

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JONIE DOMINGUEZ, ACCUSED-APPELLANT.

G.R. No. 191065. June 13, 2011

Ponente: SERENO, J.

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SERENO, J.:

The appeal before us assails the 20 August 2009 Decision of the Court of Appeals (CA) in CA-G.R. CR HC No. 03130[1] affirming the conviction of Appellant Jonie Dominguez [2] for eight counts of the crime of rape.

The present appeal stems from nine (9) criminal Informations filed with the Regional Trial Court, Branch 65, Bulan, Sorsogon, docketed as Criminal Case Nos. 02-582 to 02-590. In the Informations, Jonie Dominguez was accused of committing multiple counts of the crime of rape -- under Republic Act (R.A.) No. 8353 in relation to R.A. No. 7610 -- against two minor female relatives, hereinafter called AAA and BBB.

The aggravating circumstance of relationship was also alleged in the Informations -- the accused was allegedly the victims' "grandfather." [3] In Criminal Case No. 02-583, the Information alleged that in committing the crime, the accused was armed with a knife -- an aggravating circumstance.

AAA was allegedly raped twice: first in 2001 when she was only nine years old, and second on 12 July 2002. The first instance of rape was allegedly done by the accused's insertion of his two fingers into AAA's sex organ under the circumstance of intimidation with a knife,[4] described in the Information[5] docketed as Criminal Case No. 02-583, as follows:

That sometimes (sic) in the year 2001, at Barangay XXX, municipality of YYY, province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, while armed with a knife, taking advantage of the youthfulness of the victim and his moral ascendancy over her, with lewd designs, did then and there, willfully, unlawfully and feloniously inserted his two (2) fingers to the sex organ of AAA, a minor, 9 years of age, against her will and without her consent, to her damage and prejudice.

The generic aggravating circumstance of relationship is present considering that the accused is the grandfather of the victim being the brother of the mother of the victim's father.

The second instance of rape was allegedly committed by the accused by inserting his fingers into AAA's vagina and having carnal knowledge of her afterwards. The accused did not use a deadly weapon, but was able to perpetrate the crime through threats and the use of moral ascendancy over AAA. [6] The Information, docketed as 02-582, reads:

That on or about July 12, 2002, in the afternoon, at Barangay XXX, municipality of YYY, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, taking advantage of the youthfulness of the victim and his moral ascendancy over her, did then and there, willfully, unlawfully and feloniously inserted his fingers to the sex organ of victim and then have carnal knowledge of the victim, AAA, a minor, 10 years of age, against her will

and without her consent, to her damage and prejudice.

The generic aggravating circumstance of relationship is present considering that the accused is the grandfather of the victim being the brother of the mother of the victim's father.

BBB, on the other hand, was allegedly raped seven times: first on 15 June 2000 when she was 12 years old; and again on 20 April 2001, 1 June 2001, 13 April 2001; and finally on 2, 8, and 12 June 2002. The first instance of rape was allegedly by carnal knowledge through force, violence and intimidation, and moral ascendancy.[7] The subsequent instances of rape were allegedly committed by the insertion of a finger into BBB's sex organ, also through force, violence and intimidation, and moral ascendancy. [8]

These accusations are contained in the following Informations:

Criminal Case No. 02-584 [9]

That on or about June 15, 2000, at more or less 10:00 o'clock (sic) in the morning at barangay XXX, municipality of YYY, province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation and taking advantage of the youthfulness of the victim and also his moral ascendancy over the latter, did then and there, willfully, unlawfully and feloniously had carnal knowledge of BBB, a minor, 12 years of age, against her will and without her consent, which acts likewise constitute child abuse and exploitation, as it demeans, debases and degrades the integrity of the child as a person, to her damage and prejudice.

The generic aggravating circumstance of relationship is present, the accused being the brother of the other of the victim's father.

Criminal Case No. 02-585[10]

That on or about midnight of April 20, 2001, at barangay XXX, municipality of YYY, province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, taking advantage of the youthfulness and his moral ascendancy over the victim did then and there, willfully, unlawfully and feloniously with lewd designs inserted his fingers to the sex organ of the victim BBB, a minor, 13 years of age, against her will and without her consent, which acts likewise constitute child abuse and exploitation as it debases, demeans and degrades the integrity of the victim as a person, to her damage and prejudice.

