



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 215331

Present:

- versus -

CARPIO, J., *Chairperson*,
VELASCO, JR.,*
PERALTA,
MENDOZA, and
LEONEN, JJ.

LUDIGARIO BELEN y
MARASIGAN, Accused-Appellant.

Promulgated:

12 3 JAN 2017

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DECISION

PERALTA, J.,

Before us on appeal is the Decision¹ dated July 11, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05610, affirming the Decision² dated December 20, 2010 of the Regional Trial Court (RTC) of San Mateo, Rizal, Branch 76, which convicted Ludigario Belen y Marasigan (*appellant*) of two counts of simple rape.

On February 2, 2006, appellant was charged with qualified rape under Article 266-A (1) (a), in relation to Article 266-B (6) (1) of the Revised Penal Code, as amended by Republic Act (RA) No. 8353 and in further relation to Section 5 (a) of RA 8369 in two separate informations, the accusatory portions of which state:

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 2416-A dated January 4, 2017.

¹ Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Nina Antonio –Valenzuela, concurring, *rollo*, pp. 2-18.

² *Id.* at 42-46; Per Judge Josephine Zarate-Fernandez.

Criminal Case No. 9563

That sometime in July 1999 in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral ascendancy, with intent to cause or gratify his sexual desire, by means of force, violence and intimidation, through the use of a deadly weapon - a knife, did then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA,³ an eight (8)-year-old minor, against her will and without her consent; the crime having been attended by the qualifying circumstances of relationship-the complainant being the daughter of his common-law wife, and minority, thereby raising the said crime to that of QUALIFIED RAPE, which is aggravated by the circumstances of treachery, evident premeditation, abuse of superior strength and dwelling, to the damage and prejudice of the said victim.

Contrary to Law.⁴

Criminal Case No. 9564

That sometime in July 1999 in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral ascendancy, with intent to cause or gratify his sexual desire, by means of force, violence and intimidation, through the use of a deadly weapon - a knife, did then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA, an eight (8)-year-old minor, against her will and without her consent; the crime having been attended by the qualifying circumstances of relationship-the complainant being the daughter of his common-law wife, and minority, thereby raising the said crime to that of QUALIFIED RAPE, which is aggravated by the circumstances of treachery, evident premeditation, abuse of superior strength and dwelling, to the damage and prejudice of the said victim.

Contrary to Law.⁵

Appellant, assisted by counsel, was arraigned⁶ on April 17, 2008 and pleaded not guilty to each charge. Trial thereafter ensued.

The prosecution presented AAA, Police Senior Inspector Dean C. Cabrera (*PSI Cabrera*), the medico-legal officer of the Philippine National Police (*PNP*) Crime Laboratory, and BBB, AAA's mother.

AAA testified that she was 8 years old in 1999 and that appellant is the husband of her mother but they were not married;⁷ and that they were all

³ The real names of the victim and her immediate family members as well as any information which could establish or compromise her identity are withheld pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

⁴ Records, pp. 1-2

⁵ *Id.*

⁶ *Id.* at 31-32.

⁷ TSN, February 4, 2009, p. 3.

then living in Purok I, Buntong Palay, San Mateo Rizal.⁸ At 4 o'clock in the afternoon of July 1999, she was playing outside their house when she was called by appellant to go inside the house. Once inside, appellant locked the door and poked a knife at her and ordered her to remove her clothes to which she complied.⁹ Appellant instructed her to bend over and he inserted his penis into her vagina.¹⁰ Thereafter, appellant placed himself on top of her, moving up and down while she was crying.¹¹ The rape incident happened for about half an hour in her mother's room.¹²

At 7 o'clock in the evening of the second week of July 1999, while her mother was at work and she was then sitting at home, appellant entered the house and told her to undress to which she complied as he threatened her not to make noise or tell her mother.¹³ Appellant asked her to bend and inserted his penis into her vagina¹⁴ then she was told to lie down and appellant went on top of her and inserted his penis in her vagina and started moving up and down. The rape incident happened for about half an hour while she was crying.¹⁵ Appellant raped her several times more which only stopped when her grandmother took her to her uncle's house in Divisoria.¹⁶ It was only in 2005, when confronted by her mother as to the truth that she was raped by appellant, that she had finally told her that she had been repeatedly sexually molested by appellant.¹⁷ She had never told her mother about her ordeal before because appellant threatened her.¹⁸

