

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO BODOSO Y BOLOR, ACCUSED-APPELLANT.

G.R. No. 188129. July 05, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

For final review by this Court are the December 18, 2008 Decision[1] and February 17, 2009 Resolution[2] of the Court of Appeals, in CA-G.R. CR-HC No. 01526, which affirmed with modification the July 28, 2005 Decision[3] of the Regional Trial Court, Branch 16, Tabaco City (RTC), in Criminal Case No. T-3285 and Criminal Case No. T-3286, thus, sentencing the accused to suffer the penalty of reclusion perpetua for each count of rape and reduced the amount of civil indemnity from P75,000.00 to P50,000.00.

The RTC Decision[4] convicted the accused for two counts of rape which he committed against his own daughter and sentenced him to suffer the penalty of death and to pay "the sum of P75,000.00, for each case, as civil indemnity, the sum of P50,000.00 for each case, as moral damages, and the sum of P25,000.00 for each case, as exemplary damages, or the aggregate sum of P300,000.00 plus the costs of the suit."

It appears that on February 17, 2000, two (2) Informations were filed charging the accused with two (2) counts of rape. The accusatory portions of the two Informations read as follows:

Criminal Case No. T-3285

That on July 14, 1999, at around 8:00 o'clock in the morning, more or less, at Barangay San Isidro, Municipality of Malilipot, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal

knowledge with his own daughter, AAA,[5] a minor being only 14 years of age, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[6]

Criminal Case No. T-3286

That sometime in the month of September, 1999, at around 8:00 o'clock in the morning, more or less, at Barangay San Isidro, Municipality of Malilipot, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his own daughter, AAA, a minor being only 14 years of age, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[7]

Upon arraignment, the accused entered a plea of "Not Guilty" to both charges.[8] During the pre-trial conference, the parties stipulated that there should be no dispute with respect to the following matters:

- Identity of the accused;
- The private complainant in this case is a minor, being 14 years old on the date of the incidents, July 14, 1999 and September, 1999;
The private complainant is the daughter of the accused; and
- The private complainant and the accused were living in the same house at Brgy. San Ilawod, Malilipot, Albay.[9]

During the trial, the prosecution presented, as its witnesses, private complainant AAA and Dr. Arsenia Mañosca-Moran, the Municipal Health Officer who examined her. On the other hand, the accused, through counsel, manifested in open court that he had no intention of presenting any evidence.

Consequently, on April 2, 2001, the cases against the accused were considered submitted for decision.[10]

On July 2, 2001, a decision was rendered by the trial court finding the accused guilty as charged and imposing upon him the penalty of death. The cases were then brought to this Court for automatic review[11] and were docketed as G.R. No. 149382 and G.R. No. 149383. On March 5, 2003, this Court resolved[12] to remand the cases to the trial court for proper disposition, particularly to ascertain the voluntariness of the accused on his waiver of his right to present evidence, as expressed in the April 2, 2001 Order[13] of the trial court; his understanding of its consequences; and the conduct of further proceedings, including receiving evidence, if the contrary would be found.

In compliance with the aforementioned order of this Court, the trial court allowed the accused to present his evidence on February, 17, 2004. After resting its case, the defense moved and was granted leave to submit a memorandum.[14] Upon submission of a Memorandum,[15] the case was deemed submitted for decision.[16]

The trial court wove together the evidence presented by the prosecution and summarized its version of the incidents in this wise:

Complainant AAA is a 14-year-old minor daughter of accused Ricardo Bodoso. She was living with her father (accused herein), mother and other siblings at their house located at Brgy. San Isidro Iraya, Malilipot, Albay.

Sometime in the evening of 14 July 1999, complainant's mother and other siblings went to the Poblacion of Malilipot, Albay, to watch the coronation night of the Search for Miss Malilipot 1999. Complainant, on the other hand, was watching television at the house of her grandmother, about 8 to 10 meters away from their house, when she was summoned by her father (herein accused) to go home. She obeyed her father and immediately went home at about 8:00 o'clock in the evening.

