Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

REY MONTICALVO *y* MAGNO,
Accused-Appellant.

G.R. No. 193507

Present:

CARPIO, *J.*,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JAN 3 0 2013

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DECISION

PEREZ, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00457 dated 3 December 2009 affirming *in toto* the Decision[2] of Branch 19 of the Regional Trial Court (RTC) of Catarman, Northern Samar, in Criminal Case No. C-3460 dated 18 October 2005 finding herein appellant Rey Monticalvo *y* Magno guilty beyond reasonable doubt of the crime of rape of a demented person committed against AAA,[3]

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[1] Penned by Associate Justice Manuel M. Barrios with Associate Justices Florito S. Macalino and Samuel H. Gaerlan, concurring. *Rollo*, pp. 3-10.

[2] Penned by Judge Norma Megenio-Cardenas. CA *rollo*, pp. 54-67.

[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* [G.R. No. 167693, 19 September 2006, 502 SCRA 419], wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its

thereby imposing upon him the penalty of *reclusion perpetua* and ordering him to pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

Appellant Rey Monticalvo *y* Magno was charged with raping AAA in an Information[4] dated 30 April 2003, the accusatory portion of which reads:

> That on or about the 9th day of December 2002 at about 7:00 o'clock in the evening in Bgy. XXX, Municipality of XXX, Province of XXX, Philippines and within the jurisdiction of this [H]onorable [C]ourt, the above-named [appellant], actuated by lust and with lewd design, with force and intimidation, did, then and there, wil[l]fully, unlawfully and feloniously have carnal knowledge with [AAA], 12 years old and is **suffering from mental disorder or is demented or has mental disability**, without the consent and against the will of said victim.[5] [Emphasis supplied].

On arraignment, appellant, with the assistance of counsel *de oficio*, pleaded NOT GUILTY[6] to the crime charged.

At the pre-trial conference, the prosecution and the defense failed to make any stipulation of facts.[7] The pre-trial conference was then terminated and trial on the merits thereafter ensued.

The prosecution presented the following witnesses: (1) AAA, the private offended party; (2) BBB, mother of AAA; (3) Analiza Pait (Analiza), neighbor and friend of AAA; (4) Dr. Jesus Emmanuel Nochete (Dr. Nochete), Medical Officer IV, Northern Samar Provincial Hospital; and (5) Dr. Vincent Anthony M. Belicena (Dr. Belicena), Medical Specialist II, Northern Samar Provincial Hospital. Their testimonies established the following facts:

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decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of Republic Act No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective 15 November 2004.

4 Records, p. 27.

5 Id.

6 As evidenced by the Certificate of Arraignment and RTC Order both dated 5 September 2003. Records, pp. 49 and 55.

7 Pre-Trial Order dated 24 November 2003. Id. at 69-70.

AAA is a mental retardate and was 12 years and 11 months old at the time of the rape incident.[8] She and appellant, who was then 17 years old,[9] are neighbors − their respective houses are adjoining each other.[10]

In the afternoon of 9 December 2002, AAA and her friend, Analiza, were in front of the *sari-sari* store of AAA's mother, BBB, while appellant was inside the fence of their house adjacent to the said *sari-sari* store. Shortly, thereafter, appellant invited AAA to go with him to the kiln at the back of their house. AAA acceded and went ahead.[11]

Upon seeing appellant and AAA going to the kiln, Analiza, pretending to look for her one peso coin, followed them until she reached a papaya tree located three and a half meters away from the place. Analiza hid under the papaya tree and from there she saw appellant undress AAA by removing the latter's shorts and panty. Appellant, however, glanced and saw Analiza. Frightened, Analiza ran away and went back to the *sari-sari* store of BBB without telling BBB what she saw.[12]

Appellant proceeded to satisfy his bestial desire. After undressing AAA, appellant made her lie down. He then placed himself on top of AAA and made push and pull movements. Afterwards, appellant stopped, allowed AAA to sit down for a while and then sent her home.[13]

When AAA arrived at their house around 7:30 p.m., she was asked by her mother, BBB, where she came from and why she came home late. AAA replied that she was at the back of their house as appellant brought her there and had sexual intercourse with her.[14]

The following day, BBB brought AAA to the police station and then to the Northern Samar Provincial Hospital where AAA was examined by Dr. Nochete.[15] The medical examination yielded the following:

The findings are:

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8 Testimony of BBB. TSN, 15 March 2004, pp. 3-4.

