

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SALVINO SUMINGWA, APPELLANT.*G.R. No. 183619. October 13, 2009*

Ponente: NACHURA, J.

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On appeal before us is the January 31, 2008 Court of Appeals (CA) Decision[1] in CA-G.R. CR No. 30045 affirming with modification the February 14, 2006 Regional Trial Court[2] (RTC) Consolidated Judgment[3] against appellant Salvino Sumingwa in Criminal Case Nos. 1644 and 1645 for Acts of Lasciviousness; 1646, 1649 and 1654 for Rape; 1651 for Attempted Rape; and 1655 for Unjust Vexation. Assailed also is the June 5, 2008 CA Resolution[4] denying appellant's motion for reconsideration.

In twelve Informations, the prosecution charged appellant with two (2) counts of Acts of Lasciviousness,[5] four (4) counts of Rape,[6] three (3) counts of Unjust Vexation,[7] one (1) count of Other Light Threats,[8] one (1) count of Maltreatment,[9] and one (1) count of Attempted Rape[10] for acts committed against his minor[11] daughter AAA from 1999-2001.

Appellant pleaded "not guilty" to all the charges. On September 24, 2004, the RTC dismissed[12] Criminal Case Nos. 1647 for Rape; 1648 for Unjust Vexation; 1650 for Other Light Threats; 1652 for Unjust Vexation; and 1653 for Maltreatment, on the basis of the Demurrer to Evidence[13] filed by appellant.

Sometime in August 1999, between 8:00 and 10:00 in the morning, AAA, together with her brothers and her father, appellant herein, was in their residence in Mountain Province, watching television. Appellant called AAA and ordered her to sit in front of him. As she was sitting, appellant told her that it was not good for a girl to have small breasts. Suddenly, he inserted his hands into AAA's shirt then fondled her breast. AAA resisted by moving her hands backwards.[14]

One afternoon in September 1999, AAA's mother and brothers went to school leaving AAA and appellant in their house. While in the master's bedroom, appellant ordered AAA to join him inside. There, appellant removed his undergarments then forced her to grasp and fondle his penis until he ejaculated. Appellant thereafter told her not to be malicious about it.[15]

The same incident took place in August 2000. This time, appellant forced AAA to lie down on the bed, went on top of her, removed her short pants and panty, then rubbed his penis against her vaginal orifice. AAA resisted by crossing her legs but appellant lifted her right leg and partially inserted his penis into her vagina. As she struggled, appellant stood up then ejaculated. AAA felt numbness on her buttocks after the bestial act committed against her.[16]

Appellant repeated his dastardly act against AAA on separate occasions in September and November 2000. During these times, appellant satisfied himself by rubbing his penis against AAA's vagina without trying to penetrate it. After reaching the top of his lust, he used AAA's short pants to wipe his mess. Instead of keeping her

harrowing experience to herself, AAA narrated it to her best friend.[17]

On November 24, 2000, appellant approached AAA and told her that he wanted to have sex with her. When she refused, appellant forcibly removed her pants and boxed her right buttock. AAA still refused, which angered appellant. He then went to the kitchen and returned with a bolo which he used in threatening her. Luckily, AAA's grandmother arrived, prompting appellant to desist from his beastly desires.[18]

On December 20, 2000, AAA and her best friend were doing their school work in front of the former's house. When appellant arrived, he embraced AAA. He, thereafter, pulled her inside the house and kissed her on the lips.[19]

The last incident occurred inside the comfort room of their house on May 27, 2001. When AAA entered, appellant pulled down her short pants and panty, unzipped his trousers, brought out his penis, then repeatedly rubbed it on her vagina while they were in a standing position.[20]

AAA decided to report the sexual abuses to her grandmother who forthwith brought her to the National Bureau of Investigation where she was examined by the medico-legal officer. It was found during the examination that there were no extragenital physical injuries on AAA's body but there were old, healed, and incomplete hymenal lacerations.[21]

