ROBERT SIERRA Y CANEDA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 182941. July 03, 2009

Ponente: BRION, J.

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BRION, J.:

Before us is the petition of Robert Sierra y Caneda (petitioner) for the review on certiorari[1] of the Decision[2] and Resolution[3] of the Court of Appeals[4] (CA) that affirmed with modification his conviction for the crime of qualified rape rendered by the Regional Trial Court (RTC), Branch 159, Pasig City, in its decision of April 5, 2006.

THE ANTECEDENT FACTS

In August 2000, thirteen-year-old AAA[5] was playing with her friend BBB in the second floor of her family's house in Palatiw, Pasig. The petitioner arrived holding a knife and told AAA and BBB that he wanted to play with them. The petitioner then undressed BBB and had sexual intercourse with her. Afterwards, he turned to AAA, undressed her, and also had sexual intercourse with her by inserting his male organ into hers. The petitioner warned AAA not to tell anybody of what they did.

AAA subsequently disclosed the incident to Elena Gallano (her teacher) and to Dolores Mangantula (the parent of a classmate), who both accompanied AAA to the barangay office. AAA was later subjected to physical examination that revealed a laceration on her hymen consistent with her claim of sexual abuse. On the basis of the complaint and the physical findings, the petitioner was charged with rape under the following Information:

> On or about August 5, 2000, in Pasig City and within the jurisdiction of this Honorable Court, the accused, a minor, 15 years old, with lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his (accused) sister, AAA, thirteen years of age, against the latter's will and consent.
>
> Contrary to law.[6]

The petitioner pleaded not guilty to the charge and raised the defenses of denial and alibi. He claimed that he was selling cigarettes at the time of the alleged rape. He also claimed that AAA only invented her story because she bore him a grudge for the beatings he gave her. The parties' mother (CCC) supported the petitioner's story; she also stated that AAA was a troublemaker. Both CCC and son testified that the petitioner was fifteen (15) years old when the alleged incident happened.[7]

The defense also presented BBB who denied that the petitioner raped her; she confirmed the petitioner's claim that AAA bore her brother a grudge.

On April 5, 2006, the RTC convicted the petitioner of qualified rape as follows:

> WHEREFORE, in view of the foregoing, this Court finds the accused ROBERT SIERRA y CANEDA GUILTY beyond reasonable doubt of the crime of rape (Violation of R.A. 8353 in relation to SC A.M.

> 99-1-13) and hereby sentences the said juvenile in conflict with law to suffer the penalty of imprisonment of reclusion perpetua; and to indemnify the victim the amount of P75,000 as civil indemnity, P50,000 as moral damages, and P25,000 as exemplary damages.
>
> SO ORDERED.[8]

The petitioner elevated this RTC decision to the CA by attacking AAA's credibility. He also invoked paragraph 1, Section 6 of R.A. No. 9344 (Juvenile Justice and Welfare Act of 2006)[9] to exempt him from criminal liability considering that he was only 15 years old at the time the crime was committed.

The CA nevertheless affirmed the petitioner's conviction with modification as to penalty as follows:

> WHEREFORE, finding that the trial court did not err in convicting Robert Sierra, the assailed Decision is hereby AFFIRMED with MODIFICATION that Robert Sierra has to suffer the penalty of imprisonment of RECLUSION TEMPORAL MAXIMUM. The award of damages are likewise affirmed.
>
> SO ORDERED.[10]

In ruling that the petitioner was not exempt from criminal liability, the CA held:

> As to the penalty, We agree with the Office of the Solicitor General that Robert is not exempt from liability. First, it was not clearly established and proved by the defense that Robert was 15 years old or below at the time of the commission of the crime. It was incumbent for the defense to present Robert's birth certificate if it was to invoke Section 64 of Republic Act No. 9344. Neither is the suspension of sentence available to Robert as the Supreme Court, in one case, clarified that:
>
> We note that, in the meantime, Rep. Act No. 9344 took effect on May 20, 2006. Section 38 of the law reads:
> 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.
>
> Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court on Juveniles in Conflict with the Law.
>
> The law merely amended Article 192 of P.D. No. 603, as amended by A.M. No. 02-1-18-SC, in that the suspension of sentence shall be enjoyed by the juvenile even if he is already 18 years of age or more at the time of the pronouncement of his/her guilt. The other disqualifications in Article 192 of P.D. No. 603, as amended, and Section 32 of A.M. No. 02-1-18-SC have not been deleted from Section 38 of Republic Act No. 9344. Evidently, the intention of Congress was to maintain the other disqualifications as provided in Article 192 of P.D. No. 603, as amended, and Section 32 of A.M. No. 02-1-18-SC. Hence, juveniles who have been convicted of a crime the imposable penalty for which is reclusion perpetua, life imprisonment or reclusion perpetua to death or death, are disqualified from having their sentences suspended.[11]

The CA denied the petitioner's subsequent motion for reconsideration; hence, the present petition.

THE ISSUES

The petitioner no longer assails the prosecution's evidence on his guilt of the crime charged; what he now assails is the failure of the CA to apply paragraph 1, Section 6[12] of R.A. No. 9344 under the following issues:

(1)

Whether or not the CA erred in not applying the provisions of R.A. No. 9344 on the petitioner's exemption from criminal liability;

(2)

Whether or not the CA erred in ruling that it was incumbent for the defense to present the petitioner's birth certificate to invoke Section 64 of R.A. No. 9344 when the burden of proving his age lies with the prosecution by express provisions of R.A. No. 9344; and

(3)

Whether or not the CA erred in applying the ruling in Declarador v. Hon. Gubaton[13] thereby denying the petitioner the benefit of exemption from criminal liability under R.A. No. 9344.

The threshold issue in this case is the determination of who bears the burden of proof for purposes of determining exemption from criminal liability based on the age of the petitioner at the time the crime was committed.

The petitioner posits that the burden of proof should be on the prosecution as the party who stands to lose the case if no evidence is presented to show that the petitioner was not a 15-year old minor entitled to the exempting benefit provided under Section 6 of R.A. No. 9344.[14] He additionally claims that Sections 3,[15] 7,[16] and 68[17] of the law also provide a presumption of minority in favor of a child in conflict with the law, so that any doubt regarding his age should be resolved in his favor.

The petitioner further submits that the undisputed facts and evidence on record - specifically: the allegation of the Information, the testimonies of the petitioner and CCC that the prosecution never objected to, and the findings of the RTC - established that he was not more than 15 years old at the time of the commission of the crime.

The People's Comment, through the Office of the Solicitor General (OSG), counters that the burden belongs to the petitioner who should have presented his birth certificate or other documentary evidence proving that his age was 15 years or below. The OSG also stressed that while petitioner is presumed to be a minor, he is disqualified to have his sentence suspended following the ruling in Declarador v. Hon. Gubaton.[18]

THE COURT'S RULING
We grant the petition.

We examine at the outset the prosecution's evidence and the findings of the lower courts on the petitioner's guilt, since the petition opens the whole case for review and the issues before us are predicated on the petitioner's guilt of the crime charged. A determination of guilt is likewise relevant under the terms of R.A. No. 9344 since its exempting effect is only on the criminal, not on the civil, liability.

We see no compelling reason, after examination of the CA decision and the records of the case, to deviate from the lower courts' findings of guilt. The records show that the prosecution established all the elements of the crime charged through the credible testimony of AAA and the other corroborating evidence; sexual intercourse did indeed take place as the information charged.[19] As against AAA's testimony, the petitioner could only raise the defenses of denial and alibi - defenses that, in a long line of cases, we have held to be inherently weak unless supported by clear and convincing evidence; the petitioner failed to present this required evidentiary support.[20] We have held, too, that as negative defenses, denial and alibi cannot prevail over the credible and positive testimony of the complainant.[21] We sustain the lower courts on the issue of credibility, as we see no compelling reason to doubt the validity of their conclusions in this regard.

