

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BBB254878, ACCUSED-APPELLANT.

G.R. No. 254878, October 22, 2024

Ponente: INTING, J.

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INTING, J.:

Before the Court is an Appeal[1] from the Decision[2] dated July 7, 2020, of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 03014. The CA affirmed, with modification as to the damages, the Decision[3] dated May 7, 2018 of Branch x Regional Trial Court, xxxxxxxxxxxxxxxx City, Eastern Samar (RTC), in Criminal Case No. 12541 that found BBB254878 (accused-appellant) guilty beyond reasonable doubt of the crime of Qualified Statutory Rape.

The Antecedents

Accused-appellant was charged with Statutory Rape in relation to Republic Act No. 7610 in an Information[4] dated April 17, 2013. The Information reads as follows:

The undersigned hereby accuses [accused-appellant] of Bgy. xxxxx City, Eastern Samar of the crime of Statutory Rape, committed as follows:

That sometimes (sic) [in] September, 2010 in the evening at Bgy. xxxxx 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 have carnal knowledge with [AAA], a minor being 8 years old only and his own [niece], against her will and consent, to the damage and prejudice of the herein victim.

CONTRARY TO LAW.[5]

Upon arraignment, accused-appellant entered a plea of "not guilty" to the charge.[6]

Trial on the merits ensued.[7]

Version of the Prosecution

AAA positively identified her maternal uncle, herein accused-appellant, in open court as the person who sexually abused her. She narrated that sometime in September 2010, when she was 8 years old, she and CCC, her mother, went to xxxxxxxxxxxxxxxxxxxxxxxx, Eastern Samar, to visit her maternal grandmother. On that night, while having dinner at the house of her maternal grandfather, accused-appellant stretched his left foot and inserted his toe into her vagina. When her grandfather left the house, accused-appellant dragged her to a hut, undressed her, and inserted his penis into her vagina three times. After satisfying his lust, accused-appellant warned AAA that her parents would be killed if she tells anyone about the incident. In 2011, when AAA stayed at the house of her grandfather, accused-appellant dragged her again to a nipa hut and sexually ravished her.[8]

Dr. Ma. Theresa Tabungar (Dr. Tabungar), a Child Protection Specialist, testified that she conducted a physical and genital examination on AAA. She found a laceration on AAA's hymen which could have been caused by a

penetration in her genitalia of a blunt object, such as the penis.[9]

Version of the Defense

Accused-appellant denied the accusation against him. He averred that at the time of the incident, he was working in a shop as a welder from 7:00 a.m. to 4:00 p.m. After work, he would stay at his father's house in xxxxxxxx, but would sleep at the shop sometimes.[10]

The Ruling of the RTC

In the Decision dated May 7, 2018, the RTC found accused-appellant guilty beyond reasonable doubt of the crime of Statutory Rape, qualified by relationship. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, the Court finds [accused-appellant] GUILTY beyond reasonable doubt of statutory rape qualified by relationship. Accordingly, he is hereby sentenced to suffer the penalty of reclusion perpetua without eligibility for parole, in lieu of death. He is also ORDERED to pay [AAA] the amounts of [PHP] 100,000.00 as civil indemnity, [PHP] 100,000.00 as moral damages, and [PHP] 100,000.00 as exemplary damages, plus legal interest at the rate of 6% per annum from the finality of the decision until the amounts are fully paid.

The preventive imprisonment of the accused shall be fully credited in his favour provided he abided by and strictly followed the rules and regulations of the institution where he has been detained or confined.

SO ORDERED.[11]

The RTC gave full credence to the positive and straightforward testimony of AAA which was corroborated by the testimony of her mother and Dr. Tabungar. It ruled that accused-appellant failed to interpose any credible defense as his denial and alibi, being unsubstantiated by clear and convincing evidence, were deemed self-serving and had no weight.[12]

The Ruling of the CA

In the Decision dated July 7, 2020, the CA affirmed with modification as to damages the ruling of the RTC. The fallo of the CA Decision states:

WHEREFORE, the appeal is DISMISSED. The Decision of the Regional Trial Court of xxxxxxxxxxxx, Eastern Samar, 8th Judicial Region, Branch x in Criminal Case No. 12541 finding [accused-appellant] guilty beyond reasonable doubt of statutory rape is AFFIRMED WITH MODIFICATION. [Accused-appellant] is sentenced to suffer the penalty of reclusion perpetua, and to pay [AAA] the amounts of [PHP] 75,000.00 as civil indemnity, [PHP] 75,000.00 as moral damages[,] and [PHP] 75,000.00 as exemplary damages.

The award of damages must earn 6% per annum computed from finality of the Court's Decision until satisfied.

SO ORDERED.[13]

The CA concurred with the RTC that the prosecution, through the testimony of AAA, her mother, and Dr. Tabungar, successfully established the elements of the crime of Statutory Rape.[14] It stressed that the sexual congress between accused-appellant and AAA, then below 12 years of age, consummated the crime of Statutory Rape even if it was not attended by force, threat, or intimidation.[15] However, the CA ruled that the RTC erred in qualifying the crime by reason of relationship because the Information did not expressly state that accused-appellant is AAA's relative within the third civil degree. Accordingly, the CA ruled that accused-appellant can only be convicted of the crime of Statutory Rape.[16]

Hence, the present Appeal.[17]

The Issue

The core issue to be resolved is whether accused-appellant is guilty beyond reasonable doubt of the crime of Statutory Rape.

The Ruling of the Court

The appeal is bereft of merit.

Preliminarily, an appeal in criminal cases throws the whole case open for review, and the Court is mandated to rule on errors as may be found in the judgment appealed from, even if unassigned.[18] In the exercise of its appellate jurisdiction, the Court may even impose a graver penalty than that provided in the assailed judgment.[19] In the case, the Court finds no compelling reason to depart from the uniform factual findings of the RTC and the CA. Nevertheless, the Court declares that the proper designation of the crime is Qualified Rape of a minor.

Settled is the rule that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect.[20] Further, "findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings." [21] The rationale behind is that "the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial." [22]

On the procedural aspect, the Court finds that the Information sufficiently shows the relation of the parties. In the case, the CA modified the RTC Decision and ruled that accused-appellant can only be convicted of Statutory Rape because the Information failed to specifically state that accused-appellant is AAA's relative within the 3rd civil degree by consanguinity or affinity.[23]

The Court disagrees.

