PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAXIMO OLIMBA ALIAS “JONNY,” ACCUSED-APPELLANT.

G.R. No. 185008. September 22, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

Widower Maximo Olimba alias "Jonny," herein appellant, was accused of several counts of rape by two (2) of his three (3) minor daughters aged thirteen[1] and twelve.[2] He seeks before this Court the reversal of his conviction by the trial court and the appellate court.

Consistent with the ruling of this Court in People v. Cabalquinto,[3] we shall withhold the real names of victims AAA and BBB, as well as those of their family members, and any other relevant information that would tend to establish or compromise their identities.

On 11 June 2003, the prosecution filed before the regional trial court twelve (12) separate Informations for rape against appellant. Ten (10) charges, docketed as Criminal Case Nos. N-2234 and N-2237 to N-2245,[4] were allegedly committed against his daughter AAA. The remaining two (2), docketed as Criminal Case Nos. N-2235 and N-2236, were allegedly committed against his daughter BBB.[5]

On 17 July 2003, appellant entered pleas of not guilty to all the charges. On 9 September 2003, pre-trial was terminated without any stipulation of facts. Thereafter, trial ensued with the prosecution presenting the testimonies of: (1) AAA;[6] (2) BBB;[7] and (3) Dr. Fernando B. Montejo,[8] Municipal Health Officer, Municipality of xxx, Province of xxx, who identified the Medical Certificate issued to BBB. On the other hand, only appellant[9] testified for the defense.

Criminal Case Nos. N-2234 and N-2237 to N-2245

The evidence for the prosecution may be summarized in the following manner:

AAA was born on 18 November 1989.[10] She was first raped by appellant at the early age of eight (8) years old.[11] She never told the incident to her grandmother, who was then staying with them, because the appellant threatened to kill her siblings.[12] Besides, her grandmother was sick at the time of the incident.[13] Since then, AAA has been repeatedly raped.

AAA testified that sometime during the first week of January 2003, she, herein appellant, and the rest of the children took their supper and retired for the night.[14] AAA, however, could not sleep as she was apprehensive that appellant would rape her again.[15] True enough, around midnight, appellant took off AAA's shorts and underwear, and inserted his male organ into her vagina.[16] She pleaded and begged for pity but to no avail.[17] She could not shout because he threatened to harm her.[18] She pinched her sister BBB lying next to her but the latter did nothing.[19] Helpless and without recourse, she just kept on crying.[20]

Appellant also raped AAA on or about the second week of January 2003.[21] At around midnight, when the rest

of the children were already fast asleep, appellant removed her shorts and underwear and inserted his male organ into her vagina.[22] She asked him to stop and reminded him that she is his daughter. As before, she did not shout because she was afraid he would hurt her.[23]

The rape was repeated on or about the third week of January 2003. Appellant took AAA's shorts and underwear and inserted his male organ into her vagina.[24] She asked for mercy but to no avail.[25] She did not attempt to shout or thereafter report the incident because she was afraid that appellant would kill her siblings.[26]

Despite the sexual abuses, AAA could not leave the house for good because of the repeated threats to the lives of her siblings.[27] Appellant also maltreated her whenever she refused to submit to his lustful desires.[28] On an unspecified date, he kicked her stomach and she collapsed on the floor.[29]

Appellant continued to rape AAA on or about the 30[th] and 31[st] of January 2003; the first, second, third, and fourth week of March 2003; and the 19[th] of April 2003.[30]

Thereafter, AAA agreed to be the housemaid of CCC. She went with CCC to Manila.[31] While in Manila, she told CCC of the sexual abuses she suffered from his father.[32] CCC sent her back to file charges against the appellant.[33] She, accompanied by CCC's daughter DDD, returned and proceeded to the police station to report the incidents.[34] AAA also submitted herself to physical examination,[35] which revealed the following findings:

Genitalia: no gross deformities

: non-hyperemia
: (+) old hymenal scar 9 o'clock position[36]

In refuting the allegations,[37] appellant claimed AAA was not in their hometown in January 2003[38] on the alleged rape incidents subject of Criminal Case Nos. 2234, 2237, 2239, 2240, and 2241. She was in Manila from April 2002 to January 2003.[39] He learned from his cousin EEE that AAA returned only on 1 February 2003. She stayed with EEE because she did not send the money she earned from working in Manila to appellant.[40]