PSI Cabrera testified that he conducted a physical and genital examination on AAA on December 8, 2005 as requested by the Chief of Police of San Mateo, Rizal,¹⁹ and in this connection, he issued a Medico Legal Report stating that the victim sustained deep-healed laceration of the hymen at 6:00 position.²⁰ He stated that the finding of laceration on the hymen would hardly give any proof to the number of times that a sexual abuse had taken place.²¹

BBB, AAA's mother, testified that appellant is her live-in partner for 10 years,²² and that she was staying with AAA and appellant in the latter's house in July 1999. On November 11, 2005, AAA told her that appellant had molested her but kept silent because of appellant's threat that he would

⁸ *Id.* at 3-4.
⁹ *Id.* at 5.
¹⁰ *Id.* at 6.
¹¹ *Id.*
¹² *Id.* at 6-7.
¹³ *Id.* at 9-10; TSN, March 23, 2009, p. 5.
¹⁴ TSN, March 23, 2009, p. 6.
¹⁵ *Id.* at 7-8.
¹⁶ *Id.* at 9.
¹⁷ *Id.* at 9-10.
¹⁸ TSN, May 14, 2009, p. 10.
¹⁹ TSN, October 9, 2008 p. 3.
²⁰ *Id.* at 4-5.
²¹ *Id.* at 5.
²² TSN, September 11, 2008, p. 3.

kill them.²³ Her mother took AAA after the latter finished grade 2 and brought her to an uncles' house in Divisoria.²⁴ AAA was 8 years old and in grade 2 at the time of the rape incidents.²⁵

Appellant denied the charges and claimed that AAA is the daughter of BBB, his live-in partner with whom he separated in 1999;²⁶ that in 1999, his mother-in-law brought AAA, who was then 7 years old, to Manila to study, and did not visit her since then;²⁷ that BBB was *masungit*, so he left their house and lived alone in another house; and that BBB got mad when he left her and told him that she would file a case against him.²⁸ They filed a case against him to get his property.²⁹

On December 20, 2010, the RTC rendered its Decision the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. 9563, accused Ludigario Belen y Marasigan is hereby found GUILTY beyond reasonable doubt of the crime of Simple Rape and sentencing him to suffer the penalty of Reclusion Perpetua and to pay the victim the amount of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php25,000.00 as exemplary damages.

2. In Criminal Case No. 9564, accused Ludigario Belen y Marasigan is hereby found GUILTY beyond reasonable doubt of the crime of Simple Rape and sentencing him to suffer the penalty of Reclusion Perpetua and to pay the victim the amount of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php25,000.00 as exemplary damages. No pronouncement as to cost.

Accused Ludigario Belen y Marasigan is to be credited for the time spent for his preventive detention in accordance with Art. 29 of the Revised Penal Code as amended by RA 6127 and EO 214.

Accused Ludigario Belen y Marasigan is hereby ordered committed to the National Bilibid Prisons in Muntinlupa City for service of sentence.³⁰

The RTC found that AAA gave a detailed recount of her sexual ordeal in a candid and straightforward manner; that the medico-legal report stating a deep healed laceration at 6 o'clock position with conclusion that "genital examination reveals remote history of blunt force or penetrating coma" clearly bolstered AAA's allegation that appellant sexually molested her in

²³ *Id.* at 4.

²⁴ *Id.*

²⁵ TSN, November 10, 2008, p. 2.

²⁶ TSN, July 19, 2010, pp. 3-4.

²⁷ *Id.* at 4, 8.

²⁸ *Id.* at 4.

²⁹ *Id.* at 5.