As discussed below, the Information specifically described AAA as accused-appellant's "own niece." The prosecution proved the relationship between the parties through the respective testimony of AAA and CCC.[24] AAA narrated:

....

Q:

[AAA], do you know a person by the name [accused-appellant]?

A:

Yes, sir.

Q:

Will you, please, inform us why do you know [accused-appellant]?

A:

Because he is a brother of my mother, sir.

Q: If he is inside this session hall, will you be able to point to him?

A: Yes, sir.

Q:

Will you, please, point to him?

A:

Witness saying he is there and the person pointed to by witness when asked his name answers [accused-appellant], sir.[25]

Further, AAA's testimony was corroborated by the following statement of her mother, CCC, viz.:

....

Q:

Madam Witness, the middle name of [AAA] is xxxxx and the accused is also xxxxx, do you have a family relations?

A:

[Accused-appellant] is my younger brother, so [AAA] is his niece.

Q:

So it was very clear Madam Witness, that you and [accused-appellant] are brother's and sister's (sic) ?

A:

Yes Sir.

....

Q:

Will you please point to him?

INTERPRETER:

The witness is saying the accused is wearing a blue T-shirt, and the person pointed to by the witness, when I asked his name answered in the name of [accused-appellant].[26]

Significantly, also, accused-appellant himself admitted his relationship with AAA and CCC. He said:

CROSS-EXAMINATION OF PROS. AFABLE ON [ACCUSED-APPELLANT]:

Q:

Mr. Witness, you denied the charge against you for the crime of rape, the victim here is one [AAA]. This [AAA] is the daughter of [CCC], is that correct?

ATTY. GARFIN:

Objection, it was not touched during the direct, Your Honor.

PROS. AFABLE:

Your Honor, it was mentioned in the information. Now I am asking the relations, Your Honor.

....

COURT:

The witness may answer.

WITNESS:

A:

Yes, sir.

PROS. AFABLE:

Q:

And [CCC] and you are (sic) [brothers] and [sisters]?

A:

Yes, sir.

ATTY. GARFIN:

Objection, Your Honor, it was not taken up in the information.

PROS. AFABLE:

That is correct, Your Honor but. . . . (interrupted)

COURT:

Witness may answer.

WITNESS:

A:

Yes, sir.

PROS. AFABLE:

Q:

Now being (sic) [brothers] and [sisters] certainly you have a common father in the name of [DDD]?

A:

Yes, sir.[27]

In *People v. XXX*,^[28] the Information alleged that therein accused-appellant willfully, unlawfully, and feloniously had carnal knowledge of his niece who is a minor. In that case, the Court considered the qualifying circumstance of relationship notwithstanding the absence of a specific allegation that the same was within the third civil degree of consanguinity or affinity.^[29]

By the same token, in *People v. Abat*^[30] and *People v. XXX*,^[31] the Court qualified the crime of Rape even though the respective Informations simply alleged that the rape victim is accused-appellant's niece. The Court ruled that the allegation of relationship between the victim and the accused was sufficiently alleged in the Information.

More recently, in 2022, in the case of *People v. XXX*,^[32] the Court reiterated that the mere allegation that accused-appellant is the uncle of the victim without specifically alleging that such relation was within the third civil degree, is specific enough to satisfy the special qualifying circumstance of relationship.^[33] Significantly, the rulings in the aforementioned cases have been consistently reaffirmed in several recent unsigned resolutions^[34] issued by the Court.

The same principle applies here. While there is diverse jurisprudence on the matter, the use of specific familial terms, like niece or uncle, is adequate to inform the accused of the nature of the relationship between him and the victim, thereby meeting the requirements of the law. There is no ambiguity in the case. The Information explicitly stated that: (1) AAA was only 8 years old when the incident happened, and (2) AAA is accused-appellant's own niece. While the Information did not specify the degree of relationship between AAA and accused-appellant, it nevertheless directly, and in layman's terms, conveyed the nature of the relationship. Verily, a description that clearly and categorically identified AAA as accused-appellant's niece satisfies the requirement to inform him fully and prepare a defense. By clearly defining the familial relationship, the prosecution ensures that the accused-appellant is properly apprised of the accusation, fulfilling the principles of fairness and due process.

Therefore, under the circumstances, the consideration of the relationship between the victim, AAA, and accused-appellant to qualify the crime of rape is proper.

The Court will now resolve the case on the merits.

In the prosecution of Statutory Rape as defined in Article 266-A(1)(d) of the Revised Penal Code, the following elements must be proven: (a) the offended party is under 12 years of age; and (b) the accused had carnal knowledge of the victim, regardless of whether there was force, threat or intimidation.[35] Proof of force, intimidation, or consent is unnecessary because the absence of free consent is conclusively presumed when the victim is below the age of 12. It is enough that the age of the victim is proven and that there was sexual intercourse.[36]

In *People v. ABC260708*,^[37] the Court clarified the proper nomenclature of the crime when the elements of both Statutory Rape and Qualified Rape are present, viz.:

1.

The crime shall be denominated as QUALIFIED RAPE of a minor and not qualified statutory rape if any of the special qualifying aggravating circumstances is present, i.e. twin circumstances of minority and relationship, or the age of the victim being below 7 years old, or the accused's knowledge of the mental disability of the victim at the time of the commission of rape. This rule shall apply whether the victim is below the statutory age or is suffering from mental retardation comparable to the intellectual capacity of a child below the statutory age.

2.

The crime shall be denominated as QUALIFIED RAPE of a minor and not qualified statutory rape if the crime is attended with two or more special qualifying aggravating circumstances, i.e. twin circumstances of minority and relationship, or the age of the victim being below 7 years old, or the accused's knowledge of the mental disability of the victim at the time of the commission of rape. One of these aggravating circumstances is sufficient to qualify the crime. The unutilized special qualifying aggravating circumstances will be deemed as generic aggravating circumstances which may be appreciated if the facts warrant the imposition of a divisible penalty, i.e. existence of privileged mitigating circumstances under Article 69 of the RPC, and penalties in cases of frustrated and attempted felonies, and for accomplices and accessories pursuant to Article 50 to 57 of the RPC. Otherwise, any unutilized aggravating circumstances shall not be considered in the application of penalties.

3.

