

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE GRAGASIN Y PAR, ACCUSED-APPELLANT.

G.R. No. 186496. August 27, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before this Court is a Petition for Review under Rule 45 of the Revised Rules of Court of the Decision[1] dated 07 August 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02652, entitled *People of the Philippines v. Dante Gragasín y Par*, affirming the Decision[2] rendered by the Regional Trial Court (RTC), Branch 29, Bayombong, Nueva Vizcaya, in Criminal Case No. 4083, finding accused-appellant Dante Gragasín guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Article 266-A and Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, imposing the penalty of reclusion perpetua and ordering accused-appellant to pay the offended party P50,000.00 as civil indemnity and P50,000.00 as moral damages and costs of the suit.

On 23 September 2001, a dastardly act allegedly perpetrated by accused-appellant was committed against private complainant (AAA).[3]

On 10 December 2001, upon AAA's sworn statement dated 26 September 2001, accused-appellant was charged before the RTC of Bayombong, Nueva Vizcaya, with the crime of Rape defined and penalized under Article 266-A, Section I, paragraph (a) of Republic Act No. 8353 in relation to Republic Act No. 7659 in an Information which reads:

CRIMINAL CASE NO. 4083

That on September 23, 2001 in the evening, at Barangay XXX, Municipality of XXX, Province of XXX, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with lewd designs, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, 9 years old, against the latter's will and consent, to her own damage and prejudice. [4]

When arraigned on 4 April 2002 before Branch 29 of said court, the Information was read to accused-appellant in a dialect known to, and understood by, him. With the assistance of his counsel, accused-appellant pleaded NOT GUILTY.[5] Thereafter, trial commenced on 17 September 2002.

The prosecution offered three witnesses, namely: private complainant AAA, who was a nine-year-old girl at the time of the commission of the crime; BBB,[6] the victim's mother; and Dr. Napoleon Logan, Municipal Health Officer of Bagabag, Nueva Vizcaya, who personally examined AAA. The following documentary exhibits were also proffered in evidence: (a) AAA's birth certificate; (b) joint affidavit of AAA's parents; and (c) Certification of Medico-Genital Examination issued by Dr. Logan.

The prosecution first presented BBB, the mother of the victim AAA.

Under oath, she swore that AAA was born on 11 October 1992 and presented the birth certificate of AAA to

evidence such fact. She narrated that at around 9:00 o'clock in the evening of 23 September 2001, AAA sought permission from her so she could go to her grandmother's house to see the dress AAA was going to wear during the fiesta. BBB's house was about 50 meters away from her grandmother's house. After some time and AAA had not returned home, BBB followed her daughter to the house of her mother-in-law and saw her daughter in the kitchen "jumping and putting on her short pants." BBB then saw accused-appellant, a helper in said house, lying on his bed totally naked and pretending to be asleep. By that time, AAA had already run out of the house. Thereafter, BBB went out to ask the help of a councilwoman in XXX and Omar Saturno, a policeman from XXX, and asked them to go check on the appearance of accused-appellant who was totally naked, and the appearance of AAA. Saturno tried but failed to contact the police station. Afterwards, they proceeded to BBB's house where BBB asked her daughter AAA what happened to her. In the presence of the councilwoman and the policeman, AAA narrated that she was raped by accused-appellant. Because they could not reach the police station as it was nighttime already, the policeman advised them to wait until the next morning to have accused-appellant summoned by the barangay officials. BBB and her husband CCC controlled their urge to confront and kill the accused, and decided to leave him alone so he would not escape.

The next witness presented by the prosecution was the victim AAA, who testified that she was an elementary student who knew accused-appellant because he had been a helper for quite some time already in her grandmother's house where he also slept. At around 9:00 o'clock in the evening of 23 September 2001, she went to her grandmother's house to see if the dress her grandmother was sewing for her was already done. When she reached her grandmother's house, the latter was not there and it was only accused-appellant in the house. As she was turning on the lights in the sala of her grandmother's house, accused-appellant grabbed her hand, and took her to the kitchen which doubled as his bedroom. There, accused-appellant took off his clothes, and laid her down on his bed. He removed her shorts and underwear, began kissing her, lay on top of her and inserted his penis into her vagina. She resisted by pushing him off the bed. When accused-appellant fell off the bed, she tried to run away, but he caught up with her and pulled her again to his room. At that moment, her grandmother arrived and turned on the lights, allowing her to hurriedly put on her clothes and dash out of the house. At home that same night, she revealed to her mother what accused-appellant had done to her.