³⁰ Records p. 122.

her younger years. The RTC, however, did not find the two rape incidents as qualified rape even if AAA's birth certificate was marked and offered, since the Local Civil Registrar of San Mateo, Rizal had presented a certification that it had no record of AAA's birth, thus, failing to prove her minority.

Appellant filed his appeal with the CA. After the Solicitor General filed his Appellee's Brief, the case was submitted for decision.

On July 11, 2014, the CA rendered its Decision which denied the appeal and affirmed the RTC decision.

Hence, the instant appeal.

Both parties manifested that they would no longer file supplemental briefs as they had already exhaustively argued their issues in their respective briefs.³¹

Appellant argues that the prosecution miserably failed to overthrow the presumption of innocence in his favor. He contends that the bulk of AAA's testimony was supplied by the prosecutor who even made presumptions and legal conclusions even before hearing the evidence. He claims that AAA's testimony is doubtful as it is inconsistent with the medico-legal report findings of only one laceration in the victim's hymen.

We affirm the lower court's conviction of appellant for two counts of simple rape.

Article 266-A, paragraph (1) of the Revised Penal Code, states the elements of the crime of rape as follows:

Article 266 – A. *Rape: When and How Committed.* – Rape is committed:

- 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a) Through force, threat, or intimidation;
 - b) When the offended party is deprived of reason or otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority; and
 - d) When the offended party is under twelve (12) years of age or is demented, even

³¹ *Id.* at 30-31; 34-35.

though none of the circumstances mentioned above be present.

We have scrutinized the records of this case and are convinced that appellant had carnal knowledge of AAA with threat and intimidation, thus, against her will and without her consent. AAA categorically declared that in two separate instances, appellant had inserted his penis into her vagina while she was crying. Her testimony on the first rape incident, to wit:

Q. Where were you sometime in the month of July 1999 around 4:00 in the afternoon which is the subject of this complaint?

A. I was in our house at Purok I, sir.

Q. What were you doing at that time?

A. I was playing, sir.

Q. You were then, as you said, 8 years old?

A. Yes, sir.

Q. And at that time who were there in your house?

A. Ludigario Belen, sir.

Q. While you were playing outside your house, what, if any, transpired at around 4:00 in the afternoon?

A. He called me, sir.

Q. Who called you?

A. Ludigario Belen.

Q. And what did you do after you were called?

A. I approached him, sir.

Q. And what happened next after that?

A. He asked me to go inside the house.

Q. What happened next after that?

A. He locked the door, sir.

Q. And after locking the door of your house, what, if any, did he do if he had done anything?

A. He told me to remove my clothes, sir.

Q. Did you comply?

A. Yes, sir.

Q. Why did you comply?

A. Because he threatened me, sir.

Q. How did he threaten you?

A. He poked a knife at me, sir.

Q. You said that you had undressed, what were you wearing then at that time?

A. I was wearing shorts, sir.



Q. And what were your undergarments?

A. Shorts and panty, sir.

Q. What were your upper garments at that time?

A. T-shirt, sir.

Q. You said that you removed your clothes.

A. Yes, sir.

Q. Including your undergarments?

A. Yes, sir.

Q. After that what transpired next after that?

A. He asked me to bend over, (pinatuwad) sir.

Q. Thereafter, what did he do to you?

A. He removed his shorts, sir.

Q. After he removed his shorts, what did he do if he had done anything?

A. That was the time he raped me, sir.

Q. How did he rape you, can you describe what he did to you?

A. He inserted his penis to my vagina, sir.

Q. After inserting his private part into your private part, what did he do to you?

A. He moved on top of me, sir.

Q. How did he move, can you describe it?

A. In an up and down movement, sir.

Q. When he was doing this, what were you doing?

A. I was just crying, sir.³²

As to the second incident of rape, AAA declared:

Q. In the month of July, how many times were you raped?

A. Three times, sir.

Q. More or less, what time of the day would have this occurred, the second time that you were raped?

A. 7:00 o'clock in the evening.

Q. The first incident in July, you said that it was committed at around 4:00 o'clock in the afternoon in 1999?

A. Yes, sir.

Q. The second time was also at 7:00 o'clock in the month of July?

A. Yes, sir.

Q. The second time that this happened to you in the month of July 1999 at around 7:00 o'clock in the evening, what were you doing then, if you can remember?

