PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY ARPON Y JUNTILLA, ACCUSED-APPELLANT.

G.R. No. 183563. December 14, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Assailed before Us is the Decision[1] of the Court of Appeals dated February 8, 2008 in CA-G.R. CR.-H.C. No. 00560, which affirmed with modification the Decision[2] dated September 9, 2002 of the Regional Trial Court (RTC) of Tacloban City, Branch 7, in Criminal Case Nos. 2001-01-46 to 2001-01-53, finding the accused-appellant Henry Arpon y Juntilla guilty beyond reasonable doubt of one (1) count of statutory rape and seven (7) counts of rape against the private complainant AAA.[3]

On December 29, 1999, the accused-appellant was charged[4] with eight (8) counts of rape in separate informations, the accusatory portions of which state:

> Criminal Case No. 2000-01-46
>
> That sometime in the year 1995 in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, succeed in having carnal knowledge of the said [AAA], who was then only eight (8) years old, without her consent and against her will.
>
> Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[5]
>
> Criminal Case No. 2000-01-47
>
> That sometime in the month of July, 1999 in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the twelve-year-old offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.
>
> Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[6]
>
> Criminal Case No. 2000-01-48
>
> That sometime in the month July 1999 in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the twelve-year-old offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.
>
> Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the

offender is a relative by consanguinity within the third civil degree.[7]

Criminal Case No. 2000-01-49

That sometime in the month of July, 1999 in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the twelve-year-old offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[8]

Criminal Case No. 2000-01-50

That sometime in the month of July, 1999 in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the twelve-year-old offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[9]

Criminal Case No. 2000-01-51

That sometime in the month of July, 1999 in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the twelve-year-old offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[10]

Criminal Case No. 2000-01-52

That sometime in the month of August, 1999 in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the twelve-year-old offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[11]

Criminal Case No. 2000-01-47

That sometime in the month of August, 1999 in the municipality of [XXX], Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the uncle of [AAA], the twelve-year-old offended party, actuated by lust, did, then and there, willfully, unlawfully and feloniously, and with the use of force and violence succeed in having carnal knowledge of the said [AAA], without her consent and against her will.

Contrary to law with the aggravating circumstance that the victim is under eighteen (18) years of age and the offender is a relative by consanguinity within the third civil degree.[12] (Emphases ours.)

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During the arraignment of the accused-appellant on November 28, 2000, he entered a plea of not guilty.[13] On March 13, 2001, the pre-trial conference of the cases was conducted and the parties stipulated on the identity of the accused-appellant in all the cases, the minority of the victim and the fact that the accused appellant is the uncle of the victim.[14]

The pre-trial order containing the foregoing stipulations was signed by the accused and his counsel. The cases were then heard on consolidated trial.

The prosecution presented the lone testimony of AAA to prove the charges against the accused-appellant. AAA testified that she was born on November 1, 1987.[15] In one afternoon when she was only eight years old, she stated that the accused-appellant raped her inside their house. She could not remember, though, the exact month and date of the incident. The accused-appellant stripped off her shorts, panties and shirt and went on top of her. He had his clothes on and only pulled down his zipper. He then pulled out his organ, put it in her vagina and did the pumping motion. AAA felt pain but she did not know if his organ penetrated her vagina. When he pulled out his organ, she did not see any blood. She did so only when she urinated.[16]

AAA also testified that the accused-appellant raped her again in July 1999 for five times on different nights. The accused-appellant was then drinking alcohol with BBB, the stepfather of AAA, in the house of AAA's neighbor. He came to AAA's house, took off her panty and went on top of her. She could not see what he was wearing as it was nighttime. He made her hold his penis then he left. When asked again how the accused-appellant raped her for five nights in July of the said year, AAA narrated that he pulled down her panty, went on top of her and pumped. She felt pain as he put his penis into her vagina. Every time she urinated, thereafter, she felt pain. AAA said that she recognized the accused-appellant as her assailant since it was a moonlit night and their window was only covered by cloth. He entered through the kitchen as the door therein was detached.[17]

AAA further related that the accused-appellant raped her again twice in August 1999 at nighttime. He kissed her and then he took off his shirt, went on top of her and pumped. She felt pain in her vagina and in her chest because he was heavy. She did not know if his penis penetrated her vagina. She related that the accused-appellant was her uncle as he was the brother of her mother. AAA said that she did not tell anybody about the rapes because the accused-appellant threatened to kill her mother if she did. She only filed a complaint when he proceeded to also rape her younger sister, DDD.[18]

After the testimony of AAA, the prosecution formally offered its documentary evidence, consisting of: (1) Exhibit A - the Medico-Legal Report,[19] which contained the results of the medical examination conducted on AAA by Dr. Rommel Capungcol and Dr. Melissa Adel Gagala on October 26, 1999; and (2) Exhibit B - the Social Case Study Report[20] pertaining to AAA's case, which was issued by the Municipal Social Welfare and Development Office of the Province of Leyte.

