



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-appellee,

G.R. No. 258054

Present:

-versus-

LEONEN, *SAJ.*, Chairperson,  
LAZARO-JAVIER,\*  
LOPEZ, M.,  
LOPEZ, J., and  
KHO, JR., *JJ.*

XXX258054,

Accused-appellant.

Promulgated:

OCT 25 2023

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DECISION

**LOPEZ, M., J.:**

The State is mandated to provide protection to those of tender years.<sup>1</sup> By adopting the doctrine of unavailable child, the Court ensures that cases of child abuse or attempted child abuse can still be tried notwithstanding the unavailability of the child.

This Court resolves an appeal<sup>2</sup> assailing the Decision<sup>3</sup> dated March 2, 2021 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 13870.

\* On official business.

<sup>1</sup> *Masbate v. Relucio*, 837 Phil. 515, 526 (2018) [Per J. Perlas-Bernabe, Second Division].

<sup>2</sup> See Notice of Appeal dated March 23, 2021; *rollo*, pp. 3-4.

<sup>3</sup> *Id.* at 8-55. Penned by Associate Justice Rafael Antonio A. Santos, with the concurrence of Associate Justices Elihu A. Ybañez and Bonifacio S. Pascua of the Court of Appeals, Manila, Special Ninth Division.

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**ANTECEDENTS**

On July 20, 2018, XXX258054<sup>4</sup> was charged with qualified rape, defined and penalized in Article 266-A(1)(a) in relation to Article 266-B(1) of the Revised Penal Code (RPC), as amended, in the following Information:

That on or about the 24<sup>th</sup> of May, 2018 in the [REDACTED]<sup>5</sup> Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is the biological father of herein complainant, with lewd design, and by means of force, threat and intimidation, and with the use of a knife, a deadly weapon, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA258054],<sup>6</sup> a fourteen (14) year old minor, by then and there, inserting his penis into her vagina, against her will and consent.

CONTRARY TO LAW.<sup>7</sup>

Arraigned in the presence and with the assistance of counsel, XXX258054 entered a plea of not guilty.<sup>8</sup> During pre-trial, the parties stipulated that AAA258054 is 14 years old and XXX258054 is her biological father, among others.<sup>9</sup>

The prosecution was not able to present AAA258054 as a witness because her mother BBB258054<sup>10</sup> sent her to [REDACTED] after the filing of the Complaint to prevent her from testifying against her father.<sup>11</sup> In lieu of AAA258054's direct testimony, the prosecution offered the *Sinumpaang Salaysay* and the Sexual Abuse Protocol she accomplished.<sup>12</sup>

<sup>4</sup> Initials were used to identify accused-appellant pursuant to SC Amended Administrative Circular No. 83-2015 dated September 5, 2017, entitled "Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances."

<sup>5</sup> Under SC Amended Administrative Circular No. 83-2015, "[a]s to geographical location, the decisions, resolutions, and orders in covered cases should refer only to the province where the incident occurred or where the crime was committed. References to the specific *barangay* or town should be blotted out from the body of the decision, resolution, or order if its identification could lead to the disclosure of the identities of the women or children victims."

<sup>6</sup> The real name of the victim, his or 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 initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) [Per J. Tinga, *En Banc*], and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>7</sup> Records, Criminal Case No. 18-1174, pp. 1-2.

<sup>8</sup> *Id.* at 21-22.

<sup>9</sup> Records, Criminal Case No. 18-1174, pp. 23-24.

<sup>10</sup> The real name of the victim, his or 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 initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) [Per J. Tinga, *En Banc*], and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>11</sup> TSN, CCC258054, February 12, 2019, p. 17; TSN, GGG258054, February 18, 2019, p. 11; TSN, XXX258054, May 14, 2019, p. 10; and TSN, YYY258054, June 3, 2019, p. 4.

<sup>12</sup> Records, Criminal Case No. 18-1174, pp. 1-2.

CCC258054,<sup>13</sup> XXX258054's elder sister, testified that at past midnight on May 25, 2018, her siblings DDD258054<sup>14</sup> and EEE258054,<sup>15</sup> and sister-in-law FFF258054<sup>16</sup> woke her up and asked her to check on their niece AAA258054 who was crying. CCC258054, her siblings, and their respective families, including XXX258054, lived in [REDACTED]. AAA258054, who just came from their side of the house, confided to CCC258054 that her father, who is a drunkard and who uses *shabu*, has been sexually abusing her since she was 10 years old. XXX258054 touched the delicate parts of her body. He entered the bathroom while AAA258054 was bathing, kissed her vagina, and inserted his fingers into her vagina. XXX258054 hurt AAA258054 whenever she refused his advances. The last incident occurred just before midnight, in their house. XXX258054 had carnal knowledge of AAA258054 against her will.<sup>17</sup>

CCC258054 accompanied AAA258054 to the barangay hall and the police station so that AAA258054 could report what happened and file a complaint. In her *Sinumpaang Salaysay*, AAA258054 reiterated that her father XXX258054 began abusing her when she was 10 years old and the last incident was on the evening of May 24, 2018. She narrated that "*kanina po ay pinaghubad niya po ako at sinuntok niya po yung bunganga ko at sinampal ako tapos po pinaghahampas niya po ako ng hanger[.] Tapos po pinahiga pa niya ako sa kama, hinubaran niya ako ng short tapos pinasok niya po yung ari niya sa pepe ko[.] Tapos po nagwawala po ako noon tapos natigil na at umalis na po siya.*"<sup>18</sup> Given AAA258054's statement, the police referred her to the crime laboratory for medical examination. CCC258054 accompanied AAA258054 to the crime laboratory.<sup>19</sup>

