PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS., ROMEO G. JALOSJOS, ACCUSED-APPELLANT.

G.R. Nos. 132875-76. November 16, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This Court has declared that the state policy on the heinous offense of rape is clear and unmistakable. Under certain circumstances, some of them present in this case, the offender may be sentenced to a long period of confinement, or he may suffer death. The crime is an assault on human dignity. No legal system worthy of the name can afford to ignore the traumatic consequences for the unfortunate victim and grievous injury to the peace and good order of the community.[1]

Rape is particularly odious, one which figuratively scrapes the bottom of the barrel of moral depravity, when committed against a minor.[2]

In view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is always scrutinized with extreme caution.[3]

In the present case, there are certain particulars which impelled the court to devote an even more painstaking and meticulous examination of the facts on record and a similarly conscientious evaluation of the arguments of the parties. The victim of rape in this case is a minor below twelve (12) years of age. As narrated by her, the details of the rape are mesmerically sordid and repulsive. The victim was peddled for commercial sex by her own guardian whom she treated as a foster father. Because the complainant was a willing victim, the acts of rape were preceded by several acts of lasciviousness on distinctly separate occasions. The accused is also a most unlikely rapist. He is a member of Congress. Inspite of his having been charged and convicted by the trial court for statutory rape, his constituents liked him so much that they knowingly re-elected him to his congressional office, the duties of which he could not perform.

Statutory rape committed by a distinguished Congressman on an eleven (11) year old commercial sex worker is bound to attract widespread media and public attention. In the words of accused-appellant, "he has been demonized in the press most unfairly, his image transmogrified into that of a dastardly, ogre, out to get his slimy hands on innocent and naïve girls to satiate his lustful desires."[4] This Court, therefore, punctiliously considered accused-appellant's claim that he suffered "invidiously discriminatory treatment." Regarding the above allegation, the Court has ascertained that the extensive publicity generated by the case did not result in a mistrial; the records show that the accused had ample and free opportunity to adduce his defenses.

This is an appeal from the decision[5] of the Regional Trial Court of Makati, Branch 62, in Criminal Case Nos. 96-1985 and 96-1986, convicting accused-appellant Romeo Jalosjos of two (2) counts of statutory rape, and in Criminal Case Nos. 96-1987, 96-1988, 96-1989, 96-1990, 96-1992, and 96-1993, for six (6) counts of acts of lasciviousness defined and penalized under Article 336 of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610, also known as the Child Abuse Law.

There were six (6) other cases, Criminal Case Nos. 96-1991, 96-1994, 96-1995, 96-1996, 96-1997, and 96-1998, where the accused-appellant was acquitted of the charges of acts of lasciviousness for failure of the prosecution to prove his guilt beyond reasonable doubt.

On December 16, 1996, two (2) informations for the crime of statutory rape; and twelve (12) for acts of lasciviousness defined and penalized under Article 336 of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610, were filed against accused-appellant. The accusatory portion of said informations for the crime of statutory rape state:

> In Criminal Case No. 96-1985:
>
> The undersigned, upon prior sworn complaint by the offended party, eleven (11) year old minor ROSILYN DELANTAR, accuses ROMEO JALOSJOS of the crime of RAPE defined and penalized under Art. 335 (3) of the Revised Penal Code, committed as follows:
> That on or about June 18, 1996 at Room No.1702, Ritz Towers, Makati City, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge with (sic) eleven year old minor Rosilyn Delantar against her will, with damage and prejudice.
>
> **CONTRARY TO LAW.[6]**

In Criminal Case No. 96-1986:

The undersigned, upon prior sworn complaint by the offended party, eleven (11) year old minor ROSILYN DELANTAR, accuses ROMEO JALOSJOS of the crime of RAPE defined and penalized under Art. 335 (3) of the Revised Penal Code, committed as follows:

> That on or about June 20, 1996 at Room No. 1702, Ritz Towers, Makati City, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge with (sic) eleven year old minor Rosilyn Delantar against her will, with damage and prejudice.
>
> **CONTRARY TO LAW.[7]**

For acts of lasciviousness, the informations[8] under which accused-appellant was convicted were identical except for the different dates of commission on June 14, 1996; June 15, 1996; June 16, 1996; June 20, 1996; June 21, 1996; and June 22, 1996, to wit:

> The undersigned, upon prior sworn complaint by the offended party, eleven (11)-year old minor ROSILYN DELANTAR accuses ROMEO JALOSJOS of the crime of ACTS OF LASCIVIOUSNESS in relation to Section 5 (b), Article III of Republic Act No. 7610, otherwise known as the Special Protection of Children against Abuse, Exploitation and Discrimination Act, committed as follows:
> That in the evening of June 14, 1996, or thereabout, in Room No. 1702, Ritz Towers, Makati City, Metro-Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously kiss, caress and fondle said complainant's face, lips, neck, breasts, whole body, and vagina, suck her nipples and insert his finger and then his tongue into her vagina, place himself on top of her, then insert his penis in between her thighs until ejaculation, and other similar lascivious conduct against her will, to her damage and prejudice.

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CONTRARY TO LAW.

In Criminal Cases Nos. 96-1988; 96-1990; and 96-1993, there were added averments that on the different dates, the accused gave the complainant P10,000.00, P5,000.00 and P5,000.00 respectively.

Upon arraignment on January 29, 1997, accused-appellant refused to enter a plea. Hence, the trial court entered a plea of not guilty for him. At the trial, the prosecution presented eight (8) main witnesses and seven (7) rebuttal witnesses as well as documentary evidences marked as Exhibits A to EEEE, inclusive of submarkings. The defense, on the other hand presented twenty-six (26) witnesses. Its documentary evidence consists of Exhibits 1 to 153, inclusive of submarkings. The records of the case are extremely voluminous.

The People's version of the facts, culled mainly from the testimony of the victim, are as follows:

Maria Rosilyn Delantar was a slim, eleven-year old lass with long, straight black hair and almond-shaped black eyes. She grew up in a two-storey apartment in Pasay City under the care of Simplicio Delantar, whom she treated as her own father. Simplicio was a fifty-six year old homosexual whose ostensible source of income was selling longganiza and tocino and accepting boarders at his house. On the side, he was also engaged in the skin trade as a pimp.

Rosilyn never got to see her mother, though she had known a younger brother, Shandro, who was also under the care of Simplicio. At a very young age of 5, fair and smooth-complexioned Rosilyn was exposed by Simplicio to his illicit activities. She and her brother would tag along with Simplicio whenever he delivered prostitutes to his clients. When she turned 9, Rosilyn was offered by Simplicio as a prostitute to an Arabian national known as Mr. Hammond. Thus begun her ordeal as one of the girls sold by Simplicio for sexual favors.

Rosilyn first met accused-appellant, Romeo Jalosjos, sometime in February 1996 at his office located near Robinson's Galleria. Rosilyn and Simplicio were brought there and introduced by a talent manager by the name of Eduardo Suarez. Accused-appellant promised to help Rosilyn become an actress. When he saw Rosilyn, accused-appellant asked how old she was. Simplicio answered, "10. She is going to be 11 on May 11." Accused-appellant inquired if Rosilyn knows how to sing. Simplicio told Rosilyn to sing, so she sang the song, "Tell Me You Love Me." Accused-appellant then asked if Rosilyn has nice legs and then raised her skirt up to the mid-thighs. He asked if she was already menstruating, and Simplicio said yes. Accused-appellant further inquired if Rosilyn already had breasts. When nobody answered, accused-appellant cupped Rosilyn's left breast. Thereafter, accused-appellant assured them that he would help Rosilyn become an actress as he was one of the producers of the TV programs, "Valiente" and "Eat Bulaga."

Simplicio and Suarez then discussed the execution of a contract for Rosilyn's movie career. Accused-appellant, on the other hand, said that he would adopt Rosilyn and that the latter would have to live with him in his condominium at the Ritz Towers. Before Simplicio and Rosilyn went home, accused-appellant gave Rosilyn P2,000.00.

The second time Rosilyn met accused-appellant was at his condominium unit, located at Room 1702, Ritz Towers, Makati City. Accused-appellant and Simplicio discussed the contract and his plan to finance Rosilyn's studies. Accused-appellant gave Simplicio P500.00, thereafter, Rosilyn, Shandro and Simplicio left.

The third meeting between Rosilyn and accused-appellant was also at Ritz Towers to discuss her acting career. Accused-appellant referred the preparation of Rosilyn's contract to his lawyer, who was also present. After the meeting, Simplicio and Rosilyn left. As they were walking towards the elevator, accused-appellant approached them and gave Rosilyn P3,000.00.