Appellant denied all the accusations against him. He claimed that in August and September 1999, he was at the house of his mistress in Antipolo City. He also explained that in August 2000, he stayed in Baguio City and worked there as a karate instructor. He added that he only went home in September 2000 but left again in October for Quirino, Ilocos Sur where he stayed for three weeks. When he went back home, his wife informed him that AAA had not been coming home. Thereafter, appellant went to Baguio City to buy medicine for his wife, then returned home again on the third week of December 2000. While there, he was confronted by his wife about his womanizing. His wife got mad and refused to forgive him despite his repeated pleas. Consequently, he became furious and almost choked his wife to death when she ignored and refused to talk to him. This prompted him to leave and go back to Baguio.[22]

Sometime in April 2001, appellant went back home to reconcile with his wife. While talking to his wife and the latter's family, his mother-in-law berated him and demanded his separation from his wife. Appellant got mad and threatened to kill his wife's family. His mother-in-law, in turn, threatened to file charges against him.[23]

To belie the claim of AAA that she was sexually abused in August, November and December 2000, allegedly during school hours, her teacher testified that the former was not absent in class during those times.[24]

On November 24, 2004, AAA executed an Affidavit of Recantation[25] claiming that while appellant indeed committed lascivious acts against her, she exaggerated her accusations against him. She explained that appellant did not actually rape her, as there was no penetration. She added that she charged appellant with such crimes only upon the prodding of her mother and maternal grandmother.

On February 14, 2006, the RTC rendered a decision convicting appellant of six (6) counts of acts of lasciviousness,[26] one (1) count of attempted rape[27] and one (1) count of unjust vexation,[28] the dispositive portion of which reads:

WHEREFORE, a Consolidated Judgment is hereby rendered sentencing Salvino Sumingwa to suffer -

- The penalty of six (6) months of [arresto mayor] as minimum to six (6) years of [prision correccional] as maximum; and ordering him to pay the offended party P10,000.00 [as] indemnity [ex-delicto], P10,000.00 as moral damages and P5,000.00 as exemplary damages for each count of Acts of Lasciviousness charged in

Crim. Cases 1644, 1645, 1646, 1649 and 1654;

- The penalty of six (6) years of [prision correccional] as minimum to twelve (12) years of [prision mayor] as maximum; and ordering said offender to pay the victim P15,000.00 as indemnity [ex-delicto], P15,000.00 as moral damages and P10,000.00 as exemplary damages in Crim. Case 1651 for Attempted Rape; and
- The penalty of thirty (30) days of [arresto menor] and fine of P200.00 for Unjust Vexation in Crim. Case 1655.

SO ORDERED.[29]

The trial court gave credence to AAA's testimonies on the alleged lascivious acts committed against her. In view of the withdrawal of her earlier claim of the fact of penetration, the court sustained the innocence of appellant on the rape charges and concluded that the crime committed was only Acts of Lasciviousness.

In Criminal Case No. 1651, the RTC found that appellant committed all the acts of execution of the crime of Rape, but failed to consummate it because of the arrival of AAA's grandmother. Hence, he was convicted of attempted rape. In embracing and kissing AAA in full view of the latter's best friend, appellant was convicted of Unjust Vexation.

On appeal, the CA affirmed the conviction of appellant, except that in Criminal Case No. 1646; it convicted him of Qualified Rape instead of Acts of Lasciviousness. The pertinent portion of the assailed decision reads:

WHEREFORE, premises considered, herein appeal is hereby DISMISSED for evident lack of merit and the assailed Consolidated Judgment dated 14 February 2006 is hereby AFFIRMED with the following MODIFICATION:

- The Appellant SALVINO SUMINGWA is hereby convicted of the crime of QUALIFIED RAPE in Criminal Case No. 1646 and the penalty of RECLUSION PERPETUA is hereby imposed upon him. The Appellant is likewise ordered to pay the Victim, [AAA], civil indemnity in the amount of Php75,000.00 as well as moral damages in the amount of Php50,000.00, in conformity with prevailing jurisprudence.
- In Criminal Case No. 1651 for Attempted Rape, the Appellant, is hereby ordered to indemnify the victim [AAA] in the sum of P30,000.00 as civil indemnity, plus the sum of P25,000.00 as moral damages.

SO ORDERED.[30]

The appellate court concluded that, notwithstanding AAA's retraction of her previous testimonies, the prosecution sufficiently established the commission of the crime of Rape. It added that the qualifying circumstances of minority and relationship were adequately proven.

Hence, this appeal.

