PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELISTER BASMAYOR Y GRASCILLA, ACCUSED-APPELLANT.

G.R. No. 182791. February 10, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

On appeal is the Decision[2] of the Court of Appeals in CA-G.R. CR-HC No. 01132 dated 21 December 2007 which affirmed with modifications the Decision[3] of the Regional Trial Court (RTC) of Pasig City, Branch 261, in Criminal Cases Nos. 122127-H and 122128-H, dismissing the first case for statutory rape against appellant Elister Basmayor due to insufficiency of evidence, while finding him guilty of statutory rape on the second charge committed against AAA.[4] The Court of Appeals found appellant guilty of Qualified Rape and imposed on him the penalty of Reclusion Perpetua. It further increased the awards for civil indemnity and moral damages from P50,000.00 to P75,000.00 each and, in addition awarded exemplary damages in the amount of P25,000.00.

On 19 November 2001, two informations were filed before the RTC of Pasig City, docketed as Criminal Cases Nos. 122127-H and 122128-H, charging appellant with two counts of Statutory Rape in relation to Republic Act No. 7610 and Articles 266-A and 266-B of the Revised Penal Code. The accusatory portion of the two informations is similarly worded except for the date. The information in Criminal Case No. 122128-H reads:

> On or about November 12, 2001,[5] in Pasig City, and within the jurisdiction of this Honorable Court, the accused, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one AAA, 11 years old, minor, and the child of the live-in partner of the accused, against her will and consent.[6]

When arraigned on 13 December 2001, appellant, with the assistance of counsel de oficio, pleaded "not guilty" to the two counts of rape.[7]

At the pre-trial conference held on 8 February 2002, no stipulation was made by the parties. The prosecution marked some of its exhibits and reserve the right to present other exhibits during trial. The defense likewise reserved its right to adduce documentary exhibits during the course of the proceedings.[8]

The prosecution presented four witnesses, namely: AAA,[9] the victim; BBB, the victim's mother;[10] Larry dela Cruz,[11] Security Force Member of Barangay Sto. Tomas, Pasig City; and Dr. Pierre Paul F. Carpio,[12] Medico-Legal Officer, Philippine National Police (PNP) Crime Laboratory, Libis, Quezon City.[13]

AAA testified that at around 9:00 a.m. of 9 November 2001, she was with her mother (BBB) and the latter's live-in partner (appellant) in their house at XXX, XXX, XXX City. While her mother was sleeping, her stepfather (appellant) embraced her and touched her "pepe." She removed his hands from her private parts and went to sleep beside her mother. An hour after, or at around 10:00 a.m., she was awakened from her sleep by appellant who was undressing her. Appellant removed his shorts and brief and lay on top of her. Appellant kissed her cheeks, mashed her breasts, licked her vagina and inserted his penis therein causing her much pain. During this time, her mother was out peddling goods.

On 12 November 2001, at around 10:00 a.m., while lying in bed, appellant again placed himself on top of AAA and inserted his penis inside her vagina, causing her pain. Her mother was not in the house when appellant violated her a second time.

AAA clarified that when the first rape happened on 9 November 2001, her mother was with her sleeping. She tried to wake her up, but to no avail. The rape lasted only for a minute. Appellant told her not to tell anyone about the incident. She merely cried and did not tell anyone because she was afraid that appellant might kill her. She said rape is bad. She revealed that her "Ate Lily" came to know of her ordeal from a neighbor who witnessed what happened to the victim. Further, she explained that on 12 November 2001, her mother was in the market when the rape occurred.

AAA identified the appellant as the person who raped her. She also identified the sworn affidavit she executed[14] relative to these cases and confirmed the contents thereof.

BBB testified that AAA was her daughter who was born on 4 February 1990 as evidenced by the latter's Certificate of Live Birth.[15] BBB said that on 9 and 12 November 2001, she, AAA and appellant (common-law husband) were still living together. She disclosed that she did not witness the rape of AAA on said dates because she was in the market. She identified appellant as her live-in partner.