Police Chief Inspector Reah Cornelio (PCINSP Cornelio), Medico-Legal Officer of the Southern Police District Crime Laboratory, testified that on May 28, 2018, she received a letter/request to conduct a medico-legal examination on AAA258054 from the Women and Children Protection Desk

<sup>13</sup> The real name of the victim, his or 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 initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) [Per J. Tinga, *En Banc*], and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>14</sup> The real name of the victim, his or 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 initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) [Per J. Tinga, *En Banc*], and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>15</sup> The real name of the victim, his or 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 initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) [Per J. Tinga, *En Banc*], and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>16</sup> The real name of the victim, his or 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 initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) [Per J. Tinga, *En Banc*], and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>17</sup> TSN, CCC258054, February 12, 2019, pp. 3-6.

<sup>18</sup> Records, Criminal Case No. 18-1174, pp. 1-2.

<sup>19</sup> TSN, CCC258054, February 12, 2019, p. 13.

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of [REDACTED].<sup>20</sup> Prior to the conduct of the examination, PCINSP Cornelio asked AAA258054 to accomplish a Sexual Abuse Protocol containing a brief history of what happened. She then confirmed AAA258054's *Salaysay* with an interview. When she examined AAA258054, PCINSP Cornelio found deep-healed hymenal lacerations at the 4, 8, and 9 o'clock positions. She explained that the lacerations could have been caused by any penetrating blunt object, including an erect penis.<sup>21</sup> PCINSP Cornelio observed no other evident injuries. She reduced her findings to writing and prepared Medico-Legal Report No. SA18-108SPD/S.<sup>22</sup>

GGG258054,<sup>23</sup> daughter of XXX258054's brother EEE258054, testified that around one o'clock in the morning of May 25, 2018, she was awakened by the loud voice of her mother FFF258054 saying "[*Diyos*] *ko!* [*Diyos*] *ko!*" Alarmed, she went downstairs and asked her mother what happened. Her mother told her "[*I*] *nano ng papa niya [si AAA258054.]*" AAA258054 was raped by her father. At that time, AAA258054 was no longer in their house. Their aunt CCC258054 and her husband accompanied AAA258054 to the barangay hall to report the incident. When AAA258054 returned to their house, GGG258054 spoke with her and asked her what happened. Crying, AAA258054 told GGG258054 that she was called home by her father that evening. They were alone in the house which had no electricity. XXX258054 removed his clothes and forced AAA258054 to take her clothes off and lie down on the bed. AAA258054 tried to fight back but her father threatened her with a kitchen knife. He then inserted his penis into her vagina. AAA258054 repeated what she told GGG258054 to CCC258054 and her cousin HHH258054.<sup>24</sup>

XXX258054 denied the charge. He claimed that on the evening of the alleged incident, he was in the house of his eldest daughter YYY258054.<sup>25</sup> He was sleeping beside his youngest daughter ZZZ258054,<sup>26</sup> AAA258054's twin. He began to stay with YYY258054 the month before because the power in their house was disconnected due to his failure to pay their electric bill. Meanwhile, AAA258054 lived with CCC258054. He was surprised to learn that the *barangay tanod* was looking for him because he allegedly raped his

<sup>20</sup> Records, Criminal Case No. 18-1174, p. 62.

<sup>21</sup> TSN, PCINSP Reah Cornelio, March 20, 2019, p. 15.

<sup>22</sup> Records, Criminal Case No. 18-1174, p. 63.

<sup>23</sup> The real name of the victim, his or 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 initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) [Per J. Tinga, *En Banc*], and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>24</sup> TSN, GGG258054, February 18, 2019, pp. 3-4, 6-7, and 9-12.

<sup>25</sup> The real name of the victim, his or 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 initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) [Per J. Tinga, *En Banc*], and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>26</sup> The real name of the victim, his or 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 initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) [Per J. Tinga, *En Banc*], and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

own child. He went to their house to speak with AAA258054 but she did not talk to him.<sup>27</sup>

YYY258054 confirmed XXX258054's claim that he began living with her and her common-law partner/spouse WWW258054 in their house in [REDACTED] in April 2018. On the evening of May 24, 2018, YYY258054 checked on XXX258054 and she saw that he was already asleep beside ZZZ258054 on the second floor of their house. Hence, she was surprised that AAA258054 accused XXX258054 of raping her.<sup>28</sup> WWW258054 corroborated YYY258054's testimony. He claimed that he knew that XXX258054 was home at the time of the incident because he also checked on him.<sup>29</sup>

In its Decision<sup>30</sup> dated October 24, 2019, the Regional Trial Court (RTC) ruled that the prosecution successfully established the elements of rape under Article 266-A(1)(a) of the RPC. The RTC applied the doctrine of *unavailable child* under Section 28 of the Rule on Examination of a Child Witness to give probative weight to the *Sinumpaang Salaysay* of AAA258054 and the testimonies of the prosecution witnesses, thus:

WHEREFORE, this court finds the accused [XXX258054], GUILTY beyond reasonable doubt in the aforesaid criminal information for Rape under Art. 266-A Paragraph 1(a) of the Revised Penal Code and hereby imposes the penalty of RECLUSION PERPETUA with the accessory penalty provided by law.