The generic aggravating circumstance of relationship is present, the accused is the grandfather of the victim being the brother of the mother of the victim's father.

Criminal Case Nos. 02-586, 02-587, 02-588 and 02-590, were also couched in the same language as Criminal Case No. 02-585, except for the dates of commission and the age of BBB.

AAA and BBB chose to stay silent about the instances of rape, until their mother accidentally discovered the commission of the crimes from the accused himself. Overhearing Dominguez in one of his drinking sessions, boasting that the children's vaginas were already wide, she confronted her daughters and asked them about the remark. The children reluctantly confided to her what had happened. As a result, the girls were brought to a doctor for examination. [11] The examining physician, Dr. Estrella Payoyo, found AAA's hymen intact, but did not discount the fact that the child could have been molested. [12] In contrast, BBB was found to have old hymenal lacerations. [13][]

The Informations, filed on 21 October 2001, were subsequently amended to state that the aggravating circumstance of relationship was a special qualifying circumstance. The accused, when arraigned, pleaded not guilty to the charges against him. Thereafter trial ensued.

During the trial, AAA and BBB testified against Dominguez by narrating the lascivious acts he had done to them. According to their testimonies, the accused had employed trickery so that either AAA or BBB would be left alone with him and thereafter raped, with threats of harm to her person or her family. [14] It should be noted that as to the second rape, AAA was silent on the alleged sexual intercourse. She in fact did not mention it, but merely testified that the accused inserted his fingers into her vagina on two occasions. [15]

The main theory of the defense was one of denial and alibi. The accused insisted that he was in the mountains on the dates that he was alleged to have committed the crimes. [16]

The trial court, after receiving the evidence, convicted the accused. It gave credence to the testimonies of the two child-victims, who had positively identified him and candidly narrated the sexual acts he had perpetrated against them. The court observed that he had failed to rebut the said allegations. The fallo of the Decision reads:

WHEREFORE, premises considered, accused JONIE DOMINGUEZ having been found GUILTY of two (2) counts of Statutory Rape under par. (2) of Article 266-A in relation to Article III, Sec. 5(b) of RA 7610 and six (6) other counts of Simple Rape under pars. (1) and (2) of Article 266-A in relation to Article III, Sec. 5(b) of RA 7610, is hereby sentenced as follows:

- 1) In Criminal Case No. 92-582 (Statutory Rape), he is sentenced to suffer the indeterminate penalty of 4 years 2 months and 1 day of Prision Correccional Maximum, as minimum, to 10 years of Prision Mayor medium, as maximum; to indemnify the offended party AAA in the amounts of Php50,000.00 as civil indemnity and another Php50,000.00 as moral damages;
- 2) In Criminal Case No. 02-583 (Statutory Rape), he is sentenced to suffer the indeterminate penalty of 4 years 2 months and 1 day of Prision Correccional Maximum, as minimum, to 12 years of Prision Mayor maximum as maximum, present the generic aggravating circumstance of USE OF DEADLY WEAPON (Article 266-B in relation to par. (2) of Article 266-A); to indemnify AAA the amounts of Php50,000.00 as civil indemnity, another Php50,000.00 as moral damages and Php20,000.00 as exemplary damages;
- 3) In Criminal Case No. 02-584 (Rape), he is sentenced to suffer the indivisible penalty of RECLUSION PERPETUA (Article 266-B in relation to par. (1) of Article 266-A, RPC as amended); to indemnify BBB the amounts of Php50,000.00 as civil indemnity and another Php50,000.00 as moral damages;
- 4) In Criminal Cases Nos. 02-585; 586; 587; 588 and 590 (Rape), he is sentenced to suffer the indeterminate penalty of 4 years 2 months and 1 day of Prision Correccional maximum, as minimum, to 10 years or Prision Mayor medium, as maximum, for EACH COUNT of RAPE; to indemnify BBB the amounts of Php50,000.00 civil indemnity and another Php50,000.00 as moral damages; and to pay the costs;
- 5) In Criminal Case No. 02-589 (Rape), accused is ACQUITTED for insufficiency of evidence and for failure of the prosecution to establish his GUILT beyond reasonable doubt.

The period of preventive imprisonment already served by the accused shall be credited in the service of his sentence pursuant to Article 29 of the Revised Penal Code as amended.