First, in light of the recantation of AAA, appellant questions the credibility of the prosecution witnesses and insists that his constitutional right to be presumed innocent be applied.[31] Second, he argues that in Criminal Case No. 1651 for Attempted Rape, he should only be convicted of Acts of Lasciviousness, there being no overt act showing the intent to have sexual intercourse.[32] Lastly, he insists that he could not be convicted of all the charges against him for failure of the prosecution to show that he employed force, violence or intimidation against AAA; neither did the latter offer resistance to appellant's advances.[33]

In rape cases particularly, the conviction or acquittal of the accused most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself. When a rape victim's testimony is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded.[34] If

such testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony. [35]

A retraction is looked upon with considerable disfavor by the courts.[36] It is exceedingly unreliable for there is always the probability that such recantation may later on be repudiated. It can easily be obtained from witnesses through intimidation or monetary consideration.[37] Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.[38]

As correctly held by the CA, AAA's testimony is credible notwithstanding her subsequent retraction. We quote with approval its ratiocination in this wise:

Clearly, the retraction made by the Victim is heavily unreliable. The primordial factor that impelled the Victim to retract the rape charges against her father was her fear and concern for the welfare of her family especially her four (4) siblings. It does not go against reason or logic to conclude that a daughter, in hopes of bringing back the harmony in her family tormented by the trauma of rape, would eventually cover for the dastardly acts committed by her own father. Verily, the Victim's subsequent retraction does not negate her previous testimonies accounting her ordeal in the hands for (sic) her rapist.[39]

We now proceed to discuss the specific crimes with which appellant was charged.

Criminal Case Nos. 1646, 1649 and 1654 for Rape

The CA correctly convicted appellant of Qualified Rape in Criminal Case No. 1646, and of Acts of Lasciviousness in Criminal Case Nos. 1649 and 1654.

The crime of rape is defined in Article 266-A of the Revised Penal Code (RPC), as amended by the Anti-Rape Law of 1997, 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.

In her direct testimony, AAA stated that appellant removed her short pants and panty, went on top of her and rubbed his penis against her vaginal orifice. She resisted by crossing her legs but her effort was not enough to prevent appellant from pulling her leg and eventually inserting his penis into her vagina. Clearly, there was penetration.

It is noteworthy that appellant pulled AAA's leg, so that he could insert his penis into her vagina. This adequately shows that appellant employed force in order to accomplish his purpose. Moreover, in rape committed by a father against his own daughter, the former's moral ascendancy and influence over the latter may substitute for actual physical violence and intimidation. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires, and no further proof need be shown to prove lack of the victim's consent to her own defilement.[40]

While appellant's conviction was primarily based on the prosecution's testimonial evidence, the same was corroborated by physical evidence consisting of the medical findings of the medico-legal officer that there were hymenal lacerations. When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the same is sufficient to support a conviction for rape.[41]

Aside from the fact of commission of rape, the prosecution likewise established that appellant is the biological

father of AAA and that the latter was then fifteen (15) [42] years old. Thus, the CA aptly convicted him of qualified rape, defined and penalized by Article 266-B of the RPC, viz.:

ART. 266-B. Penalties. - x x x.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

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

In view of the effectivity of Republic Act (R.A.) 9346, appellant was correctly meted the penalty of reclusion perpetua, without eligibility for parole.

As to damages, appellant should pay AAA P75,000.00 as civil indemnity, which is awarded if the crime is qualified by circumstances that warrant the imposition of the death penalty.[43] In light of prevailing jurisprudence,[44] we increase the award of moral damages from P50,000.00 to P75,000.00. Further, the award of exemplary damages in the amount of P30,000.00[45] is authorized due to the presence of the qualifying circumstances of minority and relationship.[46]

In Criminal Case Nos. 1649 and 1654, although appellant was charged with qualified rape allegedly committed on the second week of November 2000 and May 27, 2001, he should be convicted with Acts of Lasciviousness committed against a child under Section 5(b), Article III of R.A. 7610,[47] which reads:

SEC. 5. Child Prostitution and Other Sexual Abuse. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; x x x. (Italics supplied.)