On June 14, 1996, at about 8:30 to 9:00 p.m., Simplicio and Rosilyn returned to accused-appellant's condominium unit at Ritz Towers. When accused-appellant came out of his bedroom, Simplicio told Rosilyn to go inside the bedroom, while he and accused-appellant stayed outside. After a while, accused-appellant entered the bedroom and found Rosilyn watching television. He walked towards Rosilyn and kissed her on the lips, then left the room again. Simplicio came in and bid her goodbye. Rosilyn told Simplicio that accused-appellant kissed her to which Simplicio replied, "Halik lang naman."

Rosilyn was left alone in the bedroom watching television. After some time, accused-appellant came in and entered the bathroom. He came out clad in a long white T-shirt on which was printed the word, "Dakak." In his hand was a plain white T-shirt. Accused-appellant told Rosilyn that he wanted to change her clothes. Rosilyn protested and told accused-appellant that she can do it herself, but accused-appellant answered, "Daddy mo naman ako." Accused-appellant then took off Rosilyn's blouse and skirt. When he was about to take off her panties, Rosilyn said, "Huwag po." Again, accused-appellant told her, "After all, I am your Daddy." Accused-appellant then removed her panties and dressed her with the long white T-shirt.

The two of them watched television in bed. After sometime, accused-appellant turned off the lamp and the television. He turned to Rosilyn and kissed her lips. He then raised her shirt, touched her breasts and inserted his finger into her vagina. Rosilyn felt pain and cried out, "Tama na po." Accused-appellant stopped. He continued to kiss her lips and fondle her breasts. Later, accused-appellant told Rosilyn to sleep.

The following morning, Rosilyn was awakened by accused-appellant whom she found bent over and kissing her. He told her to get up, took her hand and led her to the bathroom. He removed Rosilyn's shirt and gave her a bath. While accused-appellant rubbed soap all over Rosilyn's body, he caressed her breasts and inserted his finger into her vagina. After that, he rinsed her body, dried her with a towel and applied lotion on her arms and legs. Then, he dried her hair and told her to dress up. Rosilyn put on her clothes and went out of the bathroom, while accused-appellant took a shower.

Accused-appellant ate breakfast while Rosilyn stayed in the bedroom watching television. When accused-appellant entered the room, he knelt in front of her, removed her panties and placed her legs on his shoulders. Then, he placed his tongue on her vagina. Thereafter, he gave Rosilyn P10,000.00 and told his housemaid to take her shopping at Shoemart. When she returned to the Ritz Towers, Simplicio was waiting for her. The two of them went home. Rosilyn narrated to Simplicio what accused-appellant did to her, and pleaded for him not to bring her back to the Ritz Towers. Simplicio told her that everything was alright as long as accused-appellant does not have sexual intercourse with her.

That same evening, at around 9:00 to 9:30 in the evening, Simplicio again brought Rosilyn to the Ritz Towers. After Simplicio left, accused-appellant removed Rosilyn's clothes and dressed her with the same long T-shirt. They watched television for a while, then accused-appellant sat beside Rosilyn and kissed her on the lips. He made Rosilyn lie down, lifted her shirt above her breasts, and inserted his finger into her vagina. Then, accused-appellant removed his own clothes, placed his penis between Rosilyn's thighs and made thrusting motions until he ejaculated on her thighs. Thereafter, accused-appellant kissed her and told her to sleep.

The next day, June 16, 1996, accused-appellant roused her from sleep and bathed her. Again, he rubbed soap all over her body, washed her hair, and thereafter rinsed her body and dried her hair. While accused-appellant was bathing Rosilyn, he asked her to fondle his penis while he caressed her breasts and inserted his finger into her vagina. After their shower, accused-appellant ate breakfast. He gave Rosilyn P5,000.00 and told her to just wait for Simplicio in the condominium unit. On their way home, Simplicio told Rosilyn that if accused-appellant tries to insert his penis into her vagina, she should refuse.

At around 8:00 p.m. of June 18, 1996, Simplicio brought Rosilyn to the Ritz Towers. They found accused-appellant sitting on the bed in his bedroom. Simplicio told Rosilyn to approach accused-appellant, then he left. Accused-appellant took off Rosilyn's clothes and dressed her with a long T-shirt on which was printed a picture of accused-appellant and a woman, with the caption, "Cong. Jalosjos with his Toy." They watched television for a while, then accused-appellant lay beside Rosilyn and kissed her on the lips. He raised her shirt and parted her legs. He positioned himself between the spread legs of Rosilyn, took off his own shirt, held his penis, and poked and pressed the same against Rosilyn's vagina. This caused Rosilyn pain inside her sex organ. Thereafter, accused-appellant fondled her breasts and told her to sleep.

When Rosilyn woke up the following morning, June 19, 1996, accused-appellant was no longer around but she found P5,000.00 on the table. Earlier that morning, she had felt somebody touching her private parts but she was still too sleepy to find out who it was. Rosilyn took a bath, then went off to school with Simplicio, who arrived to fetch her.

The next encounter of Rosilyn with accused-appellant was on June 21, 1996, at about 9:00 o'clock in the evening in his bedroom at the Ritz Towers. Accused-appellant stripped her naked and again put on her the long shirt he wanted her to wear. After watching television for a while, accused-appellant knelt beside Rosilyn, raised her shirt, caressed her breasts and inserted his finger into her vagina. Then, he clipped his penis between Rosilyn's thighs, and made thrusting motions until he ejaculated. Thereafter, Rosilyn went to sleep.

The next day, June 22, 1996, Rosilyn was awakened by accused-appellant who was kissing her and fondling her sex organ. She, however, ignored him and went back to sleep. When she woke up, she found the P5,000.00 which accused-appellant left and gave the same to Simplicio Delantar, when the latter came to pick her up.

On June 29, 1996, Rosilyn again went to the Ritz Towers. During that visit, accused-appellant took photographs of Rosilyn. He asked her to pose with her T-shirt pulled down thereby exposing her breasts. He also took her photographs with her T-shirt rolled up to the pelvis but without showing her pubis, and finally, while straddled on a chair facing the backrest, showing her legs.

Before Rosilyn went to sleep, accused-appellant kissed her lips, fondled her breasts and inserted his finger into her vagina. The following morning, she woke up and found the P5,000.00 left by accused-appellant on the table. She recalled that earlier that morning, she felt somebody caressing her breasts and sex organ.

On July 2, 1996 at 7:00 p.m., Rosilyn and Simplicio returned to the Ritz Towers. Rosilyn had to wait for accused-appellant, who arrived between 12:00 to 1:00 a.m. He again dressed her with the long white shirt similar to what he was wearing. While sitting on the bed, accused-appellant kissed her lips and inserted his tongue into her mouth. He then fondled her breasts and inserted his finger into her vagina, causing her to cry in pain. Accused-appellant stopped and told her to sleep.

The next morning, accused-appellant bathed her again. While he soaped her body, he fondled her breasts and inserted his finger in her vagina. Rosilyn felt pain and shoved his hand away. After bathing her, accused-appellant had breakfast. Before he left, he gave Rosilyn P5,000.00. As soon as Simplicio arrived, Rosilyn gave her the money and then they left for school.

On July 20, 1996, Simplicio again brought Rosilyn to the Ritz Towers. Accused-appellant was waiting in his bedroom. He took off Rosilyn's clothes, including her panties, and dressed her with a long T-shirt similar to what he was wearing. After watching television, accused-appellant kissed Rosilyn on the lips, inserted his tongue in her mouth and fondled her breasts. Then, he made Rosilyn lie on the bed, spread her legs apart and placed a pillow under her back. He inserted his finger in her vagina and mounted himself between her legs with his hands rested

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on her sides. After that, he lifted his shirt, then pointed and pressed his penis against her vagina. Accused-appellant made thrusting motions, which caused Rosilyn pain. Thereafter, accused-appellant told her to sleep.

In the early morning of July 21, 1996, Rosilyn felt somebody touching her sex organ, but she did not wake up. When she woke up later, she found P5,000.00 on the table, and she gave this to Simplicio when he came to fetch her.

On August 15, 1996, Rosilyn and Simplicio went to the Ritz Towers at around 7:00 p.m. Accused-appellant was about to leave, so he told them to come back later that evening. The two did not return.

The following day, Rosilyn ran away from home with the help of Yamie Estreta, one of their boarders. Yamie accompanied Rosilyn to the Pasay City Police, where she executed a sworn statement against Simplicio Delantar. Rosilyn was thereafter taken to the custody of the Department of Social Welfare and Development (DSWD). The National Bureau of Investigation (NBI) conducted an investigation, which eventually led to the filing of criminal charges against accused-appellant.