In the service of the sentences above-mentioned, the order of their respective severity shall be followed so that they may be executed successively or as nearly as may be possible pursuant to the provision of Article 70 of the Revised Penal Code as amended.

SO ORDERED. [17]

The accused thereafter resorted to the CA for a review of the court a quo's Decision. The assailed Decision was affirmed by the appellate court, which disposed as follows:

WHEREFORE, premises considered, the appeal interposed by Jonie Dominguez is DENIED, and accordingly

his convictions as pronounced under the herein assailed November 5, 2007 Decision of the trial court is AFFIRMED together with the appropriate prison penalty, but with modification only as to the awards for civil indemnity and moral damages, for which appellant is hereby ordered to pay:

- 1) Php75,000.00 for civil indemnity, and Php75,000.00 by way of moral damages in Crim. Case No. 02-584.
- 2) Php30,000.00 for civil indemnity and Php30,000.00 by way of moral damages for each of appellant's convictions in Crim. Case Nos. 02-582, 02-583, 02-585, 02-586, 02-587, 02-588, and 02-590.
- 3) Php20,000.00 as exemplary damages in Crim. Case No. 02-583.

SO ORDERED. [18]

The accused timely filed a notice of appeal to elevate the case to this Court. He did not submit a Supplemental Brief, and instead filed a Manifestation that the case be deemed submitted for decision. [19] The Office of the Solicitor General, on behalf of the People, had earlier filed a similar Manifestation in Lieu of Supplemental Brief. [20] We thus refer to the Appellant's Brief filed with the CA, wherein the accused-appellant advanced this lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT. [21]

We sustain the conviction.

Accused-appellant argues that the prosecutor's evidence was doubtful.

The charges against him, he says, were just fabricated, since the parents of the victims had an axe to grind against him. He claims that he had loaned an amount to the victim's aunt, who is the sister of the victims' father. When he demanded the return of the money, the victims' parents got mad at him. He insinuates that these ill feelings were the reason why he was falsely charged by AAA and BBB. [22] We disregard this allegation for being irrelevant to the question of whether the crime as charged did take place.

To introduce reasonable doubt on his criminal culpability, the accused highlights the testimony of Dr. Payoyo that BBB's old lacerations could also have been caused by infection from scratching her vagina or by injury from accidents. He also emphasizes Dr. Payoyo's finding that BBB's vagina could admit only one finger with resistance. As to Dr. Payoyo's report that AAA's hymen was intact, the accused-appellant relies on it to bolster his defense that there was no sexual intercourse or sexual abuse.

Jurisprudence is clear on this matter. The absence of a laceration in BBB's hymen does not overturn the testimonies of the child-victims. As the Court held in *People v. Gabayron*: [23]

Accused-appellant draws attention to the fact that based on the medico-legal findings, there is no showing that his daughter's hymen was penetrated, nor there was any evidence of injuries inflicted. However, jurisprudence is well-settled to the effect that for rape to be consummated, rupture of the hymen is not necessary, nor it is necessary that the vagina sustained a laceration especially if the complainant is a young girl. ... The fact that there was no deep penetration of the victim's vagina and that her hymen was intact does not negate rape, since this crime is committed even with the slightest penetration of a woman's sex organ. Presence of a laceration in the vagina is not (sic) essential prerequisite to prove that a victim has been raped. Research in medicine even points out that negative findings are of no significance, since the hymen may not be torn despite repeated coitus. In fact, many cases of pregnancy have been reported in women with unruptured hymen.(emphasis supplied)[24]

Another point being raised by the accused-appellant concerns the consistency of AAA's testimony. He argues that

the inconsistencies in her testimony taint her credibility. In effect, he claims that since rape is a traumatic event for the victim, there was no way AAA could have forgotten or been mistaken about it, including its place of occurrence, had rape really happened. Specifically, the accused is arguing that since AAA mentioned two places -- their house and the back of the school - her testimony was not credible. In rebuttal, the Office of the Solicitor General states that AAA indeed testified that she was violated in their house and that, immediately prior to that incident, she was playing at the back of the school when the accused-appellant called her to come inside the house. AAA's house, where the second rape was committed, was at the back of the school. [25] She herself clarified this detail during the redirect examination. The relevant portion of the Transcript of Stenographic Notes is reproduced below:[26]

Q:

AAA, during the last time that you were here in court, you declared that you were sexually molested by Jonie Dominguez at the house of your uncle Rogelio, is that correct?