The term "statutory age" in these guidelines shall mean either "below 12 years old" or "under 16 years old"

depending on whether the crime of rape was committed before or after the effectivity of Republic Act No. 11648, respectively. (Emphasis in the original)

In the case, it is undisputed that at the time of the incident, AAA was below 12 years of age as established by her Certificate of Live Birth showing that she was born on xxxxxxxxxxxxxxxx.[38] It is also undisputed that AAA is accused-appellant's niece.

The prosecution ably established that accused-appellant had carnal knowledge of AAA. The prosecution proved beyond reasonable doubt that accused-appellant sexually abused AAA through the latter's straightforward testimony. She categorically identified accused-appellant in open court as the person who dragged her to a hut from her grandfather's house, removed her shorts and panty, and then inserted his penis into her vagina.[39] The medical findings of Dr. Tabungar corroborated AAA's testimony considering that Dr. Tabungar's medical examination found laceration on her hymen. "Laceration, whether healed or fresh, is the best physical evidence of forcible defloration." [40]

In court, AAA narrated:

DIRECT-EXAMINATION OF PROS. AFABLE ON [AAA]:

Q:

[AAA], you said feet, which part of the feet of [accused-appellant] that was inserted into your vagina?

A:

His left foot and he inserted his toe (tamuragko) Witness pointing to the big finger of his (sic) left foot, sir.

....

Q:

What else, if any, did [accused-appellant] do on that night when you were having dinner?

A:

When [DDD] leave (sic) the house, [accused-appellant] was dragging me to a hut, sir.

Q:

Where was that hut?

A:

At xxxxx, sir.

....

Q:

Now, when he dragged you to that hut in xxxxxxxx, which part of your body that he was holding?

A:

He was holding the collar of my shirt and the witness further demonstrated by holding the collar of her shirt, sir.

Q:

Now, [AAA], will you illustrate how [accused-appellant] was holding the back of your shirt when he was dragging you, with you acting as [accused-appellant] and the interpreter acting as yourself?

A:

Witness demonstrated how she was dragged by [accused-appellant], sir.

Q:

With that position you said you were being dragged, to which direction were you being dragged?

A:

Witness saying that she was being dragged backward, sir.

....

Q:

Inside that hut, [AAA], do you recall what did [accused-appellant] do to you?

A:

He undressed me, sir.

Q:

Which clothing that [accused-appellant] undressed you?

A:

My short and my panty, sir.

Q:

Now, [AAA], after [accused-appellant] undressed you meaning your panty and your shorts, do you recall what happened next?

A:

His penis was inserted to my vagina, sir.

Q:

Do you recall [AAA] how many times was it inserted?

A:

Three times, sir.

Q:

After [accused-appellant] inserted his penis to your vagina, what did he tell you, if any?

A:

[Accused-appellant] told me that if ever I tell anybody what bad happened to me, he will kill my parents, sir.[41]

Accused-appellant contended that AAA's testimony is incredible considering her failure to shout for help from the time he allegedly inserted his toe into her vagina while they were having dinner together with AAA's grandfather up to the time he allegedly dragged her into a hut to rape her. The Court finds this contention untenable.

The Court has recognized that there is no clear-cut behavior that can be expected of a person being raped or has been raped.[42] The failure of the victim to shout or seek help does not negate rape.[43] Further, "[i]t is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim." [44]

Similarly, AAA's belated reporting of the incidents to her mother is immaterial and does not affect her credibility as a witness. It must be recalled that accused-appellant threatened to kill her parents if she would tell anyone of the incident. Thus, her failure to immediately report the incident to her mother, or to the proper authorities, does not weaken her allegation that she was raped and should not be taken against her.

The Court agrees with the RTC's assessment of AAA's testimony, as affirmed by the CA. Considering that AAA was only 8 years old when the incident happened, she could hardly concoct a horrible story that would haunt her for life. It is even well settled that due to the nature of the crime, the lone testimony of the rape victim, when found to be credible, natural, and consistent with human nature, is enough to sustain a conviction.[45]

Further, accused-appellant's defense of denial must be rejected as it could not prevail over AAA's unwavering testimony and her positive and firm identification of him as the perpetrator. The Court likewise cannot give credence to the defense of alibi. For alibi to prosper, it is not enough to prove that the accused had been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[46] The defense failed in this respect.

In the absence of any ill-motive on the part of AAA that would make her falsely testify against accused-appellant, her candid narration of the incident deserves full faith and credence. Indeed, when there is no evidence to show any improper motive on the part of the prosecution witness to testify against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence,[47] as in the case.

As for the proper penalty, under Article 266-B of the Revised Penal Code, the penalty for Qualified Rape is death, viz.:

Article 266-B. Penalties. — . . .

. . . .

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

- When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

. . . .

However, in view of Republic Act No. 9346,[48] the death penalty is reduced to reclusion perpetua. Under A.M. No. 15-08-02-SC,[49] which provided the guidelines for the use of the phrase "without eligibility for parole," the proper penalty that must be imposed upon accused-appellant is reclusion perpetua, without eligibility for parole.

For the civil liability, consistent with recent jurisprudence[50] and the attendant circumstances in the case, accused-appellant is liable to pay AAA the following amounts: PHP 150,000.00 as civil indemnity, PHP 150,000.00 as moral damages, and PHP 150,000.00 as exemplary damages. Additionally, all damages awarded shall earn legal interest at the rate of 6% per annum from the date of the finality of this Resolution until fully paid.

Finally, under Republic Act No. 8505, or the Rape Victim Assistance and Protection Act of 1998, the Department of Social Welfare and Development is directed to refer AAA to the appropriate rape crisis center for the necessary assistance to be rendered to her and her family.

WHEREFORE, the appeal is DISMISSED. The Decision dated July 7, 2020, of the Court of Appeals in CA-G.R. CEB CR-HC No. 03014 is AFFIRMED with MODIFICATION. Accused-appellant BBB254878 is found GUILTY beyond reasonable doubt of the crime of Qualified Rape of a minor defined and penalized under Article 266-A, paragraph 1, in relation to Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353[51] in Criminal Case No. 12541 filed before Branch xx, Regional Trial Court, xxxxxxxxx City, Eastern Samar. He is SENTENCED to suffer the penalty of reclusion perpetua, without eligibility for parole.

Further, he is ORDERED to PAY AAA the amounts of PHP 150,000.00 as civil indemnity, PHP 150,000.00 as moral damages, and PHP 150,000.00 as exemplary damages.

