PEOPLE OF THE PHILIPPINES, PETITIONER, VS. BERNABE PANGILINAN Y CRISOSTOMO, RESPONDENT.

G.R. No. 183090. November 14, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is an appeal filed by appellant Bernabe Pangilinan which seeks to reverse and set aside the Decision[1] dated January 25, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00197. The CA decision affirmed the judgment[2] of the Regional Trial Court (RTC) of Tarlac City, Branch 63, convicting appellant of the crimes of rape under Article 266-A of the Revised Penal Code, as amended, and sexual abuse under Section 5 (b) of Republic Act (RA) No. 7610[3] with modification as to the amount of damages awarded to the offended party.

Consistent with our ruling in People v. Cabalquinto,[4] we withhold the real name of the victim and her immediate family members, as well as any information which tends to establish or compromise her identity. The initials AAA represent the victim, the initials BBB stand for her aunt, appellant's wife, and the initials CCC refer to one of her relatives.

On October 3, 2001, the prosecution filed two (2) Informations charging appellant of the crimes of Rape[5] and Child Sexual Abuse under Section 5 (b) of RA No. 7610. The Informations respectively read:

> Criminal Case No. 11768
>
> That on or about July 27, 2001, at around 10:00 o'clock in the evening at Brgy. Apsayan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse with [his] stepdaughter AAA, a minor, 13 years of age, against her will and consent.
>
> Contrary to law.[6]
>
> Criminal Case No. 11769
>
> That on or about 1995 up to about June 2001, at Barangay Apsayan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there willfully, unlawfully and criminally commit acts of lasciviousness upon the person of AAA, a minor subjected to sexual abuse.
>
> That accused is the stepfather of AAA, who was born on January 29, 1988.
>
> Contrary to law.[7]

Upon his arraignment on February 21, 2002,[8] appellant, duly assisted by counsel, entered a plea of "Not Guilty" in both cases.

Trial on the merits thereafter ensued.

The prosecution presented the testimonies of Dr. Marissa M. Mascarina, the attending physician, and the victim, AAA.

Dr. Mascarina testified that she examined AAA, as the latter was allegedly raped by appellant.[9] She made physical as well as internal examinations on AAA. Based on her examination, she issued a Medical Certificate,[10] which stated, among others, that there was no hymenal laceration.

AAA testified that she was born on January 20, 1988.[11] She had lived with her Aunt BBB, first cousin of her father, and her husband, herein appellant, since she was two years old until July 27, 2001.[12] At around 10 p.m. of July 27, 2001, while her aunt was working in Angeles, Pampanga, and she was watching television in their house, appellant arrived and ordered her to cook chicken adobo which she did. Suddenly, appellant approached her and pointed a samurai at her. Appellant then kissed her neck and mashed her breast.[13] It was not the first time that appellant did that to her.[14]

AAA further testified that she remembered three incidents wherein appellant abused her. The first time was when appellant kissed her and touched her private parts.[15] The second time was when appellant pointed a samurai at her, took her to a room and removed her clothes and kissed her on her lips and touched her private organ. He then laid on top of her and tried to insert his penis to her private organ. His organ touched her vagina; that she felt pain in her vagina but there was no blood.[16] And the third time was when appellant kissed her and mashed her breast.[17] She did not tell her aunt of appellant's sexual molestations, because he threatened to kill her and her aunt.[18] She intimated that her aunt BBB and appellant treated her like their own daughter.[19]

On redirect examination, AAA testified that appellant inserted his penis to her vagina and that it was painful when he did it.[20]

On the other hand, the defense presented appellant himself, his wife, BBB, and their two neighbors.

BBB testified that she and appellant have treated AAA as their real daughter by providing her with all her needs for which reason her relatives envied AAA.[21] She was able to talk with AAA while the latter was in the custody of the Department of Social Welfare and Development (DSWD), Tarlac City, and AAA told her that it was her cousin CCC who molested her.[22] BBB intimated that her relatives were mad at appellant because he was jobless and she was the one working for her family.[23]

For his part, appellant denied the accusations that he raped or molested AAA. He testified that on July 27, 2001, he was at his neighbor’s house dressing chickens. When he went home at around 10 p.m., AAA told him that CCC, a cousin, molested her.[24] Appellant and AAA were on their way to file a complaint against CCC when they met CCC's mother who forcibly took AAA by beating her with an umbrella.[25] Appellant insinuated that AAA was just forced by his wife's relatives to file the charges against him since they were against their relationship.[26]

Appellant's testimony was corroborated by his two neighbors.