Upon reaching their house, complainant entered the bedroom to look for a dress. Her father also entered the bedroom and told her to come near him. When complainant failed to respond, her father pulled her and forcibly laid her on the bed. After undressing himself, complainant's father removed her shirt and shorts. He then inserted his sexual organ into the vagina of the complainant and made push and pull movement for about 5 minutes. Complainant tried to extricate herself from her father's hold but to no avail, and so she just cried out her misfortune.

After the sexual act, accused helped complainant in putting back her shirts and shorts and they both went out of the room. Later, they rode together in a bicycle and proceeded to the Poblacion of Malilipot, Albay, to watch the beauty contest. When the contest ended at about 12:00 o'clock midnight, complainant, together with her mother and other siblings, all walked home to Brgy. San Isidro, Ilawod, Malilipot, Albay. Complainant did not inform her mother about the incident because she was afraid her father might kill them.

The said incident of sexual abuse was followed by another incident at about 8:00 o'clock in the morning during

the month of September, 1999, while complainant was reading a pocketbook inside their bedroom. Her mother then was in Tabaco, Albay, selling spices while her sister Vivian was burning dry leaves in their yard. After her father entered the bedroom, he pulled her in order to have sexual intercourse with her. She tried to get away from her father's hold but she could not, so she just kept on crying while she was sexually molested. After satisfying his lust, complainant's father just helped her put on her shorts and panty, dressed himself and left the room. When her mother arrived at about 12:00 noon, she did not again reveal what her father had done to her because she was afraid her mother might be killed.

Apprehensive that she or mother would be killed by her father if she would divulge the aforementioned rapes committed on 14 July 1999 and September, 1999, and fearful that she would again be sexually abused by her own father, complainant decided to leave their house on 07 January 2000, together with a friend named Cheryll Binaday who was also being maltreated by her own mother. Together, they walked along the seashore towards the direction of Brgy. Salvacion, Tabaco, Albay, when a motorized tricycle being driven by a certain Melchor passed by. When Melchor recognized the complainant, he brought them to his house, located at Brgy. San Isidro Iraya, Malilipot, Albay. Then and there, complainant revealed to Melchor that she was raped twice by her own father. Thereafter, Melchor's family called for a Brgy. Kagawad, who in turn, advised the complainant to seek the help of the police authorities.

At the Municipal Police Station of Malilipot, Albay, complainant was investigated by the police and she gave her sworn statement. Complainant was also examined by Dr. Arsenia Mañosora-Moran, Municipal Health Officer, Malilipot, Albay. The examination of the complainant yielded the following results as contained in a Medical Certificate dated 10 January 2000, viz:

"Genitalia: Hymen: with heat sealed incomplete laceration at 1:00, 3:00, 5:00, & 11:00 and complete laceration at 9:00 o'clock with sharp coaptable borders without congestion."

Explaining her findings, Dr. Moran stated that the lacerations found in the hymen of the complainant were caused by sexual intercourse and that because there was no congestion, the incident could have happened a long time ago before the examination of the patient. Hence, the present criminal complaints against the accused.[17] (Citations omitted.)

The defense version of the events was summed up by the trial court in this manner:

Setting up denial and alibi, accused Ricardo Bodoso averred that on the night of 14 July 1999, he was out of their house proceeding to Tabaco, Albay, to see a friend named Quirino who was to help him find a job. He recalled that he left their house of about 5:00 o'clock in the afternoon and returned home at almost 12:00 o'clock midnight. He also insisted that he was in Manila during the month of September, 1999, when the alleged incident happened. According to him, it was only on 30 October 1999 that he came home because he was requested by his mother to attend to the grave of his father. Finally, the accused claimed that, maybe, complainant filed the cases against him because she was afraid of him when she went away from home on 06 January 2000 and did not return home the whole night staying at the police headquarters.[18] (Citations omitted.)