The final witness presented by the prosecution was Dr. Napoleon Logan, Municipal Health Officer of XXX, XXX, as expert witness. Dr. Logan testified that he examined AAA on 24 September 2001, with the following findings:

Genital Examination:

Pubic hair, no growth, labia majora and labia minora coaptible, fourchette, lax; vestibular mucosa, intact; Contusion noted at both labia majora, hymenal orifice 1.2 cm in diameter, no lacerations noted. Vaginal wall and rugosities cannot be reached by examining finger.

Laboratory Examination:

Microscopic Examination of Vaginal discharge. Negative for Spermatozoa.[7]

The medical examination revealed that while AAA did not suffer any hymenal lacerations, she sustained contusions at the left and right labia majora. Dr. Napoleon Logan further testified that the contusion at the left and right majora could have been caused by a blunt object such as a human penis.

After the prosecution rested its case, accused-appellant filed a motion to file and admit demurrer to evidence, averring that the prosecution failed to prove his guilt beyond reasonable doubt and attacking the testimonies of AAA and her mother as being seriously flawed and inconsistent. Opposing the demurrer to evidence, the prosecution claimed that it had proven accused-appellant's guilt beyond reasonable doubt, and that minor

inconsistencies of a minor witness testifying in court must be liberally construed in the child's favor, as a child was prone to be misled and intimidated by the loud and menacing questions of the adverse party's counsel.

On 22 July 2005, the RTC ruled against the demurrer to evidence and proceeded to hear the defense.

The defense presented accused-appellant Dante Gragasín as its sole witness, who denied the accusations against him and interposed the defense of alibi.

He testified that on 23 September 2001, at around 7:00 o'clock in the evening, he was in the house of his employer drinking with several others. They broke up after 8:00 o'clock in the evening of the same date, and accused-appellant went to sleep in his quarters in the kitchen of the house. He woke up at about 7:00 o'clock of the following day and did some laundry. He later worked in the farm until 1:00 o'clock in the afternoon. Soon after, policemen arrived and invited him to the police station, where he was informed of a complaint filed by AAA.

On cross examination, accused-appellant admitted he saw AAA that evening but only saw her outside the house of her grandmother along the path to the house. They exchanged a few words and learned that she was looking for her grandmother.

Evaluating the testimonial and documentary evidence adduced by the parties during trial, the court *a quo* gave more weight to the prosecution's version and convicted accused-appellant of the crime of Rape, disposing as follows:

WHEREFORE, finding the accused Dante Gragasín y Par guilty beyond reasonable doubt as principal of the crime of Rape as defined and penalized under Article 266-A and Article 266-B of the Revised Penal Code as amended by RA 8353, the court hereby sentences the said accused to suffer the penalty of reclusion perpetua and to pay the offended party P50,000.00 as indemnity and P50,000.00 as moral damages, and the costs of this suit.[8]

In giving full weight and credit to AAA's testimony, the trial court applied the doctrine that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Neither was there any showing of a sinister motive on the part of AAA or her family to testify as they did. Although there was no testimony that AAA cried at any time after the alleged incident, it does not mean that nothing happened to her. It bears stressing that, on direct testimony, AAA testified that she, in fact, fell ill for a day after the incident. The workings of the human mind when placed under emotional stress are unpredictable, and people react differently.

On intermediate appellate review, the Court of Appeals affirmed the findings of the RTC, but modified the penalty and award of damages in this wise:

IN LIGHT OF ALL THE FOREGOING, the appeal is hereby DENIED. The decision of the Regional Trial Court is hereby AFFIRMED WITH MODIFICATION. Accused-appellant Dante Gragasín y Par is sentenced to suffer the penalty of reclusion perpetua and to pay the victim AAA (to be identified through the Information in this case), the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages.[9]

Hence, this appeal where accused-appellant prays for his acquittal.

On 13 April 2009, the Court required the parties to submit their respective supplemental briefs, if they so desired.[10] For expediency, the defense and prosecution opted to adopt their briefs submitted to the Court of

Appeals.[11] The case was thereafter deemed submitted for decision.