On February 19, 2003, the RTC rendered its Judgment, the dispositive portion of which reads:

> WHEREFORE, from the foregoing evidence, the Court hereby finds the accused Guilty Beyond Reasonable Doubt on both cases (Criminal Case No. 11768 and Criminal Case No. 11769) for Rape and Sexual Abuse, respectively, and he is hereby sentenced as follows:
> I. Under Criminal Case No. 11768
> 1. to suffer the penalty of Reclusion Perpetua; and
>
> 2. to indemnify the private complainant in the amount of P50,000.00 as actual damages, P50,000.00 as moral damages, and P20,000.00 as fine to answer for the private complainant’s rehabilitation at the DSWD, Tarlac

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City.

II. Under Criminal Case No. 11769

1. to suffer the penalty of imprisonment of six (6) months and one (1) day of Prision Correccional medium, as the minimum to seven (7) years of Prision Mayor minimum, as the maximum; and

2. to indemnify the private complainant in the amount of P30,000.00 as damages.

SO ORDERED.[27]

Appellant's motion for reconsideration was denied in an Order[28] dated March 19, 2003.

Appellant filed a Notice of Appeal.[29] On January 14, 2004, we accepted the appeal.[30] However, pursuant to the Court's ruling in People v. Mateo,[31] we transferred the case to the Court of Appeals.[32]

On January 25, 2008, the CA rendered its decision which affirmed the RTC Decision, finding the appellant guilty of the crimes charged, but modifying the award of damages, the dispositive portion of which reads:

WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit. Accordingly, the appealed Decision dated 19 February 2003 of Branch 63, Regional Trial Court (RTC), Tarlac City, Third Judicial Region, in Criminal Cases Nos. 11768 and 11769, finding the accused guilty beyond reasonable doubt in both cases imposing the sentence of Reclusion Perpetua for the crime of Rape and the penalty of imprisonment of SIX (6) MONTHS and ONE (1) DAY of Prision Correccional medium, as the minimum to SEVEN (7) YEARS of Prision Mayor minimum, as the maximum for the crime of Sexual Abuse, is hereby AFFIRMED with the following modifications as to the award of damages:

- In Criminal Case No. 11768, to indemnify the offended party the amount of FIFTY THOUSAND PESOS (P50,000.00) as exemplary damages; civil indemnity of SEVENTY-FIVE THOUSAND PESOS (P75,000.00) and moral damages of SEVENTY-FIVE THOUSAND (P75,000.00), instead of FIFTY THOUSAND PESOS (P50,000.00); and

- In Criminal Case No. 11769, to pay the offended party the amount of TWENTY-FIVE THOUSAND PESOS (P25,000.00) as exemplary damages.[33]

In so ruling, the CA found unmeritorious appellant's argument that the allegation of “on or about 1995 up to about June 2001 was unconscionably spacious which violated his right to be informed of the nature and cause of the accusation against him.” The CA ruled that the precise time of the commission of the offense need not be alleged in the complaint or information unless time is an essential element of the crime charged which is not so in the crime of acts of lasciviousness; and that since appellant did not move for a bill of particulars or quashal of the Information, he could no longer question on appeal the alleged defect in the Information.

As to appellant's claim that there was no evidence showing that he had carnal knowledge of AAA on July 27, 2001, the CA found that AAA was only 14 years old and had been subjected to abuse by appellant since she was seven years old; thus, she could not remember the details and the dates when she was abused; however, it was established that she was raped which happened before the Information was filed. The findings of Dr. Mascarina that there was no hymenal laceration did not categorically discount the commission of rape and full penetration was not required to convict appellant for rape. The CA found no reason for AAA to fabricate lies as she considered appellant her father who treated her like his own daughter.

The CA did not give probative value to the alleged written statement of AAA filed with it which seemed to exonerate appellant from the offense charged against him.

