PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO ARCE, JR., ACCUSED-APPELLANT.

G.R. Nos. 139064-66. September 06, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is a partial appeal of the Joint Decision[1] of the Regional Trial Court, National Capital Judicial Region, Branch 170, Malabon Metro Manila finding accused Alberto Arce, Jr. guilty of one (1) count of Statutory Rape and two (2) counts of Acts of Lasciviousness in Criminal Cases Nos. 15359-MN, 15466-MN and 15467-MN.[2]

The amended information for statutory rape in Criminal Case No. 15359-MN, which is the subject of the present appeal, reads as follows:

> "That sometime in or about mid July 1992 in No. 22 Celestino St., San Jose, Navotas, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, by taking advantage of the offended party, nine (9) year old minor Gemmalyn Magbanua, with the use of force and intimidation, and threatening said Gemmalyn Magbanua with bodily harm, did then and there willfully, unlawfully and feloniously have carnal knowledge with said Gemmalyn Magbanua, against her will and consent, to her damage and prejudice.
>
> CONTRARY TO LAW"[3]

On March 20, 1995, the accused was arraigned and with the assistance of counsel entered a plea of not guilty to the crime charged.[4] Thereafter, trial ensued.

The undisputed facts established by the prosecution and adopted by the trial court as the basis for its decision are as follows:

> "The Magbanua family in the year 1992 was among the lessees of Mrs. Leoncia Piedad in her residential building located at No. 22 Celestino Street, San Juan, Navotas, Metro Manila. They were occupying one of the rented rooms at the left wing and so with the Forca Family of the other while the main house serves as the residence of Mrs. Piedad and her family including accused Alberto Arce, Jr., married to her daughter Cynthia Piedad.
>
> Sometime in the middle part of July of same year and around 3:00 o'clock in the afternoon, Arce went to the room of the Magbanuas to ask Gemmalyn to buy cigarette. After she was able to buy what the accused requested from her, Gemmalyn looked for Arce but failed to find the accused at the sala of his house. The victim proceeded to the kitchen where she finally saw Arce who told her to wait for a minute as he closed the door. Arce when he came back ordered Gemmalyn to take off her shorts and panty before stripping himself of his trousers and brief. The accused subsequently made the victim to sit on his lap, with their legs spread apart, while she was facing him. In that position, Arce held the victim's hands and started leading his penis into touching the vagina of Gemmalyn for half an hour. The victim spoke to Arce why he was doing that to her but the accused just kept mum. Gemmalyn also pleaded to Arce not to do it with her because she is still young. Accused did not answer back. He then told Gemmalyn to stand up. By the time the victim was putting on her shorts and panty, Arce was playing with his penis until a whitish liquid oozed out from it. Arce ensuingly gave

Gemmalyn P1.00 which the victim nonetheless rejected before allowing her to go home.

Six (6) days thereafter, Gemmalyn met Arce standing at the foot of the stairway. The accused once more requested the victim to buy cigarette. When Gemmalyn returned and handed to him the cigarette, Arce dragged her near the wall of the second floor of the residential building. After removing his shorts and brief, Arce held Gemmalyn by the face to force her mouth to open. He let the victim sucked (sic) his penis for half an hour before withdrawing it and played with his sex organ for a short while till a whitish liquid came out. Gemmalyn felt the penis of the accused to be hot and hard. Arce again gave Gemmalyn P1.00 which the latter turned down prior to his threat to the victim that he would kill her if ever she reported the incident.

From that second sexual encounter, six (6) days also elapsed when the third occasion occurred. Gemmalyn caught sight of Arce once more at his sala. He again requested the victim to buy cigarette. Upon receipt of the stuff, Arce closed the door and sat Gemmalyn on his lap, afterwards, begun kissing her on the neck and lips. He forced his tongue into the mouth of Gemmalyn for a moment when blackout suddenly struck up. Arce instructed Gemmalyn to stand up before opening the door which accorded the victim the opportunity to run outside.

Gemmalyn enduringly revealed her ordeal in the hands of the accused to her best friend and classmate Joy Lyn Ramirez. They were at the basketball court when Joy Lyn noticed the sadness on the face of the victim. Gemmalyn at the end narrated to her friend the manner Arce molested (binastos) her and the pretext the accused employed as well as the places where the sexual molestation took place. Gemmalyn, however, told Joy Lyn to keep it a secret because she did not want her mother to know about her experiences for she might be forced to leave their house. Joy Lyn, on the other hand, informed her mother Helen what Gemmalyn divulged to her. Helen then called Gemmalyn regarding the veracity of the story. Yet, the victim requested Helen not to disclose it to her mother.