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

ASSUMING ARGUENDO THAT THE ACCUSED COMMITTED A CRIME, THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING HIM OF CONSUMMATED RAPE DESPITE THE FACT THAT THE ELEMENT OF SEXUAL INTERCOURSE WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III.

THE TRIAL COURT GRAVELY ERRED IN GIVING SCANT CONSIDERATION TO THE EVIDENCE PRESENTED BY THE DEFENSE WHICH IS MORE CREDIBLE THAN THAT OF THE PROSECUTION'S.

The assignment of errors may be narrowed down to the sole issue of whether or not accused-appellant's guilt was proven beyond reasonable doubt.

The appeal fails.

Appealing his conviction, accused-appellant anchors his innocence on denial and alibi. He argues that the testimonies of the prosecution witnesses were inconsistent with human experience, thus, not credible to sustain conviction. If accused-appellant inserted his penis into AAA's vagina, there would have been even the slightest tear on her hymen. Assuming arguendo that a crime was committed, accused-appellant should only be convicted of attempted rape for the failure of the prosecution to prove beyond any shadow of doubt the fact of penetration or even a mere touching by the penis of the labia.

The defense also attempted to cast doubt on AAA's and BBB's credibility as witnesses. First, the defense claims that AAA failed to shout for help or make any sound to alert other persons nearby while she was allegedly being raped. Second, what militates against the prosecution's cause is the inaction of AAA's parents immediately after they saw accused-appellant naked on the bed, an odd behavior for the parents of a child whom they believed to have been sexually violated.

Finally, the defense argues that the fact that accused-appellant proceeded to do his chores the day after the alleged incident is evidence of his innocence, since the natural reaction of a person who has committed a wrong is to flee from the person he has wronged.

On the other hand, the Office of the Solicitor General (OSG) supports accused-appellant's conviction, on the basis of the documentary and testimonial evidence presented by the prosecution.

Rape is a serious offense with grave consequences, both for the accused-appellant and private complainant; hence, the review of a judgment of conviction for rape must be done with utmost care.

In reviewing rape cases, this Court is guided by three principles: (1) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the

evidence for the defense.[12]

In line with these principles and considering the gravity of the offense charged and severity of the penalty that may be imposed, this Court has meticulously evaluated the entire case records and transcript of stenographic notes, and finds no reason to deviate from the appellate court's findings of accused-appellant's guilt.

Under Article 266-A[1] of the Revised Penal Code, as amended by Republic Act No. 8353, rape is committed by a man who has carnal knowledge of a woman under any of the following circumstances:

- (a) Through force, threat or intimidation;
- (b) When the offended party is deprived of reason or otherwise unconscious;
- (c) By means of fraudulent machination or grave abuse of authority; and
- (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

A perusal of the Information reveals that accused-appellant was charged with rape committed under the first and fourth circumstances:

- a) Through force, threat or intimidation;

x x x x

- 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 rape cases, the gravamen of the offense is sexual intercourse with a woman against her will or without her consent.[13] If the woman is under 12 years of age, such as in the case of AAA, proof of force and consent becomes immaterial, not only because force is not an element of statutory rape, but because the absence of free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven.[14]

The prosecution clearly established that AAA was barely nine years old on 23 September 2001 at the time accused-appellant allegedly had carnal knowledge of her. This was evidenced by AAA's birth certificate, which showed that she was born on 11 October 1992.[15] Considering she was barely nine years old at that time, no proof of involuntariness on her part is necessary. AAA, being a minor at the time the act was committed against her, is considered by law to be incapable of consenting to the sexual act. To convict accused-appellant of rape, the only circumstance that needs to be proven is the fact of sexual intercourse.

Prosecutions for rape almost always involve sharply contrasting and irreconcilable declarations of the victim and the accused.

At the heart of almost all rape cases is the issue of credibility of the witnesses, to be resolved primarily by the trial court, which is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying. The manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge, who has the unique and unmatched opportunity to observe the witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality. Accordingly, its findings are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which would otherwise affect the result of the case. The assessment made by the trial court is even more enhanced when the

Court of Appeals affirms the same, as in this case.