A Notice of Appeal[34] was subsequently filed by appellant. In a Resolution[35] dated July 23, 2008, we accepted the appeal and ordered the parties to file their respective supplemental briefs if they so desire.

Appellee filed a Manifestation[36] to be excused from filing a supplemental brief as the brief filed with the CA had adequately addressed the issues and arguments raised in the appellant's brief dated June 20, 2005.

Appellant filed a Supplemental Brief[37] wherein he alleged that assuming appellant raped AAA, the RTC gravely erred in imposing the penalty of reclusion perpetua. He claims that he should have been prosecuted for rape under RA 7610 since AAA was already more than 12 years old on that fateful day, thus, the penalty should have been reclusion temporal in its medium period to reclusion perpertua.

In his Appellant's Brief, he presented the following assignment of errors, to wit:

> I
>
> THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF ACTS OF LASCIVIOUSNESS DESPITE THE FAILURE OF THE PROSECUTION TO ALLEGE AND ESTABLISH WITH PARTICULARITY THE DATE OF THE COMMISSION OF THE OFFENSE.
>
> II
>
> THE COURT A QUO GRAVELY ERRED IN FINDING THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIMES CHARGED DESPITE THE INSUFFICIENCY OF THE PROSECUTION EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT. [38]

It is settled that in a criminal case, an appeal throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of assignment of errors or not.[39]

In this case, appellant was charged under two separate Informations for rape under Article 266-A of the Revised Penal Code and sexual abuse under Section 5 (b) of RA No. 7610, respectively. However, we find the Information in Criminal Case No. 11769 for sexual abuse to be void for being violative of appellant's constitutional right to be informed of the nature and cause of the accusation against him. We again quote the charging part of the Information for easy reference, thus:

> That on or about 1995 up to about June 2001 at Barangay Apsayan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there willfully, unlawfully and criminally commit acts of lasciviousness upon the person of AAA, a minor subjected to sexual abuse.
>
> That accused is the stepfather of AAA who was born on January 29, 1988.
>
> Contrary to law.

Under Section 8, Rule 110 of the Rules of Criminal Procedure, it provides:

> Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

A reading of the allegations in the above-quoted Information would show the insufficiency of the averments of the acts alleged to have been committed by appellant. It does not contain the essential facts constituting the

offense, but a statement of a conclusion of law. Thus, appellant cannot be convicted of sexual abuse under such Information.

In People v. Dela Cruz,[40] wherein the Information in Criminal Case No. 15368-R read:

> That on or about the 2nd day of August, 1997, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously commit sexual abuse on his daughter either by raping her or committing acts of lasciviousness on her, which has debased, degraded and demeaned the intrinsic worth and dignity of his daughter, JEANNIE ANN DELA CRUZ as a human being.
>
> CONTRARY TO LAW.[41]

We dismissed the case after finding the Information to be void and made the following ratiocinations:

> The Court also finds that accused-appellant cannot be convicted of rape or acts of lasciviousness under the information in Criminal Case No. 15368-R, which charges accused-appellant of a violation of R.A. No. 7610 (The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), "either by raping her or committing acts of lasciviousness.
>
> It is readily apparent that the facts charged in said information do not constitute an offense. The information does not cite which among the numerous sections or subsections of R.A. No. 7610 has been violated by accused-appellant. Moreover, it does not state the acts and omissions constituting the offense, or any special or aggravating circumstances attending the same, as required under the rules of criminal procedure. Section 8, Rule 110 thereof provides:
>
> x x x x
>
> The allegation in the information that accused-appellant "willfully, unlawfully and feloniously commit sexual abuse on his daughter [Jeannie Ann] either by raping her or committing acts of lasciviousness on her" is not a sufficient averment of the acts constituting the offense as required under Section 8, for these are conclusions of law, not facts. The information in Criminal Case No. 15368-R is therefore void for being violative of the accused-appellant's constitutionally-guaranteed right to be informed of the nature and cause of the accusation against him. [42]

The right to be informed of the nature and cause of the accusation against an accused cannot be waived for reasons of public policy.[43] Hence, it is imperative that the complaint or information filed against the accused be complete to meet its objectives. As such, an indictment must fully state the elements of the specific offense alleged to have been committed.[44]