A:

Yes, Ma'am.

Q:

And the other sexual molestation happened at the back of your school in Butag Elementary School, is that also correct?

A:

No, Ma'am.

Q:

What do you mean no, Ma'am?

A:

At the house of Uncle Rogelio and at our house.

Q:

But during the last time when you were asked by Atty. Gojar, you said that you were also molested at the back of the elementary school, Barangay XXX, so which is correct now?

A:

The truth is that I was sexually molested at the house of my Uncle Rogelio and at our house.

Q:

And why did you say that you were molested at the back of the elementary school in Barangay XXX, if not true?

A:

I was confused thinking that the question of Atty. Gojar is the location of our house and our house is situated at the back of the elementary school."

There was therefore no inconsistency to speak of. We find AAA's testimony credible on this point and disregard the accused's attack on the same.

The accused also cites AAA's testimony that after each incident of molestation, she told her parents about it. According to him, her testimony was discrepant with that of her mother. Recall that the mother had alleged that the discovery of the crime was due to his utterance regarding the state of her daughters' vaginas. [27] We reject the claim of the accused. It can clearly be deduced from AAA's answer during the cross-examination that when she told her parents about the molestations, she was referring to the time immediately before the filing of the Complaint and not immediately after the rape.[28] It should be pointed out that she was consistent and unwavering in her claim that the accused inserted his two fingers into her organ on two occasions. The trial court observed AAA's consistency in her testimony and ruled that she was a credible witness.[29] We respect the trial court's ruling on this matter. This Court recognizes that:

Ample margin of error and understanding is accorded to young witnesses who, much more than adults, would naturally be gripped with tension due to the novelty of the experience of testifying before a court.[30]

We have reviewed the records and find no cogent reason to disturb the conviction. A reading of the TSN of the hearing of the case convinces us that the CA did not commit any reversible error. The victims were still minors at the time they testified. Nevertheless, they were able to narrate the incidents, albeit not exactly with the same coherence as a fully capacitated adult witness would. Leeway should be given to witnesses who are minors, especially when they are relating past incidents of abuse.

Relevant to this, we quote the following discussion by retired Chief Justice Hilario G. Davide, Jr.:

It is thus clear that any child, regardless of age, can be a competent witness if he can perceive, and perceiving, can make known his perception to others and of relating truthfully facts respecting which he is examined. In the 1913 decision in *United States vs. Buncad*, this Court stated:

Professor Wigmore, after referring to the common-law precedents upon this point, says: "But this much may be taken as settled, that no rule defines any particular age as conclusive of incapacity; in each instance the capacity of the particular child is to be investigated." (Wigmore on Evidence, vol. I, p. 638)

While on the same subject, Underhill declares:

257. Children on the witness stand. - Under the common law, competency of a child under the age of fourteen years to testify must be shown to the satisfaction of the court. He is presumptively incompetent, but if he is shown to be competent it is immaterial how young he may be when he testifies. He is competent if he possesses mental capacity and memory sufficient to enable him to give a reasonable and intelligible account of the transaction he has seen, if he understands and has a just appreciation of the difference between right and wrong, and comprehends the character, meaning and obligation of an oath. If the witness fulfills these requirements, it is immaterial as bearing upon his competency that he is unable to define the oath or to define testimony. In the wise discretion of the court, a child four, five, six and for such ages as seven, eight, nine, ten, eleven, twelve, thirteen or fifteen years of age may be shown competent to testify. It may not be said that there is any particular age at which as a matter of law all children are competent or incompetent. x x x

The requirements then of a child's competency as a witness are the: (a) capacity of observation, (b) capacity of recollection, and (c) capacity of communication. And in ascertaining whether a child is of sufficient intelligence according to the foregoing requirements, it is settled that the trial court is called upon to make such determination. As held in *United States vs. Buncad*, quoting from *Wheeler vs. United States*, and reiterated in *People vs. Raptus* and *People vs. Libungan*:

The decision of (sic) this question rests primarily with the trial judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligations of an oath. As many of these matters cannot be photographed into the record, the decision of the trial judge will not be disturbed on

review unless from that which is preserved it is clear that it was erroneous. (citations omitted). [31]

We find that AAA and BBB were able to candidly answer the questions propounded to them during the examination in court and to communicate the ordeal they suffered in the hands of the accused. They were credible witnesses.

