

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDWIN DALIPE Y PEREZ, APPELLANT.

G.R. No. 187154. April 23, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the August 29, 2008 Decision [1] of the Court of Appeals, in CA-G.R. CR H.C. No. 01801, affirming with modification the Decision[2] of the Regional Trial Court of Quezon City, Branch 79, which found the accused, Edwin Dalipe y Perez, guilty beyond reasonable doubt of having committed three (3) counts of statutory rape[3] and two (2) counts of acts of lasciviousness[4] against his stepdaughter AAA.[5]

The Information[6] in Criminal Case No. Q-95-63737 indicting the accused reads:

The undersigned Public Prosecutor, upon complaint filed by AAA, accuses EDWIN P. DALIPE of the crime of RAPE (3 counts) penalized under Article 335 of the Revised Penal Code as amended by R.A. 7659, committed as follows:

That on or about the first Friday of May 1992, or immediately prior and subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused through abuse of moral ascendancy and influence over AAA, his stepdaughter, then under eighteen (18) years of age, did then and there willfully, unlawfully and feloniously lie and have carnal knowledge of said AAA, against her will or consent, to her damage and prejudice.

CONTRARY TO LAW.

The allegations in the Informations in Criminal Cases Nos. Q-95-63738[7] and Q-95-63739[8] are the same, except as to the dates of commission of the rape charges which are "Friday of the second week of July 1992" and "July 29, 1995," respectively.

The information in Criminal Case No. Q-95-63740 reads:

The undersigned Public Prosecutor, upon prior sworn complaint of AAA, assisted by Ma. Fatima Niñon, a Social Worker from the Department of Social Welfare and Development, accuses EDWIN P. DALIPE of the crime of ACTS OF LASCIVIOUSNESS penalized under Section 5, paragraph (b) of R.A. 7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, committed as follows:

That on February 17, 1994, Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there willfully unlawfully and feloniously touch, hold, fondle the breasts and insert his finger inside the private parts of AAA, a victim of child abuse, against her will or consent, accused being the stepfather of said victim, to her damage and prejudice.

CONTRARY TO LAW.

The information in Criminal Case No. Q-95-63741[9] is the same, except as to the date of commission of the charge of acts of lasciviousness which is "on or about the first week of June 1994." [10]

During the trial, the prosecution presented, as witnesses, AAA herself; Karen Sangalang, her classmate; and Dr. Floresco P. Arizala, the NBI Medico Legal Officer. The thrust of the evidence of the prosecution, as summarized in the Appellee's Brief,[11] is as follows:

Private complainant AAA was born on December 28, 1983 (Exh. A, Record, p. 133). Her parents GGG and FFF were married only on August 10, 1984, after the birth of AAA (Exh. C, Record, p. 135). It appears, however, that FFF separated from her husband GGG and thereafter lived with appellant Edwin Dalipe. AAA thus grew up recognizing Dalipe as the "husband" of her mother and called the latter her "papa." AAA said that appellant mauled her and her two brothers, DDD and EEE. (TSN, dated March 18, 1996, pp. 12-13, 15).

AAA was raped by appellant for the first time on May 19, 1992 in their house located at No. 22 Salvador Street, Loyola Heights, Quezon City. She testified that she had been watching television with her two brothers in their room when appellant entered and sent her two brothers outside. With the two boys gone, appellant locked the door and dragged AAA to her bed. He held her two hands and removed her shorts. Appellant took off his shorts, went on top of AAA, and forced his penis into her private parts. She tried to push appellant away, but the latter only tightened his grip on AAA. He then proceeded to have sexual intercourse with AAA, who felt pain ("masakit" and "mahapdi") in her private parts. After around three minutes, AAA felt a hot and sticky fluid come out of appellant's penis, after which appellant stood up. Appellant put his clothes on and went out of the room (TSN, dated March 18, 1996, pp. 14-21).

AAA also left her room and went to the room of her Lola BBB to tell the latter what appellant had done to her. Her grandmother only replied that she had known that appellant had been abusing her. After reporting to her grandmother, AAA went to her Lola BBB's store, located at the ground floor of the house, and hid herself out of fear that appellant would repeat his dastardly deed. Later on, she played with her two brothers on the ground floor of the house. Upon the return of her mother, who had been selling goods at Shoppersville, AAA reported to her that appellant had raped her. But, her mother only became angry with her. AAA could only cry as her mother told her that she had been learning too much foolishness in school (TSN, dated March 18, 1996, pp. 22-27).