In line with recent jurisprudence, accused is directed to indemnify [AAA258054] the amount of SEVENTY FIVE THOUSAND PESOS ([PHP] 75,000.00) as moral damages and SEVENTY FIVE THOUSAND PESOS ([PHP] 75,000.00) as exemplary damages. It is assumed that the victim of rape has suffered moral injuries entitling her to an award therefore.

With cost *de officio*.

Let a copy of this Decision be furnished the parties.

SO ORDERED.<sup>31</sup> (Emphasis in the original)

XXX258054 appealed. He claimed that the RTC erred in giving credence to the charge of rape despite the hearsay testimonies of the prosecution witnesses. He added that there are inconsistencies in the testimonies of the prosecution witnesses and AAA258054's *Sinumpaang Salaysay* warranting his acquittal.<sup>32</sup>

<sup>27</sup> TSN, XXX258054, May 14, 2019, pp. 4-8.

<sup>28</sup> TSN, YYY258054, June 3, 2019, pp. 5-7.

<sup>29</sup> TSN, WWW258054, July 30, 2019, p. 5.

<sup>30</sup> *Rollo*, pp. 57-70.

<sup>31</sup> *Id.* at 70.

<sup>32</sup> *CA rollo*, p. 31.

In its Decision dated March 2, 2021 in CA-G.R. HC No. 13870,<sup>33</sup> the CA denied the appeal. The CA explained that the statements given by AAA258054 to CCC258054 and GGG258054 narrating the rape incident may be admitted as part of the *res gestae*, an exception to the hearsay rule. AAA258054's *Sinumpaang Salaysay* is similarly admissible as an exception to the hearsay rule under the Rule on Examination of Child Witnesses. The CA found that the alleged inconsistencies in the testimonies of the witnesses and the *Salaysay* are inconsequential. Consequently, the CA convicted XXX258054 of qualified rape and modified the penalty to *reclusion perpetua* without eligibility for parole, thus:

**WHEREFORE**, the appeal is hereby **DENIED** for lack of merit. The *Decision* dated 24 October 2019 of the Regional Trial Court of [REDACTED] in Criminal Case No. 18-1174 is hereby **AFFIRMED** with the following **MODIFICATIONS**:

1. Accused-appellant [XXX258054] is guilty beyond reasonable doubt for the crime of Qualified Rape defined and penalized under paragraph 1(a) of Article 266-A in relation to paragraph 1, Article 266-B of the Revised Penal Code, as amended by R.A. No. [8353] and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole;
2. The award of moral damages and exemplary damages is hereby increased to One Hundred Thousand Pesos ([PHP] 100,000.00) each; and
3. Accused-appellant [XXX258054] is further ordered to pay private complainant [AAA258054] civil indemnity in the amount of One Hundred Thousand Pesos ([PHP] 100,000.00).

All monetary awards shall earn legal interest at the rate of six percent (6%) per *annum* from the date of finality of this Decision until full payment.

SO ORDERED.<sup>34</sup> (Emphasis in the original)

Hence, this recourse. Both parties manifested that they would no longer file their respective Supplemental Briefs.<sup>35</sup> XXX258054 mainly argues that the prosecution did not establish the elements of qualified rape. The prosecution presented hearsay evidence since the victim did not take the witness stand. XXX258054 contends that the *Sinumpaang Salaysay* and the testimonies of the witnesses are plagued with inconsistencies. Finally, he imputes error on the part of the Court of Appeals since his *alibi* was corroborated on its material points by the testimonies of the defense witnesses.<sup>36</sup>

<sup>33</sup> *Rollo*, pp. 8–55. Penned by Associate Justice Rafael Antonio M. Santos, with the concurrence of Associate Justices Elihu A. Ybañez and Bonifacio S. Pascua.

<sup>34</sup> *Id.* at 54.

<sup>35</sup> *Id.* at 78–84.

<sup>36</sup> *CA rollo*, p. 38.

**RULING**

The appeal is unmeritorious.

XXX258054 was charged with the crime of qualified rape, defined and penalized under Article 266-A(1)(a) in relation to Article 266-B(1) of the RPC, as amended by Republic Act No. 8353.<sup>37</sup> The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under 18 years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate, or adopted) of the victim.<sup>38</sup> It is the concurrence of both the minority of the victim and her relationship with the offender that is considered as a special qualifying circumstance.<sup>39</sup>

We first determine whether the prosecution was able to prove that XXX258054 had carnal knowledge of AAA258054 through force, threat, and intimidation. Due to the distinct nature of rape, a conviction is usually based solely on the victim's testimony, provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.<sup>40</sup> In this case, however, AAA258054 was unable to take the witness stand. As established by the prosecution and admitted by XXX258054 and AAA258054's sister, AAA258054's mother BBB258054 sent AAA258054 to their relatives in [REDACTED] to prevent her from testifying against her father. AAA258054's mother purportedly did not believe that XXX258054 was capable of sexually abusing their daughter.