The Medico-Legal Report stated the following findings:

> P. E. Findings: Surg. Findings:
>
> - (-) Physical injuries.
>
> OB- NOTES:
> - Patient came in with history of rape since 8 year old for so many times. last act was March 1999.
>
> O: Pelvic Exam:
> Ext. Genetalia - grossly normal.
> Introitus: Old, healed incomplete laceration at 3 & 9 o'clock position
> Speculum Exam: not done due to resistance.

> Internal Exam:
>
> Vaginal smear for presence of spermatozoa: = NEGATIVE[21]

Upon the other hand, the defense called the accused-appellant to the witness stand to deny the informations filed against him and to refute the testimony of AAA. He testified that when the first incident of rape allegedly happened in 1995, he was only 13 years old as he was born on February 23, 1982. In 1995, he worked in Sagkahan, Tacloban City as a houseboy for a certain Gloria Salazar and he stayed there up to 1996. He stated that he was working in Tacloban City when the alleged rapes happened in the municipality of XXX. When he would go home from Tacloban, he would stay at the house of a certain Fred Antoni. He did not go to the house of AAA as the latter's parents were his enemies. He said that he had a quarrel with AAA's parents because he did not work with them in the ricefields. He further recounted that in July 1999, he was also living in Tacloban City and worked there as a dishwasher at a restaurant. He worked there from 1998 up to September 1999. The accused-appellant likewise stated that in August 1999, he was still working at the same restaurant in Tacloban City. While working there, he did not go home to XXX as he was busy with work. He denied that he would have drinking sprees with AAA's stepfather, BBB, because they were enemies.[22]

On cross-examination, the accused-appellant admitted that the mother of AAA was his sister and they were close to each other. He said that his parents were still alive in 1995 up to October 1999 and the latter then resided at Calaasan, Alangalang, Leyte. He indicated that his parents' house was about two kilometers away from the house of AAA. While he was working at the restaurant in Tacloban City, he would visit his parents once every month, mainly on Sundays.[23]

The Judgment of the RTC

On September 9, 2002, the RTC of Tacloban City, Branch 7, rendered a Decision convicting the accused-appellant as follows:

> WHEREFORE, premises considered, pursuant to Art. 266-A and 266-B of the Revised Penal Code as amended, and further amended by R.A. 8353 (Rape Law of 1997) and R.A. 7659 (Death Penalty Law) the Court found accused HENRY ARPON, GUILTY beyond reasonable doubt of ONE COUNT OF STATUTORY RAPE and SEVEN COUNTS OF RAPE charged under the informations and sentenced to suffer the maximum penalty of DEATH, and to indemnify the victim, [AAA] the amount of Fifty Thousand (P50,000.00) Pesos for each count of Rape and pay moral damages in the amount of Fifty Thousand (P50,000.00) Pesos and pay the cost.[24] (Emphases in the original.)

The court a quo found more credible the testimony of AAA. The fact that AAA was in tears when she testified convinced the trial court of the truthfulness of her rape charges against the accused-appellant. If there were inconsistencies in AAA's testimony, the trial court deemed the same understandable considering that AAA was pitted against a learned opposing counsel. The delay in the reporting of the rape incidents was not also an indication that the charges were fabricated. Moreover, the trial court ruled that the findings of the medico-legal officer confirmed that she was indeed raped. The accused-appellant's defense of alibi was likewise disregarded by the trial court, declaring that it was not physically impossible for him to be present in XXX at any time of the day after working hours while he was working in Tacloban City. The trial court stated that the accused-appellant was positively identified by AAA as the person who sexually abused her and she held no grudge against him. The trial court imposed the penalty of death as it found that AAA was less than 18 years old at the time of the commission of the rape incidents and the accused-appellant was her uncle, a relative by consanguinity within the third civil degree. The trial court also appreciated against the accused-appellant the aggravating circumstances of abuse of confidence and nighttime.

The accused-appellant filed a Motion for Reconsideration[25] of the RTC Decision, asserting that the trial court failed to consider his minority as a privileged mitigating circumstance. As stated in his direct examination, the accused-appellant claimed that he was born on February 23, 1982, such that he was only 13 and 17 years old when the incidents of rape allegedly occurred in 1995 and 1999, respectively. In a Resolution[26] dated November 6, 2002, the trial court denied the accused-appellant's motion, holding that the latter failed to substantiate with clear and convincing evidence his allegation of minority.

The cases were elevated to the Court on automatic review and were docketed as G.R. Nos. 165201-08.[27] The parties then filed their respective briefs.[28] On February 7, 2006, we resolved[29] to transfer the cases to the Court of Appeals pursuant to our ruling in People v. Mateo.[30] The cases were docketed in the appellate court as CA-G.R. CR.-H.C. No. 00560.

