

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE PEREZ @ DALEGDEG, ACCUSED-APPELLANT.

G.R. No. 182924. December 24, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 02235 dated 26 November 2007 which affirmed with modifications the decision[2] of the Regional Trial Court (RTC) of Palawan and Puerto Princesa City, Branch 50, in Criminal Case No. 15685, finding appellant Jose Perez @ Dalegdeg guilty of statutory rape committed against AAA.[3] The Court of Appeals reduced the death penalty imposed by the trial court to reclusion perpetua, and, in addition to the grant of civil indemnity and moral damages, awarded exemplary damages.

On 18 January 2000, an information was filed before the RTC of Palawan and Puerto Princesa City charging appellant with statutory rape. The accusatory portion thereof reads:

That on or about the 19[th] day of September, 1999 at around 9:00 o'clock in the evening, at Barangay XXX, Municipality of XXX, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused with lewd design and by the use of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one, AAA, a minor of six (6) years old, against her will and consent, to her damage and prejudice.[4]

A warrant of arrest was issued against appellant who was arrested and detained, with no bail recommended, at the Provincial Jail of Puerto Princesa City.[5]

When arraigned on 5 June 2000, appellant, with the assistance of counsel de oficio, pleaded "not guilty" to the charge.[6]

During the pre-trial conference held on 6 September 2000, appellant tried to plea bargain by manifesting that he was willing to enter a plea of guilty to the lesser offense of Acts of Lasciviousness to which the public prosecutor, upon conferring with the offended party, refused to consent. At said pre-trial conference, appellant likewise admitted the following: (1) that the victim was a six (6)-year-old minor; (2) that the victim was from Barangay XXX, Municipality of XXX; and (3) that on September 19, 1999, accused Jose Perez was in Barangay XXX, Municipality of XXX.[7]

The prosecution presented four witnesses, namely: BBB,[8] the victim's mother; the victim AAA;[9] CCC,[10] the victim's father; Dr. Jerry Gundayao,[11] Municipal Health Officer, Rural Health Clinic of XXX, Palawan; and psychologist Shiela Chan.[12] Their collective testimonies reveal:

On September 19, 1999, at around 8:00 p.m., CCC, together with his children DDD, EEE and six-year-old AAA,[13] was at the house of Florencio Bumanlag at Barangay XXX, Municipality of XXX, Palawan, watching a movie. At said place, CCC and his two boys, DDD and EEE, were seated in the middle row while AAA was at the

front part of the movie house. When the movie ended at around 9:00 p.m., CCC, along with DDD and EEE, went out of the movie house. Noticing that AAA was not with them, CCC instructed his eldest son, DDD, to go back inside and fetch her. As DDD went back, he chanced upon AAA already going out. While DDD and AAA were on their way out of the movie house, CCC noticed AAA crying. He asked AAA what happened, and she told him that appellant hit her on her right eye with a stone and punched her on the abdomen. They proceeded home.

Upon arriving at their house at around 10:00 p.m., BBB, AAA's mother who was taking care of her infant child, immediately noticed AAA crying. After learning from her husband what happened to their daughter, BBB examined AAA's injuries and also noticed that AAA's private part was bleeding. She simply cleaned up AAA and changed her clothes. Thereafter, she asked AAA why her vagina was bleeding, AAA did not answer and began trembling. She told her daughter to sleep and rest.

At around 3:00 a.m. of the next day, AAA woke up and told BBB that she wanted to urinate. BBB told AAA to just continue sleeping since the wounds in her vagina were still fresh. AAA started crying claiming that her vagina was not wounded. After she stopped crying, AAA revealed to BBB what really happened to her. AAA told her that appellant struck her eye with a stone and then punched her stomach. Appellant then brought her at the back of the house of one Oring Ragote where appellant inserted his finger into her vagina followed by his sex organ.[14] While appellant was inserting his organ into AAA's vagina, she lost consciousness because of the pain.

That same morning, after hearing what befell their daughter, BBB accompanied AAA to the Barangay Office at XXX, XXX, Palawan and reported the matter to the Barangay Captain. She was instructed to have AAA medically examined. Heeding the advice, AAA, this time accompanied by CCC, proceeded to the Health Center in Barangay Poblacion, XXX, Palawan where he requested AAA to be examined.[15] Dr. Gundayao conducted the examination and found that AAA had a hematoma and abrasion in the right eye, and contusion on her right dorsal thigh and lower back; her vulva also had contusions and swelling; the labia majora had swelling and hematoma and she had fresh hymenal lacerations at 6:00 and 9:00 o'clock positions.[16] Based on his findings, he concluded that AAA had indeed been sexually abused.