A. I was seated inside our house, sir.

³²

TSN, February 4, 2009, pp. 5-6.

Q. What were you doing then, at that time?

A. None. I was just sitting, sir.

Q. And what did the accused do to you?

A. He called me, sir.

Q. What is the full name of the accused?

A. Ludigario Belen, sir.

Q. What is his relation to you again?

A. He is my stepfather (tatay-tatayan), sir.

Q. He is not your biological father?

A. No, sir.

Q. So the second time that this happened to you in the year 1999, what did he do while you were inside your house at around 7:00 o'clock in the evening?

A. Inutusan po nya ako na maghubad ako dahil gagalawin nya ako, sir.

Q. Did you do what you were told to do?

A. Yes, sir.

Q. You said that he asked you to remove your clothes, what were you wearing then at that time?

A. Shorts and panty.

Q. After removing it, what if, any, happened next after that?

A. Pinatuwad po nya ako and then he inserted his penis, sir.

Q. Where were you at that time?

A. I was inside the room, sir.

Q. You were on the floor, on what part of the room were you stooping down?

A. Inside the room of my mother, sir.

Q. On the floor or what kind of furniture?

A. On the floor, sir.

Q. After he had done that, what did he do to you?

A. He went on top of me, sir.

Q. When you say "moving" what kind of motion was he doing?

A. He was moving up and down, sir.

Q. At that time, what clothes was he wearing?

A. He removed, sir.

Q. Madam witness, you said that he went on top of you, after going on top of you, what did he do?

A. No more, he dressed up, sir.

Q. You said that he was moving back and forth, how did he do that?

A. While he was on top of me and he did that sir.

Q. You said that before that, you were asked to stoop down?

A. Yes, sir.

Q. Then you said that he went on top of you, what did he do to turn you over?

...

Q. Madam witness, you said that you were first asked to stoop down?

A. Yes, sir.

Q. On the floor?

A. Yes, sir.

Q. And then you testified before the Honorable court that he went on top of you?

A. Yes, sir.

Q. So how did it happen that you were facing him when he went on top of you when you said that he first asked you to stoop down, that would mean that if you are stooping down, your back was facing him, not your head facing him?

A. After asking me to stoop down, he told me to lie down, that is why I was facing him, sir.

...

Q. After he had gone on top of you, what did he do, if he had done anything?

A. He mashed my breast, sir.

Q. After doing that, what else did he do?

A. He continued what he was doing, sir.

Q. What was he doing?

A. He was moving on top of me, sir.

Q. While he was doing that, what were you doing?

A. I was crying, sir.

Q. Why were you crying when you said he was just on top of you.

A. Because he inserted his penis in my vagina and after that he moved sir.

Q. How long did he continue moving on top of you?

A. More than half an hour, sir.

Q. After that you said that he just left you there inside the room?

A. Yes sir and he told me to dress up.³³

It was clearly established that the first rape incident was accomplished with the use of a knife which proved that appellant employed threat in AAA's life. As to the second rape, while there was no force and intimidation used by appellant on AAA, the fact that appellant is the live-in partner of her mother and with whom she had been living with since she was 2 years old, established his moral ascendancy as well as physical superiority over

³³ TSN, March 23, 2009, pp. 4-8.

AAA. Appellant's moral ascendancy and influence over AAA substitutes for threat and intimidation³⁴ which made AAA submit herself to appellant's bestial desire. It is doctrinally settled that the moral ascendancy of an accused over the victim renders it unnecessary to show physical force and intimidation since, in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, moral influence or ascendancy takes the place of violence or intimidation.³⁵

We agree with the RTC's conclusion that AAA testified in a candid and straightforward manner. The evaluation of the trial court judge from the viewpoint of having observed the witness on the stand, coupled by the fact that the CA affirmed the findings of the trial court, is binding on the court unless it can be shown that facts and circumstances have been overlooked or misinterpreted which, if considered, would affect the disposition of the case in a different manner,³⁶ which is not present in this case.