On August 23, 1996, Rosilyn was examined by Dr. Emmanuel L. Aranas at Camp Crame. The examination yielded the following results:

> EXTERNAL AND EXTRAGENITAL
>
> Fairly developed, fairly nourished and coherent female subject. Breasts are conical with pinkish brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft
>
> GENITAL
>
> There is moderate growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy type hymen, with shallow healed laceration at 3 o'clock position and deep healed laceration at 8 o'clock position. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.
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> CONCLUSION:
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> Subject is in non-virgin state physically.
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> There are no external signs of application of any form of violence.[9]

During the trial, accused-appellant raised the defense of denial and alibi. He claimed that it was his brother, Dominador "Jun" Jalosjos, whom Rosilyn had met, once at accused-appellant's Dakak office and twice at the Ritz Towers. Accused-appellant insisted that he was in the province on the dates Rosilyn claimed to have been sexually abused. He attributed the filing of the charges against him to a small group of blackmailers who wanted to extort money from him, and to his political opponents, particularly Ex-Congressman Artemio Adaza, who are allegedly determined to destroy his political career and boost their personal agenda.

More specifically, accused-appellant claims that on June 16, 1996, he was on the Philippine Airlines (PAL) 9:40 a.m. flight from Manila to Dipolog. He stayed in Dipolog until June 18, 1996. He submitted in evidence airline ticket no. 10792424,[10] showing that he was on board Flight PR 165; the said flight's passenger's manifest,[11] where the name JALOSJOS/RM/MR appears; and photographs showing accused-appellant's constituents welcoming his arrival and showing accused-appellant talking with former Mayor Hermanico Carreon and Fiscal Empainado.

Accused-appellant further alleges that on June 28, 1996, he again took the 9:40 a.m. flight from Manila to Dipolog City. On the same flight, he met Armando Nocom of the Philippine Daily Inquirer. Upon arrival and after talking to his representatives, he proceeded to his residence known as "Barangay House" in Taguinon, Dapitan, near Dakak Beach resort, and spent the night there.

On June 29, 1996, accused-appellant attended the fiesta at Barangay San Pedro. He stayed in the house of Barangay Captain Mila Yap until 5:30 p.m. Then, together with some friends, he visited the Rizal Shrine and the Pirate Bar at Dakak Beach Resort. Thereafter, he retired in the "Barangay House" in Taguilon.

On June 30, 1996, accused-appellant alleges that he attended a city-wide consultation with his political leaders at the Blue Room of Dakak, which lasted till the afternoon. In the evening, he went home and slept in the "Barangay House."

On July 1, 1996, he attended the whole day celebration of Dipolog Day. He spent the night in the "Barangay House."

On July 2, 1996, he attended the inauguration of the reception hall of Dakak Beach Resort. The blessing ceremony was officiated by Assistant Parish Priest Adelmo Laput.

On July 3, 1996, he was the guest in the inaguration of the 3[rd] Engineering District of Dapitan City. After the mass, he visited the Jamboree site in Barangay Taguilon, Dapitan City.

He further contended that after his arrival in Dipolog on June 28, 1996, there was never an instance when he went to Manila until July 9, 1996, when he attended a conference called by the President of the Philippines.

Accused-appellant likewise alleged that on July 21, 1996, he took the 5:00 a.m. flight of PAL from Manila to Dumaguete City. From there, he was flown by a private plane to Dipolog, where he stayed until the President of the Philippines arrived.

To buttress the theory of the defense, Dominador "Jun" Jalosjos testified that he was the one, and not accused-appellant, whom Rosilyn met on three occasions. These occurred once during the first week of May 1996, at accused-appellant's Dakak office where Rosilyn and Simplicio Delantar were introduced to him by Eduardo Suarez, and twice at the Ritz Towers when he interviewed Rosilyn, and later when Rosilyn and Simplicio followed up the proposed entry of Rosilyn into the show business.

Dominador's admission of his meetings with Rosilyn on three instances were limited to interviewing her and assessing her singing and modeling potentials. His testimony made no mention of any sexual encounter with Rosilyn.

After trial, the court rendered the assailed decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

> - In Criminal Cases Nos. 96-1985 and 96-1986, the prosecution has proven beyond reasonable doubt the guilt of the accused, ROMEO JALOSJOS y GARCIA, as principal in the two (2) counts of statutory rape defined and penalized under Article 335 of the Revised Penal Code. He is hereby declared CONVICTED in each of these cases.
>
> - Accordingly, he is sentenced to:
>
> 2a. suffer the penalty of reclusion perpetua in each of these cases.
>
> 2b. indemnify the victim, MA. ROSILYN DELANTAR, in the amount of FIFTY THOUSAND PESOS (P50,000.00) as moral damages for each of the cases.

- In Criminal Cases Nos. 96-1987, 96-1988, 96-1989, 96-1990, 96-1992 and 96-1993, the prosecution has proven beyond reasonable doubt the guilt of the accused, ROMEO JALOSJOS y GARCIA, as principal in six (6) counts of acts of lasciviousness defined under Article 336 of the Revised Penal Code and penalized under Section 5 (b) of R.A. 7610 otherwise known as the Child Abuse Law. He is hereby declared CONVICTED in each of these cases;

- Accordingly he is sentenced to:

4.a. suffer in each of the cases an indeterminate prison term of from eight (8) years, eight (8) months and one (1) day of prision mayor in its medium period, as maximum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal in its medium period, as maximum;

4.b. indemnify the victim, MA ROSILYN DELANTAR, in the amount of TWENTY THOUSAND (P20,000.00) as moral damages for each of the cases;

- In Criminal Case Nos. 96-1991, 96-1994, 96-1995, 96-1996, 96-1997 and 96-1998, the prosecution has failed to prove beyond reasonable doubt the guilt of the accused, ROMEO JALOSJOS y GARCIA, in six (6) counts of acts of lasciviousness. Therefore, on the ground of reasonable doubt, the accused in these cases is hereby ACQUITTED.

SO ORDERED.[12]

Hence, the instant appeal. Accused-appellant contends:

A.

THE TRIAL COURT GRIEVOUSLY ERRED IN CONVICTING THE ACCUSED-APPELLANT BASED ON TESTIMONY OF THE PRIVATE COMPLAINANT, CONSIDERING THE ATTENDANT INDICIA OF INCONSISTENCIES AND UNTRUTHS.

B.

THE TRIAL COURT GRIEVOUSLY ERRED IN DISREGARDING THE SIGNIFICANCE OF THE CONFLICTING STATEMENTS GIVEN BY THE PRIVATE COMPLAINANT.

C.

THE TRIAL COURT GRIEVOUSLY ERRED IN DISREGARDING THE SIGNIFICANCE OF PRIVATE COMPLAINANT'S FAILURE TO IDENTIFY THE ACCUSED-APPELLANT.

D.

THE TRIAL COURT GRIEVOUSLY ERRED IN RULING THAT THE PRIVATE COMPLAINANT WAS A MINOR LESS THAN TWELVE YEARS OF AGE WHEN THE CLAIMED INCIDENTS ALLEGEDLY TOOK PLACE.

E.

THE TRIAL COURT GRIEVOUSLY ERRED IN FINDING THAT RAPE WAS COMMITTED AGAINST THE PRIVATE COMPLAINANT.[13]

In this jurisdiction, the testimony of the private complainant in rape cases is scrutinized with utmost caution. The constitutional presumption of innocence requires no less than moral certainty beyond any scintilla of doubt. This applies with more vigor in rape cases where the evidence for the prosecution must stand or fall on its own merits and is not allowed to draw strength from the weakness of the evidence of the defense. As an inevitable consequence, it is the rape victim herself that is actually put on trial. The case at bar is no exception. Bent on

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destroying the veracity of private complainant's testimony, the errors assigned by accused-appellant, particularly the first three, are focused on the issue of credibility.

Accused-appellant makes much of his acquittal in Criminal Case Nos. 96-1991, 96-1994, 96-1995, 96-1996, 96-1997, and 96-1998, for acts of lasciviousness. According to him, the fact that the trial court sustained his defense of alibi in the said cases only shows that Rosilyn concocted her stories and the rest of her testimony ought not to be believed. Stated differently, accused-appellant urges the application of the doctrine of "falsus in uno falsus in omnibus" (false in part, false in everything).[14]

The contention is without merit. Falsus in uno falsus in omnibus is not an absolute rule of law and is in fact rarely applied in modern jurisprudence.[15] Thus, in People v. Yanson-Dumancas,[16] citing People v. Li Bun Juan,[17] this Court held that:

> ... In this connection it must be borne in mind that the principle falsus in uno falsus in omnibus is not an absolute one, and that it is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. In People vs. Keller, 46 O.G. No. 7, pp. 3222-3223, the following was quoted with approval by the Court of Appeals from 1 Moore on Facts, p. 23:
> "18. Testimony may be partly credited and partly rejected. --- Trier of facts are not bound to believe all that any witness has said; they may accept some portions of his testimony and reject other portions, according to what seems to them, upon other facts and circumstances to be the truth... Even when witnesses are found to have deliberately falsified in some material particulars, the jury are not required to reject the whole of their uncorroborated testimony, but may credit such portions as they deem worthy of belief." (p. 945)[18]

Being in the best position to discriminate between the truth and the falsehood, the trial court's assignment of values and weight on the testimony of Rosilyn should be given credence. Significantly, it should be borne in mind that the issue at hand hinges on credibility, the assessment of which, as oft-repeated, is best made by the trial court because of its untrammeled opportunity to observe her demeanor on the witness stand.