*AAA258054's statements are admissible; the unavailable child doctrine*

Since the prosecution witnesses did not know the exact whereabouts of AAA258054 and had no communication with her, the prosecution invoked Section 28 of A.M. No. 004-07-SC or the Rule on Examination of a Child Witness<sup>41</sup> (Rule) which expressly allows the admission of hearsay testimony of a child describing any act or attempted act of child abuse when: (1) the child is unavailable due to death, physical infirmity, lack of memory, mental illness, or they will be exposed to psychological injury, or they are absent from the hearing and the proponent of their statement is unable to procure their attendance by process or other reasonable means; and (2) their hearsay testimony is corroborated by other admissible evidence.

In ruling on the admissibility of the child's statement, the court considers the time, content, and other circumstances that provide sufficient

<sup>37</sup> Republic Act No. 8353 (1997). The Anti-Rape Law of 1997.

<sup>38</sup> *People v. YYY*, G.R. No. 257285, February 13, 2023 [Notice, First Division].

<sup>39</sup> *People v. Bolo y Maldo*, 792 Phil. 905, 921-922 (2016) [Per J. Peralta, Third Division].

<sup>40</sup> *People v. XXX*, G.R. No. 220716, June 23, 2021 [Notice, First Division].

<sup>41</sup> SC Administrative Matter No. 004-07-SC, November 21, 2000, Rule on Examination of a Child Witness.

indicia of reliability of the statement,<sup>42</sup> such as: (1) whether there is a motive to lie; (2) the general character of the child; (3) whether more than one person heard the statement; (4) whether the statement was spontaneous; (5) the timing of the statement and the relationship between the child and the witness; (6) cross-examination could not show the lack of knowledge of the child; (7) the possibility of faulty recollection of the declarant child is remote; and (8) the circumstances surrounding the statement are such that there is no reason to suppose the child misrepresented the involvement of the accused.<sup>43</sup>

With the best interests of the child in mind, an exception to the general rule that hearsay evidence is inadmissible was created in Section 28 of the Rule to ensure that cases of child abuse or attempted child abuse could still be tried notwithstanding the unavailability of the child. It seeks to ascertain truth and prevent miscarriage of justice that may result from the unavailability of the child—including the child's enforced absence from the hearing to prevent them from testifying against their abuser, as in the present case. It cannot be gainsaid that children are especially vulnerable. The State, through its laws, must protect them from all forms of abuse and exploitation.<sup>44</sup> Through the doctrine of unavailable child, child victims can secure justice for abuses perpetrated against them even if they are unable to testify in court. The requirement that other admissible evidence corroborate the child's hearsay testimony ensures that the accused's right to due process is not violated. Moreover, the prosecution still has to discharge the burden of proving the accused's guilt beyond reasonable doubt.<sup>45</sup>

The Court applied the unavailable child doctrine in *People v. BBB*,<sup>46</sup> where the victim of qualified trafficking could not testify because she was suffering from post-traumatic stress disorder as a result of the sexual violence she experienced at the hands of the accused and her presentation in court would expose her to severe psychological injury. The Court affirmed the conviction of the accused who were convicted based on letters written by the victim and the testimonies of the social worker, special investigator, and psychologists who interviewed the victim and narrated how her mother deceived her into marrying a considerably older man.

Considering AAA258054 was unavailable—she was absent from the hearing and the prosecution was unable to procure her attendance by process or other reasonable means—and there is other evidence corroborating her hearsay testimony, the admission of AAA258054's out-of-court statements was proper.

*XXX258054's guilt was proven beyond reasonable doubt*

<sup>42</sup> *Razon, Jr. v. Tagitis*, 621 Phil. 536, 616 (2009) [Per J. Brion, *En Banc*].

<sup>43</sup> SC Administrative Matter No. 004-07-SC, November 21, 2000.

<sup>44</sup> Convention on the Rights of the Child, September 2, 1990, 1577 UNTS III (August 21, 1990).

<sup>45</sup> SC Administrative Matter No. 19-08-15-SC, August 10, 2019, 2019 Proposed Amendments to the Revised Rules on Evidence.

<sup>46</sup> G.R. No. 252507, April 18, 2022 [Per J. Lazaro-Javier, Third Division].

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After a review of the records of the case, we affirm the finding of the RTC and CA that the prosecution was able to prove XXX258054's guilt of qualified rape beyond reasonable doubt. The trial court and the CA properly admitted AAA258054's statements, which were corroborated by the other prosecution witnesses.

CCC258054 narrated how AAA258054 disclosed that her father sexually abused her, soon after the incident:<sup>47</sup>

Q: Madam[,] good morning. Do you remember where you were on May 24, 2018, a little past midnight?

A: I was at the house sleeping.

Q: And do you remember anything that happened when you were sleeping?

A: I was awakened by my siblings because AAA258054 was crying during that time.

....

Q: When you talked to AAA258054, what did she tell you[,] if any?

A: She told me what her father was doing to her.

Q: What specifically did she tell you, Madam Witness?

A: She told me that she was being mauled by her father whenever she refuses to do what he wants to do to her.

....

Q: Did you come to find out Madam Witness, what was it that XXX258054 was asking AAA258054 do that she refused then she got beaten by XXX258054?

A: According to her, her father was touching the delicate parts of her body.

....

Q: Was that the only thing that you learned from AAA258054, mere touching or is there something else that happened between them[?]

A: There's something else, Your Honor.