That night, nevertheless, AAA slept in her bed in their room together with appellant and her mother in one bed and her two brothers in their respective beds (TSN, dated March 18, 1996, pp. 24-25).

AAA was raped for the second time by appellant on the second Friday of July 1992. Around 8 o'clock that evening, AAA and her two brothers were sleeping in their room when AAA was awakened. As the room was dark, she could only see the silhouette of appellant as he inserted his finger into her private parts. AAA took his hands off her and pushed appellant causing him to fall down. In response, appellant used one hand to grab both hands of AAA and used his other hand to remove her clothes. Appellant took his clothes off, went on top of AAA, and forcibly inserted his penis into her private parts. When he finished with her, appellant stood up, put his clothes on, and went back to bed. Before leaving AAA, however, appellant told her not to report what had happened to her mother because the latter would only become angry with her and drive her away (TSN, dated March 26, 1997, pp. 5-12).

AAA went to the room of her Lola BBB and told the latter that appellant had again molested her. Her Lola BBB became mad at appellant and called him a bad person and shameless ("salbahe" and "walanghiya"). AAA stayed in her grandmother's room for a long time. Later that night, AAA returned to their room to report the incident to her mother. When AAA told her what had befallen her at the hands of appellant, FFF became angry with her daughter and called her a liar. At that time, appellant was also in the room and could hear what was taking place. Afterwards, AAA went to where her two brothers had been playing and joined them, after which she fell asleep (TSN, dated March 26, 1996, pp. 12-16).

AAA also testified with regard to the acts of lasciviousness committed by appellant against her. She said that around midnight of February 17, 1994, she was sleeping in their room when she was awakened by appellant, who had inserted his finger into her private parts. AAA then took his hand off her private parts. Realizing that AAA was already awake, appellant returned to the bed he shared with FFF. At that time, AAA's two brothers were also sleeping inside the room. On the other hand, FFF was lying on bed, but she was not asleep. AAA overheard FFF telling appellant, "Bakit pati bata pinapatulan mo?" ("Why do you have to make advances even to a child?"). AAA did not hear what appellant had said to her mother, but she listened to them talking for a long time. AAA no longer went back to sleep that night (TSN, dated March 26, 1996, pp. 16-20).

AAA later told her mother that appellant had inserted his finger into her private parts. But her mother only called her a liar and did not believe her. (TSN, dated March 26, 1996, pp. 20-22).

The second acts of lasciviousness committed by appellant against AAA took place on the first week of June 1994. Around 8 o'clock in the morning, AAA was awakened when she caught appellant inserting his finger into her private parts. AAA removed his hand, but appellant grabbed both her hands even as he inserted his other hand into her private parts. Appellant only stopped when he had seen that AAA was crying. He left AAA while she continued to cry inside her room (TSN, dated March 16, 1996, 23-26).

Appellant raped AAA for the last time in the evening of July 29, 1995. At past 9 o'clock of that night, AAA and her two brothers were sleeping in their room. FFF had not yet come home. AAA was awakened when she felt appellant's hand inside her shorts and underwear. She saw that appellant had inserted his finger into her private parts. AAA tried to remove appellant's hand, but appellant held both her hands. She then attempted to push appellant. However, appellant ignored her and proceeded to remove her clothes, after which he took off his shorts and underwear. He then put himself on top of AAA, sucked her breasts, and inserted his penis into her private parts. After appellant had consummated the sexual act, he stood up, put on his clothes, and returned to the bed he shared with FFF (TSN, dated March 27, 1996, pp. 3-8).

AAA again went to the room of her Lola BBB to report to the latter that appellant had again raped her. Her Lola BBB then confronted appellant, who denied what AAA had said and called the latter a liar. When FFF returned, AAA also told her mother what appellant had done to her. Again, FFF did not believe AAA and said that the latter had been making up lies about appellant. Afterwards, AAA went beside one of her brothers, afraid that appellant would come back to her (TSN, dated March 27, 1996, pp. 8-14).