On June 22, 1993, Mrs. Lydia Magbanua was informed by her maid about the rape which she overheard during the conversation of Mrs. Piedad and Gemmalyn at the Navotas Elementary School. She immediately went to the school and found the two still talking to each other. Mrs. Piedad said to her that Gemmalyn was telling her classmates that she was raped. When Mrs. Magbanua tried to speak with her daughter, Gemmalyn became worried and kept on rubbing her back against the wall. Mrs. Magbanua opted to bring her daughter to their house where Gemmalyn pointed to Arce as the man who raped her three (3) times. On that evening Gemmalyn only recalled the places where she was raped but not the dates of the commission. Nevertheless, Mrs. Magbanua assured her daughter that she would help her. She then talked to Mrs. Piedad and Eva, daughter-in-law of the former, regarding the incidents. Mrs. Piedad told Mrs. Magbanua not to make an outcry because the more her child would be traumatized. During the conversation, the parents of Arce arrived. Mrs. Piedad and Eva met and lead them inside the building. Mrs. Magbanua seeing them gone went to the house of Mrs. Piedad where she chanced upon Arce. She punched the accused on the face and cursed him. The accused wondered why. Mrs. Magbanua told him "Bakit, bakit ka pa, alam mo na ang ginawa mo sa anak ko, binaboy mo na ang anak ko." Arce did not make any response and just ran away through the kitchen. Later on, Mrs. Piedad, Cynthia Piedad and the parents of the accused went to see Mrs. Magbanua and asked forgiveness in behalf of the accused but such effort proved futile.

On the next morning, Cynthia Piedad and the mother of Arce came back reiterating their earlier plea. Mrs. Magbanua instead told them, "Pagkatapos sinara ang pagkababae ng anak ko". Nonetheless, Mrs. Magbanua agreed to have her daughter examined at the Mary Johnston Hospital. The result of the examination shows that there was no penile penetration of the genitalia of Gemmalyn. However, Mrs. Magbanua still pursued the complaint against Arce."[5]

On April 30, 1999, the RTC rendered its decision finding the accused guilty of rape and two (2) counts of acts of lasciviousness, the dispositive portion of the decision reads as follows:

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

1. In Criminal Case No. 15359-MN, the Court finds accused ALBERTO ARCE, JR. guilty beyond reasonable doubt of the crime of Statutory Rape (Art. 335 of the Revised Penal Code) and hereby sentences him to suffer the penalty of reclusion perpetua.

Accused is likewise ordered to pay Gemmalyn Magabanua the sum of P50,000.00 as civil indemnity, P50,000.00 by way of moral damages, P30,000.00 as exemplary damages and cost of the suit;

2. In Criminal Case Nos. 15466-MN and 15467-MN, the Court finds accused ALBERTO ARCE, JR. guilty beyond reasonable doubt of the crime of Acts of Lasciviousness (Art. 336 of the Revised Penal Code) and hereby sentences him to suffer in each case an indeterminate penalty of five (5) months arresto mayor, as minimum, to five (5) years of prision correccional, as maximum, and to pay the cost of the suit.

Let the accused be credited for whatever preventive imprisonment he had undergone in connection with the above-entitled cases.

SO ORDERED."[6]

As previously mentioned, the accused-appellant is only appealing the decision in Criminal Case No. 15359-MN where he was convicted of rape and sentenced to suffer the penalty of reclusion perpetua.[7] We are therefore limiting our discussion to the conviction for rape.

In support of his appeal, accused-appellant claims that the prosecution failed to prove that he had actual carnal knowledge with the victim, Gemmalyn. According to the accused-appellant, the prosecution failed to establish actual penetration of Gemmalyn's vagina since Gemmalyn herself admitted that accused-appellant's penis was not inserted into her vagina. Accused-appellant further argues that the conduct of Gemmalyn after she was allegedly raped belies the fact of rape considering that she was active and lively and that she even attained higher grades in school after the incident. Accused-appellant therefore prays that he be acquitted of the crime charged.

After a careful review, we resolve to affirm the judgment of conviction of the RTC.