All monetary awards shall earn legal interest at the rate of 6% per annum from the date of the finality of this Decision until fully paid.

The Department of Social Welfare and Development is DIRECTED to REFER AAA to the appropriate rape crisis center for the necessary assistance to be rendered to her and her family, in line with Republic Act No. 8505, or the Rape Victim Assistance and Protection Act of 1998.

SO ORDERED.

Gesmundo, C.J., Leonen, SAJ., M. Lopez, Gaerlan, J. Lopez, Marquez, and Singh, JJ., concur.

Caguioa, J., see concurring opinion.

Hernando,[*] J., on official business.

Lazaro-Javier,[*][*] J., on official leave.

Zalameda,[***] J., on leave.

Rosario,[****] J., on official leave.

Dimaampao, J., see concurring and dissenting opinion.

Kho, Jr., J., joins in the concurring and dissenting opinion of Justice Dimaampao.

[*] On official business.

[*][*] On official leave.

[*][*][*] On leave.

[*][*][*][*] On official leave.

[*][*][*][*][*] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 8505, entitled "Rape Victim Assistance and Protection Act of 1998," approved on February 13, 1998; and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

[1] CA rollo, pp. 98-100.

[2] Id. at 80-97. Penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pamela Ann Abella Maxino and Marilyn B. Lagura-Yap of the Special Eighteenth Division, Court of Appeals, Cebu City.

[3] Id. at 39-46. Penned by Presiding Judge Nathaniel E. Baldono.

[4] RTC records, vol. 1, pp. 2-3.

[5] Id. at 2.

[6] CA rollo, p. 81.

[7] Id.

[8] Id. at 40-41.

[9] Id. at 82.

[10] Id. at 82-83.

[11] Id. at 46.

[12] Id. at 44-45.

[13] Id. at 97.

[14] Id. at 86, 90-91.

[15] Id. at 91.

[16] Id. at 94-96.

[17] Id. at 98-100.

[18] See *Gelig v. People*, 640 Phil. 109, 115 (2010).

[19] See *People v. Olpindo*, G.R. No. 252861, February 15, 2022. This pinpoint citation refers to the copy of the

Decision uploaded to the Supreme Court website.

[20] *Estrella v. People*, 874 Phil. 374, 384 (2020).

[21] *Id.*, citing *People v. Aspa, Jr.*, 838 Phil. 302, 311-312 (2018), further citing *People v. De Guzman*, 564 Phil. 282, 290 (2007).

[22] *Estrella v. People*, *id.*, citing *People v. Villamin*, 625 Phil. 698, 713 (2010).

[23] CA rollo, pp. 95-96.

[24] *Id.* at 29.

[25] TSN, AAA, March 18, 2015, p. 15.

[26] TSN, CCC, January 26, 2015, pp. 7-8.

[27] TSN, [Accused-appellant], June 16, 2016, pp. 47-48.

[28] 886 Phil. 155 (2020).

[29] *Id.* at 171.

[30] 731 Phil. 304 (2014).

[31] 886 Phil. 155 (2020).

[32] G.R. No. 257276, February 28, 2022. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[33] *Id.*

[34] See *People v. XXX*, G.R. No. 264311, March 27, 2023 (Notice), *People v. XXX*, G.R. No. 257091, February 13, 2023 [Notice], *People v. XXX260814*, February 13, 2023 [Notice], *People v. Mata*, G.R. No. 229664, October 6, 2021 [Notice], and *People v. Cariño*, G.R. No. 230550, January 13, 2020 [Notice].

[35] See *People v. Conti*, G.R. No. 2607011, February 27, 2023. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[36] See *People v. Diaz, Jr.*, G.R. No. 248008, September 29, 2021 [Notice], citing *People v. Deliola*, 794 Phil. 194, 205 (2016).

[37] G.R. No. 260708, January 23, 2024. This pinpoint Citation refers to the copy of the Decision uploaded to the Supreme Court website.

[38] CA rollo, p. 86.

[39] *Id.* at 87.

[40] See *People v. Manaligod*, 831 Phil. 204, 213 (2018), citing *People v. Clores, Jr.*, 475 Phil. 99, 107 (2004).

[41] CA rollo, pp. 86-88.

[42] See *People v. Mendoza*, 873 Phil. 987, 996 (2020).

[43] See *People v. Mendoza*, *id.*, citing *People v. Pareja*, 724 Phil. 759, 778 (2014).

[44] *People v. Pareja*, *id.* at 779.

[45] See *People v. Banayat*, 828 Phil. 231, 237 (2018), citing *People v. Olimba*, 645 Phil. 468, 480 (2010).

[46] *Pendoy v. Court of Appeals (18th Division)-Cebu City*, 853 Phil. 242, 262 (2019), citing *People v. Abella*, 624 Phil. 18, 36 (2010).

[47] *People v. Arellano*, 397 Phil. 307, 318 (2000).

[48] (2006). An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[49] Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, August 4, 2015.

[50] See *People v. ABC260708*, G.R. No. 260708, January 23, 2024. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[51] (1997). The Anti-Rape Law or 1997.

G.R. No. 254878 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee v. BBB254878, Accused-appellant.[*]

CONCURRING OPINION

CAGUIOA, J.:

I concur with the ponencia in convicting accused-appellant BBB254878 (accused-appellant) for the crime of Qualified Rape of a Minor. The twin circumstances of minority and relationship were both alleged in the Information (subject Information) and proven during trial. There is no violation of the right to be informed of the nature and cause of accusation against accused-appellant in this case. The use of the word "niece" in the subject Information is sufficient to inform accused-appellant that he is being charged with Rape qualified by relationship.