The next question to be addressed is whether the prosecution was able to prove all the elements of the crime of rape under Article 266-A of the Revised Penal Code, as amended, which provides:

> Art. 266-A Rape; When And How Committed – Rape is Committed –
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
> b) When the offended party is deprived of reason or otherwise unconscious;
> c) By means of fraudulent machination or grave abuse of authority; and
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

We find that AAA remained steadfast in her assertion that appellant raped her through force and intimidation with the use of a samurai. And even after the incident, appellant threatened AAA that he would kill her and her aunt,

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i.e., appellant's wife, should AAA report the incident. Thus, AAA's testimony on the witness stand:

Q. What did the accused do to you?
A. He aimed the samurai at me and he took me inside the room, sir.

Q. And what happened when he took you inside the room?

ATTY. MARTINEZ:

Q. What date are you referring to?
A. I can no longer remember, sir.

FISCAL DAYAON:

Q. And what happened when you were in the room?
A. He aimed the samurai at me and directed me to remove my clothes, sir.

Q. Did you remove your clothes?
A. No, sir.

Q. Because you did not take off your clothes, what happened?
A. He was forcing me to remove my clothes. He was able to remove my clothes, sir.

Q. After undressing you, what happened?
A. He kissed me, sir.

Q. Where did he [kiss] you?
A. On my lips, sir.

Q. Where else?
A. He was [mashing] my breast.

Q. What else?
A. On my genitals.

Q. Aside from kissing you and mashing your breast and holding your vagina, what else did he do?
A. He lay on top of me.

Q. When he laid on top you, was the accused on his dress (sic) or what was his condition then?
A. He was naked, sir.

Q. Was he wearing a shirt?
A. No, sir.

Q. Was he wearing pants?
A. No, sir.

Q. What happened when he laid on top of you?
A. He was trying to insert his penis to my vagina.

FISCAL DAYAON:

Q. Was he able to insert his organ to your vagina?
A. No, sir.

Q. Could you tell us if his organ touched your vagina?
A. Yes, sir.

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Q. What part of your vagina was touched by his organ?
A. I do not know.

Q. How many times did [the] accused try to insert his organ to your vagina?
A. Many times, sir.

Q. Did you not tell your aunt about this incident that the accused was trying to insert his organ to your vagina.
A. No, sir.

Q. Why did you not tell her?
A. No, sir because he was threatening to kill me and my aunt, sir.

Q. How did he tell you?
A. The samurai was pointed at me, sir.

Q. Could you tell us how did he tell you [that he will kill] you and your aunt?
A. Don't tell the truth or else I will kill you and your aunt. [45]

On clarification made by the Court after the direct examination, AAA testified, to wit:

Q. Did you feel anything when he was trying to insert his penis to your private organ?
A. There was, sir.

Q. Where were you hurt?
A. My vagina, sir.[46]

The Court made further clarification after the redirect examination, thus:

Q. Was there any occasion that your uncle inserted his penis to your vagina?

The witness

A. Yes, sir.

x x x x

Q. What did you feel when he did that to you.

A. It was painful, sir.[47]

Indeed, AAA testified in her redirect examination that appellant had inserted his organ into her vagina and that it was painful when appellant did it. It was the penetration that caused the pain. We held that rape is committed on the victim’s testimony that she felt pain.[48] This, at least, could be nothing but the result of penile penetration sufficient to constitute rape.[49] Rape is committed even with the slightest penetration of the woman's sex organ.[50]

A finding that the accused is guilty of rape may be based solely on the victim's testimony if such testimony meets the test of credibility.[51] We held that no woman, much less a child of such tender age, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.[52]

Appellant argues that he could not be convicted of rape since based on the medical examination report, AAA's genitalia had no hymenal laceration which corroborated AAA's testimony that appellant merely kissed her and touched her breast on July 27, 2001.

