed by law, pursuant to Article 68 of the Revised Penal Code.^[143]

Relying on *People v. Bon*,^[144] the Court of Appeals excluded death from the graduation of penalties provided in Article 71 of the Revised Penal Code.^[145] Consequently, in its appreciation of the privileged mitigating circumstance of minority of appellant, it lowered the penalty one degree from reclusion perpetua and sentenced appellant to suffer the indeterminate penalty of six (6) years and one (1) day to twelve (12) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, in its medium period, as maximum.^[146]

We differ.

In a more recent case,^[147] the Court En Banc, through the Honorable Justice Teresita J. Leonardo-de Castro, clarified:

Under Article 68 of the Revised Penal Code, when the offender is a minor under 18 years, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. However, for purposes of determining the proper penalty because of the privileged mitigating circumstance of minority, the penalty of

death is still the penalty to be reckoned with. Thus, the proper imposable penalty for the accused-appellant is reclusion perpetua.[148] (Emphasis supplied.)

Accordingly, appellant should be meted the penalty of reclusion perpetua.

Civil Liability

We have consistently ruled that:

The litmus test xxx in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually imposed is reduced to reclusion perpetua.[149]

Likewise, the fact that the offender was still a minor at the time he committed the crime has no bearing on the gravity and extent of injury suffered by the victim and her family.[150] The respective awards of civil indemnity and moral damages in the amount of P75,000.00 each are, therefore, proper.[151]

Accordingly, despite the presence of the privileged mitigating circumstance of minority which effectively lowered the penalty by one degree, we affirm the damages awarded by the Court of Appeals in the amount of P75,000.00 as civil indemnity and P75,000.00 as moral damages. And, consistent with prevailing jurisprudence,[152] the amount of exemplary damages should be increased from P25,000.00 to P30,000.00.

Automatic Suspension of Sentence; Duration; Appropriate Disposition after the Lapse of the Period of Suspension of Sentence

Republic Act No. 9344 warrants the suspension of sentence of a child in conflict with the law notwithstanding that he/she has reached the age of majority at the time the judgment of conviction is pronounced. Thus:

SEC. 38. Automatic Suspension of Sentence. - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That suspension of sentence shall still be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt. (Emphasis supplied.)

x x x x

Applying *Declarador v. Gubaton*,[153] which was promulgated on 18 August 2006, the Court of Appeals held that, consistent with Article 192 of Presidential Decree No. 603, as amended,[154] the aforestated provision does not apply to one who has been convicted of an offense punishable by death, reclusion perpetua or life imprisonment.[155]

Meanwhile, on 10 September 2009, this Court promulgated the decision in *Sarcia*,[156] overturning the ruling in *Gubaton*. Thus:

The xxx provision makes no distinction as to the nature of the offense committed by the child in conflict with the law, unlike P.D. No. 603 and A.M. No. 02-1-18-SC. The said P.D. and Supreme Court (SC) Rule provide that the benefit of suspended sentence would not apply to a child in conflict with the law if, among others, he/she has been convicted of an offense punishable by death, reclusion perpetua or life imprisonment. In construing Sec. 38 of R.A. No. 9344, the Court is guided by the basic principle of statutory construction that when the law does not distinguish, we should not distinguish. Since R.A. No. 9344 does not distinguish between a minor who has been convicted of a capital offense and another who has been convicted of a lesser offense, the Court should also not distinguish and should apply the automatic suspension of sentence to a child

in conflict with the law who has been found guilty of a heinous crime.[157]

The legislative intent reflected in the Senate deliberations[158] on Senate Bill No. 1402 (Juvenile Justice and Delinquency Prevention Act of 2005) further strengthened the new position of this Court to cover heinous crimes in the application of the provision on the automatic suspension of sentence of a child in conflict with the law. The pertinent portion of the deliberation reads:

If a mature minor, maybe 16 years old to below 18 years old is charged, accused with, or may have committed a serious offense, and may have acted with discernment, then the child could be recommended by the Department of Social Welfare and Development (DSWD), by the Local Council for the Protection of Children (LCPC), or by [Senator Miriam Defensor-Santiago's] proposed Office of Juvenile Welfare and Restoration to go through a judicial proceeding; but the welfare, best interests, and restoration of the child should still be a primordial or primary consideration. Even in heinous crimes, the intention should still be the child's restoration, rehabilitation and reintegration. xxx (*Italics supplied in Sarcia.*)[159]