Appellant argues that most of the details of the alleged rape incidents were elicited from AAA through leading questions; that a reading of the Transcript of Stenographic Notes (*TSN*) showed that she was consistently led to her answers by the trial prosecutor's questions, hence, it cannot be said that her testimony was straightforward and a categorical disclosure of the events that transpired.

We find such argument without merit. We quote with approval the CA's disquisition on the matter, to wit:

A perusal of the AAA's testimony reveals that the prosecution did not proffer leading questions. Assuming *arguendo* that the questions are leading, the defense failed to object as soon as the alleged leading questions were asked. It is too late in the day for appellant to object to the formulation of the offer and the manner of questioning adopted by the public prosecutor. Appellant should have interposed his objections in the course of the oral examination of AAA, as soon as the grounds therefor became reasonably apparent. As it were, he raised not a whimper of protest as the public prosecutor recited his offer or propounded questions to AAA. Worse, appellant subjected AAA to cross-examination on the very matters covered by the questions being objected to; therefore, he is barred from challenging the propriety thereof or the admissibility of the answers given.³⁷

Appellant contends that while AAA alleged that she was raped many times when she was 8 years old, however, it was shown by the medico-legal report that she had only one laceration in her hymen which was at 6 o'clock

³⁴ *People v. Aguilar*, G.R. No. 185206, August 25, 2010, 629 SCRA 437, 449.

³⁵ *People v. Bustamante*, G.R. No. 189836, June 5, 2013, 697 SCRA 411, 422.

³⁶ *People v. Colentava*, G.R. No. 190348, February 9, 2015, 750 SCRA 165, 181; *People v. Musa*, G.R. No. 143703, November 29, 2001, 371 SCRA 234, 248, citing *People v. Pajo*, G.R. Nos. 135109-13, December 18, 2000, 348 SCRA 492.

³⁷ *Rollo*, p. 14.

position and deeply healed; and that there is a possibility that this laceration could have been done by any other male person aside from appellant since the actual genital examination was only done in 2005 when the victim was no longer living with the appellant under the same roof.

We are not impressed.

In *People v. Ferrer*,³⁸ we held:

It is settled that laceration is not an element of the crime of rape. The absence of lacerations does not negate rape. The presence of lacerations in the victim's vagina is not necessary to prove rape; neither is a broken hymen an essential element of the crime. x x x

x x x x

We accordingly reject accused-appellants arguments which hinge on alleged inconsistencies between the statements made by the private complainant *vis-a-vis* the medical examination and report. The medical report is by no means controlling. This Court has repeatedly held that a medical examination of the victim is not indispensable in the prosecution for rape, and no law requires a medical examination for the successful prosecution thereof. The medical examination of the victim or the presentation of the medical certificate is not essential to prove the commission of rape as the testimony of the victim alone, if credible, is sufficient to convict the accused of the crime. The medical examination of the victim as well as the medical certificate is merely corroborative in character.³⁹

Accordingly, what is crucial is that AAA's testimony meets the test of credibility, which serves as the basis for appellant's conviction.⁴⁰ Notably, PSI Cabrera, in his cross examination, had clarified that it is possible that a person being raped or a hymen, or a vagina being penetrated by a penis would create a laceration at the same spot just like a lightning hitting on the same spot.⁴¹ Therefore, AAA's straightforward testimony that appellant had raped her twice is not at all negated by a finding of only one laceration in her hymen.

We have been consistent in giving credence to testimonies of child victims especially in sensitive cases of rape,⁴² as no young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped.⁴³

³⁸ G.R. No. 142662, August 14, 2001, 362 SCRA 778, 787.

³⁹ *People v. Ferrer, supra*, at 788.

⁴⁰ *Id.*

⁴¹ TSN, October 9, 2008, p. 7.

⁴² *People v. Colentava, supra* note 36, at 182.