On 14 April 2003, AAA finally went back to appellant's house.[41] He hit her with a bamboo stick because she refused to go home with him when he tried to fetch her on an unspecified date.[42] Afterwards, he learned from a certain FFF that AAA went back to Manila.[43] Appellant thereafter saw her at the police station on 26 May 2003.[44]

Criminal Case Nos. N-2235 and N-2236

BBB, who was born on 6 January 1991,[45] could not remember the date when she was first raped by appellant.[46] She was subsequently defiled on two (2) more occasions.[47]

Thus, sometime during the last week of April 2003, appellant, BBB, and her two (2) brothers retired for the night[48] in their living room.[49] Two (2) of her siblings were not around. One of them was AAA. She was already in Manila.[50]

Later that evening, BBB felt appellant undress her.[51] Appellant took off her underwear and inserted his male organ into her vagina.[52] She did not exert any effort to resist him because she was afraid of the six-inch long knife he held.[53] Her attempt to wake a brother up, who lay next to her, proved to be futile.[54]

This was repeated in the evening of 24 May 2003 while BBB's siblings were fast asleep.[55] He kissed BBB on her lips and inserted his male organ into her vagina.[56]

During trial, Dr. Fernando B. Montejo, MD, MPH, Municipal Health Officer, Municipality of xxx, Province of

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xxx, identified the Medical Certificate submitted to the court to be the same he issued when he examined BBB. The Certificate indicated the following: (1) "abrasion with mucosal swelling (R) vaginal vault;"[57] and (2) "semen-like substance seen and felt at cervical os."[58]

On examination, the doctor testified that the abrasion and swelling in the right side of BBB's vagina could have been caused by a male organ. Further, the semen-like substance at the cervical canal could have come from a male organ. However, he clarified that the substance was not conclusively identified as semen allegedly because the medical technologist was not "competent" to further examine it in the microscope.[59]

Appellant solely testified for the defense and denied the allegations of rape.[60] He countered that BBB left his house on 14 April 2003, the very day that he maltreated AAA.[61] He looked for and found BBB only on 25 May 2003.[62] Hence, she was not staying in his house during the last week of April 2003 and on 24 May 2003 when the rapes were allegedly committed.[63] He added that BBB started leaving his house without permission in 2002 and has been given scoldings.[64] He also claimed that he was in his house working and could not recall any unusual incident on 24 May 2003 when BBB was allegedly raped for the third time.[65]

When asked what could be the possible motive for the filing of the case against appellant, he answered that AAA and BBB did not want anybody to look after them.[66] He also believed that AAA filed a complaint against him because "she made mistake (sic) since she did not give [him] money xxx."[67] On the other hand, BBB filed the complaints because he scolded her.[68]

On 5 July 2004, the regional trial court found appellant guilty of twelve (12) counts of rape[69] in Criminal Case Nos. N-2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244 and 2245. The dispositive portion reads:

> WHEREFORE, premises considered, this Court finds the accused Maximo Olimba Y Montero GUILTY beyond reasonable doubt of the crime of Rape in two (2) counts for Crim. Case No. 2235 and Crim. Case No. 2236. He is meted the penalty of two (2) Death penalties by lethal injections.
>
> The victim (BBB) is awarded P150,000.00 in civil indemnity and P175,000.00 in moral damages, for each count.
>
> In Criminal Cases Nos. 2234, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244 and 2245, where the victim is (AAA), the accused Maximo Olimba Y Montero is found GUILTY beyond reasonable doubt of the crime of Rape on Ten (10) Counts. He is meted the penalty of Death for each count, through lethal injection.
>
> The accused Maximo Olimba Y Montero shall pay the victim (AAA) the amount of P75,000.00 in civil indemnity for each rape committed. The accused shall further pay P100,000.00 to (AAA) in moral damages for each Rape.

Appealed to this Court, the case was transferred to the Court of Appeals for its disposition[70] in accordance with the ruling in People v. Mateo[71] allowing an intermediate review by the Court of Appeals of cases where the penalty imposed is reclusion perpetua, life imprisonment, or death.