The Decision of the Court of Appeals

On February 8, 2008, the Court of Appeals promulgated its assailed decision, decreeing thus:

> WHEREFORE, the Decision dated September 9, 2002 of the Regional Trial Court, Branch 7, Tacloban City in Criminal Case Nos. 2001-01-46 to 2001-01-53 is AFFIRMED with modification awarding exemplary damages to [AAA] in the amount of Twenty[-]Five Thousand (P25,000.00) Pesos for each count of rape and clarification that the separate award of Fifty Thousand (P50,000.00) Pesos as moral damages likewise pertains to each count of rape. The death penalty imposed is reduced to reclusion perpetua in accord with Rep. Act No. 9346.[31]

The Court of Appeals adjudged that the inconsistencies pointed out by the accused-appellant in the testimony of AAA were not sufficient to discredit her. The appellate court held that the exact age of AAA when the incidents of rape occurred no longer mattered, as she was still a minor at the time. More significant was her "straightforward, categorical and candid testimony" that she was raped eight times by the accused-appellant. The Court of Appeals also agreed with the ruling of the RTC that AAA's charges of rape conformed with the physical evidence and the accused-appellant's uncorroborated defense of alibi could not stand against the positive identification made by AAA.

As regards the attendant circumstances, the Court of Appeals ruled that the relationship of the accused-appellant to AAA was both alleged in the informations and admitted by the accused-appellant. The appellate court, however, differed in appreciating against the accused-appellant the qualifying circumstance of AAA's minority. The lone testimony of AAA on the said circumstance was held to be an insufficient proof therefor. The aggravating circumstance of nighttime was also ruled to be inapplicable as it was not shown that the same was purposely sought by the accused-appellant or that it facilitated the commission of the crimes of rape. In view of the presence of the qualifying circumstance of relationship, the Court of Appeals awarded exemplary damages in favor of AAA.

The accused-appellant filed a Notice of Appeal[32] of the above decision and the same was given due course by the Court of Appeals in a Resolution[33] dated May 27, 2008.

On November 17, 2008, the Court resolved to accept the appeal and required the parties to file their respective supplemental briefs, if they so desire, within 30 days from notice.[34] Thereafter, in a Manifestation and Motion[35] filed on December 24, 2008, the plaintiff-appellee, through the Office of the Solicitor General, prayed that it be excused from filing a supplemental brief. On February 3, 2009, the accused-appellant submitted a Supplemental Brief.[36]

The Issues

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In the accused-appellant's brief, the following issues were invoked:

> I
>
> THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.
>
> II
>
> THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT.
>
> III
>
> THE COURT A QUO GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH.[37]

The accused-appellant insists that it was error on the part of the RTC to give weight to the incredible testimony of AAA. He alleges that AAA could not state with consistency the exact date when she was first supposedly raped, as well as her age at that time. The accused-appellant also avers that AAA could not remember the dates of the other incidents of rape charged, all of which were allegedly described in a uniform manner. Contrary to the judgment of the Court of Appeals, the accused-appellant posits that the above inconsistencies cannot merely be discounted as insignificant. He further insists that the qualifying circumstances of AAA's minority and her relationship to the accused-appellant were not duly proven by the prosecution. The accused-appellant, thus, prays for a judgment of acquittal.

The Ruling of the Court

After a careful examination of the records of this case, the Court resolves to deny the appeal, but with a modification of the penalties and the amount of indemnities awarded.

To recall, the RTC and the Court of Appeals found the accused-appellant guilty of one (1) count of statutory rape and seven (7) counts of qualified rape.

Under the information in Criminal Case No. 2000-01-46, the first incident of rape was alleged to have occurred in 1995 when AAA was only eight years old. However, the accused-appellant points out that the prosecution failed to substantiate the said fact as AAA's testimony thereon was too inconsistent and incredible to be worthy of any belief. He explains that AAA initially claimed that she was raped for the first time when she was eight years old. Nonetheless, during her testimony regarding the incidents of rape that occurred in July 1999, she said that the accused did the same thing that he did to her when she was only seven years old. On her redirect examination, AAA then stated that she was first raped in 1998 when she was eleven (11) years old.

Presently, Article 266-A of the Revised Penal Code defines the crime of rape by sexual intercourse as follows:

> 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 is otherwise unconscious;
>
> c. By means of fraudulent machination or grave abuse of authority;
>
> 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.

In particular, "Article 266-A(1)(d) spells out the definition of the crime of statutory rape, the elements of which are: (1) that the offender had carnal knowledge of a woman; and (2) that such a woman is under twelve (12) years of age or is demented."[38]

The above provision came into existence by virtue of Republic Act No. 8353,[39] or the Anti-Rape Law of 1997, which took effect on October 22, 1997.[40] Prior to this date, the crime of rape was penalized under Article 335 of the Revised Penal Code,[41] which provides:

> ART. 335. When and how rape is committed. -- Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> - By using force or intimidation;
>
> - When the woman is deprived of reason or otherwise unconscious; and
>
> - When the woman is under twelve years of age or is demented.