Larry dela Cruz testified that he was one of the members of the Security Force of Barangay Sto. Tomas, Pasig City, who arrested appellant upon the complaint of one Jerry Tadena. Mr. Tadena reported that appellant raped AAA. Dela Cruz, together with his co-tanods, immediately went to the house of appellant, whom they invited to the barangay headquarters. Appellant voluntarily went with them and was informed that somebody was complaining against him. At the barangay headquarters, AAA pointed to appellant as the one who raped her. Mr. dela Cruz identified the sworn statements[16] he and Mr. Tadena executed.

The last witness for the prosecution, Dr. Pierre Paul F. Carpio, testified that he interviewed AAA and conducted a genital examination on her. His findings and conclusion are contained in Medico-Legal Report No. M-2980-01,[17] to wit:

> FINDINGS:
>
> x x x x
>
> GENITAL:
>
> x x x x
>
> HYMEN: Elastic, fleshy-type with shallow fresh laceration at 3 & 6 o'clock position.
>
> x x x x
>
> CONCLUSION: Subject is compatible with recent loss of virginity. There are no external signs of application of any form of trauma.

Dr. Carpio disclosed that AAA was coherent when he interviewed her. He explained that the loss of virginity may be caused by the insertion of a blunt object like a penis. He said that AAA divulged to him that she was raped only once. As to the findings of hymenal lacerations, he said that the same were fresh - maybe three days old - and could have possibly resulted from the 12 November 2001 incident.

On 17 October 2003, the prosecution formally offered[18] its documentary evidence consisting of Exhibits A to F, with sub-markings, on which the defense filed its comment.[19] The trial court admitted all the exhibits on 6 November 2003.[20]

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For the defense, appellant Elister Basmayor took the stand.

Appellant testified that AAA was his "anak-anakan" because her mother, CCC, was his live-in partner. He started living with CCC and AAA at XXX St., XXX, XXX City, in the year 2000. He denied the accusations that he raped AAA twice, on 9 and 12 November 2001. When he was arrested, he was at home sleeping. The barangay tanods invited him, and he voluntarily went with them. He was told that there was a complaint of rape against him. He learned that it was AAA who was the complainant. He was detained at the Pasig City Police Station. At the police station, AAA, who was accompanied by a woman, pointed to him and then cried. His live-in partner (CCC) was not there. He told the policemen he did not commit the crime charged.

Appellant insisted that he was innocent of the charges made by AAA. He said AAA complained against him because Raniel, a brother-in-law of CCC who was angry with him, induced AAA to file the cases against him. As to AAA, he did not know of any reason why she would get mad at him.

On 9 November 2001, appellant said that he, AAA and CCC were at home. The three of them went to church at 4:00 p.m. to sell their wares/goods. They stayed there until midnight, but they told AAA to go home. Appellant explained that he was not in their house when AAA was allegedly raped at 10:00 a.m. of 9 November 2001, because he was at Barangay San Nicolas, Pasig City, bringing money to his friend, Ding Sumulong. He stayed there for half an hour then went to the market to play pool. At 2:30 p.m., he watched a movie at Mariposa Theatre. After the movie ended at 3:30 p.m., he went home. On 12 November 2001, he said he was at home with his common-law wife. He does not know of any motive why his common-law wife would implicate him in such a serious crime.

The defense rested its case without marking any documentary exhibit.[21]

On 8 April 2005, the trial court promulgated its decision. In Criminal Case No. 122128-H, appellant was found guilty of simple rape and was sentenced to reclusion perpetua. In Criminal Case No. 122127-H, said case was dismissed for insufficiency of evidence. The dispositive portion of the decision reads:

> WHEREFORE, the Prosecution having proved the guilt of the accused, ELISTER BASMAYOR y GRASCILIA IN Criminal Case No. 122128-H, of the crime of Simple Rape, he is hereby sentenced to undergo an imprisonment of RECLUSION PERPETUA.
>
> Accused is further ordered to pay the offended party the sum of P50,000.00 as civil indemnity and P50,000.00 for moral damages without need of proof.
>
> Meantime, Criminal Case No. 122127-H is DISMISSED, for insufficiency of evidence.[22]