⁴³ *People v. Menaling*, G.R. No. 208676, April 13, 2016.

Appellant denies the charges and imputes ill motive on the part of AAA and her mother. It is well settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law because denial cannot prevail over the positive, candid and categorical testimony of the complainant, and as between the positive declaration of the complainant and the negative statement of the appellant, the former deserves more credence.⁴⁴

Appellant's allegation that AAA and her mother filed the cases against him in order to get his properties does not inspire belief. For appellant's allegations of ill motive to be credible, he should substantiate the same by clear and convincing evidence which he failed to do, as he even admitted that the properties are not yet titled in his name but with the government.⁴⁵ We have ruled that no mother in her right mind would subject her child to the humiliation, disgrace and trauma attendant to a prosecution for rape if she was not motivated solely by the desire to incarcerate the person responsible for her child's defilement.⁴⁶ We find that AAA and her mother are not impelled by any improper motive in filing rape charges against appellant but to obtain justice for what AAA had suffered in the hands of appellant.

We agree with the RTC as affirmed by the CA that appellant is guilty of two counts of simple rape only and not of qualified rape as charged. Rape is qualified when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.⁴⁷ Well-settled is the rule that qualifying circumstances must be specifically alleged in the Information and duly proven with equal certainty as the crime itself.⁴⁸ The informations alleged that AAA is eight years old and appellant is the common law husband of AAA's mother. The relationship of AAA with appellant was admitted by the latter but AAA's age was not sufficiently proved during trial. The victim's minority must be proved conclusively and indubitably as the crime itself.⁴⁹

⁴⁴ *People v. Bustamante*, G.R. No. 189836, June 5, 2013, 697 SCRA 411, 423, citing *People v. Mangune*, G.R. No. 186463, November 14, 2012, 685 SCRA 578, 590.

⁴⁵ TSN, July 19, 2010, p. 7.

⁴⁶ *People v. Rullepa*, G.R. No.131516, March 5, 2003, 398 SCRA 567, 581, citing *People v. Perez*, G.R. No. 129213, December 21, 1999, 319 SCRA 622.

⁴⁷ Revised Penal Code, Art. 266-B, as amended by Rep. Act No. 8353 (1997).
Article 266-B. Penalties.

x x x x

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

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

⁴⁸ *People v. Garcia*, G.R. No. 206095, November 25, 2013, 710 SCRA 571, 584-585.

⁴⁹ *Id.* at 585.

We held in *People v. Pruna*⁵⁰ that:

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victims mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victims mother or relatives concerning the victims age, the complainants testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.

In this case, the prosecution presented a copy of AAA's birth certificate but the same was not authenticated, hence, could not be given any probative value. While attached to the records is AAA's baptismal certificate⁵¹ which showed that she was born on July 27, 1991, which the defense admitted to be a faithful reproduction of the original, however, the same was not offered in evidence. Section 34 of Rule 132 of the Rules of

⁵⁰ G.R. No. 138471, October 10, 2002, 390 SCRA 577.

⁵¹ Records, p. 91.



Court provides that the court shall consider no evidence which has not been formally offered and that the purpose for which the evidence is offered must be specified. Furthermore, while BBB testified that her daughter was 8 years old at the time of the rape incidents, she admitted that she did not know when AAA was born, hence, her testimony as to AAA's age could not be considered as sufficient compliance with paragraph no. 3 of the guidelines in the *Pruna* case.

While in *People v. Balo*,⁵² we had appreciated pieces of evidence and circumstances which were actually established by the prosecution in determining the age of the victim, to wit:

In the case at bar, several documents were presented in court indicating the very young age of the victim; *first*, while assisted by her grandmother, AAA stated in her *Sinumpaang Salaysay* that she was five (5) years of age; *second*, the Request for Genital Exam indicated that AAA was five (5) years old; *third*, the Sexual Crime (Protocol) Form stated that the age of AAA was five (5) years old; *fourth*, the Initial Medico-Legal Report showed that AAA was five (5) years of age; *fifth*, Medico-Legal Report No. R07-757 reflected that AAA was five (5) years old; *sixth*, the personal circumstances of the victim when she testified on June 24, 2008 stated that AAA was five (5) years old and she likewise answered that she was five (5) years old when asked about her age; and *seventh*, the accused failed to controvert that AAA was four (4) years old at the time the crime was committed when the court inquired about it while he was testifying.