In People v. Macafe,[42] we explained the concept of statutory rape under Article 335 of the Revised Penal Code in this wise:

> Rape under paragraph 3 of [Article 335] is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve years old. Hence, force and intimidation are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.[43] (Emphasis ours.)

Manifestly, the elements of statutory rape in the above-mentioned provisions of law are essentially the same. Thus, whether the first incident of rape charged in this case did occur in 1995, i.e., before the amendment of Article 335 of the Revised Penal Code, or in 1998, after the effectivity of the Anti-Rape Law of 1997, the prosecution has the burden to establish the fact of carnal knowledge and the age of AAA at the time of the commission of the rape.

Contrary to the posturing of the accused-appellant, "the date of the commission of the rape is not an essential element of the crime of rape, for the gravamen of the offense is carnal knowledge of a woman."[44] "Inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal."[45]

As regards the first incident of rape, the RTC credited with veracity the substance of AAA's testimony. On this matter, we reiterate our ruling in People v. Condes[46] that:

> Time and again, the Court has held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality. The trial judge has the advantage of observing the witness' deportment and manner of testifying. Her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" are all useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the [Court of Appeals].[47]

In the instant case, we have thoroughly scrutinized the testimony of AAA and we found no cogent reason to disturb the finding of the RTC that the accused-appellant indeed committed the first incident of rape charged. AAA positively identified the accused-appellant as the perpetrator of the dastardly crimes. With tears in her eyes, she clearly and straightforwardly narrated the said incident of rape as follows:

[PROSECUTOR EDGAR SABARRE]

Q:

Do you recall of any unusual incident that happened when you were still 8 years old?

[AAA]

A:

There was but I cannot anymore remember the exact month and date.

Q:

Just tell what happened to you when you were still 8 years old?

A:

I was raped by Tiyo Henry.

Q:

How did he rape you?

A:

He stripped me of my panty, shorts and shirts.

Q:

Do you remember what place did he rape you?

A:

Yes, sir in our house.

Q:

Who were the persons present then at that time?

A:

My younger brother and I.

Q:

About your mother and step father where were they?

A:

In the ricefield.

PROS. SABARRE:

May we make it of record that the witness is crying.

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COURT:

Have it on record.

PROS. SABARRE:

Q:

Do you still recall was it in the morning, in the afternoon or evening?

A:

In the afternoon.

x x x x

Q:

After your clothes and [panty] were taken off by accused what did he do to you next if any?

A:

He went on top of me.

Q:

Was he still with his clothes on or already naked?

A:

He has still clothes on, he did not take off his pants, he only pulled down the zipper.

Q:

And when he pulled down the zipper and went on top of you what did he do next if any?

A:

He was pumping on me.

Q:

Did he pull out his organ?

A:

Yes, sir.

Q:

And where did he place his organ?

A:

In my vagina.

Q:

When he kept on pumping what did you feel?

A:

Pain.[48]

The above testimony of AAA was also corroborated by the Medico-Legal Report of Dr. Capungcol and Dr. Gagala, who found "old, healed, incomplete" hymenal lacerations on the private part of AAA. "[W]hen the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge."[49]

Anent the five incidents of rape that were alleged to have been committed in July 1999, the Court disagrees with the ruling of the trial court that all five counts were proven with moral certainty. The testimony of AAA on the said incidents is as follows:

Q:

How many times did [the accused-appellant] rape you in July 1999?

A:

Five times.

Q:

Was it in the daytime or night time?

A:

Night time.

Q:

Was it in different nights or on the same night?

A:

Different nights.

Q:

Who were present then at that time when he raped you five times?

A:

My Kuya and other siblings.

Q:

You have companions why were you raped?

A:

Because they were sleeping.

Q:

How did he rape you on that July night for five times, will you please narrate to the court?

A:

Because they have been drinking, he came to our house, pulled out my panty and went on top of me.

Q:

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With whom was he drinking?

A:

With my step father.

Q:

Where did they drink?

A:

In our neighbor.

Q:

When he took off your shorts and panty what was the accused wearing at that time?

A:

I do not know because I could not see since it was night time.

Q:

When he was on top of [you] was he still wearing something?

A:

No, sir.

Q:

What did he do with his penis?

A:

He made me hold it.

Q:

Then after he made you hold it what did he do with it?

A:

He left.

x x x x

ATTY. SABARRE:

Q:

You said you were raped on that July evening for five nights how did he rape you?

A:

(witness did not answer)

PROS. SABARRE:

Make it of record that the witness is crying again.

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Q:

Why are you crying?

A:

I am angry and hurt.

PROS. SABARRE:

Your honor please may I be allowed to suspend the proceeding considering that the witness is psychologically incapable of further proceeding.

x x x x

Q:

I have asked you how did the accused rape you will you please narrate the whole incident to this honorable court?