In giving more credence to the version of the defense, the trial court observed that the victim was direct, unequivocal, convincing and consistent in answering the questions propounded to her. Indeed, the records disclose that AAA was categorical and straightforward in narrating the sordid details of her horrid experience as accused-appellant ravished her even at such tender age:

Q.

What happened?

A.

He pulled my hand and he brought me to the kitchen.

Q.

How long after you arrived in your grandmother's house if Dante pulled you towards the kitchen?

A.

For a while.

Q.

When he brought you to the kitchen, what happened next?

A.

He laid me down on the bed.

Q.

Is there a bed in the kitchen?

A.

That is his room.

Q.

After he laid you down on the bed, what did he do next if any?

A.

He removed my short pants and panty.

Q.

After removing your clothing, what happened next?

A.

He began to kiss me.

Q.

What else did he do?

A.

He inserted his penis in my vagina.

Q.

While he was doing these things to you, what was your reaction?

A.

I pushed him on the bed.

Q.

When you were able to push him from the bed, what transpired next?

A.

He fell and I ran.

Q.

Were you able to run away from him?

A.

He pulled me again and my grandmother arrived.

Q.

What did you do when your grandmother arrived?

A.

I ran to our house.

Q.

Now, if you can see the accused again, would you be able to identify him?

A.

Yes, sir.

Q.

To whom did you first reveal the incident?

A.

My mother.

Q.

When did you reveal the incident?

A.

September 23, 2001.

Q.

It was also at that night after the incident, is that what you are saying?

A.

Yes, sir.

Q.

How do you feel about Dante Gragasin now?

A.

I am very angry.

Q.

How does this affect your schooling?

A.

I got sick.

Q.

For how long did you get sick?

A.

One day, sir.

x x x x

Q.

When the accused Dante Gragasin first approached you, AAA, was he reeking with liquor?

A.

Yes, sir.[16]

Not only did AAA identify accused-appellant as her rapist; she also recounted the rape in detail, particularly how the sexual intercourse took place.

A rape victim, who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness.[17] Moreover, when the offended party is a young and immature girl, as in this case, where the victim was barely 9 years old at the time the rape was committed, courts are inclined to lend credence to their version of what transpired, not only because of their relative vulnerability, but also because of the shame and embarrassment to which they would be exposed by court trial, if the matter about which they testified were not true.

Accused-appellant denies raping the victim and claims he was asleep at the time the incident allegedly took place. For alibi to succeed as a defense, the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime.[18] By his own testimony, accused-appellant testified that at the time the crime was supposed to have been committed, he was sleeping in his quarters, in the kitchen of AAA's grandmother. Clearly, there was no physical impossibility for him to be present at the scene of the crime at the time of the commission thereof. This is, undeniably, evidence of his presence at the locus criminis.

Accused-appellant's denial in this case, unsubstantiated by clear and convincing evidence, is negative, self-serving

evidence, which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters. His denial and alibi cannot prevail over the affirmative testimony of AAA, a minor less than 12 years old, who narrated how accused-appellant inserted his penis into her vagina.

With respect to the absence of hymenal lacerations on AAA's genitalia, it is well settled that medical findings of injuries in the victim's genitalia are not essential to convict accused-appellant of rape. Hymenal lacerations are not an element of rape.[19] What is essential is that there was penetration, however slight, of the labia minora, which circumstance was proven beyond doubt in this case by the testimony of AAA.[20]

In *People v. Palicte*,[21] the accused therein claimed that no rape was committed on the 11-year-old victim, because there was no deep penetration of her vagina as the hymen was still intact, but this Court held:

The fact that there was no deep penetration of the victim's vagina and that her hymen was still intact does not negate the commission of rape. According to Dr. Jose Ladrido, Jr., who has been in medico-legal cases since 1963 and has examined many rape victims, if the victim is a child, as in the case of Edievien, rape can be done without penetration. Without penetration the male organ is only within the lips of the female organ, and there is interlabia or sexual intercourse with little, none, or full penetration, although he admitted that it was also possible that there was no rape since the hymen was intact.

In the case before us, Edievien repeatedly testified that the accused inserted his penis into her vagina for half an hour, as a consequence of which she suffered pain. This, at least, could be nothing but the result of penile penetration sufficient to constitute rape. Being a virgin, as found by the examining physician, her hymenal resistance could be strong as to prevent full penetration. But just the same, penetration there was, which caused the pain. For, rape is committed even with the slightest penetration of the woman's sex organ. Mere entry of the labia or lips of the female organ without rupture of the hymen or laceration of the vagina, as in this case of Edievien, is sufficient to warrant conviction for consummated rape.