While the defense, on appeal, raises a new ground - i.e., exemption from criminal liability under R.A. No. 9344 -

that implies an admission of guilt, this consideration in no way swayed the conclusion we made above, as the defense is entitled to present all alternative defenses available to it, even inconsistent ones. We note, too, that the defense's claim of exemption from liability was made for the first time in its appeal to the CA. While this may initially imply an essential change of theory that is usually disallowed on appeal for reasons of fairness, [22] no essential change is really involved as the claim for exemption from liability is not incompatible with the evidence submitted below and with the lower courts' conclusion that the petitioner is guilty of the crime charged. An exempting circumstance, by its nature, admits that criminal and civil liabilities exist, but the accused is freed from criminal liability; in other words, the accused committed a crime, but he cannot be held criminally liable therefor because of an exemption granted by law. In admitting this type of defense on appeal, we are not unmindful, too, that the appeal of a criminal case (even one made under Rule 45) opens the whole case for review, even on questions that the parties did not raise.[23] By mandate of the Constitution, no less, we are bound to look into every circumstance and resolve every doubt in favor of the accused.[24] It is with these considerations in mind and in obedience to the direct and more specific commands of R.A. No. 9344 on how the cases of children in conflict with the law should be handled that we rule in this Rule 45 petition.

We find a review of the facts of the present case and of the applicable law on exemption from liability compelling because of the patent errors the CA committed in these regards. Specifically, the CA's findings of fact on the issues of age and minority, premised on the supposed absence of evidence, are contradicted by the evidence on record; it also manifestly overlooked certain relevant facts not disputed by the parties that, if properly considered, would justify a different conclusion.[25]

In tackling the issues of age and minority, we stress at the outset that the ages of both the petitioner and the complaining victim are material and are at issue. The age of the petitioner is critical for purposes of his entitlement to exemption from criminal liability under R.A. No. 9344, while the age of the latter is material in characterizing the crime committed and in considering the resulting civil liability that R.A. No. 9344 does not remove.

Minority as an Exempting Circumstance

R.A. No. 9344 was enacted into law on April 28, 2006 and took effect on May 20, 2006. Its intent is to promote and protect the rights of a child in conflict with the law or a child at risk by providing a system that would ensure that children are dealt with in a manner appropriate to their well-being through a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care.[26] More importantly in the context of this case, this law modifies as well the minimum age limit of criminal irresponsibility for minor offenders; it changed what paragraphs 2 and 3 of Article 12 of the Revised Penal Code (RPC), as amended, previously provided - i.e., from "under nine years of age" and "above nine years of age and under fifteen" (who acted without discernment) - to "fifteen years old or under" and "above fifteen but below 18" (who acted without discernment) in determining exemption from criminal liability. In providing exemption, the new law - as the old paragraphs 2 and 3, Article 12 of the RPC did - presumes that the minor offenders completely lack the intelligence to distinguish right from wrong, so that their acts are deemed involuntary ones for which they cannot be held accountable.[27] The current law also drew its changes from the principle of restorative justice that it espouses; it considers the ages 9 to 15 years as formative years and gives minors of these ages a chance to right their wrong through diversion and intervention measures.[28]

In the present case, the petitioner claims total exemption from criminal liability because he was not more than 15 years old at the time the rape took place. The CA disbelieved this claim for the petitioner's failure to present his birth certificate as required by Section 64 of R.A. No. 9344.[29] The CA also found him disqualified to avail of a

suspension of sentence because the imposable penalty for the crime of rape is reclusion perpetua to death.