A:

The same that he did when I was 8 years old, he went on top of me.

Q:

What was the same thing you are talking about?

A:

He pulled down my panty and went on top of me and pump.

Q:

When he pump what did you feel?

A:

Pain.

COURT:

Why did you feel pain?

A:

He placed his penis inside my vagina, everytime I urinate I feel pain.

ATTY. SABARRE:

How did you recognize that it was Henry Arpon when it was night time?

A:

It was a moonlight night and our window was only covered by cloth as cover.[50]

From the above testimony, AAA merely described a single incident of rape. She made no reference whatsoever to the other four instances of rape that were likewise supposedly committed in the month of July 1999.

The same is also true for the two (2) counts of rape allegedly committed in August 1999. AAA narrated only one incident of rape in this manner:

Q:

How many times did [the accused-appellant] rape you in the month of August 1999?

A:

Two times.

Q:

Was it during day time or night time?

A:

Nighttime.

Q:

How did he rape you again that August 1999?

A:

He kissed me.

Q:

After kissing you what did he do next?

A:

He took off his shirts.

Q:

After he took off his shirts what happened?

A:

He went on top of me and pump.

Q:

When he made a pumping motion on top of you what did you feel?

A:

My vagina was painful and also my chest because he was heavy.

Q:

Why did you feel pain in your vagina?

A:

Because he was raping me.

Q:

Did his penis penetrate your vagina?

A:

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I do not know.

Q:

If this Henry Arpon is present now in court could you recognize him?

A:

Yes, sir.

Q:

Where is he?

A:

That man (witness pointing a detention prisoner when asked his name answered Henry Arpon).[51]

"It is settled that each and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt. The prosecution's evidence must pass the exacting test of moral certainty that the law demands to satisfy the burden of overcoming the appellant's presumption of innocence."[52] Thus, including the first incident of rape, the testimony of AAA was only able to establish three instances when the accused-appellant had carnal knowledge of her.

The allegation of the accused-appellant that the testimony of AAA described the incidents of rape in a uniform manner does not convince this Court. To our mind, AAA's narration of the sexual abuses committed by the accused-appellant contained an adequate recital of the evidentiary facts constituting the crime of rape, i.e., that he placed his organ in her private part.[53] "Etched in our jurisprudence is the doctrine that a victim of a savage crime cannot be expected to mechanically retain and then give an accurate account of every lurid detail of a frightening experience -- a verity born[e] out of human nature and experience."[54]

We uphold the ruling of the RTC that the accused-appellant's defense of alibi deserves scant consideration. "Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the situs criminis at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed."[55] "[S]ince alibi is a weak defense for being easily fabricated, it cannot prevail over and is worthless in the face of the positive identification by a credible witness that an accused perpetrated the crime."[56]

In the instant case, we quote with approval the findings of fact of the trial court that:

> The distance of [XXX] to Tacloban City is just a few kilometers and can be negotiated by passenger bus in less than one (1) hour, hence, it is not impossible for the accused to be present in [XXX] at any time of the day after working hours while working in Tacloban. Besides, the accused has his day off every Sunday, which according to him he spent in [XXX], Leyte.
>
> The accused was positively identified by the victim as the person who sexually molested her beginning that afternoon of 1995, and subsequently thereafter in the coming years up to August 1999. She can not be mistaken on the identity of the accused, because the first sexual molestation happened during the daytime, besides, she is familiar with him being her uncle, the brother of her mother.[57]

Furthermore, the Court rejects the contention of the accused-appellant that AAA may have been prompted to falsely testify against him (accused-appellant) in view of the latter's quarrel with AAA's parents when he refused to work with them in the rice fields.[58] Aside from being uncorroborated, we find the same specious and

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implausible. "Where the charges against the appellant involve a heinous offense, a minor disagreement, even if true, does not amount to a sufficient justification for dragging a young girl's honor to a merciless public scrutiny that a rape trial brings in its wake."[59]

As to the accused-appellant's objection that there was no proof of the age of the victim, we affirm the trial court's finding that the prosecution sufficiently established the age of AAA when the incidents of rape were committed. The testimony of AAA that she was born on November 1, 1987,[60] the voluntary stipulation of the accused, with assistance of counsel, regarding the minority of the victim during pre-trial and his testimony regarding his recollection of the age of the victim,[61] his own niece, all militate against accused-appellant's theory. In People v. Pruna,[62] the Court established the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, as follows:

> 1. 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.
>
> 2. 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.
>
> 3. 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.
>
> 4. 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.
>
> 5. 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. (Emphases ours.)