Proof of hymenal laceration is not an element of rape.[53] An intact hymen does not negate a finding that the

victim was raped. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape.[54]

In People v. Bohol,[55] we explained the treatment of medical evidence as not essential in proving rape cases, thus,

> There is no gainsaying that medical evidence is merely corroborative, and is even dispensable, in proving the crime of rape. In child sexual abuse cases particularly, normal physical findings are common due to several factors, such as delay in seeking medical examination, the rapid healing of injuries, washing, urinating or defecating after the sexual assault, the elasticity of the hymen, changes in the hymenal tissue due to estrogen effect when the victim is at the pubertal stage, or the type of sexual molestation involved, such as fondling, oral sodomy, or cunnilingus, which leaves no physical marks. The child's disclosure is the most important evidence of the sexual abuse she has gone through.[56]

While it appears from AAA's testimony that she was not raped precisely on July 27, 2001 as what appellant did was kiss her lips and mash her breast on that day, however, her entire testimony in the witness stand positively shows that appellant with the use of force and intimidation had carnal knowledge of her at some other time. She testified that appellant violated her since she was seven years old. The first time was when they were still staying in Angeles City where appellant touched her private parts; the second time was when they were already in Gerona, Tarlac, where appellant pointed a samurai at her and raped her; and the third time happened on July 27, 2001 when appellant kissed her lips and mashed her breast. Indeed, appellant may be convicted for rape in the light of AAA's testimony. For in rape cases, the date of the commission is not an essential element of the offense; what is material is its occurrence.[57]

Notably, the information alleges that the crime of rape was committed “on or about July 27, 2001,” thus the prosecution may prove that rape was committed on or about July 27, 2001, i.e., few months or years before, and not exactly on July 27, 2001.

In People v. Lizada,[58] wherein accused-appellant averred that the prosecution failed to adduce the requisite quantum of evidence that he raped the private complainant precisely on September 15, 1998 and October 22, 1998, we ruled:

> The contention of accused-appellant does not persuade the Court. The private complainant testified that since 1996, when she was only eleven years old, until 1998, for two times a week, accused-appellant used to place himself on top of her and despite her tenacious resistance, touched her arms, legs and sex organ and inserted his finger and penis into her vagina. In the process, he ejaculated. Accused-appellant threatened to kill her if she divulged to anyone what he did to her. Although private complainant did not testify that she was raped on September 15, 1998 and October 22, 1998, nevertheless accused-appellant may be convicted for two counts of rape, in light of the testimony of private complainant.
>
> It bears stressing that under the two Informations, the rape incidents are alleged to have been committed “on or about September 15, 1998” and “on or about October 22, 1998.” The words “on or about” envisage a period, months or even two or four years before September 15, 1998 or October 22, 1998. The prosecution may prove that the crime charged was committed on or about September 15, 1998 and on or about October 22, 1998.[59]

Appellant's main defense is denial. He claims that the charge was instigated by his wife's relatives who are against their relationship. Such defense remains unsubstantiated. Moreover, it would be the height of ingratitude for AAA, who was not even shown to have any improper motive, to falsely accuse appellant of sexual abuses especially that appellant and his wife treated her like their own daughter and the fact that appellant might go to jail. In fact, AAA suffered in silence out of fear for her and her aunt's lives if not for her cousin who saw appellant in the act of kissing her and touching her private parts. It was when she was brought to the DSWD that she made

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known appellant's abuses done to her.

Anent the alleged letter of AAA filed with the CA which sought to exonerate appellant from the charges filed against him, we find the same not worthy of belief. We quote with approval what the CA said in not giving probative value to such letter, to wit:

> x x x We cannot consider the same as it has no probative value considering that it appears not to be the genuine signature of the private complainant AAA herself as compared to her signatures in the original complaint and her sworn statement. More so, it also appears that the said document is not the original one as required by the best evidence rule in criminal procedure. Lastly, it is worth noticeable that the execution of the said letter was not assisted by a counsel and it was not also notarized.[60]

In his Supplemental Brief, appellant claims that he should have been prosecuted for rape under RA No. 7610 since AAA was already more than 12 years old when the alleged rape was committed which carries the penalty of reclusion temporal in its medium period to reclusion perpetua.

We do not agree.