Burden of Proof

Burden of proof, under Section 1, Rule 131 of the Rules on Evidence, refers to the duty of a party to present evidence on the facts in issue in order to establish his or her claim or defense. In a criminal case, the burden of proof to establish the guilt of the accused falls upon the prosecution which has the duty to prove all the essential ingredients of the crime. The prosecution completes its case as soon as it has presented the evidence it believes is sufficient to prove the required elements. At this point, the burden of evidence shifts to the defense to disprove what the prosecution has shown by evidence, or to prove by evidence the circumstances showing that the accused did not commit the crime charged or cannot otherwise be held liable therefor. In the present case, the prosecution completed its evidence and had done everything that the law requires it to do. The burden of evidence has now shifted to the defense which now claims, by an affirmative defense, that the accused, even if guilty, should be exempt from criminal liability because of his age when he committed the crime. The defense, therefore, not the prosecution, has the burden of showing by evidence that the petitioner was 15 years old or less when he committed the rape charged.[30]

This conclusion can also be reached by considering that minority and age are not elements of the crime of rape; the prosecution therefore has no duty to prove these circumstances. To impose the burden of proof on the prosecution would make minority and age integral elements of the crime when clearly they are not. [31] If the prosecution has a burden related to age, this burden relates to proof of the age of the victim as a circumstance that qualifies the crime of rape.[32]

Testimonial Evidence is Competent Evidence
to Prove the Accused's Minority and Age

The CA seriously erred when it rejected testimonial evidence showing that the petitioner was only 15 years old at the time he committed the crime. Section 7 of R.A. No. 9344 expressly states how the age of a child in conflict with the law may be determined:

> SEC. 7. Determination of Age. - x x x The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor. [Emphasis supplied]

Rule 30-A of the Rules and Regulations Implementing R.A. No. 9344 provides the implementing details of this provision by enumerating the measures that may be undertaken by a law enforcement officer to ascertain the child's age:

> (1) Obtain documents that show proof of the child's age, such as
>
> (a) Child's birth certificate;
>
> (b) Child's baptismal certificate ;or
>
> (c)
>
> Any other pertinent documents such as but not limited to the child's school records, dental records, or travel papers.
>
> (2)

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x x x

(3)

When the above documents cannot be obtained or pending receipt of such documents, the law enforcement officer shall exhaust other measures to determine age by:

(a)

Interviewing the child and obtaining information that indicate age (e.g. date of birthday, grade level in school);

(b)

Interviewing persons who may have knowledge that indicate[s] age of the child (e.g. relatives, neighbors, teachers, classmates);

(c)

Evaluating the physical appearance (e.g. height, built) of the child; and

(d)

Obtaining other relevant evidence of age.

x x x

Section 7, R.A. No. 9344, while a relatively new law (having been passed only in 2006), does not depart from the jurisprudence existing at that time on the evidence that may be admitted as satisfactory proof of the accused's minority and age.

In the 1903 case of U.S. v. Bergantino,[33] we accepted testimonial evidence to prove the minority and age of the accused in the absence of any document or other satisfactory evidence showing the date of birth. This was followed by U.S. v. Roxas[34] where the defendant's statement about his age was considered sufficient, even without corroborative evidence, to establish that he was a minor of 16 years at the time he committed the offense charged. Subsequently, in People v. Tismo,[35] the Court appreciated the minority and age of the accused on the basis of his claim that he was 17 years old at the time of the commission of the offense in the absence of any contradictory evidence or objection on the part of the prosecution. Then, in People v. Villagracia,[36] we found the testimony of the accused that he was less than 15 years old sufficient to establish his minority. We reiterated these dicta in the cases of People v. Morial[37] and David v. Court of Appeals,[38] and ruled that the allegations of minority and age by the accused will be accepted as facts upon the prosecution's failure to disprove the claim by contrary evidence.

In these cases, we gave evidentiary weight to testimonial evidence on the accused's minority and age upon the concurrence of the following conditions: (1) the absence of any other satisfactory evidence such as the birth certificate, baptismal certificate, or similar documents that would prove the date of birth of the accused; (2) the presence of testimony from accused and/or a relative on the age and minority of the accused at the time of the complained incident without any objection on the part of the prosecution; and (3) lack of any contrary evidence showing that the accused's and/or his relatives' testimonies are untrue.