9 Appellant was born on 23 February 1985 per his Certificate of Live Birth. Records, p. 19-A.

10 Testimony of Analiza Pait. TSN, 9 January 2004, p. 2; Testimony of appellant. TSN, 23 May 2005, pp. 1-2 and 6.

11 Testimony of Analiza Pait, id. at 2-3.

12 Id. at 3-4 and 7-8.

13 Testimony of AAA. TSN, 15 March 2004, pp. 10-11.

14 Testimony of BBB. TSN, 15 March 2004, pp. 5-6.

15 Testimony of BBB. TSN, 15 March 2004, p. 6; Testimony of Dr. Jesus Emmanuel Nochete. TSN, 26 April 2004, p. 2.

= Confluent abrasion 1 x 1 inches, 2 inches below the umbilicus.

Genitalia Exam:

= Admits 1 finger with ease.
= (-) vulvar swelling, (-) erythema.
= (+) complete healed hymenal laceration at 5 o'clock, 7 o'clock & 10 o'clock position.

Gram Stain [R]esult: Negative for spermatozoa.[16]

Dr. Nochete explained that AAA could have possibly sustained those complete healed hymenal lacerations more than a month prior to the date of the examination. He also clarified that even though AAA has no fresh hymenal laceration it does not necessarily mean that no sexual intercourse was committed on her on 9 December 2002. It is possible that AAA did not sustain any fresh hymenal laceration because the vaginal canal has become loose. He did not also find any trace of spermatozoa on AAA's vagina, its presence being dependent on whether the appellant did ejaculate or not.[17]

AAA was also examined by Dr. Belicena, a Psychiatrist at the Northern Samar Provincial Hospital, who found that AAA is suffering from moderate to severe mental retardation, meaning, AAA is suffering from the specific form of below average intelligence that has a low reproduction functioning resulting in impaired functioning. This finding was obtained through mental examination and actual interview of AAA. Dr. Belicena, however, recommended a full battery of psychological testing to determine AAA's exact mental age.[18] Dr. Belicena's finding was reduced into writing as evidenced by a Medical Certificate[19] dated 18 May 2004.

For its part, the defense offered the testimonies of (1) Pio Campos (Pio), neighbor and friend of appellant; (2) Cesar Monticalvo (Cesar), appellant's father; (3) Alexander Sanico (Alexander), Local Civil Registrar of Bobon, Northern Samar; and (4) appellant, who invoked the defense of denial and *alibi* to exonerate himself from the crime charged.

Appellant denied having raped AAA. He claimed that on 9 December 2002, at around 1:00 p.m., he, together with Pio and a certain Dinnes Samson, was having a drinking spree in the house of one Adolfo Congayao (Adolfo). They finished drinking at around 6:00 p.m. As he was too drunk,

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16 As evidenced by a Medico-Legal Certificate dated 11 December 2002. Records, p. 8.
17 Id. at 3-6.
18 Testimony of Dr. Vincent Anthony M. Belicena. TSN, 6 October 2004, pp. 3-8.
19 CA *rollo*, p. 103.

Pio assisted him in going home. He went to sleep and woke up only at 12:00 midnight as he needed to urinate. He went back to sleep and woke up at 6:00 a.m. of the following day, *i.e.*, 10 December 2002. He was surprised that AAA charged him with rape. He was then arrested at around 3:00 p.m. of 10 December 2002.[20]

Appellant disclosed, however, that the house of Adolfo, where they had their drinking spree, is more or less six (6) meters away from the house of AAA. In fact, he could still see the house of AAA even when he was in the house of Adolfo. He similarly admitted that he knew very well that AAA is suffering from mental abnormalities. He also divulged that he asked Pio to testify on his behalf.[21]