On 30 August 2007, the decision[72] of the trial court was AFFIRMED by the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00530 with the MODIFICATION that the penalty of death in each of the cases should be reduced to reclusion perpetua in accordance with the law prohibiting the imposition of death penalty.[73]

On 14 July 2008, the Court of Appeals gave due course to the appellant's notice of appeal.[74] This Court required the parties to simultaneously file their respective supplemental briefs.[75] Only the appellant opted to submit his supplemental brief.[76]

Our Ruling

We uphold the conviction of the appellant.

The well-entrenched principles in the determination of the innocence or guilt of the accused in rape cases are, once again, seriously considered in the evaluation of this case. The three principles are:

> (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[77]

Due to the nature of the commission of the crime of rape, the testimony of the victim may be sufficient to convict the accused, provided that such testimony is "credible, natural, convincing and consistent with human nature and the normal course of things."[78] Thus, in People v. Leonardo,[79] we stated the evidentiary value of the testimony of the rape victim:

> Credible witness and credible testimony are the two essential elements for the determination of the weight of a particular testimony. This principle could not ring any truer where the prosecution relies mainly on the testimony of the complainant, corroborated by the medico-legal findings of a physician. Be that as it may, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing and otherwise consistent with human nature.[80]

Upon these considerations, we have ascertained that the prosecution has sufficiently established the appellant's guilt beyond reasonable doubt.

Credibility of the Witnesses for the Prosecution

The trial court categorically stated that AAA and BBB "were straightforward and coherent, further made believable by their display of candor and naivete."[81] The appellate court, in turn, applied the settled policy that "the finding of trial courts on the credibility of witnesses deserve[s] a high degree of respect and will not be disturbed on appeal."[82]

Before us, appellant now posits that the instant case falls within the established exceptions[83] finding refuge in our ruling in People v. Guittap.[84] Thus:

> While it is our policy to accord proper deference to the factual findings of the trial court, owing to their unique opportunity to observe the witnesses firsthand and note their demeanor, conduct, and attitude under grueling examination, where there exist facts or circumstances of weight and influence which have been ignored or misconstrued, or where the trial court acted arbitrarily in its appreciation of facts, we may disregard its findings.[85]

We find the exception to the rule inapplicable in this case.

No material inconsistencies in the testimony of AAA

In his Supplemental Brief dated 5 March 2009, appellant points out that there were material inconsistencies in the testimony of AAA that cannot be considered insignificant.[86] Specifically, it was revealed on cross examination that her grandmother was also staying in the house and sleeping thereat at the time of the rape incident. This, he argues, affects the likelihood of the consummation of rape because AAA's grandmother would definitely have noticed the untoward incident.[87]

We are not convinced. Time and again, we reiterate that lust is no respecter of time and place. Thus, in People v. Anguac,[88] we rejected appellant's claim that it is impossible for the victim's siblings, who were sleeping with her, not to be awakened during the rape incident because, in numerous cases, this Court has found that rape could indeed be committed in the same room where other family members are sleeping.[89]

Even assuming for the sake of argument that the prosecution failed to reconcile AAA's statements as to the dates when her grandmother lived with them, we consider such to be trivial a matter to impair AAA's credibility. Such would not diminish the value of the testimony.[90] On the contrary, it would strengthen the credibility of the testimony because it erases any suspicion of a coached or rehearsed witness.[91]

Appellant further contends that the inconsistent testimony on AAA's attempt to wake BBB up is likewise material because the act could not have been consummated if, indeed, BBB was roused from her sleep.[92]

This is likewise unmeritorious. It should be noted that BBB, the supposed witness to the incident, is a mere child, who could be cowed into silence by a person exercising moral ascendancy and influence over her. Granting that appellant could have discontinued his bestial act, if and when there was a witness to the commission of the crime, it was clear in the testimony of AAA that appellant was not aware that BBB was then already awake.

> Q And [BBB] was awaken[ed] while your father was doing this thing to you?
> A Yes, sir.
>
> Q What did [BBB] do?
> A She did not do anything.

Neither can we sustain the appellant's contention that AAA was in Manila when some of the rape incidents were allegedly committed. The source of the information is a third person[93] who was not presented in court. Sans any validation, the allegation remains to be hearsay. Further, a thorough examination of the testimony of AAA would show that she left for Manila only once[94] sometime after 19 April 2003 after the last rape incident.[95] We confirm the observation of the trial court that her entire testimony was clear, consistent, and convincing.