On the demeanor and manner of testifying shown by the complainant, the trial court stated:

> Guided by the foregoing principles, this court found no reason why it should not believe Rosilyn when she claimed she was raped. Testimonies of rape victims especially those who are young and immature deserve full credence (People v. Liquiran, 228 SCRA 62 (1993) considering that "no woman would concoct a story of defloration, allow an examination of her private parts and thereafter allow herself to be perverted in a public trial if she was not motivated solely by the desire to have the culprit apprehended and punished." (People v. Buyok, 235 SCRA 622 [1996]).
>
> When asked to describe what had been done to her, Rosilyn was able to narrate spontaneously in detail how she was sexually abused. Her testimony in this regard was firm, candid, clear and straightforward, and it remained to be so even during the intense and rigid cross-examination made by the defense counsel.[19]

Accused-appellant next argues that Rosilyn's direct and redirect testimonies were rehearsed and lacking in candidness. He points to the supposed hesitant and even idiotic answers of Rosilyn on cross and re-cross examinations. He added that she was trained to give answers such as, "Ano po?", "Parang po," "Medyo po," and "Sa tingin ko po."

Accused-appellant's arguments are far from persuasive. A reading of the pertinent transcript of stenographic notes reveals that Rosilyn was in fact firm and consistent on the fact of rape and lascivious conduct committed on her by accused-appellant. She answered in clear, simple and natural words customary of children of her age. The above phrases quoted by accused-appellant as uttered by Rosilyn are, as correctly pointed out by the Solicitor General, typical answers of child witnesses like her.

At any rate, even assuming that Rosilyn, during her lengthy ordeals on the witness stand, may have given some ambiguous answers, they refer merely to minor and peripheral details which do not in any way detract from her firm and straightforward declaration that she had been molested and subjected to lascivious conduct by accused-appellant. Moreover, it should be borne in mind that even the most candid witness oftentimes makes mistakes and confused statements. At times, far from eroding the effectiveness of the evidence, such lapses could, indeed, constitute signs of veracity.[20]

Then, too, accused-appellant capitalizes on the alleged absence of any allegation of rape in the five (5) sworn statements executed by Rosilyn as well as in the interviews and case study conducted by the representatives of the DSWD. In particular, accused-appellant points to the following documents:

(1)

Sworn statements dated August 22 and 26, 1996, executed before SPO5 Milagros A. Carrasco of the Pasay City Police;

(2)

Sworn statements dated September 5, 11, and 19, 1996, executed before NBI Agents Cynthia L. Mariano and Supervising NBI Agent Arlis E. Vela;

(3)

The Initial Interview of Rosilyn by the DSWD dated August 30, 1996;

(4)

DSWD Final Case Study Report dated January 10, 1997.

It must be stressed that "rape" is a technical term, the precise and accurate definition of which could not have been understood by Rosilyn. Indeed, without the assistance of a lawyer, who could explain to her the intricacies of rape, she expectedly could not distinguish in her affidavits and consequently disclose with proficient exactitude the act or acts of accused-appellant that under the contemplation of law constitute the crime of rape. This is especially true in the present case where there was no exhaustive and clear-cut evidence of full and complete penetration of the victim's vagina. It may well be that Rosilyn thought, as any layman would probably do, that there must be the fullest penetration of the victim's vagina to qualify a sexual act to rape.

In People v. Campuhan,[21] we ruled that rape is consummated "by the slightest penetration of the female organ, i.e., touching of either labia of the pudendum by the penis." There need not be full and complete penetration of the victim's vagina for rape to be consummated. There being no showing that the foregoing technicalities of rape was fully explained to Rosilyn on all those occasions that she was interviewed by the police, the NBI agents and DSWD social workers, she could not therefore be expected to intelligibly declare that accused-appellant's act of pressing his sex organ against her labia without full entry of the vaginal canal amounted to rape.

In the decision of the trial court, the testimony on one of the rapes is cited plus the court's mention of the jurisprudence on this issue, to wit:

Q:

You said that when Congressman Jalosjos inserted his finger into your vagina, your back was rested on a pillow and your legs were spread wide apart, what else did he do?

A:

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> He lifted his shirt, and held his penis; and again "idinikit-dikit niya ang ari niya sa ari ko." (underscoring supplied)
>
> Q:
>
> And, after doing that: "Idinikit-dikit niya yong ari niya sa ari ko"; what else did he do?
>
> A:
>
> After that, "Itinutok niya po yong ari niya at idiniin-diin niya ang ari niya sa ari ko." (underscoring supplied)
>
> (pp. 23, 25 to 30, TSN, 16 April 1997)
>
> It is well-entrenched in this jurisdiction that rape can be committed even without full penetration of the male organ into the vagina of the woman. It is enough that there be proof of the entrance of the male organ within the labia of the pudendum of the female organ. (People vs. Mangalino, 182 SCRA 329; People vs. Tismo, 204 SCRA 535; People vs. Bacani, 181 SCRA 393). "Penetration of the penis by entry into the lips of the female organ suffices to warrant a conviction." (People vs. Galimba, G.R. No. 111563-64, February 20, 1996 citing People vs. Abonada, 169 SCRA 530). Hence, with the testimony of Rosilyn that the accused pressed against ("idiniin") and pointed to ("itinutok") Rosilyn's vagina his sexual organ on two (2) occasions, two (2) acts of rape were consummated.[22]

Moreover, it must be borne in mind that Rosilyn's purpose in executing the affidavits on August 22 and 26, 1996 before the Pasay City Police was to charge Simplicio Delantar, not accused-appellant. As aptly pointed out by the trial court, it is preposterous to expect Rosilyn to make an exhaustive narration of the sexual abuse of accused-appellant when he was not the object of the said complaint.

Additionally, Rosilyn's statements, given to the NBI on September 11 and 19, 1996, concerned mainly the identification of pictures. There was thus no occasion for her to narrate the details of her sexual encounter with accused-appellant.

As to the interviews and studies conducted by the DSWD, suffice it to state that said meetings with Rosilyn were specially focused on the emotional and psychological repercussions of the sexual abuse on Rosilyn, and had nothing to do with the legal actions being prepared as a consequence thereof. Thus, the documents pertaining to said interviews and studies cannot be relied upon to reveal every minute aspect of the sexual molestations complained of.

At any rate, the inconsistencies between the affidavits and Rosilyn's testimony, if at all they existed, cannot diminish the probative value of Rosilyn's declarations on the witness stand. The consistent ruling of this Court is that, if there is an inconsistency between the affidavit of a witness and her testimonies given in open court, the latter commands greater weight than the former.[23]

In the third assigned error, accused-appellant attempts to impress upon this Court that Rosilyn gave the name Congressman Romeo Jalosjos as her abuser only because that was the name given to her by the person to whom she was introduced. That same name, accused-appellant claims, was merely picked up by Rosilyn from the name plate, plaque, and memo pad she saw on accused-appellant's office desk. Accused-appellant presented his brother, Dominador "Jun" Jalosjos, in an attempt to cast doubt on his culpability. It was Dominador "Jun" Jalosjos who allegedly met and interviewed Rosilyn at the Dakak office. In advancement of this theory, accused-appellant cites the fact that out of a total of 16 pictures presented to Rosilyn for identification, she picked up only 4, which depict Dominador "Jun" Jalosjos. In the same vein, accused-appellant claims that the resulting cartographic sketch from the facial characteristics given by Rosilyn to the cartographer, resembles the facial appearance of Dominador "Jun" Jalosjos. Accused-appellant also points out that Rosilyn failed to give his correct age or state that he has a

mole on his lower right jaw.