The trial court, in its July 28, 2005 Decision,[19] finally convicted the accused of two (2) counts of rape defined under Article 266-A, and penalized under Article 266-B, of the Revised Penal Code. It did not give due consideration to the defense of denial and alibi put up by the accused and, instead, gave credence to the evidence of the prosecution. It noted that in contrast to the "evasive" narration of the accused,[20] AAA testified in a straightforward and categorical manner.[21] Thus, the trial court disposed:

WHEREFORE, the Court finds accused RICARDO BODOSO guilty beyond reasonable doubt of two (2) counts of Rape, defined and penalized under Articles 266-A and 266-B, of the Revised Penal Code, as amended by Republic Act No. 8353. Accordingly, said accused is hereby sentenced to suffer the supreme

penalty of DEATH in each of the two (2) counts of rape. He is also ordered to pay complainant AAA the sum of Php75,000.00 for each case, as civil indemnity; the sum of Php50,000.00 for each case, as moral damages; and the sum of Php25,000.00 for each case, as exemplary damages, or the aggregate sum of Php300,000.00, plus costs of the suit.

Let the entire records of these two (2) cases, together with the evidence, be forwarded to the Hon. Court of Appeals for automatic review, pursuant to Administrative Circular No. 20-2005 dated April 19, 2005.

SO ORDERED.

Aggrieved, the accused appealed to the Court of Appeals presenting in his Brief[22] the following

ASSIGNMENT OF ERRORS:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE MINORITY OF THE PRIVATE COMPLAINANT AND HER RELATIONSHIP TO THE ACCUSED-APPELLANT.[23]

On December 18, 2008, the Court of Appeals rendered the subject decision echoing the findings of the trial court that the accused was guilty of the crimes leveled against him. The appellate court, however, was of the view that the award of civil indemnity should be reduced to P50,000.00[24] considering that R.A. 9346[25] prohibits the imposition of the death penalty. The dispositive portion of the decision of the Court of Appeals, thus, reads:

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit. Accordingly, the joint Decision of the Regional Trial Court (RTC), Branch 16, Tabaco City, dated 28 July 2005 in Criminal Cases Nos. T-3285 and T-3286, finding the accused-appellant guilty beyond reasonable doubt of two (2) counts of Rape, is hereby AFFIRMED with MODIFICATION in that DEATH PENALTY is reduced to RECLUSION PERPETUA in each of the two (2) counts of Rape and that the award of civil indemnity is hereby reduced from P75,000.00 to P50,000.00 for each case.

SO ORDERED.[26]

Hence this appeal.

In a resolution dated July 29, 2009,[27] the Court required the parties to file their respective supplemental briefs within thirty (30) days from notice, if they so desired. In separate manifestations, dated September 22, 2009[28] and October 16, 2009,[29] both parties waived the filing of supplemental briefs and instead opted to stand by their respective briefs filed before the Court of Appeals.

In his brief, the accused argues that AAA's testimony of what happened after the first rape incident on July 14, 1999 is hard to believe, thus, creating serious doubts as to the crimes imputed to him. The accused bases his argument on the following testimony of AAA:

ATTY. BROTAMONTE:

xxx xxx xxx

Q.

That night after your father supposedly raped you, you accompanied him to watch the program or contest in Poblacion, Malilipot, Albay?

A.

Yes.

Q.

Before going to Malilipot to watch the program or contest you eat [sic] supper with your father?

PROS. PIFAÑO:

Vague, what date?

ATTY. BROTAMONTE:

I am referring to the date of the supposed first rape incident.

COURT:

Witness may answer.

WITNESS:

A.

Not yet.

ATTY. BROTAMONTE:

Q.

What time did you take your supper that night?

A.

After watching the program and contest in Malilipot late that night.

Q.

You do not take your supper before going to Poblacion, Malilipot to watch [the] program or contest because you were then in a hurry to see that program?

A.

Yes.

Q.

Of course you were happy to watch the program or contest in Poblacion, Malilipot, Albay?

A.

Yes.

Q.

What kind of program were [sic] shown?

A.

Search for Binibining Malilipot.

Q.

And that contest consist of making the contestant[s] who were women or ladies to walk while wearing bathing suits?