On 24 November 2009, the Court En Banc promulgated the Revised Rule on Children in Conflict with the Law, which reflected the same position.[160]

These developments notwithstanding, we find that the benefits of a suspended sentence can no longer apply to appellant. The suspension of sentence lasts only until the child in conflict with the law reaches the maximum age of twenty-one (21) years.[161] Section 40[162] of the law and Section 48[163] of the Rule are clear on the matter. Unfortunately, appellant is now twenty-five (25) years old.

Be that as it may, to give meaning to the legislative intent of the Act, the promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in accordance with the Act in order that he/she is given the chance to live a normal life and become a productive member of the community. The age of the child in conflict with the law at the time of the promulgation of the judgment of conviction is not material. What matters is that the offender committed the offense when he/she was still of tender age.

Thus, appellant may be confined in an agricultural camp or any other training facility in accordance with Sec. 51 of Republic Act No. 9344.[164]

Sec. 51. Confinement of Convicted Children in Agricultural Camps and Other Training Facilities. - A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

Following the pronouncement in *Sarcia*,[165] the case shall be remanded to the court of origin to effect appellant's confinement in an agricultural camp or other training facility.

WHEREFORE, the Decision dated 29 August 2007 of the Court of Appeals in CA-G.R. CR HC No. 00213 finding appellant Hermie M. Jacinto guilty beyond reasonable doubt of qualified rape is AFFIRMED with the following MODIFICATIONS: (1) the death penalty imposed on the appellant is reduced to reclusion perpetua; and (2) appellant is ordered to pay the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages. The case is hereby REMANDED to the court of origin for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.

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

[1] People v. Antivola, G.R. No. 139236, 3 February 2004, 421 SCRA 587, 598; People v. Nogar, G.R. No. 133946, 27 September 2000, 341 SCRA 206, 217.

[2] People v. Trayco, G.R. No. 171313, 14 August 2009, 596 SCRA 233, 253; People v. Paraiso, G.R. No. 131823, 17 January 2001, 349 SCRA 335, 350-351.

[3] To maintain the confidentiality of information on child abuse cases, and consistent with the application in People v. Cabalquinto (G.R. No. 167693, 19 September 2006, 502 SCRA 419) of: (1) the provisions of Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and its implementing rules; (2) Republic Act No. 9262 (Anti-Violence Against Women and their Children Act of 2004) and its implementing rules; and (3) this Court's Resolution dated 19 October 2004 in A.M. No. 04-10-11-SC (Rule on Violence Against Women and their Children), the real name and the personal circumstances of the victim, and any other information tending to establish or compromise her identity, including those of her immediate family or household members are withheld.

[4] Records, pp. 64-69. Decision dated 26 March 2004 of the Regional Trial Court penned by Judge Ma. Nimfa Penaco-Sitaca; Id. at 77. Order dated 6 April 2004 of the Regional Trial Court penned by Judge Penaco-Sitaca; CA rollo pp. 134-159. Decision dated 29 August 2007 penned by Associate Justice Elihu A. Ybañez, with Associate Justices Romulo V. Borja and Mario V. Lopez concurring.

[5] Records, p. 2.

[6] The docket no. indicated in the covering of the trial court's record of the case and the majority of the Orders and other court processes, including the decisions of the Regional Trial Court and the Court of Appeals, is Criminal Case No. 1679-13-1411.

[7] Records, p. 2. Information dated 20 March 2003.

[8] Id. at 22. Order dated 15 July 2003.

[9] Id at 25. Pre-Trial Order dated 4 August 2003.

[10] TSNs, 13 October 2003 and 18 February 2004.

[11] TSN, 16 September 2003.

[12] TSN, 1 March 2004.

[13] TSN, 16 September 2003, pp. 5 and 12.

[14] TSN, 13 October 2003, pp. 4-5.

[15] TSN, 16 September 2003, pp. 2-3.