In her testimony, the victim Gemmalyn positively identified accused-appellant as her assailant and narrated the manner by which she was assaulted by him as follows:

"ATTY. BARRIOS:

Q:

Do you know the accused in this case Alberto Arce?

A:

Yes, sir.

Q:

Could you please point to him if he is in this court room?

INERPRETER:

Witness pointing to a certain person in court wearing yellow shirt and a black pants who when asked his name answered by the name of Alberto Arce.

ATTY. BARRIOS:

Q:

Could you tell the court when for the first time did you come to know him?

A:

I came to know him in 1991, sir.

xxx xxx xxx

Q:

Mid of July 1992 one afternoon at around 3:00 o'clock do you remember if there is anything unusual that happened? to you?

ATTY. VELARDE:

I object to the question on the ground that it is vague because the date is not being specified and the witness is being asked to recall a particular event on a day which is not specified your honor.

ATTY. BARRIOS:

The Information precisely states that the offense occurred in mid July your honor.

COURT:

That's why the day of the date.

ATTY. BARRIOS:

Your honor the information states that the offense occurred in a day it is not specified, well if the witness could remember.

COURT:

If the witness could remember.

ATTY. BARRIOS:

On that condition your honor.

COURT:

Go ahead.

WITNESS:

Yes, there was, sir.

ATTY. BARRIOS:

Q:

What is that mid July 1992, what date?

A:

It was July 1992, sir.

COURT:

If you could remember the date in July on that unusual incident. What day?

WITNESS:

It was a Sunday, your honor.

COURT:

And do you understand the calendar?

WITNESS:

Yes, your honor.

COURT:

Is it in the first week, second week, third week or fourth week of July?

WITNESS:

Mid of July your honor.

COURT:

She cannot remember the exact date go ahead now.

ATTY. BARRIOS:

Why do you remember that it was a Sunday the month of July 1992?

WITNESS:

After six (6) day, sir.

Q:

What about that?

A:

I am referring to the days Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, Saturdays.

Q:

Now, what happened during the Mondays, Tuesdays, Wednesdays, up to Saturdays?

A:

None, sir.

Q:

What is the significance about of a Sunday?

A:

Because of what he did to me, sir.

INTERPRETER:

At this point in time the witness is crying.

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WITNESS:

He asked me to buy cigarette, sir.

ATTY. BARRIOS:

Q:

After that what happened?

A:

I went to their sala but he was not there, sir.

Q:

What happened next?

A:

I went to the kitchen and I saw him, sir.

Q:

What happened when you saw him at the kitchen?

A:

He asked me to wait and he closed the door of their sala and the kitchen, sir.

Q:

What happened after he closed the door?

A:

He ordered me to undress, sir.

Q:

What happened after he told you to undress?

A:

He undress himself, sir.

Q:

By the way what did you undress?

A:

My panty and my short, sir.

Q:

Whom are you referring to that he also took off his clothes?

A:

Alberto Arce, sir.

INTERPRETER:

The witness is pointing to the accused.

ATTY. BARRIOS: What clothes did he take off?

WITNESS:

His shorts and brief, sir.

Q:

After that what happened?

A:

He placed me on his lap sir.

Q:

After he placed you on his lap what happened next?

A:

"Idinidikit niya ang ari niya sa ari ko," sir.

Q:

What do you mean when you said ari niya?

A:

"Idinidikit niya ang titi niya" sir.

Q:

"Ano yung ari mo"? na sinasabi mo?

A:

"my vagina", sir.

Q:

For how long did you do that?

A:

Half an hour, sir.

Q:

After you said that his private parts touching your private parts how did it touch?

A:

He is touching his private part to mine, sir.

COURT:

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You were on his lap?

WITNESS:

Yes, your honor.

ATTY. BARRIOS:

Q:

When you said that you were on his lap could you describe by your position in relation to him?

A:

I was facing him, sir.

Q:

How about your legs?

A:

My legs were spread, sir.

Q:

How about him, how about his legs?

A:

"Nakabuka", sir.

Q:

During the time you said his private parts were touching yours what did you feel?

A:

Hot and hard, sir.

Q:

What else did he do?

A:

He was touching his private organ to mine, sir and he was holding my hands, sir.

Q:

What else?

A:

I was asking him something, I told him why are you doing this to me?

Q:

What did he tell you?

A:

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He did not answer back, sir.

Q:

And what else happened after that?