The trial court was convinced that appellant, indeed, raped AAA not twice, but only once. Due to AAA's conflicting testimonies as to the number of times she was raped and whether her mother was present when she was allegedly raped on 9 November 2001, the trial court was compelled to dismiss Criminal Case No. 122127-H. However, as to the second rape committed on 12 November 2001, the trial court was persuaded that it happened and that appellant was the culprit. It accorded full credence to AAA's testimony as to what happened on the fateful morning of 12 November 2001. The victim identified appellant as the one who violated her honor. Her testimony was further supported by the findings of the Dr. Carpio who, upon genital examination, found fresh lacerations in her hymen at the 3:00 o'clock and 6:00 o'clock positions. Consistent with his findings, Dr. Carpio concluded that AAA had lost her virginity and that the lacerations, which were about three days old, were possibly caused by the rape committed on 12 November 2001.

The trial court found that appellant's defense of bare denial was self-serving and could not prevail over the positive, spontaneous and straightforward declarations and identification made by the credible victim. It likewise

found appellant's claim that AAA was instigated by her relative to be too flimsy a motive for one to file a serious charge of rape against him. It added that there being no showing of improper motive on AAA's part to falsely testify against the appellant, it concluded that no such improper motive existed and that her testimony was worthy of belief.

The trial court convicted appellant only of simple rape, because the prosecution failed to establish that appellant was the common-law spouse of AAA's mother. It said that the prosecution failed to show that BBB and CCC were one and the same person.

On 15 April 2005, appellant filed his Notice of Appeal manifesting his intention to appeal the decision to the Court of Appeals.[23] In an Order dated 18 April 2005, the trial court forwarded the records of the case to the Court of Appeals.[24]

On 21 December 2007, the Court of Appeals affirmed appellant's conviction, but modified the decision of the trial court by finding him guilty of Qualified Rape, increasing the awards of civil indemnity and moral damages to P75,000.00 each, and awarding exemplary damages in the amount of P25,000.00. The decretal portion of the decision reads:

> WHEREFORE, the Decision dated 1 April 2005 of the Regional Trial Court, Branch 261, Pasig City, is AFFIRMED with the following MODIFICATIONS:
>
> - ELISTER BASMAYOR is found guilty beyond reasonable doubt of the crime of Qualified Rape. The death penalty supposed to be meted upon him is reduced to Reclusion Perpetua, without eligibility for parole; and
>
> - The awards of civil indemnity, moral damages and exemplary damages are set at P75,000.00, P75,000.00 and P25,000.00, respectively.[25]

Finding that the prosecution proved the presence of the special qualifying circumstances of minority and relationship, it adjudged him guilty of Qualified Rape.

On 12 February 2008, with appellant's notice of appeal having been filed on time, the Court of Appeals elevated the records of the case to this Court.[26] Thereafter, in our resolution dated 16 July 2008, we noted the elevation of the records, accepted the appeal and notified the parties that they may file their respective supplemental briefs, if they so desired, within thirty (30) days from notice.[27] The parties opted not to file supplemental briefs on the ground they had fully argued their positions in their respective briefs.[28]

Appellant makes the following assignment of error:

> I
>
> THE COURT A-QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.
>
> II
> THE COURT A-QUO GRAVELY ERRED IN GIVING CREDENCE TO THE CONFLICTING TESTIMONY OF THE COMPLAINING WITNESS.[29]

To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great 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.[30]

Appellant maintains that since the trial court found discrepancies in the testimonies of AAA, it should have entirely rejected the testimony of AAA, because the latter was lying and her testimony unbelievable. He argues that in resolving conflict regarding credibility of witnesses, it is the general rule that findings of the trial court should be respected, for it is in a better position to observe the witnesses' deportment and manner of testifying. However, this rule, he contends, should not apply, as to the case under consideration, if the evidence on record -- or the lack of it -- shows that the trial court erred in its appreciation of facts.