Accused's right to be informed of nature and cause of accusation

The constitutional right to be informed, in writing, of the nature and cause of the accusation against an accused is an essential component of the right to due process and the presumption of innocence.[1] In *U.S. v. Karelsen*[2] the Court explained that a written accusation is necessary: (1) to furnish the accused with such a description of the charge against him or her as will enable him or her to make his or her defense; (2) to avail himself or herself of his or her conviction or acquittal for protection against a further prosecution for the same cause; and (3) to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had.[3]

To implement this constitutional right, Rule 110, Section 8 of the Revised Rules of Criminal Procedure[4] requires that the Information state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. In turn, Section 9 of the same Rule states that the acts or omissions complained of as constituting the offense as well as the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute. Thus, an Information that contains plain statements of the acts committed by the accused and circumstances constituting the crime satisfy the requirements of due process. It is not necessary that the Information adopt the legal jargon of the statute.[5] It is sufficient that it is written in simple and concise language understandable to an ordinary person.[6]

In *People v. Solar*[7] (*Solar*), the Court En Banc emphasized that "every element of which the offense is composed must be alleged in the Information. No Information for a crime will be sufficient if it does not

accurately and clearly allege the elements of the crime charged. The test in determining whether the Information validly charges an offense is whether the material facts alleged in the complaint or [I]nformation will establish the essential elements of the offense charged as defined in the law. In this examination, matters aliunde are not considered. [The reason for this requirement] is to enable the accused to suitably prepare his [or her] defense, as he [or she] is presumed to have no independent knowledge of the facts that constitute the offense." [8]

Following these jurisprudential guidelines, the subject Information sufficiently alleges the essential elements of the offense charged, including the qualifying circumstances of minority and relationship.

The term "niece" satisfies the requirements of due process

Under paragraph 1, Article 266-A of the Revised Penal Code, Rape is committed 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.

Paragraph 2, Article 266-B provides that the penalty for Rape committed under the afore-cited paragraph is reclusion perpetua. However, when the following circumstances are attendant, the penalty is increased to death, viz:

1)

When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent; guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

2)

When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

3)

When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

4)

When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

5)

When the victim is a child below seven (7) years old;

6)

When the offender knows that he is afflicted with Human Immune-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

7)

When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

8)

When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

9)

When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

10)

When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

Pertinent to the issue at hand is paragraph 2(1) of the above enumerated qualifying circumstances. The crux of the issue lies on the sufficiency of the allegation in the subject Information of the relationship between the victim, AAA and accused-appellant, as a component of the said qualifying circumstance.

For reference, the subject Information filed against accused-appellant reads:

The undersigned hereby accuses [accused-appellant] of [Brgy.] xxxxxxxxxxxxxxxx City, Eastern Samar of the crime of Statutory Rape, committed as follows:

That sometimes (sic) [in] September, 2010 in the evening at [Brgy.] xxxxxx City, Philippines and within the jurisdiction of this Honorable Court, the above-named [accused-appellant] with lewd design, did then and there [willfully], unlawfully and feloniously have carnal knowledge with [AAA], a minor being 8 years old only and his own [niece], against her will and consent, to the damage and prejudice of the herein victim.

CONTRARY TO LAW.[9]

As I see it, the twin circumstances of minority—a minor being 8 years old only—and relationship—"his own niece"—are clearly alleged in the subject Information. The simple allegation of "niece" in the Information is more than sufficient to apprise the accused of the special qualifying circumstance of relationship.

In *People v. Gonzales*[10] (*Gonzales*), the Court En Banc recognized that a "niece" is defined as the female child of a brother or sister, or the daughter of one's brother or sister, or of one's brother-in-law or sister-in-law.[11] Applying this definition, the accused in *Gonzales* was found guilty of Rape qualified by minority and relationship and was sentenced to suffer the penalty of death.[12] The Court En Banc held that all the elements of the crime of rape, including the twin circumstances of minority and relationship, were sufficiently alleged in the Information and proven during trial.[13]

It is worth noting that the allegation of relationship in the Information in *Gonzales* is exactly the same with how the relationship between accused-appellant here and AAA was alleged in the subject Information. For reference, the information in *Gonzales* reads as follows:

That on or about the 15th day of August, 1997, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, by means of force, violence and intimidation, did then and there [willfully], unlawfully and feloniously have incestuous carnal knowledge of his niece, the herein complainant, KATHERINE Gonzales y Makilan, 12 years of age, against the latter's will.

ACTS CONTRARY TO LAW.[14] (Emphasis supplied)

Thus, on the basis alone of the ruling in *Gonzales*, the ponencia correctly appreciates the twin circumstances of minority and relationship.

I recognize that there are also several cases[15] where the Court's ruling is diametrically opposed to *Gonzales*. In these cases, both decided in Division and En Banc, the Court ruled that the allegation that the accused is the victim's niece is not specific enough to satisfy the special qualifying circumstance of relationship. The Information must further state that the accused is a relative by consanguinity or affinity within the third civil degree.[16]

These set of cases, however, overlooked the requirement under the Rules on Criminal Procedure that the allegations in the Information must be in their ordinary and concise language. To be sure, nothing is simpler and more concise than stating that the victim is the accused's own niece instead of replicating the phrase "a relative with the third degree of consanguinity or affinity" of the statute. Niece, as defined and understood by an ordinary person, refers to the daughter of one's brother or sister. Cambridge Dictionary defines niece as "a daughter of your brother or sister, or a daughter of your husband's or wife's brother or sister." [17] Merriam-Webster Dictionary has the same definition, "a daughter of one's brother, sister, brother-in-law, or sister-in-law." [18] Oxford English Dictionary likewise defines niece as "the daughter of your brother or sister; the daughter of your husband's or wife's brother or sister." [19] Further, Black's Law Dictionary defines niece as "the daughter of one's brother or sister." [20] Clearly, by definition, niece falls within the special qualifying circumstance of relationship under

Article 266-B of the Revised Penal Code.

In this case, by alleging that AAA is accused-appellant's own niece—which only means that AAA is the daughter of accused-appellant's brother or sister, brother-in-law or sister-in-law, and therefore falls within the third-degree relationship—the subject Information sufficiently apprised accused-appellant of the nature and cause of accusation against him, including the special qualifying circumstance of relationship, enabling him to aptly prepare his defense. As well, the trial court was informed of the nature and circumstances of the crime enough to determine the proper nomenclature of the crime and the penalty imposable therefor.

With the sufficiency of alleging "own niece" in the subject Information, it is no longer necessary that the subject Information refer to the degree of relationship between AAA and accused-appellant. To further add the phrase "a relative by consanguinity or affinity within the third civil degree," would be redundant and downright legalese, and contrary to the mandate of the Revised Rules on Criminal Procedure that the Information use simple and concise language understandable by an ordinary person. Between the term "niece" and the phrase "relative by consanguinity or affinity within the third civil degree", the former is obviously more understandable to an ordinary person.