Appellant's testimony was corroborated on all material points by Pio and his father, Cesar, who also admitted that he personally knew AAA as she is their neighbor. Cesar also knew that AAA is suffering from mental disorder.[22] Both Pio and Cesar confirmed that on 9 December 2002, they brought appellant to his bedroom and let him sleep there because he was too drunk. Thereafter, Pio and Cesar engaged in a drinking spree inside the latter's house, particularly at the kitchen that is more than two (2) meters away from appellant's bedroom, which lasted until 11:00 p.m. Pio and Cesar likewise stated that there was no moment that appellant went out of his bedroom since the time they brought him there.[23]

Alexander, another defense witness, presented appellant's Certificate of Live Birth[24] to prove that the latter was only 17 years old during the commission of the crime, *i.e.*, 9 December 2002.[25]

The trial court, convinced about the merits of the prosecution's case rendered a Decision on 18 October 2005, finding the appellant guilty beyond reasonable doubt of the crime of rape of a demented person and sentenced him to an imprisonment term of *reclusion perpetua* and ordered him to indemnify AAA in the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

On appeal, the following errors were assigned:

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20 Testimony of appellant. TSN, 23 May 2005, pp. 2-5.
21 Id. at 6-13.
22 Testimony of Cesar Monticalvo. TSN, 15 April 2005, p. 11.
23 Id. at 3-7. Testimony of Pio Campos. TSN, 16 February 2005, pp. 4-8.
24 Records, p. 19-A.
25 Testimony of Alexander Sanico. TSN, 10 June 2005, p. 3.

I.
THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [APPELLANT] FOR THE CRIME OF RAPE OF A DEMENTED PERSON DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.
THE TRIAL COURT FAILED TO APPRECIATE [APPELLANT'S] AGE, BEING A MINOR, AT THE TIME OF THE COMMISSION OF THE CRIME.

III.
THE TRIAL COURT FAILED TO IMPOSE THE PROPER PENALTY.[26]

The Court of Appeals rendered the assailed Decision on 3 December 2009 affirming *in toto* the trial court's Decision dated 18 October 2005.

Hence, this appeal.

Appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt as the testimonies of AAA, BBB, Analiza and Dr. Nochete were replete with inconsistencies and improbabilities. *Firstly*, while the Information stated that appellant raped AAA on or about the 9th day of December 2002 at around 7:00 p.m., Analiza testified that it was in the afternoon of the same day when she saw and heard appellant calling AAA to go to the kiln at the back of their house, and while she saw appellant undress AAA, she did not actually see the sexual intercourse because the appellant saw her watching them, so she ran away. *Secondly*, BBB's testimony that on 9 December 2002, AAA confided to her that she was raped by appellant early that night was inconsistent with the testimony of Analiza that it was in the afternoon of the same day when she saw appellant and AAA going to the kiln, where the former undressed the latter. *Thirdly*, Dr. Nochete's testimony clearly stated that the hymenal lacerations on AAA's vagina could have possibly been sustained by her a month ago, which does not support AAA's claim of rape on 9 December 2002. Even granting that appellant, indeed, raped AAA on 9 December 2002, it is highly implausible that the hymenal lacerations on her vagina were already completely healed when she was examined by Dr. Nochete on 10 December 2002, which was only after less than 24-hours from the date the alleged rape was committed.

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[26] CA *rollo*, p. 26.

Appellant also questions the credibility of AAA as a witness given her condition as a mental retardate. Appellant opines that AAA, could not perceive and is not capable of making known her perception to others. As such, she can be easily coached on what to say or do.

Appellant finally avers that granting *arguendo* that he is guilty of the crime charged, he was only 17 years old at the time of its commission as evidenced by his Certificate of Live Birth. This fact was even attested to by the Local Civil Registrar of Bobon, Northern Samar. Given his minority at the time of the commission of the crime charged, the court should have considered the same as privileged mitigating circumstance in imposing the penalty against him.

This Court affirms appellant's conviction.