Q: Tell us.

A: [REDACTED] told me that whenever she's taking a bath[,] her father would go inside the c.r.

Q: What would happen inside the c.r. between them?

A: According to my niece[,] her father would kiss her vagina.<sup>48</sup>

Alarmed by AAA258054's revelation, CCC258054 accompanied her to the barangay hall and to the police to complain. Crying, AAA258054 told

<sup>47</sup> TSN, CCC258054, February 12, 2019.

<sup>48</sup> *Id.* at 3-8.

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the police officer/s assigned at the Women and Children Protection Desk what XXX258054 did to her. AAA258054 executed her *Sinumpaang Salaysay* in response to the questions asked by the officer in the presence of CCC258054 and other witnesses.<sup>49</sup>

Q: What did AAA258054 do at the police station?

A: She was crying.

Q: What else did she do?

A: Tell the story.

Q: To whom?

A: To the police.

Q: Would you know if she signed a statement at the police station?

A: Yes, sir.

....

Q: Now Madam Witness, in this statement when AAA258054 was asked by the police particularly on question no. 7

Q: Maari mo bang isalaysay ang pangyayari noong May 24, 2018[,] mga alas dose ng madaling araw?"

and based on this document AAA258054 answered:

A: Kanina po ay pinahuhubad niya po ako ng short kasi po binigyan niya daw po ako ng pera at yun ang kapalit[.] Tapos kumuha po siya ng kutsilyo at dinuro duro niya po sa akin ang kutsilyo at sinuntok niya po yung bunganga ko at sinampal ako tapos po pinaghahampas niya po ako ng hanger[.] Tapos pinahiga pa niya ako sa kama, hinubaran niya ako ng short tapos tinaas niya po yung damit ko at naghubad pa din po siya tapos pinasok niya po yung ano niya sa pepe ko[.] Tapos po nagwawala po ako noon tapos natigil na at umalis na po siya."

Q: Earlier the court asked you, what AAA258054 reported to you and you never mentioned that AAA258054's father inserted his penis in the vagina of AAA258054, my question Madam Witness, in your understanding, what did AAA258054 refer to particularly in the statement, "pinasok niya po yung ano niya sa pepe ko," in your understanding what was that "ano niya," just in your understanding?

A: They had sex, sir.<sup>50</sup>

After CCC258054 and AAA258054 arrived home from the police station a few hours later, AAA258054 also cried to her cousin GGG258054. She told GGG258054, in the presence of CCC258054 and her daughter HHH258054, that XXX258054 asked her sister ZZZ258054 to tell her to go home. There, XXX258054 had carnal knowledge of her against her will:<sup>51</sup>

Q: And then what happened next?

<sup>49</sup> TSN, CCC258054, February 12, 2019.

<sup>50</sup> *Id.* at 9–12.

<sup>51</sup> TSN, GGG258054, February 18, 2019.

- A: The child narrated her story [again].
- Q: This time in the presence of [CCC258054] and [HHH258054], will you please tell us what AAA258054 told all of you?
- A: Nasa bahay na daw po sila noon, wala po kasi silang kuryente, madilim po noon. Pinahiga daw po sya ng papa nya[,] gusto daw po s'yang pagsamantalahan. Pumapalag daw sya pero natatakot daw po siya kasi nga po kumuha na daw po ng kutsilyo iyong papa nya na sinabi po hwag daw po mag-iingay. Wala pong nagawa yung bata.
- .....
- Q: What happened next after she was made to lie down on the bed, on the papag?
- A: Pinipilit daw po sya ng papa n'ya na hubarin ang shorts n'ya kasi po pagsasamantalahan daw po s'ya. Ayaw po n'yang hubarin, kumuha daw po sya ng pantakip kasi po nakahubad na daw po s'ya. May kinuha daw po syang bagay para itaklob daw po n'ya sa katawan n'ya kaya po naibaba po ng papa n'ya iyong shorts. Ipinasok daw po yung ari ng papa n'ya sa kanya rin.
- ....
- Q: Did you have [a] chance to ask AAA258054 what [she was] doing in that house considering that it has no electricity?
- A: According to her, one time she was playing at that court when her twin sister called her and told her that their father was looking for her. AAA258054 refused to go home.
- .....
- Q: What was the reaction again of AAA258054 when [she] was asked by [REDACTED] to go home?
- A: According to her, she got scared. She was wondering why she was being summoned by her father at that hour.
- Q: Did you know what she did right after?
- A: AAA258054[,] ma'am?
- Q: Yes.
- A: She went home because[,] according to her[,] she was pushed by her sister to go home.<sup>52</sup>

At this juncture, we agree with the CA that AAA258054's disclosures to CCC258054 can also be admitted as part of the *res gestae*. A declaration is deemed part of the *res gestae* and is admissible as an exception to the hearsay rule when the following requisites are present: (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) statements must concern the occurrence in question and its immediately attending circumstances.<sup>53</sup>

<sup>52</sup> *Id.* at 13, 33, and 35.

<sup>53</sup> *People v. Loma*, 887 Phil. 117, 129 (2020) [Per J. Gaerlan, Third Division].