Failure to immediately report the rape incidents was reasonable

Applying People v. Romero, Jr.,[96] where this Court doubted the credibility of the seventeen-year-old complainant because she failed to "come out in the open and bring her abuser[-compadre of her aunt] to justice" in a span of eight months,[97] appellant argues that the failure of AAA and BBB to immediately report the rape incidents significantly affects their credibility.[98] Romero, however, is not on all fours with the prevailing circumstances of this case. The flaws and inconsistencies in the testimony of the complaining witness in that case were so material that it seriously impaired the witness'credibility.[99]

In the recent case of People v. Alarcon,[100] this Court well explained the reason why the failure of a victim to immediately report the rape does not essentially weaken the case against an accused.[101]

> The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained. In this case, AAA did not report what her father did to her because she was terribly afraid that he would harm her. This is a normal reaction by minors - to hide the truth because they are easily intimidated by threats on their person and other members of the family. xxx The only time she felt safe was after they had moved out of their father's house.[102] As written in People vs. Macapanas,
>
> x x x. How the victim comforted herself after the incident was not significant as it had nothing to do with the elements of the crime of rape. Not all rape victims can be expected to act conformably to the usual expectations of everyone. Different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode. It is settled that different people react differently to a given situation

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> or type of situation and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. [103]

The reliance of appellant on the acquittal of the accused in People v. Ladrillo[104] is likewise misplaced. In that case, it was alleged that the crime was committed "on or about the year 1992," in appellant's residence in Abanico, Puerto Princesa City, when the defense was able to prove that appellant had never been there nor was he familiar with the complainant and her family until he resided thereat in 1993.[105] With this piece of information, together with other material inconsistencies in the testimony of the complainant, we ruled:

> xxx. But the mind cannot rest easy if this case is resolved against accused-appellant on the basis of the evidence for the prosecution which, xxx, is characterized by glaring inconsistencies, missing links and loose ends that refuse to tie up.[106]

In the case at bar, we found no inconsistent statement so material that it would seriously affect the credibility of the witnesses.

Moral character of the victim is immaterial

Neither can we sustain appellant's argument that the credibility of BBB's testimony is compromised by her "apparent exposure xxx to the ways of the world at an early age of seven (7)"[107] because she and her friends frequent the poblacion.[108] BBB has satisfactorily explained the reason why she sometimes passed the night in the poblacion with her friends. She was afraid that her father would rape her again.[109] Assuming for the sake of argument that BBB is a woman of loose morals, she is not precluded from being a victim of rape.[110] Even prostitutes can be victims of rape.[111] It bears stressing that in rape, the moral character of the victim is immaterial, the essence of rape being the act of having carnal knowledge of a woman without her consent. [112]

Motive vis-a-vis credible testimony

Appellant's contention that AAA and BBB charged him of rape only because they wanted to be emancipated from parental guidance and discipline is likewise without merit. Time-honored is the doctrine that motives, such as those attributable to revenge, family feuds, or resentment, cannot destroy the credibility of minor complainants who gave unwavering testimonies during their direct and cross-examinations.[113] The testimonies of AAA and BBB were solid throughout the direct and cross-examination. In fact, the cross-examination even strengthened the cases against the appellant as most of the material questions necessary to prove the elements of rape were established when the witnesses answered the questions of the defense counsel.[114]

Bare Denial of the Appellant

We cannot give weight to the self-serving alibi and denial of the appellant over the positive and straight forward testimony of AAA and BBB. Once more, we apply the settled rule that "alibi is an inherently weak defense that is viewed with suspicion because it is easy to fabricate."[115]Alibi and denial must be strongly supported by corroborative evidence in order to merit credibility.[116] Appellant's alibi is, simply, uncorroborated.

Elements of Rape

Under Sec. 2 of the Anti-Rape Law of 1997,[117] rape is committed, among others, "[b]y a man who shall have carnal knowledge of a woman" by means of force, threat or intimidation.[118]

On the bases of the consistent and forthright testimonies of 13-year-old victim AAA and 12-year-old victim BBB detailing their harrowing experiences that concluded with positive statements that appellant inserted his organ into their private parts,[119] the prosecution has sufficiently established that appellant had carnal knowledge of (1)

AAA on or about the 1[st], 2[nd] and 3[rd] week of January, 2003 [Criminal Case Nos. 2234, 2237, and 2239] and (2) BBB on or about the last week of April, 2003 and 24 May 2003 [Criminal Case Nos. 2235 and 2236].