Contrary to the contentions of accused-appellant, the records reveal that Rosilyn positively and unhesitatingly identified accused-appellant at the courtroom. Such identification during the trial cannot be diminished by the fact that in her sworn statement, Rosilyn referred to accused-appellant as her abuser based on the name she heard from the person to whom she was introduced and on the name she saw and read in accused-appellant's office. Verily, a person's identity does not depend solely on his name, but also on his physical features. Thus, a victim of a crime can still identify the culprit even without knowing his name. Similarly, the Court, in People v. Vasquez,[24] ruled that:

> It matters little that the eyewitness initially recognized accused-appellant only by face... [the witness] ... acted like any ordinary person in making inquiries to find out the name that matched [appellant's] face. Significantly, in open court, he unequivocally identified accused-appellant as their assailant.

Even in the case of People v. Timon,[25] relied upon by accused-appellant to discredit his identification, this Court said that even assuming that the out-of-court identification of accused-appellant was defective, their subsequent identification in court cured any flaw that may have initially attended it.

In light of the foregoing, Rosilyn's failure to identify accused-appellant out of the 16 pictures shown to her does not foreclose the credibility of her unqualified identification of accused-appellant in open court. The same holds true with the subject cartographic sketch which, incidentally, resembles accused-appellant. As noted by the trial court, accused-appellant and his brother Dominador Jalosjos have a striking similarity in facial features. Naturally, if the sketch looks like Dominador, it logically follows that the same drawing would definitely look like accused-appellant.

Likewise, Rosilyn's failure to correctly approximate the age of accused-appellant and to state that he has a mole on the lower right jaw, cannot affect the veracity of accused-appellant's identification. At a young age, Rosilyn cannot be expected to give the accurate age of a 56 year-old person. As to accused-appellant's mole, the Solicitor General is correct in contending that said mole is not so distinctive as to capture Rosilyn's attention and memory. When she was asked to give additional information about accused-appellant, Rosilyn described him as having a "prominent belly." This, to our mind, is indeed a more distinguishing feature that would naturally catch the attention of an eleven year-old child like Rosilyn.

In his fifth assigned error, accused-appellant insists that the words "idinikit," "itinutok," and "idiniin-diin," which Rosilyn used to describe what accused-appellant did to her vagina with his genitals, do not constitute consummated rape. In addition, the defense argued that Rosilyn did not actually see accused-appellant's penis in the supposed sexual contact. In fact, they stressed that Rosilyn declared that accused-appellant's semen spilled in her thighs and not in her sex organ.

Moreover, in his Reply Brief, accused-appellant, citing People v. Campuhan, argued that, assuming that his penis touched or brushed Rosilyn's external genitals, the same is not enough to establish the crime of rape.

True, in People v. Campuhan,[26] we explained that the phrase, "the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge," means that the act of touching should be understood here as inherently part of the entry of the penis into the labia of the female organ and not mere touching alone of the mons pubis or the pudendum. We further elucidated that:

> The pudendum or vulva is the collective term for the female genital organs that are visible in the perineal area, e.g., mons pubis, labia majora, labia minora, the hymen, the clitoris, the vaginal orifice, etc. The mons pubis is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the labia majora or the outer lips of the female organ composed of the outer convex surface and the

> inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hairs but has many sebaceous glands. Directly beneath the labia majora is the labia minora. Jurisprudence dictates that the labia majora must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the mons pubis of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, i.e., touching of either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.[27]

In the present case, there is sufficient proof to establish that the acts of accused-appellant went beyond "strafing of the citadel of passion" or "shelling of the castle of orgasmic potency," as depicted in the Campuhan case, and progressed into "bombardment of the drawbridge [which] is invasion enough,"[28] there being, in a manner of speaking, a conquest of the fortress of ignition. When the accused-appellant brutely mounted between Rosilyn's wide-spread legs, unfetteredly touching, poking and pressing his penis against her vagina, which in her position would then be naturally wide open and ready for copulation, it would require no fertile imagination to belie the hypocrisy claimed by accused-appellant that his penis or that of someone who looked like him, would under the circumstances merely touch or brush the external genital of Rosilyn. The inevitable contact between accused-appellant's penis, and at the very least, the labia of the pudendum of Rosilyn, was confirmed when she felt pain inside her vagina when the "idiniin" part of accused appellant's sex ritual was performed.

The incident on June 18, 1996 was described by Rosilyn as follows:

> PROS. ZUNO:
>
> Q.
>
> And, after kissing your lips; after kissing you in your lips, what else did he do?
>
> A.
>
> After that, he was lifting my shirt.
>
> Q.
>
> Now, while he was lifting your shirt, what was your position; will you tell the court?
>
> A.
>
> I was lying, sir.
>
> Q.
>
> Lying on what?
>
> A.
>
> On the bed, sir.
>
> Q.
>
> And, after lifting your shirt, what else did he do?
>
> A.

He spread my legs sir.

Q.

And, after spreading your legs apart; what did he do?

A.

After that, he lifted his shirt and held his penis.

Q.

And while he was holding his penis; what did he do?

A.

He pressed it in my vagina.

ATTY. FERNANDEZ:

May we request that the vernacular be used?

A.

Tapos po, idinikit-dikit po niya yong ari niya sa ari ko.

PROS. ZUNO:

May I respectfully move that the word: "idinikit-dikit niya ang ari niya sa ari ko," be incorporated?

Q.

And while he was doing that; according to you, "idinikit-dikit niya ang ari niya sa ari mo;" what did you feel?

A.

I was afraid and then, I cried.

Q.

Will you tell the Court why you felt afraid and why you cried?

A.

Because I was afraid he might insert his penis into my vagina.

Q.

And, for how long did Congressman Jalosjos perform that act, which according to you, "idinikit-dikit niya yong ari niya sa ari ko?"

COURT:

Place the Tagalog words, into the records.

A.

Sandali lang po yon.

Q.

What part of your vagina, or "ari" was being touched by the ari or penis?

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x x x x x x x x x

Q.

You said that you felt... I withdraw that question. How did you know that Congressman Jalosjos was doing, "idinikit-dikit niya yung ari niya sa ari ko?"

A.

Because I could feel it, sir.

Q.

Now, you said you could feel it. What part of the vagina... in what part of your vagina was Congressman Jalosjos, according to you, "idinikit-dikit niya yong ari niya sa ari mo?"

A.

In front of my vagina, sir.

Q.

In front of your vagina? O.K.; will you tell the Court the position?

Will you describe the position of Congressman Jalosjos when he was doing that. "Idinikit-dikit niya sa ari ko?"

A.

Ide-demonstrate ko po ba?

FISCAL ZUNO:

Q.

Can you demonstrate?

x x x x x x x x x

A.

He was holding me like this with his one hand; and was holding his penis while his other hand, or his free hand was on the bed.

x x x x x x x x x

PROS. ZUNO:

Now, according to you, you don't know how to say it; or what was done to you. Now, will you tell the Court how can you describe what was done to you?

A.

After he "dinikit-dikit niya yong ari niya sa ari ko; itinutok naman niya ito."

Q.

O.K. you said "itinutok niya ito;" what else did he do?

PROS. ZUNO:

She is now trying to describe.

COURT:

Translate.

A.

He seems to be "parang idinidiin po niya."

Q.

Now, what did you feel, when according to you; as I would quote: "parang idinidiin niya?"

A.

Masakit po.

Q.

And, just to make it clear in Tagalog: Ano itong idinidiin niya?

COURT:

Q.

Sabi mo itinutok. Nakita mo bang itinutok?

A.

I saw him na nakaganuon po sa ano niya.

PROS. ZUNO:

Q.

O.K., clarify. You said "nakaganuon siya" what do you mean by "nakaganuon siya?"

A.

He was holding his penis, and then, that was the one which he itinutok sa ari ko.

PROS. ZUNO:

Q.

And, when you said "idinidiin po niya;" to which you are referring? What is this "idinidiin niya?"

A.

Idinidiin niya ang ari niya sa ari ko.

Q.

And what did you feel when you said: he was "idinidiin niya ang ari niya sa ari ko?"

A.

Masakit po.

COURT:

The answer is "masakit po."

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Proceed.

PROS. ZUNO:

Q.

Where did you feel the pain?

A.

Inside my ari po. (Sa loob po ng ari ko.)

x x x x x x x x x

PROS. ZUNO:

Q.

And then, after that, what else did he do

A.

After that, he touched my breast, sir.

Q.

And, after touching your breast, what did he do?

A.

And after that I felt that he was (witness demonstrating to the court, with her index finger, rubbing against her open left palm)

Q.

And after doing that, what else did he do?

A.

After that, he instructed me to go to sleep.

x x x x x x x x x

A.

I put down my clothes and then, I cried myself to sleep, sir.

Q.

Why did you cry? Will you tell the court, why did you cried after putting down your clothes?

A.

Because I felt pity for myself.

(Naaawa po ako sa sarili ko.)

x x x x x x x x x.