Our jurisprudence is replete with cases where the victim never testified in court but her declaration to a prosecution witness was considered part of the *res gestae* and ultimately resulted in the conviction of the accused. In *People v. Pablo*,<sup>54</sup> BBB, AAA's grandmother, testified that she saw AAA crying. When BBB asked AAA what happened, AAA mumbled "Itoy," while pointing to the accused-appellant outside. AAA also pointed to the lower part of her body. The Court affirmed the trial court and CA's finding that AAA's spontaneous reactions and responses to the query of her grandmother were part of the *res gestae*. *Res gestae* declarations are exceptions to the hearsay rule. To be admissible, the statement must be spontaneous, made during a startling occurrence or immediately prior or subsequent thereto, and must relate to the circumstance of such occurrence.

Also, in *People v. Loma*,<sup>55</sup> BBB, AAA's mother, testified that AAA arrived home and narrated to her that she was sexually abused at the banana plantation by the accused-appellant, whom she knew fully well as he was a relative whom they considered as family. The Court ruled that the declarations of AAA were correctly considered by the trial court as part of the *res gestae* as the same was uttered immediately after the rape, an undoubtedly startling event, committed against her by someone she considered as family. AAA had no opportunity to concoct a story different from what actually transpired as when she arrived home and immediately declared what accused-appellant did to her.

Finally, in *People v. Villarama*,<sup>56</sup> Merlita asked Elizabeth what happened and why she was crying. Elizabeth told her mother that her uncle, accused-appellant, removed her panties, made her lie down, and then inserted his penis inside her vagina. The court admitted Elizabeth's statements to Merlita as part of the *res gestae*. Elizabeth was subjected to a startling occurrence when she pointed to her uncle as her assailant. The statement was spontaneous because apart from Elizabeth's young age, the time gap from the sexual assault to the time Elizabeth recounted her harrowing experience in the hands of accused-appellant was very short.

Similar to the above cases, AAA258054's declarations to CCC258054 were uttered immediately after the rape, an undoubtedly startling event, committed against her by her own father. AAA258054 had no opportunity to concoct a story different from what transpired as she immediately informed CCC258054 about what happened minutes after it occurred. Verily, all the requisites for a declaration to be considered as part of the *res gestae* were present.

Finally, around three days after the abuse, CCC258054 accompanied AAA258054 to the crime laboratory for ano-genital examination. Prior to the conduct of the medical examination, PCINSP Cornelio asked AAA258054 to

<sup>54</sup> G.R. No. 244840, January 20, 2021 [Notice, Second Division].

<sup>55</sup> *People v. Loma*, 887 Phil. 117 (2020) [Per J. Gaerlan, Third Division].

<sup>56</sup> 445 Phil. 323 (2003) [Per J. Corona, *En Banc*].

accomplish a sexual abuse protocol. There, AAA258054 briefly described what XXX258054 did to her:<sup>57</sup>

*Pinatawag po ako ng papa ko sa kapatid kong bunso na umuwi ng bahay. Pagdating ko po sa bahay [namin, hinipuan] po agad ako ng papa ko sa dede tapos pinahiga na po ako. Tapos kumuha po [siya] ng kutsilyo [kasi] ayaw ko pong sumunod. Natakot po ako kaya sumunod na lang po ako. Sabi niya [kasi] papatayin [niya] po ako. Humiga po ako at [hinubaran] niya po ako at naghubad na din [siya]. Dun po nangyari iyon.*

Afterwards, PCINSP Cornelio interviewed AAA258054 and asked her what happened. AAA258054 reiterated to PCINSP Cornelio that her father XXX258054, who was holding a kitchen knife, forced her to remove her clothes and to have sexual contact with him in their house.<sup>58</sup>

Q: When you said you were clarifying the information provided in the protocol, you [interviewed] the patient[.] Please tell us what [she said.]

A: I asked her what happened during the alleged incident, Your Honor.

Q: What was narrated to you by the victim?

A: She said that she was forced to remove her clothes and after that[,] she was sexually abused, Your Honor.

Q: Allegedly[,] who abused the alleged victim?

A: Allegedly [XXX258054], Your Honor.

Q: Did you come to know the relation of the victim to her alleged offender?

A: If I could recall Your Honor, he was her father, Your Honor.

Q: Please tell us what other information [the victim related] to you [during] that interview.

A: She said her father was holding a kitchen knife and forced her to remove her clothes and have sexual contact with the suspect.

Q: Did you come to know from the victim where the alleged sexual contact happened?

A: In their house, Your Honor.

....

Q: From your interview[,] were you able to confirm what the victim wrote on the sexual crime protocol?

A: Yes, Your Honor.

Q: Was there any other information that you gathered outside from what she has written [on] the protocol?

A: She did not write in the protocol what really happened, Your Honor, just sexually abused, Your Honor[.] [B]ut I asked her [about the abuse

<sup>57</sup> Records, Criminal Case No. 18-1174, p. 64.

<sup>58</sup> TSN, PCINSP Reah Cornelio, March 20, 2019.