The presence of threat and intimidation was likewise established. After every rape, appellant threatened AAA that he would kill her siblings should she report the incidents. Also, in view of their father-daughter relationship, the moral ascendancy of appellant over AAA and BBB can substitute for violence and intimidation.[120] For this reason, appellant's use of a six-inch long knife[121] to cower BBB in fear and yield her into submission can be considered already a surplusage for the purpose of proving the element of threat or intimidation.

With the testimonies of AAA and BBB, and even assuming for the sake of argument that the defense was able to diminish the probative value of the medical findings presented to corroborate the testimony of the victims, we are convinced that the prosecution has established the guilt of the appellant beyond reasonable doubt. It bears stressing that the lone and uncorroborated testimony of a rape victim, as long as it is clear, convincing and otherwise consistent with human nature, may suffice to convict the accused.[122]

Presence of Special Qualifying Circumstances

The twin qualifying circumstances of minority and relationship that were specifically alleged in the Informations were likewise adequately established by the prosecution. The machine copies of the certificates of live birth of AAA and BBB, which the defense voluntarily admitted to be faithful reproductions of the original copies,[123] the testimonies of AAA and BBB stating that the appellant is their father,[124] and the testimony of appellant himself admitting that AAA and BBB are his daughters,[125] sufficiently proved the following: (1) that AAA and BBB were born on 18 November 1989 and 6 January 1991, respectively; (2) that they were minors, being 13 and 12 years old, respectively, at the time they were repeatedly defiled during the early months of 2003; and (3) that appellant is their father.

These are judicial admissions within the contemplation of Section 4, Rule 129 of the Revised Rules of Court, which provides that "[a]n admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof."[126]

Modifications in the Ruling of the Court of Appeals

Quantum of evidence in each and every charge of rape

Settled is the rule that each and every charge of rape is a distinct and separate crime;[127] each must be proven beyond reasonable doubt.[128] It is, therefore, necessary that the victim of rape provide further details on how each of the act was committed, otherwise, the bare allegation would be inadequate to establish the guilt of the accused.[129]

Applying this principle, the conviction of the appellant in Criminal Case Nos. 2238, 2240, 2241, 2242, 2243, 2244 and 2245 (referring to the rape incidents on or about the 30[th] and 31[st] of January 2003, the 1[st], 2[nd], 3[rd] and 4[th] weeks of March 2003, and on or about 19 April 2003) should be reversed.

In these cases, the prosecution merely had AAA testify that she was repeatedly raped on different dates[130] but failed to touch on how each of the acts was committed. Thus:

> [Criminal Case No. 2240]
>
> Q
>
> On January 30, 2003 what happened?
>
> A

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He again raped me.

Q

Where?

A

In our house.

Q

What time was it?

A

Midnight.

Q

Where were your siblings then?

A

They [were] all asleep.

[Criminal Case No. 2241]

Q

How about on the following day that is January 31, 2003 what happened?

A

He again raped me.

Q

Where?

A

In our house.

Q

What time was it?

A

Also midnight.

Q

What were your siblings do[ing] then?

A

They [were] sleeping.

[Criminal Case No. 2242]

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Q

In the first week of March year 2003 what happened?

A

I was again raped by my father.

Q

What time was it?

A

Midnight.

Q

And your siblings[,] what were they doing?

A

Sleeping.

[Criminal Case No. 2243]

Q

On the second week of March, 2003 what happened?

A

He again raped me.

Q

What time was it?

A

Midnight.

Q

How about your siblings where were they?

A

Sleeping.

[Criminal Case No. 2244]

Q

In the third week of March what happened?

A

He again raped me.

Q

Where?

A

In our house.

Q

What time was it?

A

Midnight.

Q

How about your siblings where were they?

A

In our house sleeping.

[Criminal Case No. 2245]

Q

On the fourth week of March 2003 what happened?

A

He again raped me.

Q

What time was it?

A

Midnight.

Q

How about your siblings where were they?

A

Sleeping.

[Criminal Case No. 2238]

Q

Now, [AAA] on April 19, 2003, what happened?

A

He again raped me.

Q

Where?

A

In our house.

Q

What time was it?

A

Midnight.

Q

How about your siblings?

A

In our house sleeping.