A.

Yes.

Q.

And of course being a lady yourself, you are so happy, watching them showing how feminine they are?

A.

Yes.

Q.

You have seen these women or ladies walking in front of [the] public wearing swimming suits that made you happy but did not cause sadness to you considering that you were just supposedly raped that night before going to watch to program?

A.

Yes.

Q.

You did not imagine yourself being supposedly violated while watching those ladies in skimpy attire?

A.

I felt that.

Q.

And yet you are happy watching them?

A.

I was happy just waiting for the declared winner.

Q.

Do you think that [it] is normal to be happy watching those ladies in skimpy attire just after you were supposedly raped by your father?

A.

No, that is not normal.

Q.

What time did you went [sic] home after watching those [sic] program.

A.

Late in the evening about 1:00 or 12:00 o'clock.

Q.

And you also went home with your father?

A.

No, with me was my mother.

Q.

Why, where was your father when you left the program when you go [sic] home?

A.

Outside, I did not know where.

Q.

But before you go home, you looked for him in the vicinity of the venue of the program so that he could accompany you home, is that correct?

A.

Not anymore because with me was my mother.

Q.

But of course in going to the program, you and your father were together in going there?

A.

Yes.

Q.

You walked all the way from your house to the Poblacion of Malilipot which is more than three (3) kilometers?

A.

No, we rode on a bicycle.

Q.

Your farther [sic] drove the bicycle?

A.

Yes.

Q.

And you rode on the bicycle while standing beside [sic] him?

A.

In front because I did not know how to ride at the back.

Q.

So, you were seated in the bicycle between the bicycle handle, which is equivalent to the wheels of [a] motor

vehicle, and you father?

A.

Yes.

Q.

You chose to seat [sic] between the driver's handle and you father because it is where you could conveniently sit?

A.

Yes.

Q.

You did not choose to ride by standing behind your father by clumping your feet on the axle of the rear wheel because that is somewhat convenient for you?

A.

Because I might fall from that position.[30]

The accused argues that if AAA had indeed been raped, she would have naturally felt pain all over her body and could not have sat behind the bike's handle, travelled for three (3) hours to Malilipot and enjoyed watching the pageant.

The accused also points out the following testimony of AAA on what she and her mother talked about as they were walking home. Thus:

Q.

When you went home with your mother, in as much as your father was left behind the Poblacion of Malilipot, Albay, the bicycle was also left with him?

A.

Yes.

Q.

So, with nothing to ride on, you and your mother just walked all the way from Poblacion Malilipot to San Isidro Ilawod, right?

A.

Yes, because we are so many then.

Q.

And you walked for about an hour?

A.

Yes.

Q.

What did you talk about while walking towards your house?

A.

We talked about who could win because when we left, nobody was declared yet.

Q.

You and your mother were talking about happy things while walking towards home?

A.

They were happy but not me.

Q.

Before you were raped, your usual self has been very happy?

A.

No.

Q.

Your mother did not ask you why you were very sad?

A.

I did not manifest that I was sad.

Q.

You pretended to be happy while walking with your mother?

A.

Yes.

Q.

So, you initiated [a] topic that are [sic] happy to pretend that you are happy?

A.

Yes.[31]

The accused contends that if AAA was indeed raped by the accused, her agitated state could not have escaped her mother's attention because it normally takes a while for a rape victim to regain her composure. Since she was not at all agitated while she was walking home with her mother, it could not be said that AAA was raped. At such a young age, AAA could not have calculatedly presented herself as if nothing had happened.

Moreover, the accused finds it hard to believe that AAA would reveal her tormenting experience to a certain Melchor Brusola and his family, a stranger to her, but not to her own mother.

Finally, the accused asserts that the prosecution was not able to prove the minority of AAA because it failed to introduce in evidence her birth certificate.

The Court finds no merit in the appeal.

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,[32] as in this case.

In its effort to ferret out the truth, the Court examined the transcripts of stenographic notes. Like the trial court, the Court finds that the victim's testimony on the incident was candid and straightforward, indicative of a reliable and trustworthy recollection of what took place on that fateful day. She narrated the sexual abuse in this manner:

PROS. PIFAÑO:

Q.