At the outset, paragraph 1, Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353,[27] provides for two (2) circumstances when carnal knowledge of a woman with mental disability is considered rape. Subparagraph (b) thereof refers to rape of a person "deprived of reason" while subparagraph (d) refers to rape of a "demented person."[28] The term "deprived of reason" has been construed to encompass those suffering from mental abnormality, deficiency or retardation.[29] The term "demented," on the other hand, means having *dementia*, which Webster defines as mental deterioration; also madness, insanity.[30] *Dementia* has also been defined in Black's Law Dictionary as a "form of mental disorder in which cognitive and intellectual functions of the mind are prominently affected; x x x total recovery not possible since cerebral disease is involved."[31] Thus, a mental retardate can be classified as a person "deprived of reason," not one who is "demented" and **carnal knowledge of a mental retardate is considered rape under subparagraph (b), not subparagraph (d) of Article 266-A(1) of the Revised Penal Code, as amended**.[32]

In this case, both the trial court and the appellate court incorrectly used the word demented to characterize AAA's mental condition and mistakenly categorized the rape committed by appellant under subparagraph

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27 Known as "The Anti-Rape Law of 1997."

28 *People v. Magabo*, 402 Phil. 977, 983-984 (2001).

29 Id. citing *People v. Reyes*, 374 Phil. 171, 185 (1999) citing further *People v. Andaya*, 365 Phil. 654, 668-669 (1999).

30 *People v. Burgos*, 201 Phil. 353, 360 (1982).

31 *People v. Magabo*, supra note 28 at 983 citing Black's Law Dictionary, 5th Ed., p. 387.

32 *People v. Magabo*, id.

(d), Article 266-A(1) of the Revised Penal Code, as amended, instead of under subparagraph (b) thereof. Nonetheless, the mistake would not exonerate appellant. Otherwise stated, his conviction or criminal liability for rape stands though not under subparagraph (d) of Article 266-A(1) of the Revised Penal Code, as amended, but under subparagraph (b) thereof.

Neither can it be said that appellant's right to be properly informed of the nature and cause of the accusation against him was violated. This Court is not unaware that the Information was worded, as follows: "[AAA] is suffering from mental disorder **or is demented** or has mental disability." This fact, however, will not render the Information defective and will not bar this Court from convicting appellant under subparagraph (b) of Article 266-A(1) of the Revised Penal Code, as amended.

In *Olivarez v. Court of Appeals*,[33] this Court pronounced that:

> x x x In *People v. Rosare*,[34] the information did not allege that the victim was a mental retardate which is an essential element of the crime of statutory rape. This Court however sustained the trial court's judgment of conviction holding that the resolution of the investigating prosecutor which formed the basis of the information, a copy of which is attached thereto, stated that the offended party is suffering from mental retardation. **It ruled that there was substantial compliance with the mandate that an accused be informed of the nature of the charge against him**. Thus:
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> > Appellant contends that he cannot be convicted of statutory rape because the fact that the victim was a mental retardate was never alleged in the information and, absent this element, the acts charged negate the commission of the offense for which he was convicted by the lower court.
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> Pursuant to Section 8, Rule 112 of the Rules of Court, we have decided to *motu proprio* take cognizance of the resolution issued by the investigating prosecutor in I.S. No. 92-0197 dated June 2, 1992, which formed the basis of and a copy of which was attached to the information for rape filed against herein appellant. Therein, it is clearly stated that the offended party is suffering from mental retardation. We hold, therefore, that this should be deemed a substantial compliance with the constitutional mandate that an accused be informed of the nature of the charge against him x x x (citation omitted).[35] [Emphasis supplied].

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33 503 Phil. 421 (2005).

34 332 Phil. 435, 442-443 (1996).

35 *Olivarez v. Court of Appeals*, supra note 33 at 436-437.

In this case, both the Complaint[36] and the Resolution[37] of the Municipal Trial Court of Northern Samar, which formed the basis of the Information and copies of which were attached in the records, stated that AAA is suffering from mental abnormalities – she looked like a retardate and her focus is not normal. Even, the Resolution[38] of the Acting Provincial Prosecutor concurred with the aforesaid findings. From the aforesaid, it can be gleaned that AAA's mental disorder or mental disability is that of being a mentally retarded and not demented. Thus, there was substantial compliance with the mandate to inform the accused of the nature of the accusation.[39] More so, as discussed hereunder, the prosecution was able to prove that AAA is, indeed, a mental retardate. Even the appellant affirmed the said mental condition of the victim.

