



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 15, 2020** which reads as follows:

“G.R. No. 238909 — PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus XXX,¹ accused-appellant.

The appeal lacks merit. The facts, as borne out by the records, sufficiently support the conclusion that accused-appellant XXX (accused-appellant) is indeed guilty of four counts of Rape. The issues and matters raised before the Court, there being no supplemental briefs filed, were sufficiently addressed and correctly ruled upon by the CA.

It is well-settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court.² Thus, when the case pivots on the issue of the credibility of the victim, the findings of the trial courts necessarily carry great weight and respect as they are afforded the unique opportunity to ascertain the demeanor and sincerity of witnesses during trial.³

The Court quotes with approval the disquisition of the CA, thus:

WE find conclusive evidence that AD was raped against her will by her biological father. She positively identified him as her rapist. She testified that in all these sexual abuses, accused-

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¹ The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]) and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

² *People v. Gerola*, 813 Phil. 1055, 1064 (2017).

³ *People v. Aguilar*, 565 Phil. 233, 247 (2007).

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appellant was always in possession of an ice pick. It bears noting that the victim was only nine (9) years old when the said incidents took place. There is statutory rape where, as in this case, the offended party is below 12 years of age.⁴ Where the victim is below 12 years old, the only subject of inquiry is whether “carnal knowledge” took place. Proof of force, threat or intimidation is unnecessary since none of these is an element of statutory rape. The Information alleged and the prosecution proved during trial that AD was below 12 years old when accused-appellant raped her. The record reveals that AD was emotional during her open court testimony. The crying of the victim during her testimony is evidence of the credibility of the rape charges which is a matter of judicial cognizance.⁵ AD’s testimony is ever [sic] corroborated by the medical findings of Dr. Rene Joy Neri of the Child Protection Unit of the Philippine Children’s Medical Center conducted on April 6, 2010 that her hymen revealed the presence of healed lacerations at 3 and 12 o’clock positions and hymenal notch at 8 o’clock position.

While the examination conducted by the Medico-Legal Officer of the National Headquarters of the Philippine National Police showed that no evident injury was noted at the time of the examination also conducted on April 6, 2010, the Supreme Court stressed repeatedly that carnal knowledge as an essential element in consummated statutory rape, does not require full penile penetration of the female. The case of *People vs. Renato Besmonte*⁶ elucidates, thus:

In *People v. Campuhan*, the Court made clear that the mere touching of the external genitalia by a penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. All that is necessary to reach the consummated stage of rape is for the penis of the accused capable of consummating the sexual act to come into contact with the lips of the pudendum of the victim. This means that the rape is consummated once the penis of the accused capable of consummating the sexual act touches either labia of the pudendum. And *People v. Bali-Balita* instructed that the touching that constitutes rape does not mean mere epidermal contact, or stroking or grazing of organs, or a slight brush or a scrape of the penis on the external layer of the victim’s vagina, or the mons pubis, but rather the erect penis touching the labias or sliding into the female genitalia. Consequently, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape proceeds

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⁴ See *People v. Boromeo*, 474 Phil. 605, 621 (2004).

⁵ *People v. Quilatan*, 395 Phil. 444, 451 (2000).

⁶ 735 Phil. 234 (2014).

from the physical fact that the labias are physically situated beneath the mons pubis or the vaginal surface, such that for the penis to touch either of them is to attain some degree of penetration beneath the surface of the female genitalia. It is required, however, that this manner of touching of the labias must be sufficiently and convincingly established.⁷

Furthermore, well-entrenched is the rule that the medical certificate is not necessary to prove the commission of the crime of rape. The medical examination of a victim is not a requisite for the successful prosecution of rape. Even without a medical report, a court may convict an accused based on the offended party's credible testimony.⁸

Also, the absence of bruises, contusions and abrasions on AD is not inconsistent with her claim that accused-appellant committed sexual abuses against her will and consent. The absence of physical injuries does not negate the commission of rape against AD. While there has been an allegation of struggles, they need not always produce physical injuries.⁹ It should also be remembered that accused-appellant was AD's biological father who exercised moral ascendancy over her. As per jurisprudence, in incestuous rape, the father's moral ascendancy and influence over his daughter sufficiently substitute for force and intimidation. He takes advantage of his blood relationship, proximity, ascendancy, and moral influence over his victim both to commit the rape and to intimidate the victim into silence.¹⁰

WE are likewise unswayed by accused-appellant's arguments that (1) the piece of paper showing AD's drawings of the alleged sexual abuses of accused-appellant demonstrates her inconsistent testimony when she later addressed another person committing the same acts against her, other than accused-appellant; and (2) there must have been an ill-motive on the victim's part because of the hatred she harbors towards him by calling him "demonyo". WE hold that at her tender age, AD's revelation that she was sexually molested cannot be easily dismissed as a mere concoction considering her willingness to undergo a public trial and relate the details of accused-appellant's sexual abuses. On her direct and cross examinations, AD remained consistent and unwavering in her narrations of how she was sexually abused by accused-appellant. Despite her lack of experience in court proceedings, she was unfazed by the grilling done on her during the cross-examination conducted by the defense, attesting to the trustworthiness of her declarations. In

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⁷ Id. at 247-248.