In People v. Dahilig,[61] wherein the question posed was whether the crime committed was rape (Violation of Article 266-A, par. 1, in relation to Article 266-B, 1[st] paragraph of the Revised Penal Code, as amended by RA No. 8353), or is it Child Abuse, defined and penalized by Section 5, (b), RA No. 7610, we said:

> As elucidated by the RTC and the CA in their respective decisions, all the elements of both crimes are present in this case. The case of People v. Abay, however, is enlightening and instructional on this issue. It was stated in that case that if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5 (b) of R.A. No. 7610 or rape under Article 266-A (except paragraph 1 [d] of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Specifically, Abay reads:
>
> Under Section 5 (b), Article III of RA 7610 in relation to RA 8353,if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A (1)(d) of the Revised Penal Code and penalized with reclusion perpetua. On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5 (b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5 (b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law.
>
> In this case, the victim was more than 12 years old when the crime was committed against her. The Information against appellant stated that AAA was 13 years old at the time of the incident. Therefore, appellant may be prosecuted either for violation of Section 5 (b) of RA 7610 or rape under Article 266-A (except paragraph 1 [d]) of the Revised Penal Code. While the Information may have alleged the elements of both crimes, the prosecution's evidence only established that appellant sexually violated the person of AAA through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, rape was established.

Accordingly, the accused can indeed be charged with either Rape or Child Abuse and be convicted therefor. Considering, however, that the information correctly charged the accused with rape in violation of Article 266-A par. 1 in relation to Article 266-B, 1st par. of the Revised Penal Code, as amended by R.A. No. 8353, and that he

was convicted therefor, the CA should have merely affirmed the conviction.

As in the present case, appellant can indeed be charged with either Rape or Child Abuse and be convicted therefor. The prosecution's evidence established that appellant had carnal knowledge of AAA through force and intimidation by threatening her with a samurai. Thus, rape was established. Considering that in the resolution of the Assistant Provincial Prosecutor, he resolved the filing of rape under Article 266-A of the Revised Penal Code for which appellant was convicted by both the RTC and the CA, therefore, we merely affirm the conviction.

However, we need to modify the damages awarded for the crime of rape committed on AAA. The CA awarded the amount of P75,000.00 as civil indemnity for the crime of rape, saying that rape was qualified by the circumstance of minority. It also awarded moral damages in the amount of P75,000.00 and exemplary damages of P50,000.00.

While the Information for rape mentioned AAA's minority, as well as the fact that she was a stepdaughter of appellant, it was only AAA's minority which was proven by a copy of a birth certificate issued by the Office of the City Civil Registrar of Angeles City. Conformably with the ruling in People v. Esperanza,[62] when either one of the qualifying circumstances of relationship and minority is omitted or lacking, that which is pleaded in the Information and proved by the evidence may be considered as an aggravating circumstance. As such, AAA's minority may be considered as an aggravating circumstance. However, it may not serve to raise the penalty, because in simple rape by sexual intercourse, the imposable penalty is reclusion perpetua which is single and indivisible.[63] Hence, the civil indemnity and moral damages awarded by the CA must be reduced from P75,000.00 to P50,000.00 each in line with prevailing jurisprudence.[64] Moreover, when a crime is committed with an aggravating circumstance, either qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code.[65]. The CA's award of P50,000.00 must also be reduced to P30,000.00, in accordance with prevailing jurisprudence.[66]

WHEREFORE, the Decision dated January 25, 2008 of the Court of Appeals, finding appellant Bernabe Pangilinan guilty beyond reasonable doubt of rape under Article 266-A of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of reclusion perpetua in Criminal Case No. 11768, is hereby AFFIRMED with MODIFICATION as to the award of damages. Appellant is ordered to pay the offended party, private complainant AAA, the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages, pursuant to prevailing jurisprudence.

The Information in Criminal Case No. 11769 is declared null and void for being violative of the appellant's constitutionally-guaranteed right to be informed of the nature and cause of the accusation against him. The case for Child Sexual Abuse under Section 5 (b) of RA No. 7160 against appellant is therefore DISMISSED.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Perez,[*] and Mendoza, JJ., concur.

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[*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152, dated November 11, 2011.

[1] Penned by Associate Justice Arturo G. Tayag, with Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid, concurring; rollo, pp. 4-31.

[2] CA rollo, pp. 13-24; per Judge Arsenio P. Adriano.

[3] Known as “Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

[4] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] Rollo, p. 3; Rape under Art. 266-A of the Revised Penal Code, per Resolution dated October 1, 2001 of the Assistant Provincial Prosecutor.