To repeat, the term "deprived of reason" has been construed to encompass those suffering from mental abnormality, deficiency or retardation.[40] Hence, carnal knowledge of a mental retardate is rape under subparagraph (b) not subparagraph (d) of Article 266-A(1) of the Revised Penal Code, as amended.[41]

The gravamen of the crime of rape under Art. 266-A(1) is sexual intercourse with a woman against her will or without her consent.[42] Article 266-A(1) of the Revised Penal Code, as amended, specifically states that:

> ART. 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:
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> 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 though none of the circumstances mentioned above be present. [Emphasis supplied].

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36 Records, p. 3.
37 Id. at 22-25.
38 Id. at 26.
39 *Olivarez v. Court of Appeals*, supra note 33 at 437 citing *People v. Villamor*, 357 Phil. 940, 949 (1998).
40 *People v. Magabo*, supra note 28 at 983.
41 Id.
42 *People v. Dela Paz*, G.R. No. 177294, 19 February 2008, 546 SCRA 363, 375.

From the foregoing, for the charge of rape to prosper, the prosecution must prove that the offender had carnal knowledge of a woman through **any** of the four enumerated circumstances. Without doubt, carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law. Proof of force or intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act. **What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter**.[43]

In *People v. Dalandas*,[44] citing *People v. Dumanon*,[45] this Court held that mental retardation can be proven by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court.[46]

In the present case, the prosecution was able to establish that AAA is, indeed, a mental retardate through, (1) the testimony of her mother; (2) the trial court's observation; and (3) the mental examination and actual interview of AAA conducted by Dr. Belicena, a Psychiatrist at the Northern Samar Provincial Hospital, who found AAA to be suffering from moderate to severe mental retardation, meaning, AAA is suffering from the "specific form of below average intelligence which has a low reproduction functioning which result to impairment functioning."[47] It is also worthy to note that the defense did not dispute, even admitted the fact that AAA is suffering from mental retardation. The findings of the lower courts about AAA's mental condition must be upheld.

The prosecution was also able to establish the fact of sexual congress between appellant and AAA. Despite the latter's mental condition, she narrated before the court in the best way she could her ordeal in the hands of appellant. As stated by the appellate court, AAA conveyed her ideas by words and demonstrations.[48] AAA recounted how the appellant sexually abused her on 9 December 2002 by inviting her to go to the kiln at the back of their house. Thereupon, appellant suddenly undressed her by removing her shorts and panty. This fact was attested to by Analiza, one of the prosecution witnesses, who actually witnessed appellant undressing AAA by removing the latter's shorts and panty. AAA further testified that after undressing her, appellant made her lie down, placed himself on top of her and made push and pull movements. Thereafter, appellant stopped, made

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43 Id. at 376.
44 442 Phil. 688, 697 (2002).
45 401 Phil. 658 (2000).
46 *People v. Dalandas*, supra note 44 at 697.
47 Testimony of Dr. Vincent Anthony Belicena. TSN, 6 October 2004, p. 4.
48 *Rollo*, p. 7.

her sit down and sent her home.[49] This testimony of AAA was correctly found by the trial court and the appellate court as coherent and given in a detailed manner.[50]

Emphasis must be given to the fact that the competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it is shown that they can communicate their ordeal capably and consistently. Rather than undermine the gravity of the complainant's accusations, it even lends greater credence to her testimony, that, someone as feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused. Moreover, it has been jurisprudentially settled that when a woman says she has been raped, she says in effect all that is necessary to show that she has been raped and her testimony alone is sufficient if it satisfies the exacting standard of credibility needed to convict the accused.[51]

Worth stressing also is the fact that during AAA's testimony, she positively identified the appellant as the person who raped her.[52] Thus, the straightforward narration of AAA of what transpired, accompanied by her categorical identification of appellant as the malefactor, sealed the case for the prosecution.[53]

The allegation of inconsistencies in the testimonies of AAA, BBB, Analiza and Dr. Nochete as regards the exact date and time the alleged rape incident happened, as well as the absence of fresh hymenal lacerations on AAA's vagina, pointed to by appellant cannot work in his favor.