After the examination, AAA and CCC proceeded to the XXX Police Station where they executed their affidavits and filed charges against appellant.[17]

A year after the incident, AAA was brought to a psychologist to be examined. Sheila Chan diagnosed AAA to be suffering from Post Traumatic Stress Disorder. Per Psychological Report dated 3 October 2000, AAA was assessed to have "moderate difficulty in social relationships and symptoms of trauma are expressed through nightmares, dissociation, and conflict with parents and siblings." [18]

On 28 May 2001, the prosecution formally offered [19] its documentary evidence consisting of Exhibits A to F, with sub-markings, to which the defense filed its comment. [20] The trial court admitted all the exhibits on 27 June 2001.

For the defense, appellant and his father, Leonardo Perez, took the stand.

Jose Perez testified that he lives in Barangay Malaud in the small island of Buenavista, in Coron, Palawan. To go to Baragay XXX, where his relatives lived and where he delivered fish, he sometimes rode his brother's pump boat. On September 19, 1999, he went to Baragay XXX to attend the birthday celebration of his friend, but which he was not able to. He returned to Baragay Malaud at about 5:00 o'clock in the afternoon upon the prodding of his brother who was in a hurry to set out to sea and fish.

Appellant denied raping AAA, claiming that he was at home with his parents when the alleged rape was committed. He disclosed that he knew how to operate a pump boat and that he used his brother's pump boat in

going to and from Barangays Malaud and XXX. He said he had no knowledge of any reason or motive why AAA charged him with rape.

Leonardo Perez testified that on September 19, 1999, he, together with his wife and son, the appellant, watched a movie at the house of Florencio Bumanlag. He saw CCC and his children watching the film. Just before the show started, he saw CCC and his daughter, AAA, go out of the movie house. Later, he noticed that his son Jose Perez was carrying AAA and handed her over to CCC. He claimed that no untoward incident happened to AAA or to any of the people at the film showing.

In its decision dated 2 September 2005, the trial court convicted appellant of statutory rape and imposed on him the capital punishment. The dispositive portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, the accused JOSE PEREZ ALIAS DALEGDIG is hereby sentenced to suffer the extreme penalty of DEATH. He is also ordered to pay the victim AAA the sum of P75,000.00 as civil indemnity ex delicto which is mandatory upon the finding of the fact of rape; and P75,000.00 as moral damages, even without need of proof since it is assumed that the victim has suffered moral injuries.

Further, accused is ordered to pay the cost of suit.[21]

The trial court was convinced that AAA was raped by appellant on that fateful night of 19 September 1999. It accorded credence to the testimony of the victim who, at seven years old, testified in a straightforward and credible manner. She positively identified appellant as the one who committed the dastardly act to her. It found that it was inconceivable for the victim, who was six years old when the sexual assault was perpetrated, to fabricate the charge of defloration and undergo the medical examination of her private parts, subject herself to public trial and tarnish her family's honor and reputation, unless she was motivated by a potent desire to seek justice for the wrong committed against her. The victim's testimony was further supported by the findings of the Dr. Jerry Gundayao who, upon genital examination, found lacerations in her hymen at the 6:00 o'clock and the 4:00 o'clock positions. Consistent with his findings, Dr. Gundayao concluded that AAA had lost her virginity. In addition, the trial court agreed with the findings of psychologist Shiela Chan that the victim's behavior after the incident was compatible with the behavior of a child subjected to abuse.

The trial court brushed aside appellant's defenses of denial and alibi. It said that the defenses of appellant had conflicting versions. Appellant's claim that he was not at the crime scene at the time when the rape was committed was contradicted by his own father, who said that he was there and saw him handing AAA over to her father CCC. The trial court added that since the crime scene, according to appellant, was only an hour away by boat, and that appellant had access to a pump boat which he knew how to operate, it was not impossible for him to be at the locus criminis during the time in question. Inherently weak, appellant's denial must similarly fail in light of his identification by AAA.