(Emphasis supplied.)[29]

Even the July 20, 1996 encounter between Rosilyn and accused-appellant would not tax the sketchy visualization

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of the naïve and uninitiated to conclude that there was indeed penile invasion by accused-appellant of Rosilyn's labia. On that occasion, accused-appellant was similarly ensconced between the parted legs of Rosilyn, except that, this time, Rosilyn was conveniently rested on, and elevated with a pillow on her back while accused-appellant was touching, poking and pressing his penis against her vagina. Topped with the thrusting motions employed by accused-appellant, the resulting pain felt by Rosilyn in her sex organ was no doubt a consequence of consummated rape.

The pertinent portions of Rosilyn's account of the July 20, 1996 incident is as follows:

PROS. ZUNO:

x x x x x x x x x

Q.

The moment when Cong. Jalosjos inserted his finger into your vagina, what was your position?

INTERPRETER:

The witness is asking he (sic) she has to demonstrate?

FISCAL ZUNO:

Q.

Ipaliwanag mo lang?

A.

My back was rested on a pillow and my legs were spread apart.

Q.

You said that when Congressman Jalosjos inserted his finger into your vagina, your back was rested on a pillow and your legs were spread wide apart, what else did he do?

A.

He lifted his shirt, and held his penis; and again "idinikit-dikit niya ang ari niya sa ari ko."

Q.

And what did you feel when he was doing that which according to you and I would quote in Tagalog: "idinikit-dikit niya yong ari niya sa ari ko?"

A.

I was afraid sir.

Q.

And, after doing that: "idinikit-dikit niya yong ari niya sa ari ko," what else did he do?

A.

After that, "itinutok niya po yong ari niya at idiniin-diin niya ang ari niya sa ari ko."

Q.

You said: "Congressman Jalosjos itinutok niya yong ari niya sa ari ko; at idiniin-diin niya yong ari niya sa ari ko;" Now, while he was doing that act, what was the position of Congressman Jalosjos?

A.

His two (2) hands were on my side and since my legs were spread apart; he was in-between them, and doing an upward and downward movement.

(Witness demonstrated a pushing, or pumping movement)

Q.

For how long did Congressman Jalosjos perform that act, pushing or pumping movement while his penis, or "ang ari niya ay nakatutok at idinidiin-diin yong ari niya sa ari mo?"

A.

I don't know.

Q.

And what did you feel when Congressman Jalosjos was making that movement, pushing, or pumping?

A.

I felt pain and then I cried.

Q.

Where did you feel the pain?

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A.

Inside my vagina, sir.

x x x x x x x x x.[30]

The child's narration of the rape sequence is revealing. The act of "idinikit-dikit niya" was followed by "itinutok niya xxx at idiniin-diin niya." The "idiniin-diin niya" was succeeded by "Masakit po." Pain inside her "ari" is indicative of consummated penetration.

The environmental circumstances displayed by the graphic narration of what took place at the appellant's room from June 14 to June 16 and June 21 to June 22, 1996 are consistent with the complainant's testimony which shows that rape was legally consummated.

In the case of People v. Campuhan, the victim put up a resistance --- by putting her legs close together --- which, although futile, somehow made it inconvenient, if not difficult, for the accused-appellant to attempt penetration. On the other hand, the ease with which accused-appellant herein perpetrated the sexual abuse, not to mention the absence of time constraint, totally distinguishes the instant case from Campuhan. Here, the victim was passive and even submissive to the lecherous acts of accused-appellant. Thus, even assuming that his penis then was flaccid, his act of holding, guiding and assisting his penis with his one hand, while touching, poking and pressing the same against Rosilyn's vagina, would surely result in even the slightest contact between the labia of the pudendum and accused-appellant's sex organ.

Considering that Rosilyn is a self-confessed sex worker, and the circumstances of the alleged sexual assault at bar, the defense argued that it is highly improbable and contrary to human experience that accused-appellant exercised a Spartan-like discipline and restrained himself from fully consummating the sexual act when there was in fact no reason for him not to do so. In the same light, the defense likewise branded as unnatural the testimony of Rosilyn that accused-appellant contented himself with rubbing his penis clipped between her thighs until he reached orgasm and desisted from fully penetrating her, when Rosilyn was then entirely at his disposal.

The defense seems to forget that there is no standard form of behavior when it comes to gratifying one's basic sexual instinct. The human sexual perversity is far too intricate for the defense to prescribe certain forms of conduct. Even the word "perverse" is not entirely precise, as what may be perverse to one may not be to another. Using a child of tender years who could even pass as one's granddaughter, to unleash what others would call downright bestial lust, may be utterly nauseating and repulsive to some, but may peculiarly be a festive celebration of salacious fantasies to others. For all we know, accused-appellant may have found a distinct and complete sexual gratification in such kind of libidinous stunts and maneuvers.

Nevertheless, accused-appellant may not have fully and for a longer period penetrated Rosilyn for fear of perpetrating his name through a child from the womb of a minor; or because of his previous agreement with his "suking bugaw," Simplicio Delantar, that there would be no penetration, otherwise the latter would demand a higher price. This may be the reason why Simplicio Delantar gave his mocking fatherly advice to Rosilyn that it is bad if accused-appellant inserts his penis into her sex organ, while at the same time ordering her to call him if accused-appellant would penetrate her. Such instance of penile invasion would prompt Simplicio to demand a higher price, which is, after all, as the Solicitor General calls it, the peculiarity of prostitution.

The defense contends that the testimony of Rosilyn that accused-appellant ejaculated on her thighs and not in her

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vagina, only proves that there was no rape. It should be noted that this portion of Rosilyn's testimony refers to the June 15 and 21, 1996 charges of acts of lasciviousness, and not the rape charges. In any event, granting that it occurred during the twin instances of rape on June 18 and July 20, 1996, the ejaculation on the victim's thighs would not preclude the fact of rape.

There is no truth to the contention of the defense that Rosilyn did not see the penis of accused-appellant. As can be gleaned from the above-quoted portions of the transcripts, Rosilyn unequivocally testified that accused-appellant held his penis then poked her vagina with it. And even if she did not actually see accused-appellant's penis go inside her, surely she could have felt whether it was his penis or just his finger.

We now come to the issue of whether or not Rosilyn was below twelve (12) years of age at the time the rape complained of occurred. To bolster the declaration of Rosilyn that she was then eleven years old, the prosecution presented the following documents:

(1)

Rosilyn's birth certificate showing her birthday as May 11, 1985;[31]

(2)

Rosilyn's baptismal certificate showing her birthday as May 11, 1985;[32]

(3)

Master List of Live Births stating that Ma. Rosilyn Delantar was born on May 11, 1985 to Librada Telen as the mother;[33]

(4)

Marked pages of the Cord Dressing Room Book;[34]

(5)

Summary of the Cord Dressing Book, showing her birthday as May 11, 1985 and her parents' (Librada Telen and Simplicio Delantar) patient file number (39-10-71);[35]

(6)

Record of admission showing her parents' patient number (39-10-71) and confinement at the Jose Fabella Memorial Hospital from May 5-14, 1985.[36]

It is settled that in cases of statutory rape, the age of the victim may be proved by the presentation of her birth certificate. In the case at bar, accused-appellant contends that the birth certificate of Rosilyn should not have been considered by the trial court because said birth certificate has already been ordered cancelled and expunged from the records by the Regional Trial Court of Manila, Branch 38, in Special Proceedings No. 97-81893, dated April 11, 1997.[37] However, it appears that the said decision has been annulled and set aside by the Court of Appeals on June 10, 1999, in CA-G.R. SP No. 45289. The decision of the Court of Appeals was appealed to this Court by petition for review, docketed as G.R. No. 140305. Pending the final outcome of that case, the decision of the Court of Appeals is presumed valid and can be invoked as prima facie basis for holding that Rosilyn was indeed eleven years old at the time she was abused by accused-appellant.

However, even assuming the absence of a valid birth certificate, there is sufficient and ample proof of the complainant's age in the records.

Rosilyn's Baptismal Certificate can likewise serve as proof of her age. In People v. Liban,[38] we ruled that the

birth certificate, or in lieu thereof, any other documentary evidence that can help establish the age of the victim, such as the baptismal certificate, school records, and documents of similar nature, can be presented.

And even assuming ex gratia argumenti that the birth and baptismal certificates of Rosilyn are inadmissible to prove her age, the Master List of Live Births and the Cord Dressing Book of Dr. Jose Fabella Memorial Hospital where Rosilyn was born are sufficient evidence to prove that her date of birth was May 11, 1985. These documents are considered entries in official records, admissible as prima facie evidence of their contents and corroborative of Rosilyn's testimony as to her age.

Thus, Rule 130, Section 44, of the Rules of Court states:

> Entries in official records. --- Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty especially enjoined by law, are prima facie evidence of the facts therein stated.

In Africa v. Caltex, et al., (Phil), Inc., et al.,[39] the Court laid down the requisites for the application of the foregoing rule, thus:

> (a)
>
> That the entry was made by a public officer, or by another person specially enjoined by law to do so;
>
> (b)
>
> That it was made by the public officer in the performance of his duties or by such other person in the performance of a duty specially enjoined by law; and
>
> (c)
>
> That the public office or the other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.

In order for a book to classify as an official register and admissible in evidence, it is not necessary that it be required by an express statute to be kept, nor that the nature of the office should render the book indispensable; it is sufficient that it be directed by the proper authority to be kept. Thus, official registers, though not required by law, kept as convenient and appropriate modes of discharging official duties, are admissible.[40]

Entries in public or official books or records may be proved by the production of the books or records themselves or by a copy certified by the legal keeper thereof.[41] It is not necessary to show that the person making the entry is unavailable by reason of death, absence, etc., in order that the entry may be admissible in evidence, for his being excused from appearing in court in order that public business be not deranged, is one of the reasons for this exception to the hearsay rule.[42]

Corollary thereto, Presidential Decree No. 651, as amended by P.D. No. 766,[43] mandates hospitals to report and register with the local civil registrar the fact of birth, among others, of babies born under their care. Said Decree imposes a penalty of a fine of not less that P500.00 nor more than P1,000.00 or imprisonment of not less than three (3) months nor more than six (6) months, or both, in the discretion of the court, in case of failure to make the necessary report to the local civil registrar.

Hence, under the above-cited P.D. 651, as amended, in connection with Rule 30, Section 44, of the Rules of Court, it is clear that the Cord Dressing Room Book where the fact of birth, name of the mother and other related entries are initially recorded, as well as the Master List of Live Births of the hospital, are considered entries in official record, being indispensable to and appropriate modes of recording the births of children preparatory to

registration of said entries with the local civil registrar, in compliance with a duty specifically mandated by law.

It matters not that the person presented to testify on these hospital records was not the person who actually made those entries way back in 1985, but Amelita Avenante, the records custodian of the hospital in 1995. To reiterate, these records may be proved by the presentation of the record itself or by a certified copy or the legal keeper thereof. Proof of the unavailability of the person who made those entries is not a requisite for their admissibility. What is important is that the entries testified to by Avenante were gathered from the records of the hospital which were accomplished in compliance with a duty specifically mandated by law.

Therefore, the Cord Dressing Room Book and the Master List of Live Births of the hospital are admissible as evidence of the facts stated therein.

The preparation of these hospital documents preceded that of the birth and baptismal certificates of Rosilyn. They establish independent and material facts prepared by unbiased and disinterested persons under environmental circumstances apart from those that may have attended the preparation of the birth and baptismal certificates. Hence, these hospital records, to reiterate, are sufficient to support the testimony of Rosilyn as to her age.

Consequently, the testimony of Simplicio Delantar that the entries in the birth certificate of Rosilyn are false and that he merely made them up, particularly her date of birth, was correctly disregarded by the trial court. It should be noted that the criminal charges for child abuse filed by Rosilyn against him was the direct cause of his incarceration. This raises a possibility that Simplicio falsely testified in the present case, to get even with Rosilyn.

Likewise, the trial court correctly disregarded the testimonies of Gloria Binay and Angelito Intruzo because the defense failed to prove that they were knowledgeable as to the circumstances of Rosilyn's birth. Their testimonies consist mainly of observations tending to show that Rosilyn's appearance belie her claim that she was born on May 11, 1985.

In the four instances of acts of lasciviousness allegedly committed on June 29, June 30, July 2, and July 3, 1996 (Criminal Cases Nos. 96-1994, 96-1995, 96-1996, and 96-1997, respectively), the trial court acquitted accused-appellant on the ground of reasonable doubt as the defense was able to prove that accused-appellant was not in Manila but either in Dipolog or Dapitan City at the time the lascivious acts were supposedly committed. The evidence of the defense established that accused-appellant flew to Dipolog on June 28, 1996, and stayed there until July 9, 1996.

In Criminal Cases Nos. 96-1991 and 96-1998, for two counts of acts of lasciviousness allegedly committed both in the early mornings of June 19 and July 21, 1996, Rosilyn merely testified that she felt somebody touching her private part but failed to identify the person who was performing those lecherous acts as she was too sleepy to wake up. Hence, accused-appellant was likewise acquitted in these cases on the ground of reasonable doubt.

With respect, however, to the acts of lasciviousness committed in the morning of June 15 and 22, 1996, and in the evening of June 14, 15, 18, and 21, 1996, as well as the rape perpetrated on June 18, 1996 and July 20, 1996, accused-appellant failed to account for his whereabouts. A careful review of the pertinent transcript of stenographic notes reveals that accused-appellant did not give any testimony as to where he was at the time these crimes were committed. Clearly, therefore, the trial court correctly disregarded his unsubstantiated defense of denial, which cannot prevail over his positive identification by Rosilyn as the culprit.

As regards the charge of acts of lasciviousness committed in the morning of June 16, 1996, accused-appellant claimed that it was impossible for him to have committed the same because he flew to Dipolog on that day. The records disclose, however, that accused-appellant's flight was at 9:40 a.m. The possibility, therefore, of accused-appellant's having performed the lascivious acts on the victim before he went off to the airport is not at

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all precluded. For his failure to prove the physical impossibility of his presence at the Ritz Towers in the morning of June 16, 1996, when the sexual abuse of Rosilyn was committed, his defense of alibi must fail.

Article III, Section 5 of Republic Act No. 7610, states:

> Child Prostitution and other Sexual Abuse. --- Children, whether male or female, who for money or profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

> xxx xxx xxx
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraphs 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; x x x . (Emphasis supplied.)

In People v. Optana,[44] the Court, citing the case of People v. Larin,[45] explained the elements of the offense of violation of Section 5 (b) of R.A. 7610, or the Child Abuse Law, as follows:

> - The accused commits the act of sexual intercourse or lascivious conduct.
>
> - The said act is performed with a child exploited in prostitution or subjected other sexual abuse.
>
> - The child, whether male or female, is below 18 years of age.

A child is deemed exploited in prostitution or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group. Under RA 7610, children are "persons below eighteen years of age or those unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of their age or mental disability or condition."

"Lascivious conduct" is defined under Article XIII, Section 32 of the Implementing Rules and Regulation of R.A. 7610, as follows:

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.

In the case at bar, accused-appellant's acts of kissing Rosilyn on the lips, fondling her breast, inserting his finger into her vagina and placing his penis between her thighs, all constitute lascivious conduct intended to arouse or gratify his sexual desire. Hence, the trial court correctly convicted accused-appellant of violation of Section 5 (b) of R.A. 7610, or the Child Abuse Law, in Criminal Cases Nos. 96-1987, 96-1988, 96-1989, 96-1990, 96-1992, and 96-1993, charging him with the above-described lascivious acts.

The penalty for violation of Section 5 (b) of R.A. 7610, or the Child Abuse Law, where the victim is below 12 years of age, is reclusion temporal in its medium period.

The records show that on at least nine (9) separate occasions, the accused-appellant inserted his finger into the

complainant's vagina. These insertions took place in 1996. A year later, Congress enacted Republic Act No. 8353, the Anti-Rape law of 1997. It does not apply to this case but it indicates state policy on rape. The Revised Penal Code is now amended to read as follows:

> Article 266-A. Rape; When and How Committed. - Rape is committed -
>
> 1. By a man who 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. (Emphasis supplied.)

Indicative of the continuing state policy towards rape, the Anti-Rape Law of 1997 now classifies the crime as an offense against persons. Any public prosecutor, not necessarily the victim or her parents, can prosecute the case.

The penalties for the crime of rape in the light of various circumstances, which are now set forth and contained in Article 266-B of the Revised Penal Code, have also been increased.

Considering that there are neither mitigating nor aggravating circumstance, the trial court correctly imposed on accused-appellant the maximum penalty of fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal, which is within the medium period of reclusion temporal medium, pursuant to our ruling in Dulla v. Court of Appeals.[46] Notwithstanding that R.A. 7610 is a special law, accused-appellant may enjoy a minimum term of the indeterminate sentence to be taken within the range of the penalty next lower to that prescribed by the Code.[47] However, the trial court erroneously fixed the minimum term of the indeterminate sentence at eight (8) years, eight (8) months and one (1) day of prision mayor in its medium period. In the aforesaid case of Dulla,[48] we held that the penalty next lower in degree to reclusion temporal medium is reclusion temporal minimum, the range of which is from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Hence, for violation of Article III, Section 5 (b) of R.A. 7610, accused-appellant shall suffer the indeterminate sentence of twelve years (12) and one (1) day of reclusion temporal, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal as maximum.