Evidently, these inconsistencies refer only to trivial and inconsequential matters that do not alter the essential fact of the commission of rape.[54] A witness is not expected to remember with perfect recollection every minute detail of her harrowing experience. A minor mistake as to the exact time of the commission of the rape is immaterial and cannot discredit the testimony of a witness. This Court has repeatedly held that the exact date of the commission of the rape is not an essential element of the crime.[55] **Indeed, the precise time of the crime has no substantial bearing on its**

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49 Testimony of AAA. TSN, 15 March 2004, pp. 9-11.

50 RTC Decision dated 18 October 2005. CA *rollo*, p. 60; CA Decision dated 3 December 2009. *Rollo*, p. 7.

51 *People v. Castillo*, G.R. No. 186533, 9 August 2010, 627 SCRA 452, 471.

52 Testimony of AAA. TSN, 15 March 2004, p. 10.

53 *People v. Castillo*, supra note 51 at 471.

54 *People v. Carpio*, 538 Phil. 451, 473 (2006).

55 *People v. Bares*, 407 Phil. 747, 764 (2001).

commission.[56] What is decisive in a rape charge is that the commission of the rape by the accused against the complainant has been sufficiently proven. Inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal.[57]

In the same way, the absence of fresh hymenal lacerations and spermatozoa on AAA's vagina do not negate the fact of rape. A freshly broken hymen, as well as the presence or absence of spermatozoa, is not also an essential element of rape.[58] As clarified by Dr. Nochete, the absence of fresh hymenal laceration on AAA's vagina does not necessarily mean that she did not engage in sexual intercourse on 9 December 2002. Possibly, AAA did not sustain any fresh hymenal laceration as her vaginal canal had become loose. And, he did not find any trace of spermatozoa because its presence depends on whether or not the appellant ejaculated.

Indeed, a mental retardate is not, by reason of such handicap alone, be disqualified from testifying in court.[59] Mental retardation *per se* does not affect credibility. **A mentally retarded may be a credible witness**. The acceptance of her testimony depends on the quality of her perceptions and the manner she can make them known to the court.[60] If the testimony of a mental retardate is coherent, the same is admissible in court.[61]

Neither can it be said that AAA was merely coached as a witness by her mother. It is highly unthinkable that a mother would draw her daughter, a mental retardate at that, into a rape story with all its attendant scandal and humiliation if the rape did not really happen. No mother in her right mind would possibly wish to stamp her child with the stigma that follows the despicable crime of rape.[62] Moreover, appellant failed to show any ill-motive on the part of AAA and her mother to falsely testify against him.

In light of the straightforward and credible testimony of AAA, her positive identification of appellant as her assailant and the lack of ill-motive on her part to falsely testify against appellant, the latter's defense of denial and *alibi* must necessarily fail.

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56 *People v. Narido*, 374 Phil. 489, 505-507 (1999).
57 *People v. Bares*, supra note 55 at 764-765.
58 *People v. Dela Paz*, supra note 42 at 380; *People v. Abulencia*, 415 Phil. 731, 746 (2001).
59 *People v. Lubong*, 388 Phil. 474, 490 (2000).
60 *People v. Tamano*, G.R. No. 188855, 8 December 2010, 637 SCRA 672, 685.
61 *People v. Lubong*, supra note 59 at 490.
62 *People v. Tamano*, supra note 60 at 688.

Denial is an inherently weak defense and has always been viewed upon with disfavor by the courts due to the ease with which it can be concocted. Denial as a defense crumbles in the light of positive identification of the accused, as in this case. The defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt. Verily, mere denial, unsubstantiated by clear and convincing evidence, is negative self-serving evidence which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters.[63]

Like denial, *alibi* is not looked upon with favor by the trial court. It also cannot prevail over witnesses' positive identification of appellant as the perpetrator of the crime. In any event, for the defense of *alibi* to prosper, it is not enough that the accused can prove his presence at another place at the time of its commission, it is likewise essential that he show physical impossibility for him to be at the *locus delicti*,[64] which the appellant in this case failed to do.

As aptly observed by the trial court:

> The houses of the offended party and the [appellant] are only divided by a fence and the place of the incident is only at the back of the house of the [appellant]. The defense of *alibi* must fail. In addition to the positive identification made by [AAA] and the place of the incident is adjacent to the houses of the victim and the [appellant], being neighbors, the fact that the [appellant] alleged that he was having drinking spree at that time and that he was dead drunk at around 6:00 p.m. of that date, there is no impossibility for the [appellant] to be physically present at the scene of the incident, because of its proximity.
>
> Corroborative testimony is not credible if tainted with bias particularly in cases where the witnesses are closely associated to the [appellant] as to be interested in the [appellant's] acquittal. In this case, the [appellant's] witnesses are his alleged drinking buddy and his father. Considering that they are bound by friendship and affiliation, it is conceivable that they would be inclined to make excuses for him [appellant] from culpability.[65]

All told, appellant's guilt has been proven by the prosecution beyond reasonable doubt, thus, his conviction stands.

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63 *People v. Mabonga*, G.R. No. 134773, 29 June 2004, 433 SCRA 51, 65-66 citing *People v. Pancho*, 462 Phil. 193, 206 (2003).

64 *People v. Aspuria*, 440 Phil. 41, 53-54 (2002).

65 CA *rollo*, p. 63.

As to penalty. Under Article 266-B[66] in relation to Article 266-A(1) of the Revised Penal Code, as amended, simple rape is punishable by *reclusion perpetua*. However, when rape is committed by an assailant who has knowledge of the victim's mental retardation, the penalty is increased to death. But this circumstance must be alleged in the information being a qualifying circumstance which increases the penalty to death and changes the nature of the offense from simple to qualified rape.[67] In the case at bench, while appellant categorically admitted that he knew AAA to be suffering from mental abnormalities, the prosecution failed to allege this fact in the information. As such, even if it was proved, it cannot be appreciated as a qualifying circumstance. Thus, appellant's conviction is only for simple rape for which he should be meted the penalty of *reclusion perpetua*.

Nonetheless, a reasonable ground exists in this case that calls for the modification of the penalty of *reclusion perpetua* imposed by both lower courts upon the appellant.

This Court finds merit in appellant's assertion that he was a minor during the commission of the crime charged. During trial, upon order of the trial court, the Local Civil Registrar of Bobon, Northern Samar, brought before it their office records, particularly appellant's Certificate of Live Birth containing the fact of birth of the latter. Appellant's Certificate of Live Birth shows that he was born on 23 February 1985. Indeed, at the time of the commission of the crime charged on 9 December 2002, appellant was only 17 years old, a minor. Thus, he is entitled to the privileged mitigating circumstance of minority pursuant to Article 68(2) of the Revised Penal Code, as amended,[68] which specifically states that:

> ART. 68. – *Penalty to be imposed upon a person under eighteen years of age*. – When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

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66 **ART. 266-B**. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

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:

x x x x

(10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

67 *People v. Maceda*, 405 Phil. 698, 724-725 (2001).

68 *People v. Sarcia*, G.R. No. 169641, 10 September 2009, 599 SCRA 20.

x x x x

> 2. **Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by the law shall be imposed, but always in the proper period**.[69] [Emphasis supplied].

Applying the privileged mitigating circumstance, the proper imposable penalty upon appellant is *reclusion temporal*, being the penalty next lower to *reclusion perpetua* - the penalty prescribed by law for simple rape. Being a divisible penalty, the Indeterminate Sentence Law is applicable.[70]

Applying the Indeterminate Sentence Law, appellant can be sentenced to an indeterminate penalty the minimum of which shall be within the range of *prision mayor* (the penalty next lower in degree to *reclusion temporal*), that is 6 years and 1 day to 12 years, and maximum of which shall be within the range of *reclusion temporal* in its medium period (there being no other modifying circumstances attendant to the crime), that is 14 years, 8 months and 1 day to 17 years and 4 months.[71] **With that, the indeterminate penalty of 10 years of *prision mayor*, as minimum, to 17 years and 4 months of *reclusion temporal*, as maximum, should be imposed upon the appellant**. However, the case of appellant does not, as it normally should, end at this point. On 20 May 2006, Republic Act No. 9344, otherwise known as the "Juvenile Justice and Welfare Act of 2006," took effect. Section 68 thereof specifically provides for its retroactive application, thus:[72]

> SEC. 68. *Children Who Have Been Convicted and are Serving Sentence.* – **Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act**. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law. [Emphasis supplied].