On cross examination,[131] AAA testified:

xxxx

Q

The same thing happened subsequent weeks particularly on January 30 and weeks of March 2003?

A

Yes, Sir.

ATTY. ALBAO:

Q

And in these particular incidents you were likewise wearing shorts?

A

Sometimes I am wearing pants.

Q

But when this rape incidents happened you are already wearing shorts?

A

Sometimes I was wearing long pants.

Clearly, these are too general, inadequate and insufficient to establish the appellant's guilt beyond reasonable doubt.[132]

Basic is the rule that where the prosecution fails to meet the quantum of evidence required for the conviction of an accused, that is, proof beyond reasonable doubt, this Court shall consider in the latter's favor his constitutional right to be presumed innocent.[133] Necessarily, appellant should be acquitted in these cases.

In light of this result, we see a need to remind the prosecution to ensure that the quantum of evidence required for the conviction of an accused charged of multiple counts of rape or any crime for that matter is met in accordance with the ruling in this case.

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Penalty of reclusion perpetua in lieu of death penalty; non-eligibility for parole

Article 266-B of the Revised Penal Code provides that the penalty of death shall be imposed when rape is committed with the twin qualifying circumstances of minority and relationship.[134] However, with the enactment of Republic Act No. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) on 24 June 2006, the Court of Appeals correctly reduced the penalty of death to reclusion perpetua[135] in Criminal Case Nos. 2234 to 2237 and 2239.

This, notwithstanding, appellant should not be eligible for parole as the law[136] specifically provides:

> Sec. 3. Person convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Monetary liability

Finding appellant guilty of only three (3) counts of rape committed against AAA in Criminal Case Nos. 2234, 2237, and 2239 and two (2) counts of rape committed against BBB in Criminal Case Nos. 2235 and 2236, all qualified by the twin special aggravating circumstances of minority and relationship, and applying current jurisprudence,[137] each victim shall be entitled to the following for each count of rape: civil indemnity in the amount of P75,000.00; and moral damages in the amount of P75,000.00. Also for each count of rape, the award of exemplary damages in the amount of P30,000.00 "to set a public example and serve as deterrent against elders who abuse and corrupt the youth"[138] is likewise in order.

WHEREFORE, the Decision dated 30 August 2007 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00530, finding appellant Maximo Olimba guilty beyond reasonable doubt of twelve (12) counts of rape is hereby MODIFIED in the following manner:

1. Appellant is found GUILTY beyond reasonable doubt of three (3) counts of qualified rape committed against AAA in Criminal Case Nos. 2234, 2237, and 2239. For each count of rape, he is hereby sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and to pay AAA the amount of P75,000.00 (or a total of P225,000.00) as civil indemnity, P75,000.00 (or a total of P225,000.00) as moral damages, and P30,000.00 (or a total of P90,000.00) as exemplary damages;

2. Appellant is also found GUILTY beyond reasonable doubt of two (2) counts of qualified rape committed against BBB in Criminal Case Nos. 2235 and 2236. For each count of rape, he is hereby sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and to pay BBB the amount of P75,000.00 (or a total of P150,000.00) as civil indemnity, P75,000.00 (or a total of P150,000.00) as moral damages, and P30,000.00 (or a total of P60,000.00) as exemplary damages; and

3. With respect to Criminal Case Nos. 2238, 2240, 2241, 2242, 2243, 2244 and 2245, the appellant is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.

Corona, C.J., (Chairperson), Carpio Morales,[*] Velasco, Jr., and Del Castillo, JJ., concur.

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[*] Additional member in lieu of Associate Justice Teresita J. Leonardo-de Castro per Special Order No. 884 dated 1 September 2010.

[1] AAA was only thirteen (13) years old (not fourteen [14] years old as alleged in the Informations) during the

rape incidents in the early months of 2003 because she was born on 18 November 1989.

[2] BBB was already twelve (12) years old (not ten [10] years old as alleged in the Informations) during the rape incidents in 2003 because she was born on 6 January 1991.

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

[4] Save for the dates of the incidents, to wit: first week of JANUARY 2003; second week of JANUARY 2003; third week of JANUARY 2003; 30[th] and 31[st] JANUARY 2003; first week of MARCH 2003; second week of MARCH 2003; third week of MARCH 2003; fourth week of MARCH 2003; and 19 APRIL 2003, the Informations in Criminal Case Nos. N-2234 and N-2237 to N-2245 uniformly read:"

That on or about xxx, at xxx, Philippines and within the jurisdiction of this Honorable Court, said accused, with lewd designs and by means of force and intimidation, did then and there, willfully, unlawfully and feloniously succeeded in having carnal knowledge with his 14-year old daughter AAA against her will and inside their own dwelling, to her damage and prejudice.