[6] CA rollo, p. 5.

[7] Id. at 7.

[8] Records, p. 20.

[9] TSN, April 30, 2002, p. 5.

[10] Exhibit “B,” records, p. 9.

[11] TSN, April 30, 2002, p. 10.

[12] Id. at 11.

[13] Id. at 13-14.

[14] Id. at 15.

[15] Id. at 21.

[16] Id.

[17] Id.

[18] Id. at 18-19

[19] Id. at 22.

[20] TSN, June 11, 2002, pp. 18-19.

[21] TSN, October 8, 2002, p. 4.

[22] Id. at 7.

[23] Id. at 13.

[24] TSN, December 10, 2002, pp. 5-6.

[25] Id. at 7-8

[26] Id. at 12-14.

[27] CA rollo, pp. 23-24

[28] Id. at 28.

[29] Id. at 25.

[30] Id. at 35.

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

[32] Resolution dated September 13, 2004, CA rollo, pp. 73-74.

[33] Rollo, pp. 30-31.

[34] CA rollo, p. 186.

[35] Rollo, p. 37.

[36] Id. at 40-41.

[37] Id. at 43-47.

[38] CA rollo, p. 90.

[39] People v. Flores, Jr., 442 Phil. 561, 569 (2002).

[40] 432 Phil. 988 (2002).

[41] Id. at 992.

[42] Id. at 1014-1016.

[43] People v. Flores, Jr., supra note 39, citing People v. Antido, G.R. No. 121098, September 4, 1997, 278 SCRA 425, 452, citing RICARDO J. FRANCISCO, CRIMINAL PROCEDURE, 270-271 (2nd ed., 1994).

[44] Id. at 569-570, citing People v. Cutamora, G.R. Nos. 133448-53, October 6, 2000, 342 SCRA 231, 239 (2000), citing People v. Bayya, 327 SCRA 771, 777 (2000); see also Balitaan v. Court of First Instance of Batangas, 115 SCRA 729, 739 (1982), cited in People v. Ramos, 296 SCRA 559, 576 (1998).

[45] TSN, April 30, 2002, pp. 16-19.

[46] Id. at 21.

[47] TSN, June 11, 2002, pp. 18-19.

[48] People v. Tampos, 455 Phil. 844, 859 (2003).

[49] People v. Palicte, G.R. No. 101088, January 27, 1994, 229 SCRA 543, 547-548.

[50] Id. at 548, citing People v. Alegado, G.R. Nos. 93030-31, August 21, 1991, 201 SCRA 37. See also the case of People v. Gabris, G.R. No. 116221, July 11, 1996, 258 SCRA 663.

[51] People v. Sumarago, 466 Phil. 956, 966 (2004).

[52] People v. Canonigo, G.R. No. 133649, August 4, 2000, 337 SCRA 310, 317, citing People v. Cabebe, 290 SCRA 543 (1998)

[53] People v. Boromeo, G.R. No. 150501, June 3, 2004, 430 SCRA 533.

[54] Id.

[55] 415 Phil. 749 (2001).

[56] Id. at 760-761.

[57] People v. Macaya, G.R. Nos. 137185-86, February 15, 2001, 351 SCRA 707, 714; People v. Gopio, G.R. No. 133925, November 29, 2000, 346 SCRA 408, 429.

[58] 444 Phil. 67 (2003).

[59] Id. at 82.

[60] Rollo, p. 28.

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[61] G.R. No. 187083, June 13, 2011.

[62] 453 Phil. 54, 77 (2003).

[63] People v. Hermocilla, G.R. No. 175830, July 10, 2007, 527 SCRA 296, 305.

[64] See People v. Padilla, G.R. No. 167955, September 30, 2009, 601 SCRA 385, 403, citing People v. Remeias Begino y Grajo, G.R. No. 181246, March 20, 2009, 582 SCRA 189; People v. Elmer Baldo y Santain, G.R. No. 175238, February 24, 2009, 580 SCRA 225.

[65] Id.; citing People v. Marcos, G.R. No. 185380, June 18, 2009, 589 SCRA 661.

[66] Id; People v. Peralta, G.R. No. 187531, October 16, 2009, 604 SCRA 285, 291.

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