On July 14, 1999 at 8:00 o'clock in the evening, do you remember where were you?

A.

Yes, sir.

Q.

Where were you on said date and time?

A.

In our house.

Q.

While there on said date and time, do you remember if there was any unusual incident that happened?

A.

There was.

Q.

Will you tell the Honorable Court what is that unusual incident that happened?

A.

I was then in our house and I entered the bedroom. He call[ed] me but I did not come near him. When I did not come near him, he pulled me and forcibly laid me on the bed then while I was on the bed, he entered his sexual organ into my vagina.

INTERPRETER:

Witness was crying in making this statement.

PROS. PIFAÑO: (Continuing)

Q.

After the accused entered his sexual organ into your vagina, what happened next?

A.

He made a push and pull movement with his organ inside my vagina.

Q.

For how long did the accused make his push and pull movement with his organ inside you vagina?

A.

About five minutes.

Q.

While he was doing this to you, what did you do?

A.

I tried to extricate from his hold but I was not able to.

Q.

So what did you do?

A.

I kept crying.

Q.

After the accused sexually abused you on said date and time for 5 minutes, what happened next?

A.

He put on my dress on me then he also put back his shirts and shorts.

Q.

After he dressed up, what did he do?

A.

He went out.

PROS. PIFAÑO: (Continuing)

Q.

How about you, did you report the incident to your mother?

A.

No, because I was afraid.

Q.

Why? What are you afraid of?

A.

He might kill my mother and my siblings.

Q.

When the incident of sexual abuse committed by the accused against you, who was the person present if there is any?

A.

Nobody, because the other members of the family were in Malilipot. The only person left in our house were he and me.

Q.

On September 1999, do you remember where were you?

A.

Yes, sir.

Q.

Where were you on said date and time?

A.

In our house.

Q.

While in your house on said date and time at about 8:00 o'clock in the morning, do you remember if there was any unusual incident that happened?

A.

There was.

Q.

Will you tell the Honorable Court what is that unusual incident that happened?

A.

I was then in the bedroom lying and reading pocket books when he pulled my dress up then removed my shorts and panty.

PROS. PIFAÑO: (Continuing)

Q.

After he removed your shorts and panty, what happened next?

A.

He entered his penis into my vagina.

Q.

When your father entered his penis into your vagina, to whom do you refer?

A.

Ricardo Bodoso.

Q.

And what is your relation to him?

A.

My father.

Q.

After the accused entered his penis into your vagina, what happened next?

A.

Then he again made a push and pull into my vagina.

Q.

For how long did he make that push and pull?

A.

About 3 minutes.

Q.

When the accused sexually abused you on September 1999 at about 8:00 o'clock in the morning, do you know who were present in the house?

A.

Yes, sir.

Q.

Who?

A.

My sister.

Q.

What is the name of your sister?

A.

BBB

Q.

How far was she in your place where you were sexually abused?

A.

She was in the yard burning dry leaves.

Q.

When the accused sexually abused you on said date and time, what did you do?

A.

I was trying to get away from his hold but I couldn't.

Q.

So what did you do?

A.

I kept crying.

INTERPRETER:

Witness still crying.

PROS. PIFANO: (Continuing)

Q.

When the accused satisfied his lust, what did he do?

A.

He put on my shorts and panty.

Q.

After the accused put on your shorts and panty, what did he do?

A.

He went away.

Q.

Where was your mother then when the incident happened?

A.

She was in the Tabaco market vending some spices.

Q.

What time then (sic) your mother went home?

A.