The legal doctrine that the assessment of the credibility of witnesses is left to the judgment of the trial court is well-established. [32] Its findings of facts, when affirmed by the Court of Appeals, are deemed conclusive on this Court. [33] In this case, both the trial court and the Court of Appeals found the prosecution witnesses credible.

The narrated facts disprove the alibi of the accused-appellant that he was up in the mountains on the dates that he allegedly molested the victims. BBB testified that the accused was staying with another relative, their Tia Cita, whose husband is his brother. He invited BBB and her two siblings to go to the house of their Tia Cita. He then ordered the two siblings of BBB to go to the seashore and pull the crab catcher. BBB was left alone with appellant, who then perpetrated his lewd acts on her. BBB likewise testified that appellant lived with them, thus making it possible for him to be near her and to molest her even at night while she was sleeping. She also testified that she was threatened by the accused who warned her not to tell anyone, or else her family would be killed. [34]

Both the trial court and the CA found these defenses of denial and alibi incredible. The testimony of the accused was riddled with obvious inconsistencies. He denied knowing the victims, but eventually identified AAA as his grandniece. His own testimony contradicted his alibi, since he testified that from 2000 to 2002, he was residing in his brother's house. This was where one of the rape incidents happened, and was even near the house of the victims. On this point, we have stated previously:

To establish alibi, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime. Physical impossibility "refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places." [35]

On its part, the prosecution was able to show the existence of the elements of rape under the amended Revised Penal Code, effectuated by R.A. No. 8353, or the Anti-Rape Law of 1997, which states:

Art. 266-A. Rape: When and how committed

Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat, or intimidation;
- 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.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Before and after the violations, the intimidation took the form of threats that the victims' family would be killed by the accused. The accused also employed trickery and took advantage of his authority over his grandnieces. Under these circumstances, the accused was able to have carnal knowledge of BBB and commit a series of sexual assaults against both her and AAA. The two incidents of rape against AAA happened before she reached 12 years

of age, she being 9 and 10 then. For those incidents, proof of threats, force or intimidation, is not necessary.

As to damages, there is a need to modify the award of civil indemnity in Criminal Case No. 02-584.

Contrary to the claim of the prosecution, the accused's relationship to the victims cannot be considered as an aggravating circumstance. For relationship to aggravate or qualify the crime of rape committed against a minor, the accused must be a relative of the victim within the third civil degree.[36] As a brother of the victim's paternal grandmother, he is but a relative within the fourth civil degree. This relationship cannot qualify the crime as to merit the punishment of reclusion perpetua to death under Article 266-B of the Revised Penal Code as amended. Thus, the rape of BBB by means of carnal knowledge was simple rape, and the amount of civil indemnity should be decreased from P75,000 to P50,000.

With respect to the manner of rape committed against AAA twice and against BBB six times, which was rape by digital insertion, jurisprudence from 2001 up to the present yields the information that the prevailing amount awarded as civil indemnity to victims of simple rape committed by means other than penile insertion is P30,000. [37] We adhere to these precedents.

We note that prior to the amendment of the law on rape, the act of inserting the finger, with lewd designs, into the genital orifice of a girl or a non-consenting woman falls under acts of lasciviousness. The victim was awarded civil indemnity likewise in the amount of P30,000. [38] In amending the law and renaming the act as rape, there is a recognition that the same evil, as that of conventional rape, is sought to be prevented. This was recognized in *People v. Jalosjos*[39] when the Court awarded civil indemnity, for each digital insertion committed by the accused against the victim, in the amount of P50,000 similar to conventional rape. Subsequent decisions, however, reverted to P30,000 the civil indemnity for the commission of rape under Art. 266-A (2) of the Revised Penal Code.[40] We follow the latter in the present case.