Accordingly, the use of the word "own niece" in the subject Information against accused-appellant complies with the requirements of due process. There was no violation of accused-appellant's constitutional right to be informed of the nature and cause of accusation against him. As the prosecution proved beyond reasonable doubt that AAA is accused-appellant's niece, conviction for Qualified Rape of a Minor is proper.

During the deliberations of another case pending with the Court En Banc involving the same issue, it was raised that in Filipino culture the word niece can also be understood to refer to the daughter of any relative, thus purportedly highlighting the need to specify the degree of relationship to comply with the requirement to apprise the accused of the special qualifying circumstance.

I disagree.

That the word niece is sometimes regarded as a generic term based on customs or practices does not change its true meaning. Still, niece, by definition, refers to the daughter of a sister or brother, sister-in-law or brother-in-law. Whether the Information simply used the term "niece" or the phrase "a relative by consanguinity or affinity within the third civil degree," the prosecution still bears the burden of proving, beyond reasonable doubt, that the relationship between the victim and the accused falls within the third civil degree of affinity or consanguinity before the special qualifying circumstance may be appreciated.

In short, if an Information uses the term "niece," the accused is already informed of the special qualifying circumstance—and he can easily debunk that circumstance by testifying as to the real relationship, if any, he has with the victim. In other words, this is really a non-issue.

The principles laid down in *Solar* may be applied to the present case

Even if the Court were to recognize that by reason of Filipino culture and tradition, the word niece becomes a generic term for a daughter of any relative, I believe that this should not automatically preclude the Court from appreciating the special qualifying circumstance of relationship. The Court's ruling in *Solar* is instructive.

Solar involves the crime of murder and the issue of whether a mere mention of treachery or other qualifying circumstances enumerated under the law is sufficient to inform the accused of the nature and cause of the accusation against him or her. While the Court recognized in *Solar* that Informations that simply identify the qualifying circumstance without specifically describing the acts done by the accused that made any or all of such

circumstances present are insufficient; it ruled that the accused has the duty to timely enforce his or her right through either a motion to quash or motion of bill of particulars. Failing to avail of these remedies before the accused enters his or her plea and proceeds to trial, he or she is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the attendant circumstances. This is because by not availing of these remedies under the Rules, accused is deemed to have understood the acts imputed against him or her in the Information,[21] including the attending circumstances. As such, if proven during trial, the qualifying circumstance may be appreciated against the accused.[22]

In this regard, the Court En Banc laid down the following guidelines for the Bench and the Bar:

1.

Any Information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty — is present, must state the ultimate facts relative to such circumstance. Otherwise, the Information may be subject to a motion to quash under Section 3(e) (i.e., that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.

Failure of the accused to avail any of the said remedies constitutes a waiver of his [or her] right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him [or her] if proven during trial.

Alternatively, prosecutors may sufficiently aver the ultimate facts relative to a qualifying or aggravating circumstance by referencing the pertinent portions of the resolution finding probable cause against the accused, which should consequently be attached to the Information in accordance with the second guideline below.

2.

Prosecutors must ensure compliance with Section 8(a), Rule 112 of the Revised Rules on Criminal Procedure that mandates the attachment to the Information of the resolution finding probable cause against the accused. Trial courts must ensure that the accused is furnished a copy of this Decision prior to the arraignment.

3.

Cases which have attained finality prior to the promulgation of this Decision will remain final by virtue of the principle of conclusiveness of judgment.

4.

For cases which are still pending before the trial court, the prosecution, when still able, may file a motion to amend the Information pursuant to the prevailing Rules in order to properly allege the aggravating or qualifying circumstance pursuant to this Decision.

5.

For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has already waived

his [or her] right to question the defective statement of the aggravating or qualifying circumstance in the Information, (i.e., whether he [or she] previously filed either a motion to quash under Section 3(e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.[23] (Citation omitted)

In this case, if the Court were to regard niece as too generic or broad a term, then the afore-quoted guidelines in *Solar* applies squarely to this case. Following numbers 1 and 5 of the *Solar* guidelines, if accused-appellant failed to timely file a motion to quash the subject Information or a motion for bill of particulars, the special qualifying circumstance of minority and relationship, broadly alleged in the subject Information may still be appreciated against accused-appellant as it was proven during trial. In such a case, accused-appellant's conviction for Qualified Rape of a Minor would still be proper.

ACCORDINGLY, I vote to CONVICT accused-appellant for Qualified Rape of a Minor. The Decision correctly appreciates the special qualifying circumstance of minority and relationship.

[*] In line with Amended Administrative Circular No. 83-2015 dated September 5, 2017, titled "Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances," the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

[1] *People v. Solar*, 858 Phil. 884 (2019) [Per J. Caguioa, En Banc].

[2] 3 Phil. 223 (1904) [J. Johnson, En Banc].

[3] *Id.* at 226. Citations omitted.

[4] A.M. No. 00-5-03-SC – Re: Revised Rules of Criminal Procedure (Rule 110-127, Revised Rules of Court).

[5] *Villarba v. Court of Appeals*, 874 Phil. 84, 105 (2020) [Per J. Leonen, Third Division].

[6] Rule 110, Section 9, Revised Rules of Criminal Procedure; See also *Villarba v. Court of Appeals*, *id.*

[7] *Supra* note 1.

[8] *People v. Solar*, *id.* at 927. Emphasis supplied. Citations omitted.

[9] *Ponencia*, p. 2.

[10] 393 Phil. 338 (2000) [Per Curiam, En Banc].

[11] *Id.* at 355.

[12] *Id.* at 357.

[13] *Id.* at 352-355.

[14] *Id.* at 349.

[15] See *People v. Talan*, 591 Phil. 812 (2008) [Per J. Carpio, First Division]; *People v. Esperanza*, 453 Phil. 54 (2003) [Per C.J. Davide, En Banc]; and *People v. Ugang*, 431 Phil. 552 (2002) [Per C.J. Davide Jr., En Banc].

[16] *Id.*

[17] CAMBRIDGE DICTIONARY, "niece," available at <https://dictionary.cambridge.org/us/dictionary/english/niece> (last accessed on September 15, 2024).

[18] MERRIAM-WEBSTER DICTIONARY, "niece," available at <https://www.merriam-webster.com/dictionary/niece> (last accessed on September 15, 2024).