CONTRARY TO LAW, with the aggravating circumstance that the victim is his very own daughter.

[5] The Informations in Criminal Case Nos. N-2235 and N-2236, which are similarly worded except for the dates the crimes were committed, to wit: last week of APRIL 2003; and "the last week of MAY 24, 2003 (sic)," read:

That on or about xxx, late in the evening at xxx, Philippines and within the jurisdiction of this Honorable Court, said BBB was awakened when her father, herein accused, sleep beside her and with lewd designs and by means of force and intimidation, did then and there, willfully unlawfully and feloniously succeeded in ravishing his 10-year old daughter BBB against her will and inside their own dwelling to her damage and prejudice.

CONTRARY TO LAW, with the aggravating circumstance that the victim is his very own daughter.

[6] TSN, 19 November 2003, pp. 1-25.

[7] TSN, 10 December 2003, pp. 1-14.

[8] TSN, 12 November 2003, pp. 1-10.

[9] TSN, 28 January 2004, pp. 1-17.

[10] Records, p. 35.

[11] TSN, 19 November 2003, p.11.

[12] Id. at 14.

[13] Id. at 15.

[14] TSN, 19 November 2003, p. 5.

[15] Id. at 17.

[16] Id. at 5 and 17.

[17] Id. at 18.

[18] Id.

[19] Id.

[20] Id. at 6 and 19.

[21] Id. at 6.

[22] Id. at 19 to 20.

[23] Id. at 20.

[24] Id.

[25] Id. at 20 to 21.

[26] Id. at 21.

[27] Id.

[28] Id. at 23.

[29] Id.

[30] Id. at 7-9 and 21.

[31] Id. at 9.

[32] Id. at 10.

[33] Id.

[34] Id.

[35] Id.

[36] Records, p. 5.

[37] TSN, 28 January 2004, p. 3.

[38] Id. at 3.

[39] Id. at 3-4.

[40] Id. at 4-5.

[41] Id. at 6.

[42] Id. at 5.

[43] Id at 6.

[44] Id. at 6-7.

[45] Records, p. 36.

[46] TSN, 10 December 2003, p. 6.

[47] Id.

[48] Id. at 5.

[49] Id. at 8.

[50] Id. at 5.

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[51] Id.

[52] Id.

[53] Id. at 5 and 9.

[54] Id. at 5.

[55] Id.

[56] Id. at 6.

[57] Records, p. 5-a.

[58] Id.

[59] TSN, 12 November 2003, pp. 6-7.

[60] TSN, 28 January 2004, p. 7.

[61] Id. at 7-8.

[62] Id. at 14.

[63] Id. at 8 and 14.

[64] Id. at 8.

[65] Id.

[66] Id. at 9.

[67] Id. at 12.

[68] Id. at 16.

[69] Judgment penned by Judge Enrique C. Asis. Records, pp. 53-73.

[70] Resolution dated 17 January 2006. CA rollo, p. 129.

[71] G.R. No. 147678-87, 7 July 2004, 433 SCRA 640.

72 Penned by Associate Justice Agustin S. Dizon with Associate Justices Francisco P. Acosta and Stephen C. Cruz, concurring. CA rollo, pp. 139-145.

[73] Id. at 144.

[74] CA rollo, p. 155.

[75] Rollo, p. 18.

[76] Id. at 22-27.

[77] People v. Dalisay, G.R. No. 188106, 25 November 2009, 605 SCRA 807, 814 citing People v. Glivano, G.R. No. 177565, 28 January 2008, 542 SCRA 656, 662 further citing People v. Malones, G.R. No. 124388-90, 11 March 2004, 425 SCRA 318, 329.

[78] People v. Cadap, G. R. No. 190633, 5 July 2010.

[79] G.R. No. 181036, 6 July 2010.

[80] Id. citing People v. Dy, 425 Phil. 608, 645 (2002).

[81] Records, pp. 68-69.

[82] Rollo, p. 9 citing People v. Catillano, 377 SCRA 79.

[83] Id.

[84] G.R. No. 144621, 451 Phil. 214 (2003).

[85] Rollo, p. 22.

[86] Id.

[87] Id.at 22-24.

[88] G.R. 176744, 5 June 2009, 588 SCRA 716, 724.

[89] Id. citing People v. Besmonte, 397 SCRA 513, 523.

[90] People v. Macapanas, G.R. No. 187049, 4 May 2010.

[91] Id. citing People v. Murillo, G.R. Nos. 128851-56, 19 February 2001, 352 SCRA 105, 118.

[92] Rollo, p. 22-23.

[93] TSN, 28 January 2004, p. 4.

[94] TSN, 13 November 2003, p. 15.

[95] Id. at 9.

[96] Rollo, p. 23.

[97] People v. Romero, Jr., G.R. No. L-43805, 23 October 1982, 117 SCRA 897, 902.

[98] Rollo, p. 24.

[99] People v. Romero, Jr., supra note 97 at 901-902.

[100] G.R. No. 177219, 9 July 2010.

[101] Id.

[102] Id.

[103] Id. citing People v. Macapanas, supra note 90.

[104] 377 Phil. 904 (1999).

[105] Id. at 71.

[106] Id. at 74.

[107] Rollo, p. 25.

[108] TSN, December 10, 2003, p.10.

[109] Id.

[110] People v. Baluya, G.R. No. 133005, 430 Phil. 349, 363 (2002).

[111] Id. citing People v. Rosales G.R. No. 12490, 8 September 1999 313 SCRA 757, 762; People v. Alfeche, G.R. No. 124213, 17 August 1998, 294 SCRA 352, 377 citing People v. Rivera, G.R. Nos. 88298-99, 1 March 1995, 242 SCRA 26, 37; People v. Barera, 262 SCRA 63, 77 [1996].

[112] People v. Baluya, supra note 110.

[113] People v. Anguac, supra note at 88 at 723 citing People v. Alejo, G.R. No 149370, 23 September 2002, 411 SCRA 563, 573 and People v. Rata, G.R. Nos. 145523-24, 11 December 2003, 418 SCRA 237, 248-249.

[114] TSN, 19 November 2003, pp. 11-24 and TSN, 10 December 2003, pp. 7-10.

[115] People v. Jacob, G.R. No. 177151, 22 August 2008, 565 SCRA 203.

[116] Id.

[117] Republic Act No. 8353.

[118] Id., paragraph 1(a), Art. 266-A of Sec. 2 of the Anti-Rape Law of 1997.

[119] TSN, 19 November 2003, pp. 5 and 20 and TSN, 10 December 2003, pp. 5-6.

[120] People v. Dimanawa, G.R. No. 184600, 9 March 2010.

[121] TSN, 10 December 2003, pp. 5 and 9.

[122] People v. Leonardo, supra note 79 citing People v. Dy, 425 Phil. 608, 645-646 (2002).

[123] TSN, 10 December 2003, p. 12.

[124] TSN, 19 November 2003, p. 3 and TSN, 10 December 2003, p. 3.

[125] TSN, 28 January 2004, pp. 9 and 13.

[126] People v. Lauga, G.R. No. 186228, 15 March 2010.

[127] People v. de la Torre, G.R. No. 121213 and 121216-23, 13 January 2004, 419 SCRA 18, 36.

[128] People v. Guardian, 435 Phil. 666, 681 (2002)

[129] People v. de la Torre, supra note 127; People v. Guardian, id.

[130] TSN, 19 November 2003, pp. 7-9.

[131] TSN, 19 November 2003, pp. 21-22.

[132] People v. de la Torre, 464 Phil. 23, 45-46 (2004).

[133] People v. Ladrillo, supra note 104 at 72.

[134] Title Eight, Chapter Three, Revised Penal Code, as amended by "The Anti-Rape Law of 1997" provides, in part:

ART. 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by xxx

xxxx

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

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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.

[135] Rollo, p. 10.

[136] Republic Act No. 9346.

[137] People v. Lauga, supra note 126 citing People v. Sia, G.R. No. 174059, 27 February 2009, 580 SCRA 364, 367-368.

[138] People v. Rante, G.R. No. 184809, 29 March 2010 citing People v. Cañada, G.R. No. 175317, 2 October 2009.

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