An award of exemplary damages to AAA and BBB for all the instances of rape committed by the accused against them is also warranted. In *People v. Alfredo* [41], the Court reiterated an earlier decision held "that exemplary damages may be awarded not only in the presence of an aggravating circumstance, but also where the circumstances of the case show a highly reprehensible conduct." [42] In the present case, the circumstances show the higher degree of perversity of the accused. Instead of showing any remorse in abusing children of tender age, he repeatedly committed the crime against the victims. Worse, he even degraded them before other people by making fun of the fact that their private parts were already non-virginal, something that society sees as outrageous and uncommon for their age. Surely, only a person who is outrageously perverse can brag about his vulgarities to others with seeming impunity. These are conducts and dispositions that are abhorrent to the norms of a civilized society and should be curtailed and discouraged. We apply the Court's rationale in *People v. Rayos*[43], wherein we held that "Article 2229 of the Civil Code sanctions the grant of exemplary or correction damages in order to deter the commission of similar acts in the future and to allow the courts to mould behaviour that can have grave and deleterious consequences to society."

In *People v. Alfredo*[44], the Court clarified that the basis of awarding exemplary damages on account of a crime is not exclusively Article 2230 of the Civil Code, which provides that "in criminal offenses, exemplary damages as a part of civil liability may be imposed when the crime was committed with one or more aggravating circumstances." The Court held as that:

In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*, the Court awarded exemplary

damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People of the Philippines v. Cristino Cañada*, *People of the Philippines v. Pepito Neverio* and *The People of the Philippines v. Lorenzo Layco, Sr.*, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales' words in her separate opinion in *People of the Philippines v. Dante Gragasin y Par*, "[t]he 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." [45]

The records reveal the accused's perversity and moral corruption, which should not be replicated in our society. To deter such behavior, exemplary damages must be imposed on the accused as a warning to those persons who are similarly disposed.

Regarding the penalty of imprisonment, we find that a modification thereof is in order. Article 266-B of the Revised Penal Code, as amended, reads:

Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

... ..

Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prision mayor to reclusion temporal.

The trial court failed to apply the proper penalty in Criminal Case No. 02-583, for rape by sexual assault aggravated by the use of a knife, in imposing a maximum of only 12 years of prision mayor instead of prision mayor to reclusion temporal with a duration of six (6) years and one (1) day to twenty (20) years. We impose fifteen (15) years and four (4) months of reclusion temporal.

As to the minimum penalty required by the Indeterminate Sentence Law, the RTC's Decision was appropriate. Article 61 paragraph 2 of the Revised Penal Code states that the penalty next lower in degree to a prescribed penalty of one or more divisible penalties imposed to their full extent is that immediately following the lesser of the penalties. The minimum of the penalty to be imposed is to be taken from within the entire period of prision correccional, or six (6) months and one (1) day to six (6) years. Considering the abhorrent character of the crime committed and the innocence of the victim in Criminal Case No. 02-583, we peg the minimum penalty at six (6) years of prision correccional.

The sentence of imprisonment imposed in Criminal Case Nos. 02-582, 02-584 to 02-588 and 02-590 will remain undisturbed.

IN VIEW OF THE FOREGOING, the assailed Decision of the Court of Appeals is **AFFIRMED** with **MODIFICATION**. Accused JONIE DOMINGUEZ is sentenced to suffer the following:

- a) In Criminal Case No. 02-583, the indeterminate penalty of six (6) years of prision correccional as minimum, to fifteen (15) years and four (4) months of reclusion temporal as maximum.
- b) In Criminal Case Nos. 02-582, 02-585, 02-586, 02-587, 02-588 and 02-590, the indeterminate penalty of four (4) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum for each count of rape; and

c) In Criminal Case No. 02-584, the indivisible penalty of reclusion perpetua.

Accused JONIE DOMINGUEZ is further ordered to pay the following civil liabilities:

a)

To AAA:

1)

P30,000 as civil indemnity for each count of rape in Criminal Case Nos. 02-582 and 02-583;

2)

P30,000 as moral damages for each count of rape in Criminal Case Nos. 02-582 and 02-583; and

3)

P30,000.00 exemplary damages for each count of rape in Criminal Case Nos. 02-582 and 02-583.

b)

To BBB:

1)

P50,000 as civil indemnity in Criminal Case No. 02-584;

2)

P50,000 as moral damages in Criminal Case No. 02-584;

3)

P30,000 as civil indemnity for each count of rape in Criminal Case Nos. 02-585, 02-586, 02-587, 02-588 and 02-590;

4)

P30,000 as moral damages for each count of rape in Criminal Case Nos. 02-585, 02-586, 02-587, 02-588 and 02-590;

5)

P30,000 as exemplary damages for each count of rape in Criminal Case Nos. 02-584, 02-585, 02-586, 02-587, 02-588 and 02-590.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Villarama, Jr., JJ., concur.