[19] OXFORD ENGLISH DICTIONARY, "niece," available at <https://www.oed.com/search/dictionary/?scope=Entries&q=niece> (last accessed on September 17, 2024).

[20] BLACK'S LAW DICTIONARY, "niece," available at <https://thelawdictionary.org/niece> (last accessed on September 17, 2024).

[21] *People v. Solar*, supra note 1.

[22] *Id.* at 931.

[23] *Id.* at 930-931.

CONCURRING AND DISSENTING OPINION

DIMAAMPAO, J.:

I concur with the majority's view insofar as it finds accused-appellant BBB254878 guilty beyond reasonable doubt of the crime of rape. Nonetheless, I submit that he can only be convicted of simple rape since the allegations in the Information are not specific enough to satisfy the special qualifying circumstance of relationship under Article 266-B, paragraph 1[1] of the Revised Penal Code (RPC), as amended by Republic Act No. 8353.[2]

The accusatory portion of the Information reads:

The undersigned hereby accuses BBB254878 of Bgy. xx, xxxxxxxxxxxxxxxx City, Eastern Samar of the crime of Statutory Rape, committed as follows:

That sometimes [sic] [i]n September, 2010 in the evening at Bgy. xxxxxxxxxxxxxxxx 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 have carnal knowledge with [AAA], a minor being 8 years old only and his own neice [sic], against her will and consent, to the damage and prejudice of the herein victim.

CONTRARY TO LAW.[3]

The ponencia held that the foregoing averments are sufficient to qualify the crime of rape, ratiocinating as follows:

While there is diverse jurisprudence on the matter, the use of specific familial terms, like niece or uncle, is adequate to inform the accused of the nature of the relationship between him and the victim, thereby meeting the requirements of the law. There is no ambiguity in the case. The Information explicitly stated that: (1) AAA was only 8 years old when the incident happened, and (2) AAA is accused-appellant's own niece. While the Information did not specify the degree of relationship between AAA and accused-appellant, it nevertheless directly, and in layman's terms, conveyed the nature of the relationship. Verily, a description that clearly and categorically identified AAA as accused-appellant's niece satisfies the requirement to inform him fully and prepare a defense. By clearly defining the familial relationship, the prosecution ensures that the accused-appellant is properly apprised of the accusation, fulfilling the principles of fairness and due process.[4]

I respectfully dissent.

It is hornbook doctrine that the qualifying circumstance of minority of the victim and her relationship to the offender must be specifically alleged in the Information and proven during trial.[5] If the offender "is merely a

relation — not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim — it must be alleged in the information that he is 'a relative by consanguinity or affinity . . . within the third civil degree.'"[6] The failure to do so means that the Information would be considered defective, a conclusion that has been consistently affirmed by the Court.[7] Hence, when the Information, for instance, merely states that the accused is the "uncle of the complainant," the same cannot be used to qualify the crime of rape even if it was proven during trial that he was indeed the victim's relative by affinity within the third civil degree.[8]

Applying these well-settled principles, it follows that the allegation in the Information that AAA, was BBB254878's "own niece," without particularly stating that such relationship was within the third civil degree of affinity or consanguinity, cannot qualify the crime of rape in the instant case.

The foregoing notwithstanding, the ponencia anchors its ruling on cases such as *People v. Abat*,[9] the 2020 case of *People v. XXX*,[10] and the 2022 case of *People v. XXX*. [11] The ponencia posits that in these cases, the respective accused were convicted of qualified rape sans the specific averment that their relationship with the victim was within the third civil degree.[12]

In my humble view, a close reading of these cases — at least the last two that are more recent — reveals that the respective Informations therein included additional details which actually indicated the degree of the relationship involved. For reference, they were worded as follows:

People v. XXX[13] (2020 case)

People v. XXX[14] (2022 case)

That sometime during the month of April 2000 at _____, Philippines, the above named accused, by means of force and intimidation, and exercising moral ascendancy over one [AAA] since he is her maternal uncle, did then and there willfully, unlawfully and feloniously have carnal knowledge of the said [AAA], his very own niece and a minor seven (7) years of age at the time (born May 19, 1993), against the will of the offended party, to her damage and prejudice.

CONTRARY TO LAW. (Underscoring supplied.)

That on or about the 8th day of August 2009 in the _____, 4 and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], 5 a minor 7 years old (sic) aggravated by relationship, the accused being the uncle of the victim because accused is the brother of the victim's father.

CONTRARY TO LAW. (Underscoring supplied.)

In addition to the fact that the Informations provided that both accused were the uncles of their respective victims, it is crystal clear that the express mention of additional factors, i.e., the term "maternal" and the qualifier that the "accused is the brother of the victim's father," highlighted the relationship of the accused with one of the victim's parents. In contrast, the Information herein simply mentioned that AAA was BBB254878's own niece, absent any elucidation on the latter's relationship with the former's father or mother.

Appositely, the present disposition completely overlooks the Court's recognition of the importance of including additional elements in the Information. To my mind, this is precisely the import of the Court's disquisition in the 2022 case of *People v. XXX*,[15] which did not deviate from the general rule that the relationship must be averred with specificity, viz.:

However, contrary to the finding of the CA, We hold that the special qualifying circumstance of relationship was sufficiently alleged in the Information. Indeed, the minority of the victim and his or her relationship with

the offender should both be alleged in the Information and proven beyond reasonable doubt during trial in order to qualify the rape charge as these circumstances have the effect of altering the nature of the rape and its corresponding penalty. If the offender is merely a relation — not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim — it must be alleged in the information that he is "a relative by consanguinity or affinity (as the case may be) within the third civil degree." The allegation that accused-appellant is the uncle of AAA, and a brother of AAA's father, without specifically alleging that such relationship was within the third civil degree, is specific enough to satisfy the special qualifying circumstance of relationship. In *People v. XXX*, the Court considered the qualifying circumstance of relationship even without the specific allegation that the same was within the third civil degree of consanguinity or affinity, since the information therein already described the offender as the "maternal uncle" of the victim. In the same manner, the Information in the instant case contained a statement that "the accused being the uncle of victim because accused is the brother of the victim's father." Hence, accused-appellant can be properly convicted of Qualified Rape.[16] (Underscoring supplied. Citations omitted.)