The death penalty having been imposed, the trial court forwarded the records of the case to the Supreme Court for automatic review pursuant to Section 10, Rule 122 of the 2000 Rules of Criminal Procedure. However, pursuant to Our ruling in *People v. Mateo*,^[22] the case was transferred to the Court of Appeals for appropriate action and disposition.^[23]

On 26 November 2007, the Court of Appeals affirmed appellant's conviction but modified the decision of the trial court by reducing the penalty imposed from capital punishment to reclusion perpetua, and by awarding exemplary damages. The decretal portion of the decision reads:

WHEREFORE, the DECISION DATED SEPTEMBER 2, 2005 is AFFIRMED with the following MODIFICATIONS:

- The death penalty imposed is reduced to RECLUSION PERPETUA pursuant to Republic Act 9346 without eligibility for parole under the Indeterminate Sentence Law.
- The accused is ORDERED to pay AAA the amount of P50,000.00 as exemplary damages, in addition to the civil indemnity of P75,000.00 and moral damages of P75,000.00 already imposed.

Costs of suit to be paid by the accused.[24]

On 4 January 2008, appellant filed a Notice of Appeal.[25] With the Notice of Appeal having been timely filed, the Court of Appeals gave due course thereto and directed the elevation of the records of the case to this Court for automatic review.[26] Thereafter, in our resolution dated 21 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 a supplemental brief on the ground they had fully argued their positions in their respective briefs.[28]

Appellant makes a lone assignment of error:

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

In trying to exonerate himself, appellant advances the following arguments, to wit: (1) the truth cannot be determined from the testimony of AAA because the same was made up and coached. The prosecutor was practically suggesting to AAA how the latter should answer. Although leading questions may be asked on direct examination, especially when the witness is a child, the prosecutor should not put words in the mouth of the witness because a young child is open to ideas which, if persistently rammed into her mind, will appear real to her; (2) no eyewitnesses were presented to pinpoint the appellant as the perpetrator of the crime; (3) nobody in the movie house noticed anything untoward happen to AAA or hear AAA cry or make any sound to show that she was being molested or attacked; (4) the public health officer did not say that the fresh hymenal injuries on AAA were compatible with rape; and (5) no seminal fluids were found in AAA's vaginal area.

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.[29]

After examining the testimony of the AAA, we find that it was neither made up nor coached. The questions propounded to AAA were leading. A question that suggests to the witness the answer, which the examining party wants, is a leading question. As a rule, leading questions are not allowed. However, the rules provide for exceptions when the witness is a child of tender years, as it is usually difficult for such child to state facts without prompting or suggestion. Leading questions are necessary to coax the truth out of their reluctant lips.[30]

Section 10, Rule 132 of the Rules of Court provides:

SEC. 10. Leading and misleading questions. - A question which suggests to the witness the answer which the examining party desires is a leading question. It is not allowed, except:

x x x x

(c) When there is difficulty in getting direct and intelligible answers from a witness who is ignorant, or a child

of tender years, or is of feeble mind, or a deaf mute.

In the case at bar, the trial court was thus justified in allowing leading questions to AAA, as she was merely seven years old when and was not yet going to school when she testified. As further explained in *People v. Daganio*[31]:

The trend in procedural law is to give wide latitude to the courts in exercising control over the questioning of a child witness. The reasons are spelled out in our Rule on Examination of a Child Witness, which took effect on December 15, 2000, namely, (1) to facilitate the ascertainment of the truth, (2) to ensure that questions are stated in a form appropriate to the developmental level of the child, (3) to protect children from harassment or undue embarrassment, and (4) avoid waste of time. Leading questions in all stages of examination of a child are allowed if the same will further the interests of justice.

We agree with the Court of Appeals when it said:

[T]he accused's contention, that AAA was a coached witness, was entirely baseless.

The leading questions made to AAA did not take the form of coaching a child witness, because even the accused himself was unaware of any reason why AAA should accuse him of rape if it was false. The testimony of a rape victim is credible where she has no ill motive to testify against the accused. The failure of the accused to offer any explanation as to why the complainant implicated him in a very serious accusation indicated that no improper motive had impelled her to charge him thus.

There was also no basis in his suggestion that the answers given by AAA had been merely suggested to her, or that the idea of rape had been rammed into her head, or that words were simply placed in the mouth of AAA. For, how could a child so young and so ignorant of worldly ways be expected to consistently point to the accused as her defiler and to narrate the incidents of the rape in an unaffected manner unless she had really gone through the harrowing experience. It was doubtful that she would even remember the supposed coaching or that she could memorize the coached answers considering her inability to recall even her own age.[32]

We quote the testimony of AAA on direct examination:

ATTY. ANDA: (to witness) AAA, do you know Jose Perez alias Dalegdeg?

A:

Yes, ma'am.

Q:

Can you point him to us now?

COURT: (to Interpreter) Witness pointing to the person wearing a white T-shirt, a person pointed to stood up, gave his name as Jose Perez alias Dalegdeg.,

ATTY. ANDA: Did Jose Perez alias Dalegdeg hit your right eye with the piece of stone?

A:

Yes ma'am.

Q:

And did he also punch your stomach?

A:

Yes ma'am.

Q:

And thereafter did he insert his finger into your sex organ?

A:

Yes ma'am.

Q:

And that later, did he insert his sex organ into your vagina?

A:

Yes ma'am.

Q:

And did it hurt you?

A:

Yes ma'am.

Q:

Because of what by (sic) Jose Perez alias Dalegdeg did to you, what happened to you?

A:

I was painted (sic) (Nalipong).

COURT: Quote in quote (Nalipong).

Q:

Did you bleed after that?

A:

Yes ma'am.

Q:

Did you cry?

A:

Yes ma'am.

Q:

Did you tell to your father what happened to you?

A:

Yes ma'am.

Q:

Did you tell your mother?

A:

Yes ma'am.

COURT: (to Atty. Anda)

You asked her why she cried?

ATTY. ANDA

Yes Your Honor.

Q:

Why did you cry?

A:

Because it was painful ma'am.[33]

AAA's testimony on cross-examination clearly shows that she was not coached. After a thorough and extensive examination by counsel for the accused, AAA never wavered in pointing to appellant as her ravisher.

Q:

Madam witness, do you know Dalegdeg?

A:

Yes sir.

Q:

Why do you know this Dalegdeg?---

A:

Because we stayed in one place.

Q:

For how long have you known this Dalegdeg, madam witness?

A:

I've (sic) known him for a long time sir.

Q:

Do you know madam witness, what Dalegdeg have done to you?

A:

Yes sir.

Q:

What was that?

A:

He hit me (pokpok).

Q:

Why you was (sic) hit by Dalegdeg?

x x x x

ATTY. ANIGAN: (to witness) When you were hit by Dalegdeg, what are you doing at that time?

A:

None sir.

Q:

Do you remember the time when you were hit by Dalegdeg?

A:

Yes sir.

Q:

At what time?

A:

At night time sir.

Q:

Was the place dark or was lighted?

A:

It was dark.

Q:

Were you able to see Dalegdeg's face?

A:

Yes sir.

Q:

Why did you know that it was Dalegdeg who hit you?

A:

Yes sir, I know him.

x x x x

Q:

Why did she know Jose Perez alias Dalegdeg at that time?

A:

Because I recognized him ma'am.

Q:

How were you able to recognized (sic) Dalegdeg?

A:

Because I can identify him.

ATTY. ANIGAN: (to witness) In what way or manner madam witness were you able to identify him?

ATTY. ANDA: (to court) She already answered a while ago that Dalegdeg stayed in their area and live there.

ATTY. ANIGAN: (to witness) My question is how was she able to identify him in what way?

A:

I was able to identify him because he also stayed in the same place where we reside.

x x x x

Q:

Can you demonstrate to us madam witness how Dalegdeg sexually abused you?

A:

I was carried by Dalegdeg in his arms.

Q:

You were walked by Dalegdeg?

A:

Yes sir.

Q:

After you suddenly walked by Dalegdeg, what did Dalegdeg do to you?

A:

He hit my eyes.

Q:

Did you resist madam witness when you were struggled by Dalegdeg?

A:

Yes sir.

Q:

Why did you gave (sic) your consent, when you were carried by Dalegdeg?

A:

I was afraid to (sic) him.

Q:

Why, are you alone outside your house at the time of the incident?

A:

Yes sir, I was alone outside the house because my companion is watching the movie.

Q:

Why are you outside in your house at that time?

A:

We are watching movie.

Q:

You are watching movie, in the movie house?

A:

Yes sir.

Q:

How far this movie house from you house?

A:

It's near.

Q:

Did you reach it by walking?

A:

Yes sir.

Q:

When you go to the movie house, madam witness, are you alone?

A:

My companion is my father.

Q:

So, you are watching movie together with your father?

A:

Yes sir.

Q:

When you got by Dalegdeg where is your father?

A:

He was at the movie house sir.

Q:

Why did Dalegdeg able to get you?

A:

Because my father was not with me when Dalegdeg took me.

Q:

You were outside the movie house?

A:

Yes sir.

Q:

How about your father he was watching the movie while Dalegdeg get you?

A:

Yes sir.

Q:

After you were sexually abused what did you do madam witness?

A:

I fell (sic) the pain sir.

Q:

When did your father know this incident madam witness?

A:

Yes sir.

Q:

When?

A:

My father came to know, when he went out in the movie house already.

Q:

Are you sure madam witness that it is Jose Perez alias Dalegdeg who sexually abused you?

A:

Yes sir.[34]

Both lower courts gave full faith and credence to the testimony of AAA. They found the same sufficient to convict appellant of the crime charged. There being overwhelming evidence showing that on 19 September 1999 appellant had carnal knowledge of private complainant 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.[35] In the case at bar, even though the testimony of AAA was not flawless in all the particulars, it bore the earmarks of truth.

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 subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.[36] Youth and immaturity are generally badges of truth.[37] 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.[38]

In this case, considering that the victim was of tender age, who has undergone a traumatic 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.

Appellant contends that AAA's testimony is not sufficient to convict him because the prosecution did not present eyewitnesses to pinpoint him as the culprit, and nobody in the movie house noticed anything untoward happen to AAA or hear AAA cry or make any sound to show that she was being molested or attacked.

We find such argument untenable. Settled of course is the rule that in the determination of the value and credibility of evidence, witnesses are to be weighed, not numbered. Accordingly, the testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable. If credible and convincing, that alone would be sufficient to convict the accused.[39] It is of judicial notice that the crime of rape is usually committed in a private place where only the aggressor and the rape victim are present.[40] The testimony of the hapless victim alone is sufficient to convict her offender. No law or rule requires the corroboration of the testimony of a single witness in a rape case.[41]

In the case at bar, AAA positively identified appellant as the person who sexually assaulted her. As explained above, we find AAA to be a credible witness. As such, her sole testimony is sufficient to convict. Moreover, no other person in the movie house witnessed the dastardly act, because the same was committed not in the said place but in another place beyond the prying eyes of would-be witnesses. As testified to by BBB, her daughter, AAA told her that she was brought by appellant to the rear of the house of one Oring Ragote where she was violated.

Appellant's argument -- that there could not have been any rape because the public health officer who examined AAA did not say that the hymenal injuries on AAA were compatible with rape, and that there was no seminal fluid found in AAA's vaginal area -- does not persuade.

The injuries sustained by AAA are indicated in the document issued by Dr. Jerry R. Gundayao entitled Living Case No. 92099-01.

General and Physical Findings:

x x x x

Contusion hematoma (R) lower eye with linear abrasion, (R) nasal Bridge.

Contussion (sic) right (R) lower back

Contussion (sic) right (R) dorsal thigh

x x x x

Genital Examination:

Vulva with contusion noted

Absence of pubic hair, contusion Labia Majora with hematoma

U-shaped posterior fourchette

Hymenal laceration, deep, fresh, at 6:00 o'clock position and shallow, fresh hymenal laceration at 4:00 o'clock position corresponding to the face of a watch, vaginal canal admits

Remarks:

1)

With evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.

2)

Fresh deep and shallow hymenal laceration present

Conclusion: Subject is of non-virgin state[42]

Explaining his findings and conclusion on the medical examination he conducted on AAA, Dr. Gundayao testified as follows:

COURT: Aside from your external findings did you make any internal findings?

A:

Well in addition to that external findings Your Honor, there is also a contusion at the right lower back, here, if you don't mind Your Honor I'll show it.

COURT: Witness stood up pointing to the portion of his body referring to the middle spinal column.

A:

I ask the victim, what happened to that: Basta mayroong sumuntok daw sa kanya rito, because during the time I saw that patient talagang swelling dahil sa kanyang edad, naisip ko baka bumagsak siya pero nakapagtataka bakit swelling and then on my genital examination although the child has absence of pubic hair, the vulva has contusion meaning namamaga ang vulva there is swelling. Ang vulva po ay nakikita natin na may pubic hair although there is no pubic hair in the little girl, doon po dapat ang vulva in other words sa singit, nagtataka kami bakit namamaga.

Q:

Now, besides the vulva any other finding as a result of your genital examination?

A:

Yes ma'am, there is also on the labia majora and labia majora Your Honor, yong tinatawag natin sa layman yong kuntil makapal, yong babae kasi may dalawang kuntil, yong inner part yong labia minora yong outer part yong minora napansin po namin na ang labia majora niya ay namamaga and at the same time may hematoma. Then going on the deeper part of findings on the hymenal part there is six 6:00 o'clock fresh deep laceration and at the same time there is fresh laceration at four 4 o'clock and the hymenal shape is normally V shape meaning yong hymen niya ay hindi pa nagagalaw and then because of this laceration that happened to the fourchette it become U shape, because there is hymenal torn resulting to abnormality of the fourchette, which is normally V shape in virgin. However, due to the hymenal torn, there is a finding of U shape which is

abnormal in nature.

COURT: Concluding that the child has been subjected to sexual abuse?

A:

Yes Your Honor.

Q:

Now, what does this finding indicated as sexual abuse doctor?

A:

Well the state of virginity has been damaged.

Q:

When you conducted the corresponding examination what did you ask to the child or to her father?

A

Even the child could answer during that time, well I asked to that child. May gumalaw ba sa iyo, o may pumatong ba sa iyo, she answered yes mayroon po.

x x x x

Q:

You also mentioned a while ago that the abnormalities that you observed as a result of the genital examination, can you say what are those abnormalities?

A:

The vulva is with contusion as I said before, the vulva is found on the portion where there is pubic hair, sa singit po, although the child has no pubic hair, there is a contusion on the labia majora with hematoma and the positive fourchette is U shape as I said before normally it is V-shape.

Q:

Yes, and the other one is her (sic) the vaginal canal admits, will normally (sic) to that child?

COURT: Admits what?

A:

Admits one finger.

Q:

What should be the normal condition?

A:

It should be closed.

COURT: And what could have possibly caused that abnormalities as you have observed in your findings?

A:

Your Honor there might be a penetration.

COURT: Penetration by a hard object, like what, like penis?

A:

Probably Your Honor.

COURT: Finger?

A:

Probably Your Honor.

x x x x

COURT: On the questioning of the court, there has been an answer a matter of fact what could possibly caused such abnormality have what object could be finger or penis have caused such abnormality and he said it is could it possible. That is the answer of this witness.

Q:

Based on your experience doctor was that possibly made?

A:

Will most cases like I said before I handled a year ago two cases there is penetration by things those two cases because they came to me ...

Q:

Penetration of what?

A:

By penis.

Q:

And you have been so sure with the same findings like this case for abnormalities?

A

In all of those abnormal findings I believe that penetration has been made.

x x x x

Q:

Mr. Witness you said that there is an abnormality in the fourchette or V shape, and you said also that abnormality was caused by insertion of hard thing, is that correct?

A:

Yes sir.

Q:

There are many circumstances that might cause the said abnormality?

A:

Other circumstances that there is...

Q:

Yes like what?

A

Well I had also one case when the child was found riding on a bicycle then she accidentally fell out from the bicycle and then she was possibly hit by the bicycle.

COURT: She fell from the bicycle?

A:

No, saddle that's possible, however the laceration is very different.[43]

From the foregoing testimony, Dr. Gundayao was certain that AAA was subjected to sexual abuse. The hymenal laceration inflicted on AAA was caused by the penetration of a penis or even by a finger which is consistent with AAA's declaration that appellant first inserted his finger into her vagina followed by his penis. Moreover, the abnormalities in AAA's genital area was not caused by any accident (i.e., falling from a bicycle) or by other factors, but by full penile penetration.

The Court of Appeals found:

The violent physical and sexual assault were too much for AAA's young and fragile body that she fainted from the excruciating pain when the accused forced his penis into her vagina. As a result, she profusely bled, and in fact, her bleeding continued until the next day when she was examined by the doctor. The penile penetration had lacerated her posterior fourchette, giving it a "U" shape (instead of the "V" shape in the case of a virgin). Such bloody and deep extent of her vaginal injuries could only mean that the penis of the accused went beyond merely touching the labia majora or the labia minora of the pudendum and effected a full penetration. x x x.[44]

As to the absence of semen in AAA's vaginal area, such would not preclude the fact that rape has been committed on AAA. The absence of spermatozoa is not a negation of rape. The presence or absence of spermatozoa is immaterial since it is penetration, not ejaculation, which constitutes the crime of rape. Besides, the absence of spermatozoa in the vagina could be due to a number of factors, such as the vertical drainage of the semen from the vagina, the acidity of the vagina, or the washing of the vagina immediately after sexual intercourse.[45] The absence of sperm samples in the vagina of the victim does not negate rape, because the absence of spermatozoa is not an element thereof.[46] It is a settled rule that for rape to be consummated, the hymen of the private complainant need not be penetrated or ruptured. It is enough that the penis reaches the pudendum, or at the very least, the labia. The briefest of contacts under circumstances of force, intimidation or unconsciousness, even without laceration of the hymen, is deemed to be rape in our jurisprudence. The mere introduction of the penis into the aperture of the female organ, thereby touching the labia of the pudendum, already consummates the crime of rape.[47]

In this case, the absence of sperm can be explained by the fact that AAA's mother and the midwife who assisted Dr. Gundayao in his examination of AAA, cleaned AAA's private part.[48] The absence of spermatozoa in the victim's vagina is, therefore, not fatal to AAA's cause. Her credible testimony alone suffices to establish appellant's guilt. The medical report of Dr. Gundayao further corroborated her claim that she was raped. The findings of multiple and deep lacerations and other injuries in AAA's vagina indicated that AAA was no longer a virgin. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration.[49] 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.[50]

Against a deluge of damning evidence from the prosecution, appellant merely raises the defenses of denial and alibi. He denies raping AAA claiming that at that time of the incident, he was with his parents in their house which was an hour away by boat from the scene of the crime.

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.[51] Denial is intrinsically weak, being a negative and self-serving assertion.[52]

Moreover, appellant's statement that he did not know of any reason why AAA charged him with rape[53] further bolstered the credibility of AAA. 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.[54]

Petitioner likewise interposes the defense of alibi. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected.[55] For the defense of alibi to prosper, it is imperative that the accused establish two elements: (1) he was not at the locus delicti at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.[56] Petitioner failed to do so.

In the case at bar, petitioner avers that he was in his house at Barangay Malaud in the small island of Buenavista in Coron, Palawan when AAA was sexually assaulted. He said that it takes an hour by pump boat to travel from his residence to Barangay XXX where the crime was committed. Thus, it was not possible for him to have been at the scene of the crime when it was committed. On top of this, his own father contradicted his statement that he was not in Barangay XXX when the crime was committed. Appellant's father categorically said appellant was with them (father and mother) in the movie house when AAA was raped. In fact, his father saw him carrying AAA inside the movie house and then handing her over to her father.

The felony was committed on 19 September 1999. The provisions of Republic Act No. 8353,[57] 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 the fact that it was done through force, violence, intimidation or threat.[58]

As provided for in the Revised Penal Code,[59] 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 was below 12 years of age. Sexual congress with a girl under 12 years old is always rape.[60]

In the present case, appellant was charged with statutory rape. The first element was proved by the testimony of the victim herself, while the second element was established by appellant's admission and the presentation of AAA's Certificate of Live Birth showing that she was born on 22 March 1993. When the crime was committed on 19 September 1999, AAA was only six years old.

For one to be convicted of qualified rape, at least one of the aggravating/qualifying circumstances mentioned in Article 266-B[61] must be alleged in the information and duly proved during the trial. In the instant case, since the aggravating/qualifying circumstance of the victim's minority (below seven years of age) had been properly alleged in the information and proved during trial, the trial court's imposition of the penalty of death on appellant was justified.

With the effectivity,[62] 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.

Thus, the Court of Appeals properly reduced the penalty 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 P75,000.00 as civil indemnity and P75,000.00 as moral damages. In addition thereto, the Court of Appeals awarded exemplary damages in the amount of P50,000.00. The amount awarded is proper, since P75,000.00 is the amount awarded if the crime is qualified by circumstances which warrant the imposition of the death penalty.[63] With respect to the award of moral damages, the P75,000.00 is to be granted without need of pleading or proof of basis thereof.[64] Due to the presence of the aggravating/qualifying circumstance of minority (below seven years of age), the award of exemplary damages by the Court of Appeals is in order, but the same should be reduced to P25,000.00.[65]

WHEREFORE, premises considered, the decision of the Court of Appeals dated 26 November 2007 finding appellant guilty beyond reasonable doubt of statutory rape is AFFIRMED with the MODIFICATION that the award of exemplary damages is reduced to P25,000.00.

SO ORDERED.

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

[1] Penned by Associate Justice Lucas P. Bersamin with Associate Justices Portia Aliño-Hormachuelos and Arturo G. Tayag, concurring; rollo, pp. 3-24.

[2] Records, pp. 140-146.

[3] 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 her 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 the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic 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.

[4] Records, p. 1.

[5] Id. at 11.

[6] Id. at 16.

[7] Id. at 23.

[8] TSN, 11 October 2000.

[9] TSN, 18 October 2000.

[10] TSN, 8 November 2000.

[11] TSN, 7 February 2001.

[12] TSN, 9 May 2001.

[13] Exh. B; Records, p. 77.

[14] TSN, 11 October 2000, p.17; Exh. A; id. at 76.

[15] Exh. D; id. at 79.

[16] Exh. E; id. at 80-81.

[17] Exhs. A and C; id. at 76 and 78.

[18] Exh. F; id. at 82-85.

[19] Id. at 72-85.

[20] Id. at 86.

[21] Id. at 146.

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

[23] CA rollo, p. 25.

[24] Rollo, pp. 23-24.

[25] CA rollo, p. 115.

[26] Id. at 123.

[27] Rollo, p. 30.

[28] Id. at 31-33, 34-36.

[29] People v. Bascugin, G.R. No. 144195, 25 May 2004, 429 SCRA 140, 146.

[30] People v. Escultor, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 664-665.

- [31] 425 Phil. 186, 193 (2002).
- [32] Rollo, pp. 101-102.
- [33] TSN, 4 October 2000, pp. 5-7.
- [34] TSN, 4 October 2000, pp. 8-15.
- [35] *People v. Escultor*, supra note 30 at 661.
- [36] *People v. Villafuerte*, G.R. No. 154917, 18 May 2004, 428 SCRA 427, 433.
- [37] *People v. Espinosa*, G.R. No. 138742, 15 June 2004, 432 SCRA 86, 99.
- [38] *People v. Andales*, 466 Phil. 873, 887 (2004).
- [39] *People v. Balajadia*, G.R. No. 96988, 2 August 1993, 225 SCRA 22, 28.
- [40] *People v. Dela Cruz*, 342 Phil. 150, 158 (1997).
- [41] *People v. Limon*, 366 Phil. 29, 38 (1999).
- [42] Exh. B; records, pp. 80-81.
- [43] TSN, 7 February 2001, pp. 10-19.
- [44] Rollo, p. 20.
- [45] *People v. Freta*, 406 Phil. 854, 861 (2001).
- [46] *People v. Padilla*, 420 Phil. 671, 674 (2001).
- [47] *People v. Arango*, G.R. No. 168442, 30 August 2006, 500 SCRA 259, 279.
- [48] TSN, 11 October 2000, p. 6, 7 February 2001, p. 20.
- [49] *People v. Limio*, G.R. Nos. 148804-06, 27 May 2004, 429 SCRA 597, 610.
- [50] *Id.* at 611.
- [51] *People v. Esperas*, 461 Phil. 700, 713 (2003).
- [52] *People v. Aagsaoay, Jr.*, G.R. Nos. 132125-26, 3 June 2004, 430 SCRA 450, 466.
- [53] TSN, 22 January 2003, p. 22.
- [54] *People v. Malabago*, 338 Phil. 177, 190 (1997); *People v. Gagto*, 323 Phil. 539, 556 (1996).
- [55] *People v. Sanchez*, 426 Phil. 19, 31 (2002).
- [56] *People v. Flora*, 389 Phil. 601, 611 (2000).
- [57] 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.
- [58] *People v. Dimaano*, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 665.
- [59] 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.

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

[61] 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:

x x x x

5) When the victim is a child below seven (7) years old.

[62] 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.

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

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

[65] 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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