Notably, in its Decision, the trial court observed that at the time she took the witness stand (when she was 14 years old), the victim, as to her body and facial features, was indeed a minor.[63]

That the carnal knowledge in this case was committed through force, threat or intimidation need no longer be belabored upon. "[I]n rape committed by close kin, such as the victim's father, step-father, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed. Moral influence or ascendancy takes the place of violence and intimidation."[64]

Penalties

On the penalties imposable in the instant case, the former Article 335 of the Revised Penal Code, as amended, punishes the crime of rape with reclusion perpetua. The sixth paragraph thereof also provides that:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant

> circumstances:
>
> 1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law-spouse of the parent of the victim. (Emphases ours.)

Similarly, the present Article 266-B of the Revised Penal Code relevantly recites:

> ART. 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.
>
> x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim. (Emphases ours.)

The Court finds that the circumstances of minority and relationship qualify the three (3) counts of rape committed by the accused-appellant. "As a special qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused must be both alleged and proven beyond reasonable doubt."[65] In the instant case, the informations alleged that AAA was less than eighteen (18) years of age when the incidents of rape occurred and the accused-appellant is her uncle, a relative by consanguinity within the third civil degree. The said circumstances were also admitted by the accused-appellant during the pre-trial conference of the case and again admitted by him during his testimony.[66]

In People v. Pepito,[67] the Court explained that "[t]he purpose of entering into a stipulation or admission of facts is to expedite trial and to relieve the parties and the court, as well, of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry. These admissions during the pre-trial conference are worthy of credit. Being mandatory in nature, the admissions made by appellant therein must be given weight." Consequently, for the first incident of rape, regardless of whether the same occurred in 1995 or in 1998, the imposition of the death penalty is warranted. For the second and third counts of rape, the imposable penalty is also death.

Nonetheless, a reduction of the above penalty is in order.

The RTC and the Court of Appeals failed to consider in favor of the accused-appellant the privileged mitigating circumstance of minority. Although this matter was not among the issues raised before the Court, we still take cognizance of the same in accordance with the settled rule that "[i]n a criminal case, an appeal throws open the entire case wide open for review, and the appellate court can correct errors, though unassigned, that may be found in the appealed judgment."[68]

Pertinently, the first paragraph of Section 7 of Republic Act No. 9344, otherwise known as the "Juvenile Justice and Welfare Act of 2006," provides for the rule on how to determine the age of a child in conflict with the law,[69] viz:

> 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 of age 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

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> and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

Furthermore, in Sierra v. People,[70] we clarified that, in the past, the Court deemed sufficient the testimonial evidence regarding the minority and age of the accused provided the following conditions concur, namely: "(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."[71]

In the instant case, the accused-appellant testified that he was born on February 23, 1982 and that he was only 13 years old when the first incident of rape allegedly happened in 1995.[72] Other than his testimony, no other evidence was presented to prove the date of his birth. However, the records of this case show neither any objection to the said testimony on the part of the prosecution, nor any contrary evidence to dispute the same. Thus, the RTC and the Court of Appeals should have appreciated the accused-appellant's minority in ascertaining the appropriate penalty.

Although the acts of rape in this case were committed before Republic Act No. 9344 took effect on May 20, 2006, the said law is still applicable given that Section 68 thereof expressly states:

> SEC. 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 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.

People v. Sarcia[73] further stressed that "[w]ith more reason, the Act should apply to [a] case wherein the conviction by the lower court is still under review."

Thus, in the matter of assigning criminal responsibility, Section 6 of Republic Act No. 9344 is explicit in providing that:

> 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 the 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. (Emphases ours.)

As held in Sierra, the above provision effectively modified the minimum age limit of criminal irresponsibility in paragraphs 2 and 3 of the Revised Penal Code, as amended,[74] "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."[75]

Accordingly, for the first count of rape, which in the information in Criminal Case No. 2000-01-46 was allegedly committed in 1995, the testimony of the accused-appellant sufficiently established that he was only 13 years old at that time. In view of the failure of the prosecution to prove the exact date and year of the first incident of rape, i.e.,

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whether the same occurred in 1995 or in 1998 as previously discussed, any doubt therein "should be resolved in favor of the accused, it being more beneficial to the latter."[76] The Court, thus, exempts the accused-appellant from criminal liability for the first count of rape pursuant to the first paragraph of Section 6 of Republic Act No. 9344. The accused-appellant, nevertheless, remains civilly liable therefor.

For the second and third counts of rape that were committed in the year 1999, the accused-appellant was already 17 years old. We likewise find that in the said instances, the accused-appellant acted with discernment. In Madali v. People,[77] the Court had the occasion to reiterate that "[d]iscernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case." In this case, the fact that the accused-appellant acted with discernment was satisfactorily established by the testimony of AAA, which we had already found to be credible. Verily, AAA testified that she at first did not tell anybody about the sexual assault she suffered at the hands of the accused-appellant because the latter told her that he would kill her mother if she did so. That the accused-appellant had to threaten AAA in an effort to conceal his dastardly acts only proved that he knew full well that what he did was wrong and that he was aware of the consequences thereof.

Accordant with the second paragraph of Article 68 of the Revised Penal Code, as amended, and in conformity with our ruling in Sarcia, when the offender is a minor under eighteen (18) years of age, "the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. However, for purposes of determining the proper penalty because of the privileged mitigating circumstance of minority, the penalty of death is still the penalty to be reckoned with." Thus, for the second and third counts of rape, the proper penalty imposable upon the accused-appellant is reclusion perpetua for each count.

Had the trial court correctly appreciated in favor of the accused-appellant the circumstance of his minority, the latter would have been entitled to a suspension of sentence for the second and third counts of rape under Section 38 of Republic Act No. 9344, which 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 supplied even if the juvenile is already eighteen years (18) 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 Rule on Juvenile in Conflict with the Law.

Be that as it may, the suspension of sentence may no longer be applied in the instant case given that the accused-appellant is now about 29 years of age and Section 40 of Republic Act No. 9344 puts a limit to the application of a suspended sentence, namely, when the child reaches a maximum age of 21. The said provision states:

> SEC. 40. Return of the Child in Conflict with the Law to Court. -- If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.
>
> If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of

> sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years. (Emphasis ours.)

Nonetheless, the disposition set forth under Section 51 of Republic Act No. 9344 is warranted in the instant case, to wit:

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

Additionally, the civil liability of the accused-appellant for the second and third incidents of rape shall not be affected by the above disposition and the same shall be enforced in accordance with law and the pronouncements in the prevailing jurisprudence.

Civil Liability

The Court recently ruled in People v. Masagca, Jr.[78] that "[c]ivil indemnity is mandatory when rape is found to have been committed. Based on prevailing jurisprudence, we affirm the award of P75,000.00 to the rape victim as civil indemnity for each count." We also explained in Sarcia that "[t]he litmus test x x x in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually imposed is reduced to reclusion perpetua."[79] The trial court's award of civil indemnity of P50,000.00 for each count of rape is therefore increased to P75,000.00 for each of the three (3) counts of rape committed in the instant case.

Anent the award of moral damages, the same is justified "without need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries [from the experience she underwent]."[80] We also increase the trial court's award of P50,000.00 to P75,000.00 for each of the three (3) counts of rape herein established in keeping with the recent case law.[81]

Lastly, we affirm the Court of Appeals' award of exemplary damages. As held in People v. Llanas, Jr.,[82] "[t]he award of exemplary damages is also proper not only to deter outrageous conduct, but also in view of the aggravating circumstances of minority and relationship surrounding the commission of the offense, both of which were alleged in the information and proved during the trial." The appellate court's award of P25,000.00 as exemplary damages is raised to P30,000.00 for each of the three (3) counts of rape in keeping with the current jurisprudence on the matter.[83]

WHEREFORE, in light of the foregoing, the appeal is DENIED. The Decision dated February 8, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00560 is hereby AFFIRMED with the following MODIFICATIONS:

(1)

For the first count of rape herein established, the accused-appellant Henry Arpon y Juntilla is hereby EXEMPTED from criminal liability.

(2)

For the second and third counts of rape, the accused-appellant is found GUILTY beyond reasonable doubt of two (2) counts of QUALIFIED RAPE and is hereby sentenced to suffer the penalty of reclusion perpetua for each count.

(3)

As to the civil liability, the accused-appellant is ORDERED to pay AAA for each of the three (3) counts of rape P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages, plus legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision

(4)

The case is hereby REMANDED to the court of origin for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

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[1] Rollo, pp. 4-28; penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Pampio A. Abarintos and Francisco P. Acosta, concurring.

[2] CA rollo, pp. 74-89; penned by Judge Crisostomo L. Garrido.

[3] The real name or any other information tending to establish the identity of the private complainant and those of her immediate family or household members shall be withheld in accordance with Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and For Other Purposes; Section 40 of A.M. No. 04-10-11-SC, known as "Rule on Violence Against Women and Their Children" effective November 15, 2004; and People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

Thus, the private offended party shall be referred to as AAA. The initials BBB shall refer to the stepfather of the private offended party. CCC shall stand for her mother, while DDD shall indicate her younger sister. XXX shall denote the place where the crime was allegedly committed.

[4] From the records of the case, i.e., the Sworn Statement executed by AAA before the police on October 25, 1999 (Records, Vol. VIII, p. 7) and the transcript of the preliminary investigation conducted by the Municipal Trial Court (Records, Vol. VIII, pp. 11-14), it appears that AAA initially incriminated two individuals for the incidents of rape allegedly committed against her, namely the accused-appellant and his brother Henrile Arpon. Subsequently, it was mentioned during the trial of the cases before the RTC that Henrile Arpon was already dead. (See TSN, July 10, 2002, p. 3.)

[5] Records, Vol. I, p. 1.

[6] Id., Vol. II, p. 1.

[7] Id., Vol. III, p. 1.

[8] Id., Vol. IV, p. 1.

[9] Id., Vol. V, p. 1.

[10] Id., Vol. VI, p. 1.

[11] Id., Vol. VII, p. 1.

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[12] Id., Vol. VIII, p. 1.

[13] Id. at 28.

[14] Id. at 30.

[15] TSN, May 21, 2002, p. 4.

[16] Id. at 5-6.

[17] Id. at 7-9.

[18] Id. at 10-11.

[19] Records, Vol. VIII, p. 8.

[20] Id. at 9.

[21] Id. at 8.

[22] TSN, August 1, 2002, pp. 3-6.

[23] Id. at 7-8.

[24] Records, Vol. VIII, pp. 77-78.

[25] Id. at 81-82.

[26] Id. at 89-90.

[27] CA rollo, p. 46.

[28] Id. at 56-73, 98A-127.

[29] Id. at 160.

[30] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

[31] Rollo, pp. 27-28.

[32] Id. at 29-31.

[33] Id. at 32.

[34] Id. at 38.

[35] Id. at 39-41.

[36] Id. at 43-48.

[37] CA rollo, pp. 58-59.

[38] People v. Padilla, G.R. No. 182917, June 8, 2011.

[39] 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.

[40] People v. Lindo, G.R. No. 189818, August 9, 2010, 627 SCRA 519, 526.

[41] As amended by Republic Act No. 7659, entitled An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for that Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes. The said law took effect on December 31, 1993.

[42] G.R. No. 185616, November 24, 2010, 636 SCRA 221.

[43] Id. at 228-229.

[44] People v. Mercado, G.R. No. 189847, May 30, 2011.

[45] People v. Maglente, G.R. No. 179712, June 27, 2008, 556 SCRA 447, 464-465.

[46] G.R. No. 187077, February 23, 2011, 644 SCRA 312.

[47] Id. at 322-323.

[48] TSN, May 21, 2002, pp. 5-6.

[49] People v. Mercado, supra note 44.

[50] TSN, May 21, 2002, pp. 7-9.

[51] Id. at 10.

[52] People v. Matunhay, G.R. No. 178274, March 5, 2010, 614 SCRA 307, 318.

[53] Id.

[54] People v. Del Rosario, 398 Phil. 292, 301 (2000).

[55] People v. Tabio, G.R. No. 179477, February 6, 2008, 544 SCRA 156, 166.

[56] People v. Baroquillo, G.R. No. 184960, August 24, 2011.

[57] Records, Vol. VIII, p. 76.

[58] Rollo, p. 44.

[59] People v. Maglente, supra note 45 at 465-466.

[60] TSN, May 21, 2002, p. 4.

[61] TSN, August 1, 2002, p. 8.

[62] 439 Phil. 440, 470-471 (2002).

[63] Records, Vol. VIII, p. 71.

[64] People v. Yatar, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 521.

[65] People v. Ramos, 442 Phil. 710, 732 (2002).

[66] TSN, August 1, 2002, pp. 7-8.

[67] 459 Phil. 1023, 1039 (2003).

[68] People v. Feliciano, 418 Phil. 88, 106 (2001).

[69] Section 4(e) of Republic Act No. 9344 reads:

SEC. 4. Definition of Terms. -- The following terms as used in this Act shall be defined as follows:

x x x x

(e) "Child in Conflict with the Law" refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

[70] G.R. No. 182941, July 3, 2009, 591 SCRA 666.

[71] Id. at 686.

[72] TSN, August 1, 2002, p. 3.

[73] G.R. No. 169641, September 10, 2009, 599 SCRA 20, 48.

[74] Paragraphs 2 and 3 of Article 12 of the Revised Penal Code, as amended, read:

ART. 12. Circumstances which exempt from criminal liability. - The following are exempt from criminal liability:

x x x x

2. A person under nine years of age.

3. A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Article 80 of this Code.

When such minor is adjudged to be criminally irresponsible, the court, in conformity with the provisions of this and the preceding paragraph, shall commit him to the care and custody of his family who shall be charged with his surveillance and education; otherwise, he shall be committed to the care of some institution or person mentioned in said Article 80.

[75] Sierra v. People, supra note 70 at 681-682.

[76] People v. Sarcia, supra note 73.

[77] G.R. No. 180380, August 4, 2009, 595 SCRA 274, 296-297.

[78] G.R. No. 184922, February 23, 2011, 644 SCRA 278, 286.

[79] People v. Sarcia, supra note 73 at 45.

[80] People v. Sambrano, 446 Phil. 145, 161 (2003).

[81] People v. Masagca, Jr., supra note 78 at 286-287.

[82] G.R. No. 190616, June 29, 2010, 622 SCRA 602, 615.

[83] People v. Padilla, G.R. No. 182917, June 8, 2011.

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