About 11:00 or 12:00.[33]

The Court gives considerable weight on the above testimony of AAA since, ordinarily and customarily, Filipino children revere and respect their elders. This is deeply ingrained in them and is even recognized by law. Thus, it is unthinkable, if not completely preposterous, that a daughter would audaciously concoct a story of rape against her father in wanton disregard of the unspeakable trauma and social stigma it may generate on her and the entire family. An unmarried teenage lass does not ordinarily file a rape complaint against anybody, much less her own father, if it never did happen.[34]

The Court finds difficulty in subscribing to the assertion of the accused that AAA could not have been possibly raped simply because she was able to travel on a bicycle with her father and watched a beauty pageant right after the incident. AAA's honor might have been tarnished and her womanhood desecrated, but it does not follow that her physical capacity was affected.

The fear of bodily harm against herself and her mother can explain why AAA acted the way she did while walking home with her mother. After going through a harrowing experience in the hands of her father, her young mind could only imagine the worst from him. Few things are more recognized than the love that a daughter has for her mother. Verily, the guilt of the accused cannot be doubted just because AAA did not act as expected of a

rape victim. Her behavior after the incident can be attributed to her young age, her father's moral ascendancy over her, and her fear that he might harm her and her mother should she find out that he had ravished their daughter. At any rate, not all rape victims are expected to act conformably to the usual expectation of everyone.[35] Different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode. In *People v. Silvano*,[36] it was written:

It is a time-honored precept that different people react differently to a given situation 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.

For the same reason, the fact that AAA first confided the rape to Melchor Brusola and his family, instead of her mother, should not be taken against her.

The prosecution's version of what transpired on the two unforgettable occasions is fortified by the medical findings of Dr. Arsenia Mañosca-Moran, who testified that the lacerations found in her hymen could have been caused by sexual intercourse. Her report that there was no congestion because the incident took place several months before the examination of the patient on January 8, 2000 is consistent with the story of AAA that she was raped on July 14, 1999 and September 1999. When the testimony of the witness corresponds with medical findings, there is sufficient basis to conclude that the essential requisites of carnal knowledge have been established.[37] The mass of physical and testimonial evidence in this case clearly establishes the guilt of the accused. In fine, the trial court was correct in its findings.

In both incidents, the accused puts up the defense of denial and alibi. In a long line of cases, it has been consistently held that between the positive assertion of prosecution witnesses and the negative averment of an accused, the former undisputedly deserves more credence and is entitled to greater evidentiary value than mere denial.[38] On the other hand, for alibi to prosper, the accused must not only 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.[39] As noted by the trial court:

Besides, the claim of the accused that he stayed in Tabaco in (sic) the evening of July 14, 1999 until midnight was belied by his own admission during the hearing on February 17, 2000, thus:

ATTY. BONAFER, JR.: (continuing)

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Q. Now, Mr. witness, how would you describe your relationship or your dealings with the private complainant prior to July 14, 1999?

A. In fact, I was so surprised because on the night of July 14, 1999 we are so happy together eating our supper and in fact, when I learned of that incident I was surprised. xxx[40]

The assertion of the accused that the minority of AAA was not established because the prosecution failed to present her birth certificate in evidence deserves scant consideration. The Informations specifically alleged that AAA was a minor, i.e., barely 14 years old on July 14, 1999 and September 1999, when she was raped by her own father. The accused himself, with the assistance of counsel, categorically admitted during pre-trial that AAA was his daughter and that she was only 14 years old on July 14, 1999 and in September 1999. These stipulations are binding on this Court because they are judicial admissions within the contemplation of Section 4, Rule 129 of the Revised Rules of Court.[41] The stipulation of facts signed by the parties, that is, the accused, his counsel and the prosecutor, in a criminal case is recognized as a declaration constituting judicial admission and is binding upon the parties. The stipulated facts stated in the pre-trial order amount to an admission by the accused and a waiver of

his right to present evidence to the contrary. Although the right to present evidence is guaranteed by the Constitution, such right may be waived expressly or impliedly.[42] Thus, the rule that no proof need be offered as to any facts admitted during a pre-trial hearing applies.[43]

In this regard, the Court is also guided by the ground rules laid down in the case of *People v. Pruna*,[44] in appreciating the age, either as an element of the crime or as a qualifying circumstance. Thus:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
 - If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
 - If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
 - If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
4. In the absence of a certificate of live birth, authentic document or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

The trial court should always make a categorical finding as to the age of the victim. (Emphasis supplied)

At any rate, the minority of AAA was never in question as it was never contested. Not only did the accused admit such fact during the pre-trial conference,[45] but he also neither objected to, nor refuted, the following: AAA's testimony during the trial; the Medical Certificate[46] issued by Dr. Mañosca-Moran on January 10, 2000 and signed by AAA and her mother, which stated that she was only 14 years old at the time of the examination; and AAA's sworn statement[47] subscribed and sworn to on the same date before Judge Edwin C. Ma-Alat.

With respect to the penalty, the Court of Appeals failed to state that the reduction from death to reclusion perpetua is without eligibility for parole as held in the case of *People v. Antonio Ortiz*.^[48] This should be rectified.

Moreover, it also erred in reducing the amount of the civil indemnity from P75,000.00 to P50,000.00. As the penalty would still have been death had it not been abolished, the amount of the civil indemnity should have remained at P75,000.00. The discussion in *People v. Rodolfo Lopez*^[49] is worth noting. Thus:

On pecuniary liability, this Court ruled in *People of the Philippines v. Sarcia* that:

The principal consideration for the award of damages, under the ruling in *People v. Salome* and *People v. Quiachon* is the penalty provided by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender.

Regarding the civil indemnity and moral damages, *People v. Salome* explained the basis for increasing the amount of said civil damages as follows:

The Court, likewise, affirms the civil indemnity awarded by the Court of Appeals to Sally in accordance with the ruling in *People v. Sambrano* which states:

As to damages, we have held that if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be Php75,000.00 . . . Also, in rape cases, moral damages are awarded without the need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the trial court's award of Php50,000.00 as moral damages should also be increased to Php75,000.00 pursuant to current jurisprudence on qualified rape.

It should be noted that while the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous. Consequently, the civil indemnity for the victim is still Php75,000.00.

People v. Quiachon also ratiocinates as follows:

With respect to the award of damages, the appellate court, following prevailing jurisprudence, correctly awarded the following amounts: Php75,000.00 as civil indemnity which is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty; Php75,000.00 as moral damages because the victim is assumed to have suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof, x x x.

Even if the penalty of death is not to be imposed on the appellant because of the prohibition in R. A. No. 9346, the civil indemnity of Php75,000.00 is still proper because, following the ratiocination in *People v. Victor*, the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. The Court declared that the award of P75,000.00 shows "not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time but also the expression of the displeasure of the court of the incidence of heinous crimes against chastity."

The litmus test therefore, in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually is reduced to reclusion perpetua.

(Emphasis included)

Moreover, to conform with existing jurisprudence,[50] the amount of exemplary damages should be increased from P25,000.00 to P30,000.00 for each count of rape. Finally, in addition to the damages awarded, the accused should also pay interest at the legal rate of 6% from this date until fully paid.[51]

WHEREFORE, the December 18, 2008 Decision of the Court of Appeals, in CA-G.R. CR H.C. No. 01526, finding accused RICARDO BODOSO y BOLOR guilty of two (2) counts of rape is hereby MODIFIED to read as follows:

WHEREFORE, finding the accused guilty of two (2) counts of rape committed against his daughter, AAA, the Court hereby sentences the accused, in each count, to suffer the penalty of reclusion perpetua, without eligibility for parole; and to pay AAA the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages; and to pay the costs.

The accused shall also pay legal interest on all damages awarded until fully paid.

SO ORDERED.

Carpio, (Chairperson), Peralta, Bersamin,[*] and Abad, JJ. , concur.

[*] Designated as additional member in lieu of Justice Antonio Eduardo B. Nachura per raffle dated June 16, 2010.

[1] Penned by Associate Justice Arturo G. Tayag, with Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and Associate Justice Noel G. Tijam concurring; Rollo, pp. 2-26.

[2] Id. at 30.

[3] CA rollo, pp. 60-70; Records (Volume No. 1), pp. 229-239.

[4] Id.

[5] The Court shall use fictitious initials in lieu of the real names and circumstances of the victim and the latter's immediate family members other than accused-appellant. (See *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742; citing Sec. 29 of Republic Act (R.A.) No. 7610, Sec. 44 of R.A. No. 9262, and Sec. 40 of the Rule on Violence Against Women and Their Children; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419).

[6] CA rollo, p.5.

[7] Id. at 6.

[8] Records (Volume No. 1), pp. 37-38.

[9] Id. at 46-47.

[10] Records (Volume No. 1), p.106.

[11] Id. at 134.

[12] Id. at 137-155.

[13] Id. at 106.

[14] Id. at 219.

[15] Id. at 224-226.

[16] Id. at 227.

[17] RTC Decision, pp. 3-5; CA rollo, pp. 15-17; Records (Volume 1) pp. 231-233.

[18] RTC Decision, p.5; CA rollo, p. 17. Records (Volume 1) p. 233.

[19] *Supra* note 4.

[20] RTC Decision, p.8; CA rollo, p. 20; Records (Volume No. 1), p.236.

[21] RTC Decision, p.6; CA rollo, p 18; Records (Volume No. 1), p.234.

[22] CA rollo, pp. 44-59.

[23] Id. at 46, 51.

- [24] CA Decision, p. 23. Rollo, p. 24.
- [25] An Act Prohibiting the Imposition of Death Penalty in the Philippines.
- [26] Rollo, p. 25.
- [27] Id. at 32.
- [28] Id. at 36-37.
- [29] Id. at 47-48.
- [30] TSN, November 13, 2000, pp. 10-15.
- [31] Id. at 15-17.
- [32] *People v. Dalipe*, G.R. No. 187154, April 23, 2010.
- [33] TSN, October 3, 2000, pp. 4-8.
- [34] *People v. Miranda*, G.R. 176634, April 5, 2010, citing *People v. Alvero*, 386 Phil. 181, 198 (2000).
- [35] *People v. Silvano*, 368 Phil. 676 (1999).
- [36] Id.
- [37] *People v. Anthony Rante y Reyes*, G.R. No. 184809, March 29, 2010, citing *People v. Tuazon*, G.R. No. 168102, 22 August 2008, 563 SCRA 124, 135.
- [38] *People v. Bustamante*, 445 Phil. 345 (2003); *People v. Monteron*, 428 Phil. 401 (2002) and *Tecson v. Sandiganbayan*, 376 Phil. 191 (1999).
- [39] *People v. Alvarado*, 429 Phil. 208 (2002).
- [40] TSN, February 17, 2003, p.11.
- [41] Sec. 4. Judicial admissions. - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made (Emphasis supplied.)
- [42] *Alano v. CA*, 347 Phil. 549 (1997).
- [43] *Afable, et al. v. Ruiz, et al.*, 56 O.G. 3767; *supra*; *Munasque v. Court of Appeals*, 224 Phil. 79 (1985) and *Permanent Concrete Products, Inc. v. Teodoro*, 135 Phil. 364 (1968).
- [44] 439 Phil. 440 (2002).
- [45] Records (Volume No. 1), pp. 46-47.
- [46] Exh. C, Records (Volume 1) p. 4; Exh. D. Records (Volume 2) p. 4.
- [47] Exh. A. Records (Volume 1) p. 2; Exh. B. Records (Volume 2) p. 2.
- [48] G.R. No. 179944, September 4, 2009.
- [49] G.R. No. 179714, October 2, 2009.
- [50] *People v. Antonio Dalisay y Destresa*, G.R. No. 188100, November 25, 2009 and *People v. Elmer Peralta y*

Hidalgo, G.R. No. 187531, October 16, 2009.

[51] *People v. Bagos* G.R. No. 177152, January 6, 2010, citing *People v. Guevarra*, G.R. No. 182192, October 29, 2008, 570 SCRA 288, 313; *People v. Antivola*, 466 Phil. 394 (2004) and *People v. Olaybar*, 459 Phil. 114 (2003).

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