[1] Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Arturo G. Tayag and Michael P. Elbinias.

[2] The accused signed as "Diony Dominguez" in the RTC Decision.

[3] The proper nomenclature is "granduncle" instead of "grandfather".

[4] Records (Criminal Case 02-583) at 1.

[5] Id.

[6] Records (Criminal Case 02-582) at 1.

[7] Records (Criminal Case No. 02-584) at 1.

[8] Supra note 6 at 3-8.

[9] Supra note 7.

[10] Records (Criminal Case No. 02-585) at 1.

[11] TSN, 13 December 2004, at 5-6.

[12] TSN, 13 May 2003, at 9-13.

[13] Id. at 5-8.

[14] TSN, 15 July 2003, at 6-10; TSN, 3 August 2004, at 3-5.

[15] TSN, 3 August 2004, at 2-6; TSN, 16 November 2004, at 5-8.

[16] TSN, 11 July 2006, pp 3-5; TSN, 4 September 2006, at 4-6.

[17] Supra note 6 at 274-275.

[18] CA rollo, at 358-359.

[19] Rollo at 35-36.

[20] Id. at 31-32.

[21] Supra note 18 at 232.

[22] Id. at 242-252.

[23] *People v. Gabayron*, G.R. No. 102018, 21 August 1997, 278 SCRA 78.

[24] Id. at 92-93, citing *People v. Lazaro*, 249 SCRA 234 (1995) and *People v. Sapurco*, 245 SCRA 519 (1995).

[25] Supra note 18, at 318-319.

[26] TSN, 7 December 2004, at 3.

[27] Supra note 18, at 244-245.

[28] TSN, 16 November 2004, at 6.

[29] Supra note 6, at 17-18.

[30] *People v. Lawa*, G.R. Nos. 126147/143925-26, 28 January 2003, citing *People v. dela Cruz*, 276 SCRA 352, 357 (1997).

[31] *People v. Mendoza*, G.R. No. 113791, 22 February 1996, 254 SCRA 18, 31-33.

[32] *People v. Barde*, G.R. No. 183094, 22 September 2010, citing *People v. Lalongisip*, G.R. No. 188331, 16 June 2010.

[33] *Id.* citing *People v. Beltran, Jr.*, 503 SCRA 715, 730 (2006).

[34] *Supra* note 18, at 308-315.

[35] *People v. Mosquera*, G.R. No. 129209, 9 August 2001, 362 SCRA 441, 450, citing *People v. Saban*, 319 SCRA 36, 46 (1999); *People v. Reduca*, 301 SCRA 516, 534 (1999), and *People v. De Labajan*, 317 SCRA 566, 575 (1999).

[36] Revised Penal Code, Art. 266-B (1).

[37] *People v. Soriano*, G.R. No. 142779-95, 29 August 2002, 388 SCRA 140; *People v. Palma*, G.R. No. 148869-74, 11 December 2003, 418 SCRA 365; *People v. Olaybar*, G.R. No. 15060-31, 1 October 2003, 412 SCRA 490; *People v. Suyu*, G.R. No. 170191, 16 August 2006, 499 SCRA 177; *People v. Hermosilla*, G.R. No. 175830, July 10, 2007, 527 SCRA 296; *People v. Fetalino*, G.R. No. 174472, 19 June 2007, 525 SCRA 170; *People v. Senieres*, G.R. No. 172226, 23 March 2007, 519 SCRA 13; *Flordeliz v. People*, G.R. No. 186441, 3 March 2010, 614 SCRA 225; *People v. Alfonso*, G.R. No. 182094, 18 August 2010.

[38] *People v. Velasquez*, G.R. Nos. 132635 & 143872-75, 21 February 2001, 352 SCRA 445.

[39] G.R. Nos. 132875-76, 16 November 2001, 369 SCRA 179.

[40] *Supra* note 37.

[41] G.R. No. 188560, 15 December 2010.

[42] *Id.*, citing *People v. Dalisay*, G.R. No. 188106, 25 November 2009, 605 SCRA 807.

[43] G.R. No. 133823, 7 February 2001; see also *People v. Serrano*, G.R. No. 137480, 28 February 2001.

[44] *Supra* note 41.

[45] *Id.*

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