A:

I again asked something to him, sir.

Q:

What did you ask him?

A:

I told him not to do it to me because I am still young, sir.

Q:

And what did he answer as to that?

A:

He also did not answer back, sir.

Q:

What happened after that?

A:

After asking him the question he instructed me to stand up, sir.

Q:

After that what did you do?

A:

I put on my panty and short, sir.

Q:

What happened after that?

A:

I saw him playing his private organ.

Q:

After that what did you observe?

A:

A whitish liquid came out from his organ sir.

Q:

After you saw a whitish liquid came out from his organ what happened next?

A:

He gave me P1.00, sir.

Q:

What did you do with that P1.00?

A:

I did not accept the P1.00 sir.

Q:

Why?

A:

Because I do not like, sir.

Q:

After that when you said you refuse to accept the P1.00 what happened next?

A:

He instructed me to go home, sir.[8]

We are not persuaded by accused-appellant's attempt at discrediting the testimony of Gemmalyn. Time and again this Court has ruled that the findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless the court a quo overlooked substantial facts and circumstances, which if considered, would materially affect the result of the case.[9] After a careful review of Gemmalyn's testimony, we find no cogent and legal basis to disturb the trial court's finding upholding her credibility and disregarding the testimonies of the defense witnesses, considering that she remained steadfast in her narration and unfaltering in her testimony regarding the unfortunate incident.

Neither are we convinced by accused-appellant's assertion that Gemmalyn's mother was using her to get even with accused-appellant since she failed to have a relationship with him. It has been held that no mother would stoop so low as to subject her own daughter to the hardships and shame concomitant to a prosecution for rape just to assuage her own hurt feelings. A mother would not sacrifice their daughter's honor to satisfy a grudge, knowing fully well that such an experience would certainly damage her daughter's psyche and mar her for life. Neither would she subject her daughter to a public trial with its accompanying stigma on her as a victim of rape, if said charge is not true.[10] In the absence of clear and concrete evidence to the contrary, we find this doctrine clearly applicable to the present case.

Accused-appellant also makes much of the fact that it would have been impossible for him to rape Gemmalyn considering the place where the rape took place. However, rape does occur not only in seclusion; repeatedly, it has been said, lust is no respecter of time and precinct and known to happen in most unlikely places such as in parks, along roadsides, within school premises or even in occupied rooms.[11] We quote with approval the trail court's ratiocination on this matter as follows:

> "xxx the testimony of the accused completely contradicted the posture taken by Mrs. Piedad to the effect that it was physically impossible for Arce to commit the crimes charged in view of the attendance of several tenants of the residential building aside from the claim of the witness that their occurrence could not escape her eyes unnoticed. This is on account of the revelation of the accused that he and Cesarah Forca made love at the sala,

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> kitchen and second floor of the building obviously unknown to Mrs. Piedad. It only bolstered the narration of Gemmalyn with respect to the places where she was violated by Arce because what was established is the propensity of the accused that having sexual congress with a minor child inside the residential building without anybody knowing it and that includes his mother-in-law and wife.[12]

Accused-appellant maintains however, that since Gemmalyn never stated that he inserted his penis into her vagina and that she merely claimed that he attempted to touch her vagina with his penis or "idinidikit yung ari niya", then there was no rape.

We agree.

To prove rape, it is necessary to establish that the penis touched the labia of the pudendum of the victim. Touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or scrape of the penis on the external layer of the victim's vagina or mons pubis. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. As the labias, which are required to be "touched" by the penis, are by their natural situs beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape. But in the absence of any showing of the slightest penetration of the female organ, i.e., touching 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.[13]

A careful reading of the testimony of Gemmalyn fails to convince us that the rape was consummated. Gemmalyn did not declare positively that there was the slightest penetration necessary to consummate rape. On the contrary, she categorically stated that accused-appellant was not able to insert his penis into her private part because she was moving away her hips, viz:

> "ATTY. MAGLAGUE:
>
> Alright. Referring to the sworn statement executed on June 29, 1993, you mentioned here that you didn't want his private part to be inserted in your private part. Was that your statement?
>
> A:
>
> Yes, sir.
>
> Q:
>
> And that means that his private part was not inserted in your private part?
>
> ATTY. AMBROCIO:
>
> Objection, your Honor.
>
> ATTY. MAGLAQUE:
>
> I am leading, your Honor. I am being...
>
> ATTY. AMBROCIO:
>
> He is making an inference o what the witness is saying.
>
> COURT:

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Alright what is your objection?