⁸ *People v. Lampaza*, 377 Phil. 119, 122 (1999).

⁹ See *People v. Gapasan*, 312 Phil. 964, 972 (1995).

¹⁰ *People v. Felipe Nachor*, 652 Phil. 756, 774 (2010).

criminal cases of this nature, the only evidence that can really be offered to establish the guilt of the accused, more often than not, is the testimony of the complainant herself.¹¹

The alleged contradictions and inconsistencies in AD's testimony refer to trivial matters. They are not material to the issue of whether or not accused-appellant committed the horrendous acts he was charged with, tried and convicted. It is worth stressing that AD was only nine (9) years old when she answered the questions contained in her *Sinumpaang Salaysay* and 12 years old when she testified in open court. Error-free testimony cannot be expected, most especially when a witness is recounting details of a harrowing experience, one which even an adult would like to bury in oblivion.¹² AD was still very young and considering the numerous times she was molested by accused-appellant, it is but natural for her to make mistakes and that there be some degree of inconsistency in her testimony. A child of tender years, could not be expected to give complete and perfect testimony.¹³ Discrepancies could be caused by the natural fickleness of human memory.¹⁴ WE find no compelling reason to disturb or set aside the findings of the lower court, which gave weight and credence to her testimony.

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Anent the issue that it is highly improbable that the sexual abuses be committed near the presence of AD's mother and brother, WE rule in the negative. Case law proves that circumstances of time, place, and even the presence of other persons are not considerations in the commission of rape.¹⁵ The Supreme Court explicated on this matter in the case of *People vs. Carlo Escano*¹⁶, viz:

In truth, as has been held, rape is no respecter of time and place. It is known to be committed in places ordinarily considered as unlikely. The scene of the rape is not always nor necessarily isolated or secluded. Rape can be committed in places where people congregate, in parks, along the roadside, within school premises, inside an occupied house, and even in a room where other members of the family are also sleeping. Among couples with large families who live in cramped quarters, the presence of other members of the family is not necessarily a deterrent to the commission of the crime. In this case, it was not

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¹¹ *People v. Soriano*, 436 Phil. 719, 753 (2002).

¹² *People v. Osing*, 402 Phil. 343, 350 (2001).

¹³ *People v. Guibao*, 291 Phil. 63 (1993).

¹⁴ *People v. Joya*, 297 Phil. 932, 944 (1993).

¹⁵ *People v. Castillo*, 727 Phil. 556, 567-568 (2014).

¹⁶ 427 Phil. 162 (2002).

impossible for accused-appellant to have access to Zenaida, who was then sleeping beside him together with her other siblings.^{17 18}

Following *People v. Tulagan*,¹⁹ the proper nomenclature of the offense in Criminal Case No. 2011-12755-MK should be Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5 (b), Article III of RA 7610. Since accused-appellant is the victim's father, which was alleged in the Information and proven during trial, the same should be considered an aggravating circumstance for the purpose of increasing the period of imposable penalty to its maximum period, *i.e.*, *reclusion perpetua*.²⁰ Pursuant to prevailing jurisprudence,²¹ the awards of civil indemnity, moral damages, and exemplary damages in Criminal Case No. 2011-12755-MK should be increased from ₱30,000.00 to ₱50,000.00 each.

WHEREFORE, premises considered, the appeal is **DISMISSED** for lack of merit. The Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated November 23, 2017 of the Court of Appeals in CA-G.R.CR-HC No. 08859. The Decision finding accused-appellant XXX guilty beyond reasonable doubt of three counts of Statutory Rape under Article 266-A of the Revised Penal Code, as amended, and one count of Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5 (b), Article III of RA 7610, as amended, is **AFFIRMED** with **MODIFICATION**. He is ordered to pay the private offended party One Hundred Thousand Pesos (₱100,000.00) as civil indemnity, One Hundred Thousand Pesos (₱100,000.00) as moral damages, and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages in each of Criminal Case Nos. 2011-12756-MK, 2011-12757-MK, 2011-12759-MK and Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as exemplary damages in Criminal Case No. 2011-12755-MK.

All monetary awards are subject to six percent (6%) interest per annum from finality of this Resolution until fully paid.

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¹⁷ Id. at 184.

¹⁸ *Rollo*, pp. 18-22.

¹⁹ G.R. No. 227363, March 12, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>>.

²⁰ RA 7610, Sec. 31 (c).

²¹ *People v. Tulagan*, supra note 19.

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court *aka*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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