All these conditions are present in this case. First, the petitioner and CCC both testified regarding his minority and age when the rape was committed.[39] Second, the records before us show that these pieces of testimonial evidence were never objected to by the prosecution. And lastly, the prosecution did not present any contrary evidence to prove that the petitioner was above 15 years old when the crime was committed.

We also stress that the last paragraph of Section 7 of R.A. No. 9344 provides that any doubt on the age of the child must be resolved in his favor.[40] Hence, any doubt in this case regarding the petitioner's age at the time he committed the rape should be resolved in his favor. In other words, the testimony that the petitioner as 15 years old when the crime took place should be read to mean that he was not more than 15 years old as this is the more favorable reading that R.A. No. 9344 directs.

Given the express mandate of R.A. No. 9344, its implementing rules, and established jurisprudence in accord with the latest statutory developments, the CA therefore cannot but be in error in not appreciating and giving evidentiary value to the petitioner's and CCC's testimonies relating to the former's age.

Retroactive Application of R.A. No. 9344

That the petitioner committed the rape before R.A. No. 9344 took effect and that he is no longer a minor (he was already 20 years old when he took the stand) will not bar him from enjoying the benefit of total exemption that Section 6 of R.A. No. 9344 grants.[41] As we explained in discussing
Sections 64 and 68 of R.A. No. 9344[42] in the recent case of --Ortega v. People:[43]

> Section 64 of the law categorically provides that cases of children 15 years old and below, at the time of the commission of the crime, shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officers (LSWDO). What is controlling, therefore, with respect to the exemption from criminal liability of the CICL, is not the CICL's age at the time of the promulgation of judgment but the CICL's age at the time of the commission of the offense. In short, by virtue of R.A. No. 9344, the age of criminal irresponsibility has been raised from 9 to 15 years old. [Emphasis supplied]

The retroactive application of R.A. No. 9344 is also justified under Article 22 of the RPC, as amended, which provides that penal laws are to be given retroactive effect insofar as they favor the accused who is not found to be a habitual criminal. Nothing in the records of this case indicates that the petitioner is a habitual criminal.

Civil Liability

The last paragraph of Section 6 of R.A. No. 9344 provides that the accused shall continue to be civilly liable despite his exemption from criminal liability; hence, the petitioner is civilly liable to AAA despite his exemption from criminal liability. The extent of his civil liability depends on the crime he would have been liable for had he not been found to be exempt from criminal liability.

The RTC and CA found, based on item (1) of Article 266-B of the RPC, as amended, that the petitioner is guilty of qualified rape because of his relationship with AAA within the second civil degree of consanguinity and the latter's minority.[44] Both courts accordingly imposed the civil liability corresponding to qualified rape.

The relationship between the petitioner and AAA, as siblings, does not appear to be a disputed matter. Their mother, CCC, declared in her testimony that AAA and the petitioner are her children. The prosecution and the defense likewise stipulated in the proceedings below that the relationship exists. We find, however, that AAA's minority, though alleged in the Information, had not been sufficiently proven.[45] People v. Pruna[46] laid down these guidelines in appreciating the age of the complainant:

> In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.
>
> - The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
>
> - In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and

school records which show the date of birth of the victim would suffice to prove age.

- If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

- If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

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

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

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

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

The records fail to show any evidence proving the age of AAA. They do not likewise show that the petitioner ever expressly and clearly admitted AAA's age at the time of the rape. Pursuant to Pruna, neither can his failure to object to AAA's testimony be taken against him.