ATTY. AMBROCIO:

Argumentative.

ATTY. MAGLAQUE:

That cannot be argumentative. This witness is speaking from his own direct personal knowledge.

ATTY. AMBROCIO:

Argumentative your Honor. Because the next line says, "Ang sabi ko po ay ayaw ko na." When you use the word "na", that means that it is already after.... exactly what you were doing is...

ATTY. MAGLAQUE:

That is why I am trying to clarify, to explain...

COURT:

Alright go ahead. The witness may answer.

ATTY. MAGLAQUE:

I think the counsel is giving undue clue to the witness on how to answer and that is very reprehensible, your Honor.

COURT:

Alright go ahead.

ATTY. MAGLAQUE:

Let my comment appear on the record.

COURT:

Alright, go ahead. Witness may answer.

A:

Yes, sir.

Q:

His private part was not able to be inserted in your private part. That is what you are saying?

ATTY. MAGLAQUE:

Yes, your Honor.

COURT:

In your June 29, sworn statement?

ATTY. MAGLAQUE:

Yes, your Honor.

COURT:

Alright go ahead.

ATTY. MAGLAQUE:

Just answer my question. Was it inserted or not?

A:

No. sir.

Q:

Because you didn't want it?

A:

yes, sir, because I was moving away my hips."[14]

Of added significance is the finding contained in the medical report[15] as testified to by Dr. Luella Nario which reveals that there were no hymenal lacerations found on Gemmalyn. In cases of rape where there is a positive testimony and a medical certificate, both should in all respects complement each other; otherwise, to rely on the testimonial evidence alone, in utter disregard of the manifest variance in the medical certificate, would be productive of unwarranted or even mischievous results. It is necessary to carefully ascertain whether the penis of the accused in reality entered the labial threshold of the female organ to accurately conclude that rape was committed.[16]

Gemmalyn's attempt to demonstrate what she meant by "idinidikit ang ari" is also unavailing to prove that the rape was actually consummated. Gemmalyn stated that:

"ATTY. MAGLAQUE:

In your sworn statement, and I am referring to your sworn statement executed on June 29, 1993 and Dec. 3, 1993, you stated in the vernacular, "idinidikit ang ari". Will you explain to the Hon. Court what do you mean by that?

INTERPRETER:

The witness is demonstrating by the use of her hands.

ATTY. AMBROCIO:

Your Honor, may I translate? The witness placing her fist against her open palm to indicate the fist as the penis of the accused and open palm as her vagina.

ATTY. MAGLAQUE:

Will the witness please demonstrate?

COURT:

Is there any demonstration?

INTERPRETER:

Yes, your honor.

COURT:

Alright.

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ATTY. MAGLAQUE:

May we put on the record, "scratching".

ATTY. AMBROCIO:

No, your Honor. May we have it in the vernacular "Kiskis" is different from scratching. Scratching is "kinakamot", ok" Your Honor please, this is rape. And considering the size of the child at that time, mere contact is sufficient to charge the accused with rape.

COURT:

Well, what is she demonstrating? The words meaning "idinidikit and ari"? Alright, what do you mean by "idinidikit ang ari"? Do you understand it?

A:

Yes, your Honor. "Idinidikit po yung ari nya".

COURT:

"Sa ari mo"?

A:

Yes, your Honor.

COURT:

Alright. The witness is demonstrating?

INTERPRETER:

Yes, your Honor the witness is demonstrating.

ATTY. MAGLAQUE:

And you will agree that in all of your three statements, Gemma, all you told and you narrated in these three sworn statements were in the words of the vernacular "idinidikit ang ari"?

A:

Yes, sir.

ATTY. MAGLAQUE:

I think that will be all."[17]

Gemmalyn's demonstration by using her fist against an open palm does not give an accurate description of what accused-appellant actually did to her. If at all, the demonstration is ambiguous and does not establish actual proof that accused-appellant's penis touched the labias or slid into the female organ, and not merely stroked the external surface thereof.