[16] TSN, 1 March 2004, p. 2.

[17] Id.

[18] Id. at 8-9.

[19] Id. at 3.

[20] Id.

In its decision, the trial court translated the testimony in the following manner: "xxx leaving the store at the same time, he saw Hermie holding the child by the hand and proceeding downward while he proceeded upward to the house of Lita Lingkay to watch TV." Records, p. 67. Decision dated 26 March 2004.

[21] TSN, 13 October 2003, p. 18.

[22] Id. at 7 and 14.

[23] Id. at 16 and 18.

[24] Id. at 6-7.

[25] Id. at 16.

[26] Id. at 7-8.

[27] Id. at 8.

[28] Id.

[29] Id. at 9.

[30] TSN, 16 September 2003, p. 4.

[31] Id.

[32] Id. at 6.

[33] Id. at 4.

[34] Id. at 6.

[35] Id. at 4 and 6.

[36] Id. at 15.

[37] Id. at 4 and 15.

[38] Id.

[39] Id. at 5.

[40] Id. at 6.

[41] Id.

[42] Id.

[43] Id.

[44] Id. at 7.

[45] Id. at 17.

[46] TSN, 1 March 2004, pp. 10-11.

- [47] Id. at 10.
- [48] Id. at 3.
- [49] Id.
- [50] Id. at 4.
- [51] Id.
- [52] Id.
- [53] Id. at 5.
- [54] TSN, 16 September 2003, p. 7.
- [55] Id. at 7-8.
- [56] Records, p. 9. Medico-legal Certificate issued on 29 January 2003 by the Municipal Health Office.
- [57] Id.
- [58] Id. at 12. Medico Legal Certificate issued on 29 January 2003 by the provincial hospital.
- [59] Id.
- [60] TSN, 8 January 2004, p. 9; TSN, 9 February 2004, pp. 3-4.
- [61] Id. at 8.
- [62] TSN, 22 March 2004, p. 5.
- [63] Id. at 3.
- [64] TSN, 2 February 2004, p. 7.
- [65] Id. at 8.
- [66] Id.
- [67] Id.
- [68] Id. at 2-4.
- [69] TSN, 9 February 2004, pp. 3-4.
- [70] TSN, 8 January 2004, p. 7.
- [71] Id at 6 and 9.
- [72] Id. at 7.
- [73] Id. at 8.
- [74] Id.
- [75] Id.
- [76] Id. at 9.
- [77] Id. at 11.

[78] Id. at 10.

[79] Id.

[80] Id. at 9.

[81] Id. at 10.

[82] Id. at 11.

[83] Id. at 11-12.

[84] TSN, 22 March 2004, pp. 2-4.

[85] TSN, 2 February 2004, p. 5.

[86] Records, pp. 64-69.

[87] Id. at 69.

[88] Id. at 71-72. Motion to Re-open Trial for Reception of Newly Discovered Evidence of Minority on the Part of the Accused dated 1 April 2004.

[89] Id. at 77. Order dated 6 April 2004.

[90] CA Rollo, pp. 32-33. Resolution of the Supreme Court Third Division, 8 September 2004, G.R. No. 163715.

[91] CA rollo, p. 158. Decision dated 29 August 2007.

[92] Id. at 169. Resolution of the Court of Appeals 22nd Division, 19 November 2007, CA-G.R. CR HC No. 00213.

[93] Rollo, p. 36. Resolution of the Supreme Court 2nd Division, 25 June 2008, G.R. No. 182239.

[94] Id. at 37-40. Manifestation (In Lieu of Supplemental Brief) of the Accused-Appellant dated 12 August 2008; Id. at 41-44. Manifestation (In Lieu of Supplemental Brief) of the People of the Philippines dated 22 August 2008.

[95] CA rollo, p. 92. Brief for the Accused-Appellant dated 25 January 2006.

[96] Id. at 95 citing *People v. Lagramada*, G.R. Nos. 146357 & 148170, 29 August 2002.

[97] *People v. Dalisay*, G.R. No. 188106, 25 November 2009, 605 SCRA 807, 814 citing *People v. Glivano*, G.R. No. 177565, 28 January 2008, 542 SCRA 656, 662 further citing *People v. Malones*, 425 SCRA 318, 329 (2004).

[98] *People v. Cadap*, G. R. No. 190633, 5 July 2010 citing *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 444.

[99] *People v. Leonardo*, G.R. No. 181036, July 6, 2010; *People v. Alcazar*, G.R. No. 186494, 15 September 2010.

[100] *People v. Antivola*, supra note 1; *People v. Nogar*, supra note 1.

[101] *People v. Trayco*, supra note 2.

[102] Art. 266-A paragraph 1(d), Revised Penal Code, as amended by Sec. 2 of The Anti-Rape Law of 1997.

[103] TSN, 13 October 2003, pp. 7-8.

[104] *People v. Amatorio*, G.R. No. 175837, 8 August 2010.

- [105] *People v. Corpuz*, G.R. No. 168101, 13 February 2006, 482 SCRA 435, 448.
- [106] TSN, 8 January 2004, pp. 2-4,
- [107] *Id.* at 3.
- [108] *People v. Castillo*, G.R. No. 186533, 9 August 2010, citing *People v. Malones*, 469 Phil. 301, 325-326 (2004).
- [109] CA rollo, p. 93. Brief for the Accused-Appellant dated 25 January 2006.
- [110] *People v. Antivola*, *supra* note 1 at 597-598.
- [111] TSN, 13 October 2003, pp. 7 and 14-16.
- [112] Records, p. 68. Decision of the Regional Trial Court dated 26 March 2004.
- [113] *People v. Celocelo*, G.R. No. 173798, 15 December 2010 citing *People v. Fernandez*, 426 Phil. 169, 173 (2002).
- [114] *People v. Ayade*, G.R. No. 188561, 15 January 2010, 610 SCRA 246, 253.
- [115] Records, p. 68. Decision of the Regional Trial Court dated 26 March 2004.
- [116] TSN, 9 February 2004, p. 8.
- [117] *Id.* at 6 and 8.
- [118] *Id.* at 7.
- [119] *Id.* at 7-8.
- [120] Records, pp. 68-69. Decision of the Regional Trial Court dated 26 March 2004.
- [121] *People v. Antivola*, *supra* note 1.
- [122] *People v. Paraiso*, *supra* note 2.
- [123] *People v. Trayco*, *supra* note 2 at 253 citing *People v. Limio*, G.R. Nos. 148804-06, 27 May 2004, 429 SCRA 597.
- [124] *Supra* note 2.
- [125] *People v. Trayco*, *supra* note 2 at 351 citing *People v. Arlee*, G.R. No. 113518, 25 January 2000, 323 SCRA 201; *People vs. Cañete*, 287 SCRA 490 (1998); *People v. Andan*, 269 SCRA 95 (1997).
- [126] *Id.*
- [127] *People v. Antivola*, *supra* note 1.
- [128] *Id.* at 598-599.
- [129] CA rollo, p. 148.
- [130] *Id.* at 149.
- [131] G.R. No. 169641, 10 September 2009, 599 SCRA 20.
- [132] Sec. 68. Children Who Have Been Convicted and are Servicing Sentence. - Persons who have been

convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. x x x

[133] *People v. Sarcia*, supra note 131 at 48.

[134] SEC. 6. Minimum Age of Criminal Responsibility. - xxx

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

x x x x

[135] *Madali v. People of the Philippines*, G.R. No. 180380, 4 August 2009, 595 SCRA 274, 296 citing the Rule on Juveniles in Conflict with the Law

[136] *Id.* at 296-297.

[137] *Remiendo v. People of the Philippines*, G.R. No. 184874, 9 October 2009, 603 SCRA 274, 289.

[138] *Id.* citing *Llave v. People*, G.R. No. 166040, 26 April 2006, 488 SCRA 376.

[139] CA rollo, p. 151.

[140] Records, pp. 73-74. Certificate of Live Birth and Certification from the Municipal Office of the Civil Registrar issued on 30 March 2004.

[141] Paragraph 6, sub-paragraph 5, Article 266-B of the Revised Penal Code, as amended by The Anti-Rape Law of 1997.

[142] Sec. 1, Republic Act No. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines).

[143] ART. 68 Penalty to be imposed upon a person under eighteen years of age. - When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

1. xxx

2. Upon a person over fifteen and under eighteen yeras of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

[144] G.R. No. 166401, 30 October 2006, 506 SCRA 168.

[145] *Id.* at 215.

Article 71 of the Revised Penal Code provides:

ART. 71. Graduated scales. - In the cases in which the law prescribes a penalty lower or higher by one or more degrees than another given penalty, the rules prescribed in article 61 shall be observed in graduating such penalty.

x x x x

The courts, in applying such lower or higher penalty, shall observe the following graduated scales:

SCALE NO. 1

1. Death,
2. Reclusion perpetua,
3. Reclusion temporal,
4. Prision mayor,
5. Prision correccional,
6. Arresto mayor,
7. Destierro,
8. Arresto menor,
9. Public censure,
10. Fine.

x x x x

[146] CA rollo, p. 154.

[147] *People v. Sarcia*, supra note 131.

[148] *Id.* at 41.

[149] *Id.* at 45.

[150] *Id.* at 43.

[151] *Id.* at 46.

[152] *Id.* citing *People v. Regalario*, G.R. No. 174483, 31 March 2009, 582 SCRA 738.

[153] G.R. No. 159208, 18 August 2006, 499 SCRA 341.

[154] Art. 192. Suspension of Sentence and Commitment of Youthful Offender. - If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him, the court, shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court, upon application of the youthful offender and if it finds that the best interest of the public, as well as that of the offender will be served thereby, may suspend all further proceedings and commit such minor to the custody or care of the Department of Social Welfare and Development or to any training institution operated by the government or any other responsible person until he shall have reached twenty-one years of age, or for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare and Development or the government training institution or responsible person under whose care he has been committed.

Upon receipt of the application of the youthful offender for suspension of his sentence, the court may require the Department of Social Welfare and Development to prepare and submit to the court a social case study report over the offender and his family.

The youthful offender shall be subject to visitation and supervision by the representative of the Department of Social Welfare and Development or government training institution as the court may designate subject to such conditions as it may prescribe.

The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to one who is convicted for an offense punishable by death or life imprisonment or to one

who is convicted for an offense by the Military Tribunals. (Emphasis supplied.)

[155] CA rollo, pp. 155-156.

[156] *People v. Sarcia*, supra note 131.

[157] *Id.* at 49-50.

[158] *Id.* at 50 citing Senate Bill No. 1402 on Second Reading by the 13th Congress, 2nd Regular Session, No. 35, held on 9 November 2005, amendments by Senator Miriam Defensor-Santiago.

[159] *Id.*

[160] Section 48. Automatic Suspension of Sentence and Disposition Orders. - If the child is found guilty of the offense charged, the court, instead of executing the judgment of conviction, shall place the child in conflict with the law under suspended sentence, without need of application. Suspension of sentence can be availed of even if the child is already eighteen years (18) of age or more but not above twenty-one (21) years old, at the time of the pronouncement of guilt, without prejudice to the child's availing of other benefits such as probation, if qualified, or adjustment of penalty, in the interest of justice.

The benefits of suspended sentence shall not apply to a child in conflict with the law who has once enjoyed suspension of sentence, but shall nonetheless apply to one who is convicted of an offense punishable by reclusion perpetua or life imprisonment pursuant to the provisions of Rep. Act No. 9346 prohibiting the imposition of the death penalty and in lieu thereof, reclusion perpetua, and after application of the privileged mitigating circumstance of minority. (Emphasis supplied.)

[161] *People v. Sarcia*, supra note 131 at 50.

[162] Sec. 40. Return of the Child in Conflict with the Law to Court. - xxx

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years. (Emphasis supplied.)

[163] Section 48. Automatic Suspension of Sentence and Disposition Orders. -

x x x x

If the child in conflict with the law reaches eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with the provisions of Republic Act No. 9344, or to extend the suspended sentence for a maximum period of up to the time the child reaches twenty-one (21) years of age, or to order service of sentence. (Emphasis supplied.)

[164] *People v. Sarcia*, supra note 131 at 51.

[165] *Id.* at 52.

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