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that he committed] and she said the penis of the suspect was inserted in her genital area, Your Honor.<sup>59</sup>

PCINSP Cornelio then conducted a physical examination of AAA258054. The examination showed that there were deep healed lacerations at the 4, 8, and 9 o'clock positions of the hymen of AAA258054. She explained that the lacerations could be caused by any blunt penetrating object such as an erect penis or finger. PCINSP Cornelio testified that her findings are consistent with AAA258054's narration of what XXX258054 did to her. The defense tried to discredit PCINSP Cornelio's findings by implying that the deep healed lacerations could not have resulted from the alleged abuse which happened about three days earlier. However, PCINSP Cornelio explained that the lacerations can completely heal in three days. The healing process of a 14-year-old, especially one with good hygiene and nutrition, will be fast. The lacerations can heal in three days, more or less.<sup>60</sup>

The prosecution witnesses testified uniformly on material points. They consistently narrated how AAA258054 told them that her father XXX258054 had carnal knowledge of her through force and intimidation on the evening of May 24, 2018. The testimonies of the witnesses were also corroborated by the finding of PCINSP Cornelio that AAA258054 suffered hymenal lacerations at the 4, 8, and 9 o'clock positions.

Now, we proceed to determine whether the prosecution was able to prove the qualifying circumstances of age and relationship. Notably, the parties stipulated on the age of AAA258054 and that XXX258054 was her father during pre-trial.<sup>61</sup> However, it is settled that the stipulation is insufficient evidence of AAA258054's age. Her minority must be proved conclusively and indubitably as the crime itself.<sup>62</sup> In *People v. Pruna*,<sup>63</sup> the Court provided guidelines for appreciating age either as an element of the crime or as a qualifying circumstance. There, the Court explained that the best evidence to prove the age of a person is the original or certified true copy of the certificate of live birth. In their absence, similar authentic documents may be presented such as baptismal certificates and school records. If the original or certified true copy of the birth certificate and other authentic documents are not available, credible testimonies of the victim's mother or a member of the family may be sufficient under certain circumstances. In the event that both the birth certificate or other authentic documents and the testimonies of the victim's mother or other qualified relative are unavailable, the testimony of the victim may be admitted in evidence provided that it is expressly and clearly admitted by the accused.

Here, the prosecution did not present the original or certified true copy of AAA258054's birth certificate and other authentic documents. Her mother

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<sup>59</sup> *Id.* at 10–11.

<sup>60</sup> *Id.*

<sup>61</sup> Records, Criminal Case No. 18–1174, pp. 23–24.

<sup>62</sup> *People v. Cabales*, 891 Phil. 601, 615 (2020) [Per J. Carandang, First Division].

<sup>63</sup> 439 Phil. 440 (2002) [Per. C.J. Davide, Jr., *En Banc*].

BBB258054, who worked abroad and who purportedly did not believe the charge against XXX258054, was also not presented as a witness. AAA258054 was also unavailable since her mother sent her to the province so that she could not testify against her father. However, in her *Sinumpaang Salaysay* that we admitted under the unavailable child doctrine, AAA258054 clearly indicated her age to be 14 years old.<sup>64</sup> Also, CCC258054, XXX258054's sister and AAA258054's aunt who resided in the same residence as AAA258054, testified on the age of AAA258054.<sup>65</sup> More importantly, XXX258054 expressly admitted that AAA258054 was 14 years old during his direct examination.<sup>66</sup> Since AAA258054's testimony that she was 14 years old was admitted in evidence and XXX258054 expressly and clearly admitted AAA258054's age, AAA258054's minority was established beyond reasonable doubt in accordance with *Pruna*. Insofar as AAA258054's relationship with XXX258054, CCC258054 and GGG258054 testified that XXX258054 was AAA258054's father.<sup>67</sup> XXX258054 likewise expressly admitted that AAA258054 was his daughter during his direct examination.<sup>68</sup> Under prevailing jurisprudence, admission in open court of relationship is sufficient and conclusive to prove the accused's relationship with the victim.<sup>69</sup> Thus, it was shown beyond reasonable doubt that XXX258054 was AAA258054's father. Hence, the CA correctly affirmed the conviction of XXX258054 of qualified rape.

XXX258054's claim that the testimonies of the prosecution witnesses were replete with inconsistencies is at best specious. It is immaterial which aunt AAA258054 confided in first and what time she told GGG258054 what happened. It is also of no moment that GGG258054 claimed that she was close to AAA258054 but she did not know her birthday and could not present their exchanges via Messenger. The purported inconsistencies are trivial and inconsequential. They have no bearing on the elements of the crime of rape.<sup>70</sup> Finally, the finding of PCINSP Cornelio that AAA258054 had no other evident injuries does not disprove AAA258054's claim in her *Salaysay* that XXX258054 slapped her and hit her with a hanger when she resisted his advances and that he eventually succeeded in having carnal knowledge of her against her will. The absence of physical injuries does not negate rape, as it is not an element of the crime of rape.<sup>71</sup> As explained by the CA, the presence of bruises or other injuries depends on various factors, including the force employed by the assailant.<sup>72</sup>

*Denial and alibi are inherently weak defenses*

<sup>64</sup> Records, Criminal Case No. 18-1174, pp. 1-2.

<sup>65</sup> TSN, CCC258054, February 12, 2019, p. 5.

<sup>66</sup> TSN, XXX258054, May 14, 2019, p. 3.

<sup>67</sup> TSN, CCC258054, February 12, 2019, p. 5; and TSN, GGG258054, February 18, 2019, p. 5..

<sup>68</sup> TSN, XXX258054, May 14, 2019, p. 3.