An evaluation of Gemmalyn's testimony in its entirety particularly the repeated use of the word "idinidikit", to describe the act and the categorical admission that there was no penetration, as well as the demonstration before the court by the use of her hands, taken together with the absence of an indication of laceration in the medical report, as her "physical virginity was preserved", creates a very serious doubt in our minds as to whether the rape was consummated in light of recent jurisprudence distinguishing consummated rape from attempted rape. It is

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understandable why a child of very tender years would encounter difficulty in distinguishing whether there was indeed penetration of her organ that would consummate the rape but neither the prosecution nor the court, which could have raised clarificatory questions to establish the actual consummation of the offense, did so. We are constrained to rule that the evidence does not sustain a finding beyond reasonable doubt that a conviction for consummated rape.

Under Article 6 of the Revised Penal Code, rape is merely attempted when the offender commenced the commission of the crime directly by overt acts but does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance.[18] Pursuant to Article 51 of the Revised Penal Code, the imposable penalty for attempted rape is two degrees lower than that if the rape was consummated. The crime of statutory rape is punished under Article 335 of the Revised Penal Code, viz:

> "ART. 335. - When and how rape is committed.- Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
>
> 2. When the woman is deprived of reason or otherwise unconscious; and
>
> 3. When the woman is under twelve years of age or is demented.
>
> The crime of rape shall be punished by reclusion perpetua.
>
> Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death." (Emphasis supplied)

Therefore, the penalty to be reckoned with in determining the penalty for attempted rape is reclusion perpetua, the penalty prescribed for simple rape under Article 335, as amended by R. A. No. 7659. The penalty two degrees lower than reclusion perpetua is prision mayor. There being no modifying circumstance proven, the penalty of prision mayor may be imposed in its medium period. Applying the Indeterminate Sentence Law, the appropriate penalty should be an indeterminate penalty whose minimum shall be within the range of prision correccional, the penalty next lower to prision mayor, and whose maximum shall be the medium of the latter.[19] Following the case of People vs. Torio,[20] accused-appellant is hereby sentenced to an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum.[21] Since accused-appellant is guilty of attempted rape only, an indemnity of P50,000.00 and moral damages of P25,000.00 are in order.[22]

WHEREFORE, the appealed judgment of conviction of the Regional Trial Court in Criminal Case No. 15359-MN is AFFIRMED with the MODIFICATION that accused-appellant ALBERTO ARCE, JR. is hereby found guilty beyond reasonable doubt of the crime of attempted rape. Accused-appellant is hereby sentenced to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum and he is further ordered to pay the victim, GEMMALYN MAGBANUA, the amounts of P50,000.00 as civil indemnity and P25,000.00 as moral damages.

Costs against accused-appellant.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

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[1] Rollo, 43.

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[2] Penned by Judge Benjamin T. Antonio.

[3] Rollo, 7.

[4] Record, 85.

[5] Decision, pp. 3-5; Rollo, 45-47.

[6] Decision, p. 11; Rollo, 53.

[7] See Appellant's Brief, p. 1; Rollo, 70.

[8] TSN dated July 13, 1995, 3-4; 5-9.

[9] People vs. Cheng Ho Chua, 305 SCRA 28, 36 [1999].

[10] People vs. Geromo, 321 SCRA 355, 365 [1999].

[11] People vs. Ramon, 320 SCRA 775, 789 [1999].

[12] Rollo, 52.

[13] People vs. Campuhan, 329 SCRA 270, 279 [2000]; People vs. Francisco, G.R. No. 135201-02, March 15, 2001, at p. 13.

[14] TSN dated August 7, 199, 4.

[15] "FINDINGS

GENERAL PHYSICAL EXAMINATION:

Height: 126.0cms.

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

Breasts, infantile, Areolae, light brown, 1.3 cms. in diameter. Nipples, flat, light brown, 0.3 cm. in diameter.

GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora and minora coaptated. Foruchette, tense. Vestibular mucosa, congested. Hymen, thin, short, intact. Hymenal orifice, annular, admits a tube, 1.0 cm. in diameter with no moderate resistance. Vaginal walls and rugosities cannot be reached by the examining finger.

CONCLUSIONS:

Physical virginity preserved."

[16] People vs. Campuhan, Supra at 287.

[17] TSN dated August 7, 1996, 10.

[18] People vs. Francisco, Supra at p. 14.

[19] § 1, Act No. 4103 as amended, The Indeterminate Sentence Law.

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[20] 318 SCRA 345 [1999].

[21] Ibid., at pp. 356-357.

[22] People vs. Tolentino, 308 SCRA 485, 497 [1999].

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