Thus, the required concurrence of circumstances that would upgrade the crime to qualified rape - i.e., relationship within the third degree of consanguinity and minority of the victim - does not exist. The crime for which the petitioner should have been found criminally liable should therefore only be simple rape pursuant to par. 1, Article 266-A of the RPC, not qualified rape. The civil liability that can be imposed on the petitioner follows the characterization of the crime and the attendant circumstances.

Accordingly, we uphold the grant of moral damages of P50,000.00 but increase the awarded exemplary damages P30,000.00, both pursuant to prevailing jurisprudence.[47] Moral damages are automatically awarded to rape victims without the necessity of proof; the law assumes that the victim suffered moral injuries entitling her to this award.[48] Article 2230 of the Civil Code justifies the award of exemplary damages because of the presence of the aggravating circumstances of relationship between AAA and petitioner and dwelling.[49] As discussed above, the relationship (between the parties) is not disputed. We appreciate dwelling as an aggravating circumstance based on AAA's testimony that the rape was committed in their house.[50] While dwelling as an aggravating circumstance was not alleged in the Information, established jurisprudence holds that it may nevertheless be appreciated as basis for the award of exemplary damages.[51]

We modify the awarded civil indemnity of P75,000.00 to P50,000.00, the latter being the civil indemnity appropriate for simple rape[52] on the finding that rape had been committed.[53]

In light of the above discussion and our conclusions, we see no need to discuss the petition's third assignment of error.

WHEREFORE, premises considered, the instant petition is GRANTED. The Decision dated February 29, 2008 and Resolution dated May 22, 2008 of the Court of Appeals in CA-G.R.-CR.-H.C. No. 02218 are REVERSED and SET ASIDE.

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Pursuant to Section 64 of R.A. No. 9344, Criminal Case No. 120292-H for rape filed against petitioner Robert Sierra y Caneda is hereby DISMISSED. Petitioner is REFERRED to the appropriate local social welfare and development officer who shall proceed in accordance with the provisions of R.A. No. 9344. Petitioner is ORDERED to pay the victim, AAA, P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages.

Unless there are other valid causes for petitioner's continued detention, we hereby ORDER his IMMEDIATE RELEASE under the above terms.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections in Muntinlupa City for its immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five days from receipt of this Decision the action he has taken.

Let a copy of this Decision be likewise furnished the Juvenile Justice and Welfare Council.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Chico-Nazario, and Leonardo-De Castro, JJ., concur.

** Designated additional Member of the Second Division effective June 3, 2009 per Special Order No. 658 dated June 3, 2009.

*** Designated additional Member of the Second Division effective May 11, 2009 per Special Order No. 635 dated May 7, 2009.

[1] Under Rule 45 of the Rules of Court.

[2] Dated February 29, 2008; rollo, pp. 81-103.

[3] Dated May 22, 2008; id., pp. 115-117.

[4] Docketed as CA-G.R.-CR.-H.C. No. 02218, and penned by Associate Justice Andres B. Reyes, Jr., with Associate Justice Jose C. Mendoza and Associate Justice Ramon M. Bato, Jr. concurring.

[5] The real name of the victim as well as those of her immediate family members is withheld per Republic Act (R.A.) No. 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes) and R.A. No. 9262 (An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes).

[6] This case was docketed as Criminal Case No. 120292-H; rollo, pp. 82-83.

[7] Id., pp. 51 and 53.

[8] Id.,pp. 81-82.

[9] SEC. 6. Minimum Age of Criminal Responsibility. - A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act. x x x

[10] Rollo, pp. 102-103.

[11] Id., pp. 127-129.

[12] SEC. 6. Minimum Age of Criminal Responsibility. - A child fifteen (15) years of age or under at the time of the commission of offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

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.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

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

[14] Rollo, pp. 10-23.

[15] SEC. 3. Liberal Construction of this Act. - In case of doubt, the interpretation of any of the provisions of this Act, including its implementing rules and regulations (IRRs), shall be construed liberally in favor of the child in conflict with the law.