In this particular case, these pieces of evidence, together with the physical appearance of the victim when she testified, would have been sufficient basis for the lower court to ascertain the tender age of the victim when the crime was committed. Furthermore, the Medico-Legal Report prepared by Police S/Insp. Dr. Ebdane, a government physician who took an oath as a civil service official, means that she is competent to examine persons and issue medical certificates which will be used by the government. As such, the Medico-Legal Report carries the presumption of regularity in the performance of her functions and duties. As regards the other documents, under Section 44,45 Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts therein stated. To be sure, in the absence of proof to the contrary, law enforcement agencies of the government similarly enjoy the presumption of regularity in the performance of their official functions. Verily, if baptismal certificates or school records are allowed to be presented in court to establish the age of the victim in the absence of a birth certificate, with more reason should Medico-Legal Reports and comparable documents be allowed to ascertain such circumstance in similar cases.

Consequently, notwithstanding the fact that AAA's original or duly certified birth certificate, baptismal certificate or school records, were never presented by the prosecution, the Court agrees with the lower court and the appellate court that AAA's minority was duly established by the evidence on record.

⁵² G.R. No. 217024, August 15, 2016.

We, however, find those pieces of evidence wanting in this case. AAA's *Sinumpaang Salaysay* was executed when she was already 14 years old and thus, the initial medico-legal report also showed that she was 14 years old when she was examined. Hence, AAA's allegation that she was 8 years old when she was raped was not proved by these documents.

Article 266-B of RA 8353, otherwise known as the *Anti-Rape Law of 1997*, states that whenever rape is committed through force, threat or intimidation, the penalty shall be *reclusion perpetua*. However, whenever the rape is committed with the use of a deadly weapon, such as a knife in this case, the penalty shall be *reclusion perpetua* to death. In the first incident of rape, it was committed with the use of a knife which is a deadly weapon, thus the penalty imposable is *reclusion perpetua* to death. Article 63(2) of the Revised Penal Code states that when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. Since no aggravating nor any mitigating circumstance had been proved, We find that the RTC correctly imposed the penalty of *reclusion perpetua*. As to the second rape incident, since the moral ascendancy of appellant over AAA took the form of threat and intimidation on her, the RTC likewise correctly imposed the penalty of *reclusion perpetua* on the appellant.

We, however, modify the damages awarded by the RTC in the two rape cases pursuant to our ruling in *People v. Ireneo Jugueta*.⁵³ The civil indemnity, moral damages and exemplary damages should all be increased to ₱75,000.00 for each count of rape. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this decision until fully paid.⁵⁴

WHEREFORE, the instant appeal is **DISMISSED**. The Decision dated July 11, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05610 is **AFFIRMED** with **MODIFICATION** that the award of civil indemnity, moral damages and exemplary damages should all be increased to ₱75,000.00 for each count of rape. The monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this decision until fully paid.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

⁵³ G.R. No. 202124, April 5, 2016.

⁵⁴ *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, 716 Phil. 267 (2013).

WE CONCUR:

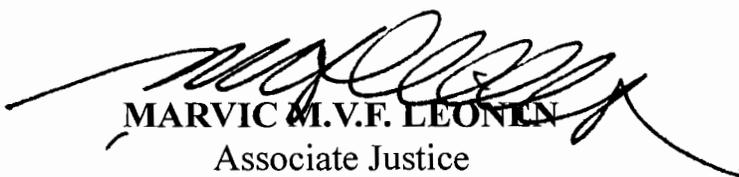


ANTONIO T. CARPIO
Associate Justice
Chairperson

PRESBITERO J. VELASCO, JR.
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice