



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 182230**

Present:

- *versus* -

SERENO, C.J.,  
LEONARDO-DE CASTRO,  
BRION,\*  
BERSAMIN, and  
REYES, JJ.

**EDGARDO LUPAC y FLORES,**  
Accused-Appellant.

Promulgated:

**19 SEP 2012**

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**DECISION**

**BERSAMIN, J.:**

Under appeal is the decision promulgated on November 23, 2007,<sup>1</sup> whereby the Court of Appeals (CA) affirmed the rape conviction of Edgardo Lupac y Flores but modified the trial court's characterization of the offense as statutory rape because of the failure of the People to properly establish the victim's minority under 12 years at the time of the commission of the rape.

The information filed on August 16, 1999 under which Lupac was arraigned and tried for statutory rape alleged as follows:

That on or about the 21<sup>st</sup> day of May, 1999 in the Municipality of Taytay, Province of Rizal, Philippines and within the jurisdiction of this

\* Vice Justice Martin S. Villarama, Jr., who is on leave per Special Order No. 1305.

<sup>1</sup> *Rollo*, pp. 2-22; penned by Associate Justice Andres B. Reyes, Jr. (now Presiding Justice), with Associate Justice Jose C. Mendoza (now a Member of this Court) and Associate Justice Ramon M. Bato concurring.

Honorable Court, the above-named accused with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one, AAA,<sup>2</sup> his niece, 10 years old against her will and consent.

CONTRARY TO LAW.<sup>3</sup>

The version of the Prosecution follows.

AAA, her mother (BBB), and Lupac (allegedly BBB's brother) had originally been living together in the same house, but he eventually transferred to another place in the neighborhood. His transfer notwithstanding, he continued going to BBB's house, where he occasionally took afternoon naps in the bedroom of the house. On May 21, 1999, BBB left AAA in the house alone with Lupac to sell peanuts in Mandaluyong City. At around 1:30 p.m., AAA told him that she was going to take a nap in the bedroom. She did not lock the bedroom door as was her usual practice.

Waking up around 2:30 p.m., AAA was aghast to find herself naked from the waist down. She felt soreness in her body and pain in her genitalia. Momentarily, she noticed Lupac standing inside the bedroom near her, clad only in his underwear. He was apologetic towards her, saying that "he really did not intend to do 'that' to her."<sup>4</sup> He quietly handed her a towel. As soon as she absorbed what had happened, she started to cry. He opened the windows and unlocked the door of the house.<sup>5</sup> Seeing the chance, she rushed out of the house, and ran to the place of Tita Terry, a neighbor, who was a friend of her mother's. AAA revealed to Tita Terry what he had done to her, saying: *Inano ako ni Kuya Ega*.<sup>6</sup> She uttered the word *hindot*<sup>7</sup> – vernacular

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<sup>2</sup> The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*) and Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*). See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

<sup>3</sup> Records, p. 1.

<sup>4</sup> TSN, December 12, 2000, p. 6.

<sup>5</sup> Id. at 7.

<sup>6</sup> TSN, July 31, 2001, p. 7.

<sup>7</sup> Id. at 7-8.

for sexual intercourse. She and Tita Terry left together to find BBB and inform her about what had happened to AAA.<sup>8</sup>

The three of them reported the rape to the *barangay*. A *barangay kagawad* accompanied them to the Taytay Police Station to lodge a complaint for rape against Lupac. AAA submitted to a medico-legal examination, which found her to have suffered injuries inflicted deep inside her genitalia (described as congested vestibule within the *labia minora*, deep fresh bleeding laceration at 9 o'clock position of the hymen, and abraded and u-shape posterior fourchette).

During the trial, Dr. Emmanuel N. Reyes, the medico-legal officer who had examined AAA, attested that he had found AAA at the time of the examination to have recently lost her virginity based on her hymen revealing "a deep fresh bleeding at 9:00 o'clock position."<sup>9</sup>

Lupac's defense consisted of denial and *alibi*.

Lupac denied being related to AAA, either by consanguinity or otherwise, but admitted being her neighbor for a long time. He also denied the accusation, insisting that he had been asleep in his own house during the time of the rape. Nonetheless, he conceded not being aware of any motive for AAA to falsely charge him with rape.

After trial, on August 11, 2006, the Regional Trial Court, Branch 73, in Antipolo City (RTC) convicted Lupac of statutory rape,<sup>10</sup> disposing:

WHEREFORE, PREMISES CONSIDERED, Edgardo Lupac is hereby found guilty of the crime of statutory rape and is sentenced to suffer the penalty of RECLUSION PERPETUA. He is also ordered to

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<sup>8</sup> Id. at 8.

<sup>9</sup> TSN, January 22, 2002, pp. 4-5.

<sup>10</sup> CA Rollo, pp. 43-47.

pay private complainant ₱50,000.00 as civil indemnity and ₱50,000.00 in moral damages plus the cost of the suit.

SO ORDERED.

In convicting Lupac of statutory rape as defined and penalized under paragraph 1(d), Article 266-A of the *Revised Penal Code*, as amended by Republic Act No. 8353, the RTC concluded that although the qualifying circumstance of relationship had not been proven, AAA's testimony showing her age of only 11 years at the time of the rape, being born on December 23, 1988, sufficed to prove her age as an essential element in statutory rape.

On intermediate appeal, Lupac assailed the credibility of AAA and argued that the RTC erred in accepting AAA's testimony as proof of her date of birth and her minority under 12 years.

On November 23, 2007, the CA affirmed the conviction,<sup>11</sup> but modified it by holding that Lupac was guilty of simple rape under Article 266-A, paragraph 1(b) of the *Revised Penal Code*. It noted that the Prosecution was not able to effectively establish the victim's minority under 12 years because of the non-submission of AAA's birth certificate, such fact being essential in qualifying the offense to statutory rape. It observed, however, that the lack of consent as an element of rape was properly alleged in the information and duly established by the evidence showing that AAA had been asleep and unconscious at the time of the commission of the rape. It held that the variance in the mode of the commission of the rape was really a non-issue because he did not challenge the information at the arraignment, during the trial and even on appeal. It disposed:

IN VIEW THEREOF, the assailed Decision convicting the accused is hereby AFFIRMED. The penalty and the damages are likewise AFFIRMED.

SO ORDERED.

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<sup>11</sup> *Supra*, note 1.

In his appeal, Lupac insists on his innocence, still impugning the credibility of AAA.

We affirm the CA.

Firstly, both the RTC and the CA considered AAA as a credible witness. We accord great weight to their assessment of the credibility of AAA as a witness as well as of her version. Verily, the personal observation of AAA's conduct and demeanor enabled the trial judge to discern if she was telling the truth or inventing it.<sup>12</sup> The trial judge's evaluation, which the CA affirmed, now binds the Court, leaving to the accused the burden to bring to our attention facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted but would materially affect the disposition of the case differently if duly considered.<sup>13</sup> Alas, the accused made no showing that the RTC, in the first instance, and the CA, on review, had ignored, misapprehended, or misinterpreted facts or circumstances supportive of or crucial to his defense.<sup>14</sup>

Secondly, the CA rectified the mistaken characterization by the RTC of the crime as statutory rape. We concur with the CA. Although the information alleged that AAA had been only 10 years of age at the time of the commission of the rape, the State did not reliably establish such age of the victim in accordance with the guidelines for competently proving such age laid down by the Court in *People v. Pruna*,<sup>15</sup> to wit:

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.

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<sup>12</sup> *People v. Lantano*, G.R. No. 176734, January 28, 2008, 542 SCRA 640, 651-652.

<sup>13</sup> *People v. Domingo*, G.R. No. 184958, September 17, 2009, 600 SCRA 280, 288; *Gerasta v. People*, G.R. No. 176981, December 24, 2008, 575 SCRA 503, 512.

<sup>14</sup> *People v. Felan*, G.R. No. 176631, February 2, 2011, 641 SCRA 449, 453.

<sup>15</sup> G.R. No. 138471, October 10, 2002, 390 SCRA 577.

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 victim's 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 victim's mother or relatives concerning the victim's age, the complainant's 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.<sup>16</sup>

The foregoing guidelines (*Pruna* guidelines, for short) apply herein despite their being promulgated subsequent to the filing of the information, for they were only an amalgamation of the norms on proving the age of the victim in rape variously defined in jurisprudence. With the minority under 12 years of AAA being an element in statutory rape, the proof of such minority age should conform to the *Pruna* guidelines in order that such essential element would be established beyond reasonable doubt. That was not done because the evidence adduced by the Prosecution did not satisfy *Pruna* guidelines 4 and 5, *supra*, to wit:

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's

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<sup>16</sup> Id. at 603-604.

age, the complainant's 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.

As such, the RTC erred in giving credence to AAA's declaration about her being under 12 years at the time of the rape.

Thirdly, the conviction of Lupac for rape is upheld despite AAA's minority under 12 years not being competently proved. This is because the information also properly charged him with raping AAA by its express averment that the carnal knowledge of her by him had been "against her will and consent." The essence of rape is carnal knowledge of a female either *against her will* (through force or intimidation) or *without her consent* (where the female is deprived of reason or otherwise unconscious, or is under 12 years of age, or is demented).<sup>17</sup> The Prosecution showed during the trial that AAA had been asleep when he forced himself on her. Such showing competently established the rape thus charged, as defined by paragraph 1 of Article 266-A, *Revised Penal Code*,<sup>18</sup> for AAA, being unconscious in her sleep, was incapable of consenting to his carnal knowledge of her. Indeed, the Court has uniformly held in several rulings that carnal knowledge of a female while she was asleep constituted rape.<sup>19</sup>

Lastly, Lupac assails the absence of credible direct evidence about his having carnal knowledge of AAA because she herself, being then asleep and unconscious, could not reliably attest to his supposed deed. Consequently, he

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<sup>17</sup> *People v. Taguilid*, G.R. No. 181544, April 11, 2012; *People v. Butiong*, G.R. No. 168932, October 19, 2011; *People v. Flores, Jr.*, G.R. Nos. 128823-24, December 27, 2002, 394 SCRA 325, 333; see also *People v. Masalihit*, G.R. No. 124329, December 14, 1998, 300 SCRA 147, 155.

<sup>18</sup> Article 266-A. *Rape; When And How Committed*. – Rape is committed –

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

xxx

b) When the offended party is deprived of reason or otherwise unconscious;

xxx

<sup>19</sup> *People v. Conde*, G.R. No. 112034, January 31, 1996, 252 SCRA 681, 689; *People v. Caballero*, 61 Phil. 900 (1935); *People v. Corcino*, 53 Phil. 234 (1929); *People v. Dayo*, 51 Phil. 102 (1927).

argues that the evidence against him did not amount to proof beyond reasonable doubt.

Lupac's argument hews closely to what the Court has stated in *People v. Campuhan*<sup>20</sup> to the effect that there must be proof beyond reasonable doubt of at least the introduction of the male organ into the *labia* of the *pudendum* of the female genital organ, which required some degree of penetration beyond the vulva in order to touch the *labia majora* or the *labia minora*.

The position of Lupac is bereft of merit, however, because his conviction should still stand even if direct evidence to prove penile penetration of AAA was not adduced. Direct evidence was not the only means of proving rape beyond reasonable doubt. Circumstantial evidence would also be the reliable means to do so, provided that (a) there was more than one circumstance; (b) the facts from which the inferences were derived were proved; and (c) the combination of all the circumstances was such as to produce a conviction beyond reasonable doubt.<sup>21</sup> What was essential was that the unbroken chain of the established circumstances led to no other logical conclusion except the appellant's guilt.<sup>22</sup>

The following circumstances combined to establish that Lupac consummated the rape of AAA, namely: (a) when AAA went to take her afternoon nap, the only person inside the house with her was Lupac; (b) about an hour into her sleep, she woke up to find herself already stripped naked as to expose her private parts; (c) she immediately felt her body aching and her vaginal region hurting upon her regaining consciousness; (d) all doors and windows were locked from within the house, with only her and the brief-clad Lupac inside the house; (e) he exhibited a remorseful demeanor in unilaterally seeking her forgiveness (*Pasensiya ka na AAA*),

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<sup>20</sup> G.R. No. 129433, March 30, 2000, 329 SCRA 270, 280-281.

<sup>21</sup> Section 4, Rule 133, *Rules of Court*.

<sup>22</sup> See *People v. Tolentino*, G.R. No. 139834, February 19, 2001, 352 SCRA 228, 233; *People v. Gargar*, G.R. Nos. 110029-30, December 29, 1998, 300 SCRA 542, 552.



even spontaneously explaining that he did not really intend to do “*that*” to her, showing his realization of the gravity of the crime he had just committed against her; (f) her spontaneous, unhesitating and immediate denunciation of the rape to Tita Terry and her mother (*hindot* being the term she used); and (g) the medico-legal findings about her congested vestibule within the *labia minora*, deep fresh bleeding laceration at 9 o’clock position in the hymen, and abraded and U-shaped posterior fourchette proved the recency of infliction of her vaginal injuries.

The fact that all her injuries – congested vestibule within the *labia minora*, deep fresh bleeding laceration at 9 o’clock position of the hymen and abraded and U-shaped posterior fourchette – were confined to the posterior region area of her genitals signified the forceful penetration of her with a blunt instrument, like an erect penis.

The Court holds that AAA’s denunciation of Lupac as her rapist to Tita Terry and her own mother with the use of the words *hindot* and *inano ako ni Kuya Ega* without any appreciable length of time having intervened following her discovery of the rape was part of the *res gestae* (that is, rape). Section 42, Rule 130 of the *Rules of Court* states:

Section 42. *Part of the res gestae.* – Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.

For the application of this rule, three requisites must be shown to concur, namely: (a) that the principal act, the *res gestae*, must be a startling occurrence; (b) the statements were made before the declarant had the time to contrive or devise a falsehood; and (c) the statements must concern the occurrence in question and its immediate attending circumstances. The requisites were met herein. AAA went to Tita Terry’s house immediately after fleeing from Lupac and spontaneously, unhesitatingly and immediately

declared to Tita Terry that Lupac had sexually abused her.<sup>23</sup> Such manner of denunciation of him as her rapist was confirmed by Tita Terry's testimony about AAA's panic-stricken demeanor that rendered it difficult to quickly comprehend what the victim was then saying.<sup>24</sup> Of course, AAA's use of the words *hindot* and *inano ako ni Kuya Ega* said enough about her being raped.

The nature of *res gestae* has been fittingly explained by the Court in *People v. Salafranca*,<sup>25</sup> viz:

The term *res gestae* has been defined as "those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act." In a general way, *res gestae* refers to the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication. The rule on *res gestae* encompasses the exclamations and statements made by either the participants, *victims*, or spectators to a crime immediately before, during, or immediately after the commission of the crime when the circumstances are such that the statements were made as a *spontaneous* reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement. The test of admissibility of evidence as a part of the *res gestae* is, therefore, whether the act, declaration, or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony.

Lastly, the Court needs to add exemplary damages to the civil damages awarded to AAA. Under the *Civil Code*, exemplary damages are imposed in a criminal case as part of the civil liability "when the crime was committed with one or more aggravating circumstances."<sup>26</sup> Such damages are awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."<sup>27</sup>

Conformably with the *Civil Code*, the CA and the RTC should have recognized the entitlement of AAA to exemplary damages on account of the

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<sup>23</sup> TSN, July 31, 2001, pp. 6-8.

<sup>24</sup> Id. at 8.

<sup>25</sup> G.R. No. 173476, February 22, 2012.

<sup>26</sup> Article 2230, *Civil Code*.

<sup>27</sup> Article 2229, *Civil Code*.

attendance of the aggravating circumstance of her minority under 12 years. It should not matter that the CA disregarded her testimony on her age due to such testimony not measuring up to the *Pruna* guidelines. At least, the RTC found her testimony on her minority under 12 years at the time of the rape credible enough to convict the accused of statutory rape. Nor was it of any consequence that such minority would have defined the rape as statutory had it been sufficiently established. What mattered was to consider the attendance of an aggravating circumstance of any kind to warrant the award of exemplary damages to the victim. This was the point stressed in *People v. Catubig*,<sup>28</sup> to wit:

The term “aggravating circumstances” used by the *Civil Code*, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. **Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*.**

For exemplary damages, therefore, the Court holds that the sum of ₱30,000.00 is reasonable and proper.

The Court declares Lupac to be further liable to pay interest of 6% *per annum* on all the items of civil damages, to be reckoned from the finality of this decision until full payment.

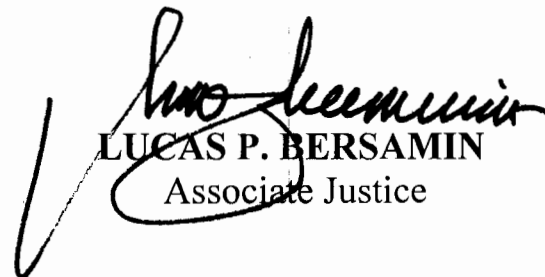
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<sup>28</sup> G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

**WHEREFORE,** we **AFFIRM** the decision promulgated on November 23, 2007 in all respects, subject to the modification that **EDGARDO LUPAC y FLORES** shall pay the further amount of ₱30,000.00 as exemplary damages, plus interest of 6% *per annum* on the civil indemnity, moral damages, and exemplary damages, reckoned from the finality of this decision until full payment.


Costs of suit to be paid by the accused.

**SO ORDERED.**




**LUCAS P. BERSAMIN**  
Associate Justice

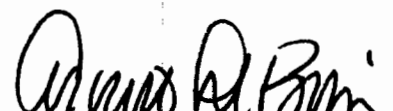
**WE CONCUR:**




**MARIA LOURDES P. A. SERENO**  
Chief Justice



**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice




**ARTURO D. BRION**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

### **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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