In August 1995, AAA told her classmate, Karen Sangalang (hereafter, Karen), about the rapes committed against her by appellant. Karen, in turn, informed her teachers, Mrs. Villamin and Ms. Manzano, about AAA's plight. When her teachers asked her, AAA confirmed that she had been raped by appellant. Her teachers thus took AAA to the DSWD office and, later on, to the NBI office, where she executed a statement, dated August 3, 1995, regarding the rapes and acts of lasciviousness committed by appellant against her. AAA was then brought by a social worker, Fatima Ninon, to CHIME in Alabang, Muntinlupa, where she was given food and clothing. Placed under the custody of the DSWD, AAA stayed in a housing facility called Cottage VI located in Alabang, Muntinlupa, where she remained until November 1995 when she began living with her real father, GGG (TSN, dated March 27, 1996, pp. 14-35; Exhibit "D", Record, pp. 136-141).

Karen Sangalang testified that around 2 o'clock in the afternoon of August 1, 1995, she, AAA, and other students had been waiting in school for the people tasked to fetch them when she noticed that AAA looked sad and teary-eyed. Karen asked AAA what had been troubling her, to which the latter replied that she had a problem that she could not tell anybody about. When Karen offered to help her, AAA confided to her that appellant had been molesting her ("ginagalaw siya ng stepfather niya"). AAA also told Karen that her mother did not believe her when she reported to the latter what had been done to her by appellant. The following day, August 2, Karen accompanied AAA to their adviser, Mrs. Villamin, to tell the latter about AAA's plight. Mrs. Villamin then took Karen [AAA] to the guidance counselor to report the rapes committed against Karen [AAA]. Later on, AAA was brought to the DSWD (TSN, dated August 27, 1996, pp. 3-7).

Dr. Floresto P. Arizala was the NBI medico-legal officer who conducted the physical examination of AAA. His findings are as follows:

GENERAL PHYSICAL EXAMINATION:

Height: 148.0 cm. Weight: 84 lbs.

Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject

Breast, developing, Areolae, light brown, 3.5 cm. in diameter.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora and labia minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, originally annular, tall, thick with an old healed superficial laceration at 5:00 o'clock position corresponding to a face of a watch, edges of which are rounded, non-coaptable. Hymenal orifice, admits a tube 2.0 cm. in diameter. Vaginal walls, tight. Rugosities, prominent.

CONCLUSIONS:

- No evident sign of extragenital physical injuries noted on the body of the subject at the time of the examination.
- Old healed superficial hymenal laceration, present.

(Exhibit "F," Record, p. 146)

Dr. Arizala explained that he first recorded the external injuries on the body of AAA and afterwards proceeded with the actual genital examination. As regards the physical examination of AAA, Dr. Arizala found no external injury on her body. With respect to the genital examination, he found superficial lacerations on AAA's hymen. He opined that these lacerations could have been produced by the insertion of a blunt object in the body of the victim, such as a male penis or a finger. Considering that the lacerations were already healed, he concluded that these were inflicted on the victim at least three (3) months and even up to one (1) year prior to the examination. Dr. Arizala also testified that the hymenal orifice of the victim in this case could admit a tube measuring two (2) centimeters in diameter (TSN, dated August 28, 1996, pp. 2-8).

Those who testified for the defense were the accused, Edwin P. Dalipe; BBB, the grandmother of AAA; CCC, an uncle of AAA; and Baltazar Sabanal. The defense of the accused, as summarized by the accused in his Appellant's Brief,[12] is as follows:

On the first day of May 1992, he was playing billiards with his friends namely, Jude, Carlo, Andoy and others from 2:00 in the afternoon up to 10:00 in the evening. After the game, they went directly to Farmer's Plaza and went home the following day.

On the second Friday of July 1992 at around 8:00 p.m., he said he was not in the house since he was always out to playing billiards on Fridays. He likewise denied the accusation that he committed acts of lasciviousness against the complainant on February 19, 1994 and on an unspecified date in June 1994.

He further denied raping the complainant on July 29, 1995 at about 9:00 in the evening. He claimed that he and Nonoy Sabanal left the house at about 8:00 pm and fetched Comato Morales at Project 8, Quezon City, then they proceeded to Kampo Disco at West Avenue, Quezon City and played billiards for four (4) hours. They went home at 3:30 in the morning of the following day.

He said that his wife, mother-in-law, and brother-in-law never confronted him regarding the alleged acts committed on AAA. He said further that this is the first time that he was charged with an offense. He and FFF started living together with the De Santoses (FFF's family) at No. 22 Salvador St., Loyola Heights, Quezon

City in 1984 when AAA was only one (1) year [old], but they were driven away by BBB and CCC because they (FFF's family) do [did] not approve of his relationship with FFF. Edwin and his family moved out and transferred residence from time to time until in 1989 when FFF's brothers, WWW and XXX, prevailed upon them to return and live at the De Santos residence again to watch over the mother of FFF, who was then living alone. They moved in and stayed again with FFF's mother, where he, FFF and the kids occupied a room in the second floor of the house, adjacent to the room of his mother-in-law.

He said he treated the mother of FFF as his real mother but the latter treated him and the kids indifferently. He claimed that CCC and BBB were against him because they thought he was to share in the inheritance given to his wife FFF, consisting of a portion of the house at No. 22 Salvador, Loyola Heights which is registered under FFF's name.

While he was already under detention for two (2) months for the crimes charged, Tito Santos offered him to sign an agreement, in which the De Santos family offered to settle the instant cases with the assurance that his family will be taken care of, provided that he (Edwin) would not return anymore to the De Santos residence. (TSN, Oct. 14, 1996, pp. 16-13, October 21, 1996, pp. 2-4).

On cross-examination, he testified that when he got married to FFF in 1991, he had no knowledge that she was previously married. He also testified that AAA was enticed by her Lola BBB to file these cases against him because of the animosity existing between him and BBB. (TSN, October 21, 1996, pp. 9-29).

BBB, is the grandmother of private complainant AAA. As the defense, hostile witness, she testified that her granddaughter was crying when she complained to her that her stomach was painful because she was "sinalbahe" by the accused. She cannot remember the date and year when AAA reported [the incident] to her. She admitted that she did not confront the accused regarding the report of AAA. She averred further that the accused is not her son-in-law. He is just the live-in partner of her daughter FFF. (TSN, October 29, 1996, pp. 2-20).

CCC, brother of Emily de Santos testified that he (CCC) is a resident of said house since 1991. He first saw the accused for the first time ten (10) years ago. The second time he saw the accused was when the latter was already living at No. 22 Salvador St., Loyola Heights, Quezon City.

He said he did not confront the accused nor FFF about the report relayed by AAA to her [grand]mother (BBB). But he called up his elder sister YYY who was then living in Novaliches and asked her to take AAA away from the house of Loyola Heights, Quezon City. He never thought of reporting the matter to the barangay or [to the] police, neither did he inquire personally from AAA about the alleged incident because he was afraid of FFF and the accused. He wanted to protect his family so he just called up YYY who could decide on this matter. He admitted that he was not happy with his sister's first marriage, much more when she was living with the accused. (TSN, November 13, 1996, pp. 3-28)

Baltazar Sabanal testified that at about 8:00 in the evening of July 29, 1995, Romulo fetched him. The accused and the three of them went to play billiards in Project 8, Quezon City until 2:00 a.m. of the following day.

On cross-examination, he testified that the accused hired him in January 1995 to work in the latter's canteen. On July 29, 1995, they played billiards at Kampo Pub-House in Project 8, Quezon City. He left the residence of the accused after he executed his sworn statement (TSN, February 3, 1997, pp. 2-23).

In its July 30, 1997 Decision, the trial court convicted the accused of three (3) counts of statutory rape and two (2) counts of acts of lasciviousness. Thus, the trial court disposed:

WHEREFORE, judgment is hereby rendered finding the accused Edwin Dalipe y Perez guilty beyond reasonable doubt of the crime of statutory rape (3 counts).

In Criminal Case Nos. Q-95-63737-38, the Court sentences him to suffer the penalty of reclusion perpetua for

each count, as penalized under Art. 335 of the Revised Penal Code, as amended by RA 7659, and to indemnify the victim in the amount of P50,000.00 and P25,000.00 for each count, as moral and exemplary damages, respectively.

In Criminal Case Nos. Q-63739, the accused is hereby sentenced to suffer the maximum penalty of DEATH, as penalized by Sec. 11, of RA 7659, and to indemnify the victim, the amount of P50,000.00 and P25,000.00 as moral and exemplary damages, respectively.

In Criminal Case Nos. Q-95-637340-41, judgment is likewise rendered finding the said accused guilty beyond reasonable doubt of the crime of acts of lasciviousness (2 counts) penalized under Sec. 5, paragraph b) of RA 7610, and he is hereby sentenced to suffer the indeterminate sentence of 9 years and 1 day of prison mayor as minimum to 15 years, 8 months and 20 days of reclusion temporal, as maximum, for each count.

SO ORDERED.[13]

On August 18, 2008, the Court of Appeals rendered the subject decision, affirming with modification the judgment of conviction of the Regional Trial Court. The dispositive portion of the decision of the Court of Appeals reads:

WHEREFORE, the appealed decision of the Regional Trial Court of Quezon City (Branch 79) is AFFIRMED with MODIFICATIONS in that (i) the sentence imposed on accused appellant Edwin Dalipe y Perez in Crim. Case. No. Q-95-6739 is REDUCED to reclusion perpetua; (ii) he is ordered to pay the offended party, AAA, the sums of P225,000.00, P225,000.00 and P75,000.00, or the total amount of P525,000.00, as civil indemnity, moral damages and exemplary damages, respectively, for the three counts of rape in Crim. Case Nos. Q-95-63737, Q-95-63738 and Q-95-63739; and (iii) he is sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of reclusion temporal, as a minimum, to seventeen (17) years of reclusion temporal, as maximum, for each count of acts of lasciviousness subject of Crim. Cases Nos. Q-95-63740 and Q-95-63741.

SO ORDERED.[14]

The Court of Appeals was of the considered view that the trial court erred in meting the accused the death penalty in Criminal Case No. Q-95-63739. In its Decision, said appellate court reasoned:

Although it was stipulated during the pre-trial and admitted by appellant that he is the stepfather of AAA, as alleged in the information, serious doubts have been cast on such admission, considering BBB's testimony that appellant was only a live-in partner of her daughter FFF. Besides, no marriage certificate was produced to prove that appellant was married to FFF. Neither has it been shown that FFF's marriage to GGG, AAA's biological father, and who is still alive, has been legally dissolved or annulled.

Circumstances that qualify a crime and increase its penalty to death cannot be subject of stipulation. The accused cannot be condemned to suffer the extreme penalty of death on the basis of stipulations or admissions. This strict rule is warranted by the gravity and irreversibility of capital punishment (People v. Ibarrientos, 432 SCRA 424). To justify the death penalty, the prosecution must specifically allege in the information and prove during the trial the qualifying circumstances of minority of the victim and her relationship to the offender (People v. Escutor, supra). At any rate, death penalty has been abolished pursuant to Rep. Act No. 9346."[15]

On the penalty imposed for acts of lasciviousness, the Court of Appeals ruled that the accused should have been punished pursuant to the provisions of Sec. 5(b) of R.A. No. 7610[16] (Child Abuse Act) which provides that "the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period."

In his defense, the accused argues that the prosecution's version is full of incredible and inconsistent statements,

thus, creating serious doubts as to the crimes imputed to him. He emphasizes that, on the basis of the following testimony of AAA, it was impossible for him to have committed the offenses charged.

Q

But you never bothered to shout and call the attention of your two kid brothers and your Lola?

A

I did not shout, sir.

Q

All the time that he was doing the push-up motion on top of you, one of his hand was holding your two hands and the other hand was covering your mouth, that is what you want the court to understand, correct?

A

Yes, sir.

Q

There was never an instance during that occasion that he released your hands with his one hand and also removed his other hand that was covering your mouth?

A

He released my two hands and used his knees in pinning me down, sir.

Q

When you had already your hands freed from his hold, you did not push him and shout?

A

I pushed him, sir.

Q

You did not shout?

A

No, sir.

Q

While the accused as you said was pinning you down, your two hands with his knees, his two hands were stucked [sic] on the bed to support his weight while he was doing the push up motion?

A

No, sir.

Q

Will you demonstrate to the Court how exactly the two hands of the accused were doing while he was making the push-up motion?

A

One of his hands was holding my hands and the other was fondling my breast, sir.

x x x x x x x x

Court:

She clarified that in her statement at paragraph 23 because there are two (2) statements, one, before the penis was inserted and there was a change of position - tapos po ipinasok na niya ang pek-pek ko at habang ginagawa niya iyon ay dinaganan niya ng tuhod ang dalawang kamay ko habang tutop pa rin ng kaliwang kamay niya and [sic] bibig ko at ang kanang kamay niya ang humipo sa bust ko.

(TSN, June 18, 1996, pp. 13-14).

The accused posits that, from the scenario given by the victim, he could not have possibly committed the bestial acts on her.

Determining the guilt or innocence of an accused, based solely on the victim's testimony, is not an easy task in reviewing convictions for rape and sexual abuse cases. For one, these crimes are usually committed in private so that only the two direct parties can attest to what actually happened. Thus, the testimonies are largely uncorroborated as to the exact details of the rape, and are usually in conflict with one another. With this in mind, we exercise utmost care in scrutinizing the parties' testimonies to determine who of them should be believed. Oftentimes, we rely on the surrounding circumstances as shown by the evidence and on common human experience.

After due consideration, we find no reason to doubt the veracity of AAA's testimony and her version of the events that led to the filing of the present charges.

Both the trial court and the Court of Appeals found AAA's testimony to be positive, direct and categorical.

Time and again, this Court has emphasized that 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 demeanor of 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. The assessment made by the trial court is even more enhanced when the Court of Appeals affirms the same, as in this case.

It cannot be said that just because the brothers of AAA were present in the same room, the accused could not have perpetrated the bestial acts. Lust is not a respecter of time and place. This Court has repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, and even inside a house where there are other occupants or where other members of the family are also sleeping. Thus, it is an accepted rule in criminal law that rape may be committed even when the rapist and the victim are not alone. The fact is that rape may even be committed in the same room while the rapist's spouse is asleep, or in a small room where other family members also sleep.[17]

The accused also points to the apparent inconsistencies between the testimonies of AAA and that of her grandmother. In her testimony, AAA said that she reported every incident of rape and sexual molestation to her grandmother, while the latter testified that AAA complained to her only once.

We find the alleged inconsistencies to be minor and inconsequential. As correctly held by the Court of Appeals, the inconsistency does not refer to any of the material ingredients of rape as would affect the criminal liability of the accused. In *Merencillo v. People*, [18] we wrote:

Minor discrepancies or inconsistencies do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witnesses' honesty. The test is whether the testimonies agree on essential facts and whether the respective versions corroborate and substantially coincide with each other so as to make a consistent and coherent whole.

Besides, as noted by the Court of Appeals, the 83-year-old grandmother of AAA was oftentimes forgetful, as testified to by CCC,[19] and displayed utter reluctance in testifying as a hostile witness for the defense.

The accused adds that he could not have committed the acts ascribed to him because during those dates enumerated by the victim, he was not in the house, an alibi corroborated by his friend, Baltazar Sabanal.

We are not swayed. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of an accused, the former undisputedly deserves more credence and is entitled to greater evidentiary value.[20] Thus, the positive assertions of the prosecution witnesses cannot be overcome by mere denial or alibi. For alibi to prosper, not only must an accused prove that he was at another place at the time of the commission of the crime, but also that it was physically impossible for him to be at the crime scene at that time.[21] The alibi of the accused, which was supported by the testimony of Baltazar Sabanal, cannot overcome the convincing positive evidence adduced by the prosecution. Such corroborative testimonies of relatives and friends are viewed with suspicion and skepticism by the court.[22]

The accused also points out that the delay in the reporting of the charges casts doubt on the veracity thereof. This argument deserves scant consideration. Indeed, the rule is that delay in the reporting of sexual abuse does not imply that the charge is not true, as the victim prefers to bear the ignominy of pain silently rather than reveal her harrowing experience and expose her shame to the world. Such delay is not unusual, especially when the victim is a minor.[23] It bears emphasis that AAA had, in fact, immediately reported the crimes to her mother and to her grandmother. It is deplorable that neither of them did not do anything about it.

In a desperate and futile attempt to escape liability, the accused claims that the complainant's family merely concocted the charges against him, because they did not like him. The contention is far from persuasive. We have ruled that a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[24]

When a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape has indeed been committed.[25] Considering the age of the complainant, who was ten years old when the crime was committed, the Court finds it improbable for a girl of her age to fabricate a charge so humiliating to herself and her family had she not been truly subjected to the painful experience of sexual abuse.

In fine, there is no iota of doubt in our mind that the accused is guilty of the crime of rape. In reducing the penalty from death to reclusion perpetua, the Court of Appeals failed to state that the reduction is without eligibility for parole as held in the case of *People v. Antonio Ortiz*. [26] This should be rectified.

As previously stated above, the Court of Appeals modified the trial court's decision with respect to the acts of lasciviousness and convicted the accused under Sec. 5(b) of R.A. No. 7610. Section 5(b), Article III of R.A. No. 7610, defines and penalizes acts of lasciviousness committed against a child as follows:

Section 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.

x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims 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; and

The essential elements of this provision are:

- 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.[27]

Section 32, Article XIII of the Implementing Rules and Regulations of R.A. No. 7610 defines lascivious conduct as follows:

[T]he 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 pubic area of a person.[28] (emphasis supplied)

The first element obtains in this case. It was clearly shown beyond reasonable doubt that the accused inserted his finger into her vagina with lewd designs as inferred from the nature of the acts themselves.

The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse. [29] In this case, AAA was sexually abused because she was coerced or intimidated by the accused. AAA tried to remove the hands of the accused when he was touching her vagina, but to no avail.

As regards the civil liability of the accused, we affirm the award of P75,000.00 as civil indemnity and P75,000.00 as moral damages, without need of proof. To conform with existing jurisprudence,[30] the amount of exemplary damages should be increased from P25,000.00 to P30,000.00 for each count of rape.

WHEREFORE, the August 18, 2008 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 018001 finding accused Edwin Dalipe y Perez guilty of three (3) counts of rape and two (2) counts of acts of lasciviousness is **AFFIRMED WITH MODIFICATIONS**. The penalty of reclusion perpetua should be without eligibility for parole and that the award for exemplary damages is increased from P25,000.00 to P30,000.00 for each count of rape.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Nachura, and Leonardo-De Castro[*], JJ., concur.

[*] In lieu of Associate Justice Conchita Carpio Morales per Special Order No. 837, dated April 12, 2010

[1]Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizzaro concurring; Rollo, pp. 3-19.

[2]CA rollo, pp. 35-53.

[3]Docketed as Criminal Cases Nos. Q-95-63737, Q-95-63738 and Q-95-63739; id. at 3-7.

[4]Docketed as Criminal Cases Nos. Q-95-63740 and Q-95-63741; id. at 8-11.

[5]Conformably with Our ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006) and subsequent cases, the identities of the offended party and her immediate family and household members, including identifying information, are withheld.

[6]CA rollo, p. 2.

[7]Id. at 4.

[8]Id. at 6.

[9]Id. at 10.

[10]Id. at 15.

[11]Counter statement of Facts, id. at 256-302.

[12]Id. at 95-113.

[13]Id. at 53.

[14] Rollo, p. 18.

[15]Id. at 17.

[16]AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES.

[17] *People v. Castel*, G.R. No. 171164, November 18, 2008, ; and *People v. Mejia*, G.R. No. 185723, August 4, 2009.

[18] G.R. Nos. 142369-70, April 13, 2007, 521 SCRA 31, 43.

[19]TSN, November 13, 1996, p. 15.

[20] *People v. Monteron*, G.R. No. 130709, March 6, 2002, 340 SCRA 2002; *Tecson v. Sandiganbayan*, F.E. No. 123045, November 16, 1999; 318 SCRA 80 and *People v. Bustamante*, G.R. 140724-26, February 12, 2003 , 397 SCRA 326.

[21] *People v. Alvarado*, G..R. No. 145730, March 19, 2002 , 379 SCRA 475.

[22] *People v. Alvero*, G.R. Nos. 134536-38, 5 April 2000, 329 SCRA 737, 753.

[23] *People v. Andrade*, G.R. No. 148902, September 29, 2003, 412 SCRA 243.

[24] *People v. Cabillan*, 267 SCRA 258 (1997); *People v. Gaban*, 262 SCRA 593 (1996); *People v. Derpo*, 168 SCRA 447 (1988); and *People v. Molas*, G.R. Nos. 88006-08, March 2, 1998.

[25] *People v. Diaz*, 338 Phil. 219, 230 (1997).

[26]G. .R. No. 179944, September 4, 2009.

[27] *People v. Larin*, G.. R. No. 128777, October 7, 1998, 297 SCRA 309, 318; *Ampluyo v. People*,G..R. No.

157718, April 26, 2005, 457 SCRA 282, 295; *Olivarez v. Court of Appeals*, G..R. No. 163866, July 29, 2005, 465

SCRA 465, 473; *Malto v. People*, G..R. No. 164733, September 21, 2007, 533 SCRA 643; and *People v. Abello*, G.. R. No. 151952, March 25, 2009.

[28] *People v. Bon*, G..R. No. 149199, January 28, 2003, 396 SCRA 506, 514-515; *Amployo v. People*, *supra*; and *People v. Abello*, *supra* note 27.

[29] *People v. Abello*, *supra* note 27.

[30] *People v. Elmer Peralta y Hidalgo*, G..R. No. 187531, October 16, 2009; and *People v. Antonio Dalisay y Destresa*, G.R. No. 188100, November 25, 2009.

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