Accused-appellant's contention that there can be no consummated rape, considering the absence of spermatozoa in the victim's vagina, is of no merit. The absence of spermatozoa does not negate the conclusion that it was his penis that was inserted into the victim's vagina.[22] Jurisprudence is replete with examples where, despite the absence of spermatozoa, the accused was still found guilty of consummated rape. *People v. Dones*[23] held that the important consideration in rape cases is not the emission of semen, but the penetration of the female genitalia by the male organ. In *People v. Bato*,[24] this Court affirmed that the presence or absence of spermatozoa is immaterial in a prosecution for rape, the important consideration not being the emission of semen, but the unlawful penetration of the female genitalia by the male organ. Similarly, this Court stressed in *People v. Arivan*[25] that the absence of spermatozoa in the private complainant's sex organ does not disprove rape. It could be that the victim washed or urinated prior to her examination, which may well explain the absence of spermatozoa.

In prosecutions for rape, the testimony of an expert witness is not indispensable for a conviction for rape. Such is not an element of rape. By declaring that the accused-appellant inserted his penis into her vagina, the victim AAA said all that was necessary to prove rape. However, Dr. Logan's testimony in fact bolstered AAA's credibility when he explained that there were contusions in the labia majora and labia minora of private complainant's vagina, which could have been caused by a blunt object, including a penis. The medical findings and testimony of Dr. Logan corroborated the testimony of the victim and her mother.

As correctly found by the trial court, this fact confirmed the testimony of AAA that accused inserted his penis into her vagina, and that she was indeed raped by him. While accused-appellant was inserting his sexual organ into the genital organ of AAA, she was able to push him and escape. Thus, this explains why there was no full penetration of his penis into her vagina.

Following a long line of jurisprudence, full penetration of the female genital organ is not indispensable.[26] It suffices that there is proof of the entrance of the male organ into the labia of the pudendum of the female organ. Any penetration of the female organ by the male organ, however slight, is sufficient.[27] Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify conviction for rape.[28]

The allegation of force and intimidation becomes immaterial in the instant case, because sexual intercourse with a minor below 12 years old constitutes statutory rape.

Additionally, the defense insists that the inaction of private complainant's parents immediately after they allegedly saw him naked on the bed was behaviour contrary to human experience, as no parent would react in such a way when confronted with the situation of seeing a naked man in a room where their minor daughter was. The defense also harps on the fact that there is nothing in the testimony that will show that the victim cried or shouted for help. This Court finds the same to be without merit, considering that different people react differently to a given situation. There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.

In sum, the prosecution was able to discharge its burden of proving accused-appellant's guilt. Accused-appellant is guilty beyond reasonable doubt of statutory rape under Article 266-A, paragraph 1(d) of the Revised Penal Code.

Under the second paragraph of Article 266-B, in relation to Article 266-A(1)(d) of the Revised Penal Code, carnal knowledge of a woman under 12 years of age is punishable by reclusion perpetua.

On the award of damages, civil indemnity ex delicto is mandatory upon a finding of the fact of rape.[29] Moral damages are automatically awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[30] Exemplary damages are awarded under Article 2230 of the Civil Code if there is an aggravating circumstance, whether ordinary or qualifying. There being no aggravating circumstance that can be considered, the award of exemplary damages would have to be deleted.

Pursuant to prevailing jurisprudence, the amount of P75,000.00 as civil indemnity must be modified to P50,000.00, and moral damages reduced from P75,000.00 to P50,000.00.[31] In *People v. Sambrano*,[32] the Court decreed that the award of P75,000.00 as civil indemnity and P75,000.00 as moral damages is only warranted when the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty. The instant case involves simple rape. Hence, the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages are in order.

WHEREFORE, premises considered, the decision of the Court of Appeals, finding accused-appellant Dante Gragasín y Par GUILTY beyond reasonable doubt of the crime of RAPE, is hereby AFFIRMED with MODIFICATION as to the award of damages: P50,000.00 as civil indemnity and P50,000.00 as moral damages; exemplary damages are deleted. No costs.

SO ORDERED.

Velasco, Jr., Nachura, and Peralta, JJ., concur.

Carpio Morales,[*] J., please see Concurring Opinion & Dissenting Opinion.

Chico-Nazario,** J., Acting Chairperson.

[*] Per Special Order No. 679 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating

Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[**] Per Special Order No. 681 dated 3 August 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] Penned by Associate Justice Pampio A. Abarintos with Associate Justices Edgardo F. Sundiam and Arturo G. Tayag, concurring; rollo, pp. 2-18.

[2] Penned by Acting Presiding Judge Jose Godofredo M. Naui; records, pp. 45-52.

[3] Private complainant is referred to as AAA. In view of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Section 29 of Republic Act No. 7610, otherwise known as the Anti-violence Against Women and Their Children Act of 2004.

[4] Records, p. 1.

[5] Records, p. 14.

[6] The real name of the mother's victim is withheld per Republic Act No. 7610, Republic Act No. 9262, and *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[7] Records, p. 6.

[8] Records, pp. 124-131.

[9] Rollo, p. 18.

[10] *Id.* at 25.

[11] *Id.* at 31; 34-35.

[12] *People v. Gonzales*, G.R. No. 141599, 29 June 2004, 433 SCRA 102, 108-109.

[13] *People v. Igat*, 353 Phil. 294, 302 (1998).

[14] *People v. Dimaano*, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 665.

[15] Exhibit "A"; records, p. 74.

[16] TSN, pp. 21-27.

[17] *People v. Lou*, 464 Phil. 413, 425 (2004).

[18] *People v. Gonzales*, *supra* note 12 at 116.

[19] *People v. Resurreccion*, G.R.No. 185389, 7 July 2009.

[20] *People v. Codilan*, G.R. No. 177144, 23 July 2008, 559 SCRA 623, 634.

[21] G.R. No. 101088, 27 January 1994, 229 SCRA 543, 547-548, cited in *People v. Gabris*, 328 Phil. 184, 198 (1996).

[22] *People v. Cañada*, G.R. No. 112176, 6 February 1996, 253 SCRA 277, 284.

[23] 325 Phil. 173 (1996).

[24] 382 Phil. 558, 566 (2000), citing *People v. Juntilla*, 373 Phil. 351, 366 (1999); *People v. Sacapaño*, 372 Phil. 543, 555 (1999); *People v. Manuel*, 358 Phil. 664, 672 (1998).

[25] G.R. No. 176065, 22 April 2008, 552 SCRA 448, 469.

[26] *People v. Castro*, G.R. No. 172874, 17 December 2008, 574 SCRA 244, 254.

[27] *People v. Aure*, G.R. No. 180451, 17 October 2008, 569 SCRA 836, 866.

[28] *People v. Boromeo*, G.R. No. 150501, 3 June 2004, 430 SCRA 533, 542.

[29] *People v. Calongui*, G.R. No. 170566, 3 March 2006, 484 SCRA 76, 88.

[30] *People v. Sabardan*, G.R. No.132135, 21 May 2004, 429 SCRA 9, 28-29.

[31] *People v. Corpuz*, G.R. No. 178536, 30 January 2009.

[32] 446 Phil. 145, 162 (2003).

CONCURRING AND DISSENTING OPINION

CARPIO MORALES, J.:

I concur in the Decision, but disagree with the deletion of the award of exemplary damages.

Emphatic on AAA's minority in sustaining appellant's conviction, the majority paradoxically overlooks the same in deleting the award of exemplary damages. Consistent with the Court's latest pronouncements in *People v. Sia*,^[1] *People v. Wasit*,^[2] and *People v. Cruz*,^[3] all unanimously decided, I subscribe to the view that exemplary damages should be awarded in rape cases where the victim is a minor without need for any other circumstance to concur with minority, in order to deter individuals with perverse tendencies from sexually abusing young children. The application of Article 2230 of the Civil Code *strictissimi juris* in such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages - to set a public example or correction for the public good.

I, therefore, vote to AFFIRM the appellate court's award of exemplary damages.

[1] G.R. No. 174059, February 27, 2009.

[2] G.R. No. 182454, July 23, 2009.

[3] G.R. No. 186129, August 4, 2009.

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