<sup>69</sup> *People v. Bolo*, 792 Phil. 905, 918-919 (2016); *People v. Soria*, 698 Phil. 676, 695-696 (2012) [Per J. Del Castillo, Second Division]; and *People v. Padilla*, 617 Phil. 170, 180-181 (2009) [Per J. Peralta, *En Banc*].

<sup>70</sup> *Figueroa v. People*, G.R. No. 262474, January 11, 2023 [Notice, Third Division].

<sup>71</sup> *People v. XXX*, G.R. No. 254029, February 1, 2023 [Notice, First Division].

<sup>72</sup> *Rollo*, p. 48.

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The RTC and CA did not err when they did not give weight to XXX258054's denial and alibi. Denial is an inherently weak defense and is generally viewed upon with disfavor because it is easily concocted but difficult to disprove. For an alibi to prosper, it must be proved that the accused was in another place during the commission of the crime, rendering it physically impossible for the accused to be at the scene of the crime. Moreover, an alibi must be corroborated by disinterested witnesses.<sup>73</sup> XXX258054 claimed that at the time of the alleged assault, he was asleep in the house of YYY258054 and WWW258054, who corroborated his testimony. Notably, YYY258054 and WWW258054's house was in [REDACTED], hence, it was not physically impossible for XXX258054 to go home to their house and have carnal knowledge of AAA258054 in the same evening. Equally important, YYY258054 and WWW258054 are not disinterested witnesses and are not credible. They stood to benefit from the acquittal of XXX258054, who supported the needs of the family.

### *Penalty*

Anent the penalty, the CA modified the sentence of XXX258054 to *reclusion perpetua* without eligibility of parole. The Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties provide that the qualification "without eligibility for parole" may be applied to qualify *reclusion perpetua* in cases where the appellant would have been sentenced to suffer the death penalty if not for Republic Act No. 9346. When the death penalty is not warranted, the phrase "without eligibility for parole" does not need to modify *reclusion perpetua*. It is understood that convicted persons penalized with an indivisible penalty are not eligible for parole.<sup>74</sup> Since XXX258054 is guilty of qualified rape and he would have been penalized with the death penalty if not for Republic Act No. 9346, the CA correctly modified the penalty to *reclusion perpetua* without eligibility for parole. As to XXX258054's civil liability, we deem it proper to modify the awards of civil indemnity, moral damages, and exemplary damages from PHP 100,000.00 to PHP 150,000.00 each. The purpose is to deter parents with perverse or aberrant sexual behavior from sexually abusing their children.<sup>75</sup> All awards shall earn interest of 6% per annum from the date of finality of judgment until fully paid.<sup>76</sup>

**ACCORDINGLY**, the appeal is **DISMISSED**. Accused-appellant XXX258054 is **GUILTY** of qualified rape. He is sentenced to *reclusion perpetua* without eligibility for parole. He is further **ORDERED** to pay the victim AAA258054 the amounts of PHP 150,000.00 as civil indemnity, PHP 150,000.00 as moral damages, and PHP 150,000.00 as exemplary damages. The monetary award shall earn 6% legal interest per annum from finality of this Decision until fully paid.

<sup>73</sup> *People v. Cariquez*, G.R. No. 251011, December 7, 2021 [Notice, First Division].

<sup>74</sup> SC Administrative Matter No. 15-08-02-SC, August 4, 2015, Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties.

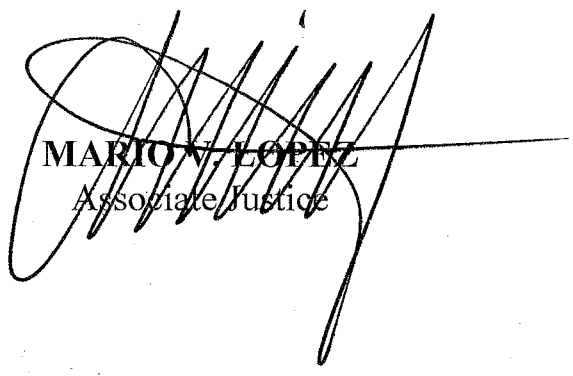
<sup>75</sup> *People v. ABC260708*, G.R. No. 260708, 23 January 2024 [Per J. M. Lopez, Second Division].

<sup>76</sup> *People v. Jugueta*, 783 Phil. 806, 850 (2016) [Per J. Peralta, *En Banc*].

Y



**SO ORDERED.**



**MARIO V. LOPEZ**  
Associate Justice

**WE CONCUR:**



**MARVIC M.V.F. LEONEN**  
*Senior Associate Justice*  
*Chairperson*

(on official business)

**AMY C. LAZARO-JAVIER**  
*Associate Justice*



**JHOSEFA LOPEZ**  
*Associate Justice*



**ANTONIO T. KHO, JR.**  
*Associate Justice*

**ATTESTATION**

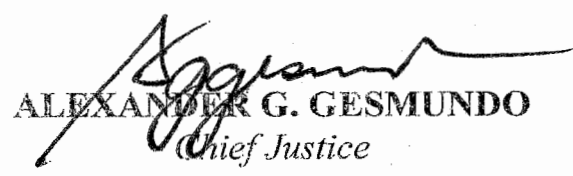
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M.V.F. LEONEN**  
*Senior Associate Justice*  
*Chairperson*

**CERTIFICATION**

Pursuant to Article VIII, Section 13 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.



**ALEXANDER G. GESMUNDO**  
*Chief Justice*