After reviewing the testimony of the victim, who was eleven (11) years old when the rape occurred on 12 November 2001, we find the same to be clear, credible, convincing and worthy of belief. The victim narrated her ordeal as follows:

Q:

x x x Now my question to you is: what time when Elister Basmayor raped you on November 12, 2001?

A:

"Alas diyes po ng umaga."

Q:

How did the accused rape you on November 12, 2001 at 10:00 o'clock in the morning?

A:

"Nakahiga po ako at pinatungan niya ako."

Q:

So when Elister Basmayor put himself on top of your body, what did Elister Basmayor do to you in raping you?

A:

"Ipinasok niya po iyong ari niya sa pepe ko."

Q:

Where (sic) did you feel when Elister Basmayor put his penis inside your vagina?

A:

"Masakit po."

Q:

Who were with you in that house when Elister Basmayor inserted his penis into your vagina?

A:

"Wala po."

Q:

"Ibig mong sabihin, kayo lang dalawa ang nasa loob ng bahay noong oras na iyon?

A:

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"Opo."

Q:

Can you please inform this court how are you related to Elister Basmayor, the accused in this case?

A:

"Step-father po."

Q:

So if Elister Basmayor, the accused who inserted his penis into your vagina is inside this courtroom, could you please point to him?

A:

"Opo."

Q:

Will you please standup and point to him.

A:

Yes, sir, that man.

INTERPRETER:

Witness pointing to a person inside the courtroom, wearing a yellow t-shirt, who upon being asked answered by the name Elister Basmayor.[31]

Both trial court and the Court of Appeals gave full faith and credence to the testimony of AAA on the rape that happened on 12 November 2001. They found the same to be sufficient to convict appellant of the crime charged. There being overwhelming evidence showing that on 12 November 2001 appellant had carnal knowledge of AAA by means of force and intimidation, we find no compelling reason to deviate from the findings of the trial court as affirmed by the Court of Appeals. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[32]

In the case at bar, even though there were inconsistencies in the testimony of AAA regarding the alleged rape committed on 9 November 2001, we find that said discrepancies did not affect her credibility when she testified on the rape committed on her on 12 November 2001. We agree with the Court of Appeals when it said that the rape committed on 12 November 2001 was separate and distinct from the one allegedly committed on 9 November 2001, and that what was essential was the consistency in the narration of the 12 November 2001 rape.

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.[33] Youth and immaturity are generally badges of truth.[34] 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.[35]

In this case, considering that the victim is of tender age and has undergone a harrowing experience and exposed herself to the rigors of public trial, we find it very unlikely that she would impute so grave a crime to appellant whom she calls her "Papa."

AAA positively identified appellant as the person who ravished her and said, "Ipinasok niya po iyong ari niya sa pepe ko." As explained above, we find AAA to be a credible witness. As such, her sole testimony is sufficient to convict. Her claim that she was raped was further corroborated by the medical report[36] of Dr. Carpio. The findings of fresh lacerations in AAA's vagina indicated that she was no longer a virgin. The hymenal lacerations inflicted on AAA were possibly caused by the penetration of a penis. Dr. Carpio further explained that such fresh lacerations were usually three days old, and so he concluded that the lacerations on AAA's hymen were possibly inflicted during the 12 November 2001 incident. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration.[37] And when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.[38]

As against the convincing evidence of the prosecution, appellant simply denies the charge that he raped AAA on 12 November 2001, saying that he was resting at home with his wife. His denial, unsubstantiated and uncorroborated, must certainly fail. Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim.[39] Denial is intrinsically weak, being a negative and self-serving assertion.[40]

Moreover, appellant's statement that he does not know of any reason why AAA charged him with rape[41] further strengthened AAA's credibility. When there is no evidence to show any improper motive on the part of the rape victim to testify falsely against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.[42]

As to appellant's claim that AAA was merely coerced by her uncle to file the instant case, we find the same to be dubious. The trial court correctly ruled:

> Further, the claim of the accused that the offended party was instigated by her uncle, Raniel, is too flimsy a motive for one to file a serious charge of rape against him. Moreover, the fact that the accused had quarreled with Raniel is too insignificant to cause [AAA] and her mother to go to the extreme of filing a rape charge against him. There being no showing of improper motive on the victim's part to falsely testify against the accused, the logical conclusion is that no such improper motive exists and that her testimony is worthy of belief.[43]

The felony was committed on 12 November 2001. The provisions of Republic Act No. 8353,[44] which was the law in effect on the day when the rape was committed, shall apply.

The gravamen of the offense of rape is sexual congress with a woman by force and without consent. If the woman is under 12 years of age, proof of force is not an element of statutory rape, but the absence of a free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven. But if the woman is 12 years of age or over at the time she was violated, sexual intercourse must be proven and also that it was done through force, violence, intimidation or threat.[45]

As provided for in the Revised Penal Code,[46] sexual intercourse with a girl below 12 years old is statutory rape. 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. Sexual congress with a girl under 12 years old is always rape.[47]

Appellant was charged with statutory rape. The first element was proved by the testimony of the victim herself,

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while the second element was established by AAA's Certificate of Live Birth showing that she was born on 4 February 1990. AAA was eleven (11) years old when the crime was committed on 12 November 2001.

For one to be convicted of qualified rape, at least one of the aggravating/qualifying circumstances mentioned in Article 266-B[48] must be alleged in the information and duly proved during the trial. In the instant case, the aggravating/qualifying circumstance of minority (under twelve years old) and relationship have been alleged in the information. As stated above, the victim's minority has been proved by her Certificate of Live Birth. As regards the qualifying circumstance of relationship, it is alleged in the information that the victim is the daughter of appellant's live-in partner (common-law spouse).

Appellant claims that his live-in partner is not BBB, the victim's mother, but CCC. On such claim, the trial court ruled that the prosecution failed to prove the qualifying circumstance of relationship and convicted appellant only of simple rape. The Court of Appeals, however, convicted him of qualified rape, because it was shown that BBB and CCC were one and the same person.

We agree with the Court of Appeals that the qualifying circumstance of relationship has been sufficiently proved. The victim declared that the appellant was her mother's live-in partner. Her mother, BBB, also testified and pointed to appellant as her live-in partner. On the other hand, appellant, who calls the victim his "anak-anakan," claimed that his live-in partner was CCC, not BBB. We find that BBB and CCC are one and the same person. It is of no moment that appellant knows BBB by the name of CCC. BBB categorically identified appellant to be her live-in partner, which statement was seconded by the victim. If BBB and CCC were truly different persons, appellant could have easily presented CCC to show such reality. This, he did not do. His reliance on his declaration that his common-law wife was CCC and not BBB was fatal to his cause.

The prosecution having alleged and proved during trial the aggravating/qualifying circumstances of minority and relationship mentioned in Article 266-B, the Court of Appeals correctly convicted him of qualified rape and imposed on him the capital punishment.

With the effectivity,[49] however, of Republic Act No. 9346, entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted out to appellant shall be reclusion perpetua. Said section reads:

> SECTION 2. In lieu of the death penalty, the following shall be imposed:
>
> (a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
>
> (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

The Court of Appeals properly lowered the penalty that should have been imposed on appellant from death penalty to reclusion perpetua. Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole, following Section 3 of said law which provides:

> SECTION 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

As to the award of damages, the trial court awarded P50,000.00 as civil indemnity and P50,000.00 as moral damages. The Court of Appeals properly increased the said amounts to P75,000.00, because the amount of P75,000.00 each for civil indemnity and moral damages is to be awarded if the crime is qualified by

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circumstances that warrant the imposition of the death penalty.[50] With respect to the award of moral damages, the same is to be granted without need of pleading or proof of basis thereof.[51] Due to the presence of the aggravating/qualifying circumstances of minority and relationship, the award of exemplary damages in the amount of P25,000.00 by the Court of Appeals is in order.[52]

WHEREFORE, premises considered, the decision of the Court of Appeals in CA-G.R. CR-HC No. 01132 dated 21 December 2007 is AFFIRMED.

SO ORDERED.

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

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[1] Sometimes spelled "Grascilia."

[2] Penned by Associate Justice Japar B. Dimaampao with Associate Justices Mario L. Guariña and Sixto C. Marella, Jr., concurring; CA rollo, pp. 86-95.

[3] Records, pp. 140-146.

[4] This is pursuant to the ruling of this Court in People of the Philippines v. Cabalquinto (G.R. No. 167693, 19 September 2006, 502 SCRA 419), wherein this Court resolved to withhold the real name of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of thelegal mandate onthe utmost confidentiality ofproceedings involving violence against women and children set forth in Sec. 29 ofRepublic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004;and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective November 15, 2004.

[5] 9 November 2001 (Criminal Case No. 122127-H) and 12 November 2001 (Crim. Case No. 122128-H); records, pp. 1 and 10.

[6] Records, p. 10.

[7] Id. at 15-16.

[8] Id. at 19.

[9] TSN, 19 July 2002; TSN, 23 August 2002.

[10] TSN, 10 April 2003.

[11] TSN, 18 September 2003.

[12] Id.

[13] TSN, 7 February 2001.

[14] Records, p. 263; Exhs. B-B2.

[15] Id. at 268; Exh. F.

[16] Id. at 264-265; Exhs. C and D.

[17] Id. at 269; Exh. G.

[18] Id. at 260-269.

[19] Id. at 270.

[20] Id. at 273-A.

[21] Id. at 299.

[22] Id. at 329.

[23] Id. at 348.

[24] Id. at 350.

[25] CA rollo, p. 95.

[26] Id. at 105.

[27] Rollo, p. 19.

[28] Id. at 20-21, 24-26.

[29] CA rollo, p. 37.

[30] People v. Arango, G.R. No. 168442, 30 August 2006, 500 SCRA 259, 269.

[31] TSN, 23 August 2002, pp. 5-9.

[32] People v. Escultor, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.

[33] People v. Villafuerte, G.R. No. 154917, 18 May 2004, 428 SCRA 427, 433.

[34] People v. Espinosa, G.R. No. 138742, 15 June 2004, 432 SCRA 86, 99.

[35] People v. Andales, 466 Phil. 873, 887 (2004).

[36] Records, p. 269; Exh. G.

[37] People v. Limio, G.R. Nos. 148804-06, 27 May 2004, 429 SCRA 597, 610.

[38] Id. at 611.

[39] People v. Esperas, 461 Phil. 700, 713 (2003).

[40] People v. Agsaoay, Jr., G.R. Nos. 132125-26, 3 June 2004, 430 SCRA 450, 466.

[41] TSN, 6 November 2003, p. 14.

[42] People v. Malabago, 338 Phil. 177, 190 (1997); People v. Gagto, 323 Phil. 539, 556 (1996).

[43] Records, p. 328.

[44] 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. Republic Act No. 8353, otherwise known as The Anti-Rape Law of 1997, took effect on 22 October 1997.

[45] People v. Dimaano, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 665.

[46] Art. 266-A. Rape; When and How Committed. - Rape is committed -

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

a) Through force, threat, or intimidation;

x x x x

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.

[47] People v. Jusayan, G.R. No. 149785, 28 April 2004, 428 SCRA 228, 234-235.

[48] Art. 266-B. Penalties. x x x

x x x x

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;

[49] Republic Act No. 9346 took effect immediately after its publication in two newspapers of general circulation, namely Malaya and Manila Times, on 29 June 2006 in accordance with Section 5 thereof.

[50] People v. Barcena, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 561.

[51] People v. Alfaro, 458 Phil. 942, 963 (2003).

[52] In criminal offenses, exemplary damages as a part of civil liability may be imposed when the crime was committed with one or more aggravating circumstances. (Art. 2230, Civil Code.)

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