[16] SEC. 7. Determination of Age. - The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

[17] SEC. 68. Children Who Have Been Convicted and are Serving 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 the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law.

[18] Supra note 13, citing the case of People v. Lugto, 190 SCRA 754 (1990).

[19] Rollo, p. 46.

[20] People v. Bon, G.R. No. 166401, October 20, 2006, 506 SCRA 168, 185.

[21] Ibid.

[22] Toledo v. People, G.R. No. 158057, September 24, 2004, 439 SCRA 94, 103.

[23] People v. Yam-Id, G.R. No. 126116, January 21, 1999, 308 SCRA 651, 655, citing Sacay v. Sandiganbayan, 142 SCRA 593 (1986).

[24] Id.

[25] Manila Doctors Hospital v. So Un Chua, G.R. No. 150355, July 31, 2006, 497 SCRA 230, 238.

[26] Section 2(d) of R.A. No. 9344.

[27] See: Reyes, Revised Penal Code; Book 1 (2008 ed.), p. 40.

[28] See Section 4(q) of R.A. No. 9344.

[29] SEC. 64. Children in Conflict with the Law Fifteen (15) Years Old and Below. - Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

[30] People v. Concepcion, G.R. No. 136844, August 1, 2002, 386 SCRA 74, 78; See: People v. Austria, G.R. Nos. 111517-19, July 31, 1996, 260 SCRA 106, 117; Ty v. People, G.R. No. 149275, September 27, 2004, 439 SCRA 220, 231; People v. Castillo, G.R. No. 172695, June 29, 2007, 526 SCRA 215, 227; Ortega v. People, G.R. No. 151085, August 20, 2008.

[31] The elements of rape under paragraph 1 of Article 266-A of the RPC, as amended are: (1) The offender is a man; (2) The offender had carnal knowledge of a woman; and (3) That such act is accomplished under any of the following circumstances: (a) by using force and intimidation; or (b) when the woman is deprived of reason or otherwise unconscious; or (c) by means of fraudulent machination or grave abuse of authority; or (d) when the woman is under 12 years of age or demented; Reyes, II Revised Penal Code, p. 556 (2008 edition).

[32] People v. Dela Cruz, G.R. Nos. 131167-68, August 23, 2000, 338 SCRA 582; People v. Villarama, G.R. No. 139211, February 12, 2003, 397 SCRA 306.

[33] 3 Phil 59, 61 (1903).

[34] 5 Phil 186, 187 (1905).

[35] G.R. No. 44773, December 4,1991, 204 SCRA 535, 556-557.

[36] G.R. No. 94471, September 14, 1993, 226 SCRA 374, 381.

[37] G.R. No. 129295, August 15, 2001, 368 SCRA 96, 125-126.

[38] G.R. Nos. 11168-69, June 17, 1998, 290 SCRA 727, 745.

[39] See note 7.

[40] Section 7 of R.A. No. 9344.

[41] Rollo, p. 51.

[42] SECTION 64. Children in Conflict with the Law Fifteen (15) Years Old and Below. - Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs, as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

x x x

SECTION 68. Children Who Have Been Convicted and are Serving Sentences. -- 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

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sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable laws.

[43] Supra note 30.

[44] 1) Whether 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.

[45] Rollo, pp. 51 and 84.

[46] G.R. No. 138471, October 10, 2002, 390 SCRA 577, 603-604; see also People v. Lopit, G.R. No. 177742, December 17, 2008.

[47] Id., People v. Sia, G.R. No. 174059, February 27, 2009 and People v. Bandin, G.R. No. 176531, April 24, 2009

[48] People v. Suarez, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 352.

[49] Paragraph 3 of Article 13 and Article 15 of the RPC, as amended.

[50] Rollo, p. 46.

[51] People v. Blancaflor, G.R. No. 130586, January 29, 2004, 421 SCRA 354, 365-366.

[52] Supra note 46.

[53] People v. Canares, G.R. No. 174065, February 18, 2009.

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