The elements of sexual abuse under the above provision are as follows:

- The accused commits the act of sexual intercourse or lascivious conduct.
- The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
- The child, whether male or female, is below 18 years of age.[48]

AAA testified that in November 2000, while she and appellant were inside the bedroom, he went on top of her and rubbed his penis against her vaginal orifice until he ejaculated.[49] She likewise stated in open court that on May 27, 2001, while inside their comfort room, appellant rubbed his penis against her vagina while they were in a

standing position.[50] In both instances, there was no penetration, or even an attempt to insert his penis into her vagina.

The aforesaid acts of the appellant are covered by the definitions of "sexual abuse" and "lascivious conduct" under Section 2(g) and (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement the provisions of R.A. 7610:

(g) "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;

(h) "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or public area of a person.

Following the "variance doctrine" embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure, appellant can be found guilty of the lesser crime of Acts of Lasciviousness committed against a child. The pertinent provisions read:

Sec. 4. Judgment in case of variance between allegation and proof. - When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Sec. 5. When an offense includes or is included in another. - An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

As the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating.[51]

Section 5(b) of R.A. 7610 prescribes the penalty of reclusion temporal in its medium period to reclusion perpetua. Since there is an aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period --- reclusion perpetua for each count.[52]

Consistent with previous rulings[53] of the Court, appellant must also indemnify AAA in the amount of P15,000.00 as moral damages and pay a fine in the same amount in Criminal Case Nos. 1649 and 1654.

Criminal Case Nos. 1644 and 1645 for Acts of Lasciviousness

Appellant is likewise guilty of two (2) counts of Acts of Lasciviousness under Section 5(b), Article III, R.A. 7610 committed against AAA on the second week of August 1999 and on the first week of September 1999. AAA testified that in August, appellant, with lewd design, inserted his hands inside her shirt then fondled her breasts; and in September, he forced her to hold his penis until he ejaculated.

The trial and the appellate courts were correct in giving credence to the victim's testimony, in dismissing appellant's defense of denial and alibi, and in disbelieving that AAA initiated the criminal cases only upon the prodding of the latter's grandmother. Settled jurisprudence tells us that the mere denial of one's involvement in a crime cannot take precedence over the positive testimony of the offended party.[54]

We are not unmindful of the fact that appellant was specifically charged in an Information for Acts of Lasciviousness defined and penalized by Article 336 of the RPC. However, the failure to designate the offense by statute, or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged.[55] The character of the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information.[56]

In the present case, the body of the information contains an averment of the acts alleged to have been committed by appellant which unmistakably refers to acts punishable under Section 5(b), Article III, R.A. 7610.

Appellant should, therefore, be meted the same penalties and be made to answer for damages as in Criminal Case Nos. 1649 and 1654.

Criminal Case No. 1651 for Attempted Rape

AAA testified that on November 24, 2000, while AAA and her brothers were sleeping inside their parents' bedroom, appellant entered and asked AAA to have sex with him. When AAA refused, appellant forcibly removed her clothes and boxed her right buttock. As she still resisted, he took a bolo, which he poked at her. Appellant desisted from committing further acts because of the timely arrival of AAA's grandmother. With these, appellant was charged with Other Light Threats in Criminal Case No. 1650; Attempted Rape in Criminal Case No. 1651; Unjust Vexation in Criminal Case No. 1652; and Maltreatment in Criminal Case No. 1653.

On September 24, 2004, the RTC dismissed Criminal Case Nos. 1650, 1652 and 1653 for insufficiency of evidence. Criminal Case No. 1651, among others, proceeded, however. Eventually, appellant was convicted of Attempted Rape, which the CA affirmed.

A careful review of the records reveals, though, that the evidence is insufficient to support appellant's conviction of Attempted Rape.

Rape is attempted when the offender commences the commission of rape directly by overt acts and does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance.[57] The prosecution must, therefore, establish the following elements of an attempted felony:

- The offender commences the commission of the felony directly by overt acts;
- He does not perform all the acts of execution which should produce the felony;
- The offender's act be not stopped by his own spontaneous desistance;
- The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.[58]

The attempt that the RPC punishes is that which has a logical connection to a particular, concrete offense; and that which is the beginning of the execution of the offense by overt acts of the perpetrator, leading directly to its realization and consummation.[59] In the instant case, the primary question that comes to the fore is whether or not appellant's act of removing AAA's pants constituted an overt act of Rape.

We answer in the negative.

Overt or external act has been defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the

perpetrator, will logically and necessarily ripen into a concrete offense.[60]

The evidence on record does not show that the above elements are present. The detailed acts of execution showing an attempt to rape are simply lacking. It would be too strained to construe appellant's act of removing AAA's pants as an overt act that will logically and necessarily ripen into rape. Hence, appellant must be acquitted of Attempted Rape.

Neither can we hold appellant liable for Other Light Threats for threatening AAA with a bolo; for Unjust Vexation for undressing her without her consent, causing disturbance, torment, distress, and vexation; nor for Maltreatment for boxing the right side of AAA's buttocks. Although all of the above acts were alleged in the Information for Attempted Rape in the Order dated September 24, 2004, Criminal Case Nos. 1650, 1652 and 1653 involving the above crimes were dismissed for insufficiency of evidence based on the demurrer to evidence filed by appellant.

The order granting appellant's demurrer to evidence was a resolution of the case on the merits, and it amounted to an acquittal. Any further prosecution of the accused after an acquittal would violate the proscription on double jeopardy.[61] Accordingly, appellant's conviction of any of the above crimes, even under Criminal Case No. 1651, would trench in his constitutional right against double jeopardy.

Criminal Case No. 1655 for Unjust Vexation

Appellant was charged with Unjust Vexation, defined and penalized by Article 287 of the RPC, which reads:

ART. 287. Light coercions. - Any person who, by means of violence, shall seize anything belonging to his debtor for the purpose of applying the same to the payment of the debt, shall suffer the penalty of arresto mayor in its minimum period and a fine equivalent to the value of the thing, but in no case less than 75 pesos.

Any other coercion or unjust vexation shall be punished by arresto menor or a fine ranging from 5 to 200 pesos, or both.

The second paragraph of this provision is broad enough to include any human conduct that, although not productive of some physical or material harm, could unjustifiably annoy or vex an innocent person. The paramount question to be considered is whether the offender's act caused annoyance, irritation, torment, distress, or disturbance to the mind of the person to whom it was directed.[62]

Appellant's acts of embracing, dragging and kissing AAA in front of her friend annoyed AAA. The filing of the case against appellant proved that AAA was disturbed, if not distressed by the acts of appellant.

The penalty for coercion falling under the second paragraph of Article 287 of the RPC is arresto menor or a fine ranging from P5.00 to P200.00 or both. Accordingly, appellant is sentenced to 30 days of arresto menor and to pay a fine of P200.00, with the accessory penalties thereof.

WHEREFORE, the Court AFFIRMS the January 31, 2008 Court of Appeals Decision in CA-G.R. CR No. 30045 with MODIFICATIONS. The Court finds appellant Salvino Sumingwa:

1. GUILTY of QUALIFIED RAPE in Criminal Case No. 1646. He is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and ordered to pay AAA P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages.
2. GUILTY of four (4) counts of ACTS OF LASCIVIOUSNESS under Section 5 (b) Article III of R.A. 7610 in Criminal Case Nos. 1644, 1645, 1649, and 1654. He is sentenced to suffer the penalty of reclusion perpetua and ordered to pay AAA P15,000.00 as moral damages and a fine of P15,000.00, for EACH COUNT.

3. NOT GUILTY in Criminal Case No. 1651.

4. GUILTY of UNJUST VEXATION in Criminal Case No. 1655. He is sentenced to suffer 30 days of arresto menor and to pay a fine of P200.00, with the accessory penalties thereof.

SO ORDERED.

Carpio, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

[1] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose Catral Mendoza and Jose C. Reyes, Jr., concurring; rollo, pp. 2-38.

[2] Branch 35, Bontoc Mountain Province.

[3] Penned by Pairing Judge Artemio B. Marrero; CA rollo, pp. 59-74.

[4] Rollo, pp. 42-44.

[5] Docketed as Criminal Case Nos. 1644 and 1645.

[6] Docketed as Criminal Case Nos. 1646, 1647, 1649 and 1654.

[7] Docketed as Criminal Case Nos. 1648, 1652 and 1655.

[8] Docketed as Criminal Case No. 1650.

[9] Docketed as Criminal Case No. 1653.

[10] Docketed as Criminal Case No. 1651.

[11] The acts complained of were committed when the victim was 15 and 16 years old.

[12] Records (Criminal Case No. 1644), pp. 156-158.

[13] Id. at 141-148.

[14] TSN, December 10, 2003, pp. 4-6.

[15] Id. at 6-8.

[16] Id. at 8-10.

[17] Id. at 11-12.

[18] Id. at 12-13.

[19] Id. at 14.

[20] Id. at 14-15.

[21] Records (Criminal Case No. 1644), p. 20.

[22] Rollo, pp. 10-11.

[23] Id. at 11.

[24] Id

- [25] Records (Criminal Case No. 1644), p. 206.
- [26] In Criminal Cases No. 1644, 1645, 1646, 1649, and 1654.
- [27] In Criminal Case No. 1651.
- [28] In Criminal Case No. 1655.
- [29] CA rollo, p. 73.
- [30] Rollo, pp. 37-38.
- [31] Id. at 56.
- [32] Id. at 56-58.
- [33] CA rollo, p. 53.
- [34] People v. Abulon, G.R. No. 174473, August 17, 2007, 530 SCRA 675, 687-688.
- [35] People v. Deauna, 435 Phil. 141, 163 (2002).
- [36] People v. Miñon, G.R. Nos. 148397-400, July 7, 2004, 433 SCRA 671, 685-686.
- [37] People v. Deauna, supra note 35, at 164.
- [38] People v. Miñon, supra note 36, at 685-686.
- [39] Rollo, pp. 17-18.
- [40] Campos v. People, G.R. No. 175275, February 19, 2008, 546 SCRA 334, 347-348; People v. Balonzo, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 771.
- [41] People v. Guambor, 465 Phil. 671 (2004).
- [42] AAA was born on November 12, 1984 as shown in her Certificate of Live Birth; records (Criminal Case No. 1644), p. 138.
- [43] People v. Antonio, G.R. No. 180920, March 27, 2008, 549 SCRA 569, 574.
- [44] People v. Bejic, G.R. No. 174060, June 25, 2007, 525 SCRA 488; People v. Ibañez, G.R. No. 174656, May 11, 2007, 523 SCRA 136.
- [45] People of the Philippines v. Lilio U. Achas, G.R. No. 185712, August 4, 2009; People of the Philippines v. Adelado Anguac y Ragadao, G.R. No. 176744, June 5, 2009; The People of the Philippines v. Lorenzo Layco, Sr., G.R. No. 182191, May 8, 2009.
- [46] People v. Bejic, supra note 44; People v. Ibañez, supra note 44, at 145.
- [47] "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."
- [48] Malto v. People, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 656; Navarrete v. People, G.R. No. 147913, January 31, 2007, 513 SCRA 509, 521; Olivares v. Court of Appeals, G.R. No. 163866, July 29, 2005, 465 SCRA 465, 473.
- [49] TSN, December 10, 2003, p. 22.
- [50] Id. at 25.

[51] *People v. Montinola*, G.R. No. 178061, January 31, 2008, 543 SCRA 412.

[52] *Id.*

[53] *Id.*; *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280; *Olivares v. Court of Appeals*, *supra* note 48.

[54] *People of the Philippines v. Heracleo Abello y Fortada*, G.R. No. 151952, March 25, 2009.

[55] *Malto v. People*, *supra* note 48.

[56] *Olivares v. Court of Appeals*, *supra* note 48.

[57] *People of the Philippines v. Catalino Mingming y Discalso*, G.R. No. 174195, December 10, 2008; *Baleros, Jr. v. People*, G.R. No. 138033, February 22, 2006, 483 SCRA 10, 27.

[58] *People of the Philippines v. Catalino Mingming y Discalso*, *supra* note 57; *People v. Lizada*, G.R. Nos. 143468-71, January 24, 2003, 396 SCRA 62, 94.

[59] *Baleros, Jr. v. People*, *supra* note 57, at 27.

[60] *Baleros, Jr. v. People*, *id.* at 27-28; *People v. Lizada*, *supra* note 58, at 94.

[61] *People v. Lizada, Jr.*, G.R. No. 128587, March 16, 2007, 518 SCRA 393, 403; *People v. Sandiganbayan*, 426 Phil. 453 (2002).

[62] *Maderazo v. People*, G.R. No. 165065, September 26, 2006, 503 SCRA 234, 247; *Baleros, Jr. v. People*, *supra* note 57, at 30.

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