At the time of commission of the crimes complained of herein in 1996, statutory rape was penalized under Section 11 of R.A. 7659, which amended Article 335 of the Revised Penal Code, to wit:

> When and how rape is committed. --- Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> - By using force or intimidation;
>
> - When the woman is deprived of reason or otherwise unconscious; and
>
> - When the woman is under twelve years of age or is demented.
>
> The crime of rape shall be punished by reclusion perpetua. xxx.

In statutory rape, mere sexual congress with a woman below twelve years of age consummates the crime of

statutory rape regardless of her consent to the act or lack of it. The law presumes that a woman of tender age does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, it was held that carnal knowledge of a child below twelve years old even if she is engaged in prostitution is still considered statutory rape. The application of force and intimidation or the deprivation of reason of the victim becomes irrelevant. The absence of struggle or outcry of the victim or even her passive submission to the sexual act will not mitigate nor absolve the accused from liability.[49]

In the case at bar, the prosecution established beyond reasonable doubt that accused-appellant had carnal knowledge of Rosilyn. Moreover, the prosecution successfully proved that Rosilyn was only eleven years of age at the time she was sexually abused. As such, the absence of proof of any struggle, or for that matter of consent or passive submission to the sexual advances of accused-appellant, was of no moment. The fact that accused-appellant had sexual congress with eleven year-old Rosilyn is sufficient to hold him liable for statutory rape, and sentenced to suffer the penalty of reclusion perpetua.

As to accused-appellant's civil liability, the amount of moral damages awarded by the trial court for each count of acts of lasciviousness under Section 5 (b) of R.A. 7610 should be increased from P20,000.00 to P50,000.00.[50] On the other hand, the award of the amount of P50,000.00 as moral damages for each count of statutory rape was correct.

In People v. Lor,[51] citing the cases of People v. Victor,[52] and People v. Gementiza,[53] we held that the indemnity authorized by our criminal law as civil indemnity ex delicto for the offended party, in the amount authorized by the prevailing judicial policy and aside from other proven actual damages, is itself equivalent to actual or compensatory damages in civil law. Said civil indemnity is mandatory upon finding of the fact of rape; it is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound judicial discretion.[54] Hence, accused-appellant should be ordered to pay the offended party another P50,000.00 as civil indemnity for each count of rape and acts of lasciviousness.

WHEREFORE, the Decision of the Regional Trial Court of Makati, Branch 62, in Criminal Case Nos. 96-1985 and 96-1986 finding accused-appellant Romeo Jalosjos guilty beyond reasonable doubt of two counts of statutory rape, and sentencing him to suffer the penalty of reclusion perpetua for each count, is AFFIRMED. Likewise, the appealed Decision of the Regional Trial Court of Makati, Branch 62 in Criminal Case Nos. 96-1987, 96-1988, 96-1989, 96-1990, 96-1992, and 96-1993, finding accused-appellant guilty beyond reasonable doubt of acts of lasciviousness in six counts, is AFFIRMED with MODIFICATIONS. As modified, accused-appellant is sentenced to suffer, for each count of acts of lasciviousness, the indeterminate penalty of twelve years (12) and one (1) day of reclusion temporal, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal as maximum. Further, accused-appellant is ordered to pay the victim, Ma. Rosilyn Delantar, the additional amount of P50,000.00 as civil indemnity for each count of statutory rape and acts of lasciviousness. Finally, the award of moral damages for each count of acts of lasciviousness is increased to P50,000.00.

SO ORDERED.

Davide, Jr., CJ., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

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[1] People v. Nazareno, 80 SCRA 484, 491 [1977].

[2] People v. Sangil 276 SCRA 532 [1997].

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[3] People v. Herrick, 187 SCRA 364 [1990].

[4] Rollo, p. 325

[5] Penned by Judge Roberto C. Diokno

[6] Rollo, p. 25.

[7] Rollo, p. 27.

[8] Criminal Cases Nos. 96-1987; 96-1988; 96-1989; 96-1990; 96-1992; and 96-1993. Rollo, pp. 29-52.

[9] Annex "G", Records, p. 1854.

[10] Exhibit "145".

[11] Exhibit "145" and "145-C".

[12] Rollo, pp. 195-197.

[13] Rollo, pp. 327-328.

[14] People v. Garcia, 271 SCRA 621, 629 [1997].

[15] People v. Paredes, 264 SCRA 578, 583 [1996]

[16] 320 SCRA 584, [1999]

[17] 17 SCRA 934 [1966].

[18] Id., p. 607.

[19] Decision, p.35; Rollo p. 3, 315.

[20] People v. Bernal, 254 SCRA 659, 669 [1997].

[21] 329 SCRA 270, 282 [2000].

[22] Decision p. 39; Rollo, p. 3,319.

[23] People v. Salimbago, 314 SCRA 282, 291-292 [1999].

[24] 281 SCRA 123, 129 [1997].

[25] 281 SCRA 577, 592 [1997].

[26] 329 SCRA 270, 279-280 [2000].

[27] Id., 281-282.

[28] People v. Salinas, 232 SCRA 274, 279 [1994].

[29] TSN, April 16, 1997, pp. 24-41.

[30] TSN, April 17, 1997, pp. 27-30.

[31] Exhibit "A".

[32] Exhibit "F".

[33] Exhibit "E".

[34] Exhibit "C".

[35] Exhibit "B".

[36] Exhibit "D".

[37] Exhibit B-6, Records, pp. 1841-1844.

[38] G.R. No. 136247 and 138330, November 22, 2000.

[39] 16 SCRA 448, 452 [1996]; citing 3 Moran, Comments on the Rules of Court, p. 398 [1957].

[40] VII Francisco, The Revised Rules of Court in the Philippines, Part I, pp. 618-619 [1997]; citing Kyburg v. Perkins, 6 Cal. 674. and Bell v. Kendrick, 25 Fla. 778.

[41] Id., pp. 620-621, citing 4 Jones on Evidence, 2d ed., 1704

[42] Id., p. 620, citing 3 Wigmore on Evidence, § 1621.

[43] SECTION 1. Registration of births. - All babies born in hospitals, maternity clinics, private home, or elsewhere within the period staring from January 1, 1974 up to the date when this decree becomes effective, irrespective of the nationality, race, culture, religion or belief of the parents, whether the mother is a permanent resident or transient in the Philippines, and whose births have not yet been registered must be reported for registration in the office of the local civil registrar of the place of birth by the physician, nurse, midwife, hilot, or hospital or clinic administrator who attended the birth or in default thereof, by either parent or a responsible member of the family or a relative, or any person who has knowledge of the birth of the individual child.

The report referred to above shall be accompanied with an affidavit describing the circumstances surrounding the delayed registration.

SEC. 2. Period of registration of births. - The registration of the birth of babies referred to in the preceding section must be done within sixty (60) days from the date of effectivity of this decree without fine or fee of any kind. Babies born after the effectivity of this decree must be registered in the office of the local civil registrar of the place of birth within thirty (30) days after birth, by the attending physician, nurse, midwife, hilot or hospital or clinic administrator or, in default of the same, by either parent or a responsible member of the family or any person who has knowledge of the birth.

The parents or the responsible member of the family and the attendant at birth or the hospital or clinic administrator referred to above shall be jointly liable in case they fail to register the new born child.

x x x x x x x x x

SEC. 9. Penalty. Any person required under this decree to report for registration any fact concerning the civil status of persons and who fails to do so, or who deliberately makes false statements in the birth or death form and presents the same for registration, or who violates any rule or regulation which may be issued pursuant to this decree, and any local public health officer who fails to perform his duties as provided for in this decree, shall upon conviction, be punished by a fine of not less than P500.00 nor more than P1,000.00 or imprisonment of not less than three (3) months nor more than six (6) months, or both, in the discretion of the court.

[44] G.R. No. 133922, February 12, 2001.

[45] 297 SCRA 309 [1998].

[46] 326 SCRA 32, 48 [2000]; see also Article 65 of the Revised Penal Code.

[47] People v. Simon, 234 SCRA 555 [1994].

[48] Supra.

[49] People v. Quinagoran 315 SCRA 508, 516-517 [1999].

[50] People v. Optana, supra.

[51] G.R. No. 133190, July 19, 2001.

[52] 292 SCRA 186, 200 [1998].

[53] 285 SCRA 478, 492 [1998].

[54] People v. De los Santos, 295 SCRA 583, 605 [1998]; citing People v. Prades, 293 SCRA 411, 430 [1998].

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