Likewise, I am mindful that the Court has previously defined the term "niece" as the "female child of a brother or sister, or the daughter of one's brother or sister, or of one's brother-in-law or sister-in-law" in the case of *People v. Gonzales*.^[17] Nonetheless, a reading of the relevant cases decided since its promulgation suggests that the Court has adopted and applied the stringent rule earlier discussed.

For instance, in the en banc case of *People v. Ugang*,^[18] the Court convicted the accused-appellant of simple rape despite the allegation in the Information that the victim was "his 18 years old mentally ill niece."^[19] The Court declared that the Information merely stated that the victim was the accused-appellant's niece and did "not state the specific degree of their relationship."^[20] Likewise, in *People v. Talan*,^[21] accused was found guilty of simple rape since the Information only provided that the person he abducted and raped was his "niece" without specifying that they were relatives within the third degree of consanguinity.^[22]

In *People v. Esperanza*,^[23] the Court sitting en banc illuminated why the use of the term "niece," by itself, is not enough to qualify the crime of rape—

The twin circumstances of minority and relationship under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, are in the nature of qualifying circumstances because they alter the nature of the crime of rape and increase the penalty. As special qualifying circumstances they must be specifically pleaded or alleged with certainty in the information; otherwise, the death penalty cannot be imposed. In these cases, the allegation that Irma is Nelson's niece is not specific enough to satisfy the special qualifying circumstance of relationship. If the offender is merely a relation — not a parent, ascendant, step-parent, guardian, or common law spouse of the mother of the victim — the specific relationship must be alleged in the information, i.e., that he is "a relative by consanguinity or affinity [as the case may be] within the third civil degree." The informations in these cases merely allege that Irma is the "niece" of Nelson. She could be a niece beyond the third civil degree either of consanguinity or affinity. Hence, the informations are fatally defective in this respect.^[24] (Underscoring supplied. Citation omitted.)

Notably, the aforementioned explanation disproves the claim that the term "niece" is a simple and concise term that no longer requires any specificity.

Finally, in the recent case of *People v. XXX*²⁶⁵⁴³⁹,^[25] the Court, in no uncertain terms, decreed that that the Court of Appeals erred in qualifying the crime of rape since the "qualifying circumstance of relationship, however, was not sufficiently alleged in the Informations." The Court observed that it merely averred that accused had the carnal knowledge of his niece; it did not specifically state that the accused was a relative of the victim by consanguinity or affinity within the third civil degree. For reference, one of the Informations therein was worded in the following prose:

Criminal Case No. 11082-G

That on February 19, 2010 at on or about 4:00 in the afternoon in _____, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a seventeen years (sic) old who acted with discernment, with lewd design, did then and there willfully, knowingly and feloniously have carnal knowledge to (sic) his niece [AAA265439] a nine (9) years (sic) old female child by inserting his penis inside her vagina, against her will and to her damage and prejudice.

Contrary to law.[26] (Underscoring supplied)

Significantly, the Court reverberated its pronouncement in *People v. Estrada*,[27] where the term "uncle of the offended party" was likewise deemed insufficient to qualify the crime of rape.

Given the foregoing disquisitions, I submit that the special qualifying circumstance of relationship cannot be used to qualify the crime of rape in this instance by virtue of the lack of specificity of the contents of the present Information. Accordingly, I agree with the Court of Appeals that BBB254878 can only be convicted of statutory rape.[28]

A final cadence. Considering that the present case was resolved through an unsigned resolution, the doctrine espoused in the aforementioned cases of *People v. Ugang*,[29] *People v. Talan*,[30] *People v. Esperanza*,[31] and *People v. XXX265439*,[32] — all full blown Decisions of the Court — appears to remain as the prevailing rule. Fortunately, this view helps avoid the absurd situation where the Court's resolution on whether the crime of rape should be qualified is dependent on whether the Information used the term "niece" or "uncle" to describe the relationship. To reiterate, prevailing case law still does not consider the term "uncle," sans additional details, specific enough to satisfy the special qualifying circumstance of relationship.

All told, I vote to DISMISS the instant appeal. The Decision dated July 7, 2020 of the Court of Appeals in CA-G.R. CEB CR-HC No. 03014 should be affirmed in toto.

[1] When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

[2] Republic Act No. 8353 (1997), An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime against Persons, Amending for the Purpose Act No. 3815, as amended, otherwise known as the Revised Penal Code, and for Other Purposes, The Anti-Rape Law of 1997.

[3] Ponencia, p. 2.

[4] Id. at 9.

[5] See *People v. Flores*, G.R. No. 188315, August 25, 2010 [Per J. Perez, First Division].

[6] See *People v. Libo-on*, G.R. No. 136737, May 23, 2001 [Per J. Gonzaga-Reyes, En Banc].

[7] Id.

[8] Id.

[9] 731 Phil. 304 (2014) [Per J. Leonardo De Castro, First Division].

[10] 886 Phil. 155 (2020) [Per CJ Peralta, First Division].

- [11] G.R. No. 257276, February 28, 2022 [Per J. Hernando, Second Division].
- [12] Ponencia, pp. 8-9.
- [13] 886 Phil. 155 (2020) [Per CJ Peralta, First Division].
- [14] G.R. No. 257276, February 28, 2022 [Per J. Hernando, Second Division].
- [15] Id.
- [16] Id.
- [17] G.R. No. 133859, August 24, 2000 [Per Curiam, En Banc].
- [18] G.R. No. 144036, May 7, 2002 [Per CJ Davide Jr., En Banc].
- [19] Id.
- [20] Id.
- [21] G.R. No. 177354, November 14, 2008 [Per J. Carpio, First Division].
- [22] Id.
- [23] G.R. Nos. 139217-24, June 27, 2003 [Per CJ Davide Jr., En Banc].
- [24] Id.
- [25] G.R. No. 265439, November 13, 2023 [Per J. Lazaro-Javier, Second Division].
- [26] Id.
- [27] G.R. No. 178318, January 15, 2010 [Per J. Del Castillo, Second Division].
- [28] Ponencia, pp. 4-5.
- [29] G.R. No. 144036, May 7, 2002 [Per CJ Davide Jr., En Banc].
- [30] G.R. No. 177354, November 14, 2008 [Per J. Carpio, First Division].
- [31] G.R. Nos. 139217-24, June 27, 2003 [Per CJ Davide Jr., En Banc].
- [32] G.R. No. 265439, November 13, 2023 [Per J. Lazaro-Javier, Second Division].

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