Clearly, Republic Act No. 9344 is applicable in this case even though the crime was committed four (4) years prior to its enactment and effectivity. Parenthetically, with more reason should Republic Act No. 9344 apply to

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69 Id. at 40-41.
70 *People v. Mercado*, 445 Phil. 813, 827 (2003).
71 *People v. Duavis*, G.R. No. 190861, 7 December 2011, 661 SCRA 775, 786.
72 *People v. Sarcia*, supra note 68 at 48.

this case as the 2005 conviction by the lower courts was still under review when the law took effect in 2006.[73]

Section 38 of Republic Act No. 9344 warrants the suspension of sentence of a child in conflict with the law notwithstanding that he/she has reached the age of majority at the time the judgment of conviction is pronounced.[74] It reads, thus:

> SEC. 38. *Automatic Suspension of Sentence*. – Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided, however*, **That suspension of sentence shall still be applied even if the juvenile is already eighteen (18) of age or more at the time of the pronouncement of his/her guilt**.
>
> Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law. [Emphasis supplied].

However, while Section 38 of Republic Act No. 9344 provides that suspension of sentence can still be applied even if the child in conflict with the law is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt, Section 40 of the same law limits the said suspension of sentence until the said child reaches the maximum age of 21, thus:[75]

> SEC. 40. *Return of the Child in Conflict with the Law to Court*. – If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.
>
> If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, **or to extend the suspended sentence for a certain**

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73 Id. at 48-49.

74 *People v. Jacinto*, G.R. No. 182239, 16 March 2011, 645 SCRA 590, 621.

75 *People v. Sarcia*, supra note 68 at 50.

> **specified period or until the child reaches the maximum age of twenty-one (21) years.** [Emphasis supplied].

At present, appellant is already 27 years of age, and the judgment of the trial court was promulgated prior to the effectivity of Republic Act No. 9344. Therefore, the application of Sections 38 and 40 of the said law is already moot and academic.

Be that as it may, to give meaning to the legislative intent of Republic Act No. 9344, the promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of 21 years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in accordance with Republic Act No. 9344 in order that he/she is given the chance to live a normal life and become a productive member of the community. The age of the child in conflict with the law at the time of the promulgation of the judgment of conviction is not material. **What matters is that the offender committed the offense when he/she was still of tender age**.[76] The appellant, therefore, shall be entitled to appropriate disposition under Section 51 of Republic Act No. 9344, which provides for the confinement of convicted children as follows:[77]

> SEC. 51. *Confinement of Convicted Children in Agricultural Camps and Other Training Facilities*. – A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

To conform to this Court's ruling in *People v.Sarcia*,[78] the case shall be remanded to the court of origin to effect appellant's confinement in an agricultrual camp or other training facility.[79]

As to damages. The civil liability resulting from the commission of the offense is not affected by the appropriate disposition measures and shall be enforced in accordance with law.[80] This Court affirms both the civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00 awarded by the lower courts in favor of AAA. Civil indemnity, which is actually in the

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76 *People v. Jacinto*, supra note 74 at 625.
77 *People v. Sarcia*, supra note 68 at 51.
78 Id.
79 *People v. Jacinto*, supra note 74 at 625.
80 *People v. Sarcia*, supra note 68 at 51.

nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape. Case law also requires automatic award of moral damages to a rape victim without need of proof because from the nature of the crime, it can be assumed that she has suffered moral injuries entitling her to such award. Such award is separate and distinct from civil indemnity.[81]

In consonance with prevailing jurisprudence on simple rape wherein exemplary damages are awarded to set a public example and to protect hapless individuals from sexual molestation, this Court likewise affirms the lower courts award of exemplary damages but increased the same from ₱25,000.00 to ₱30,000.00 to conform to recent jurisprudence.[82]

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00457 dated 3 December 2009 is hereby **MODIFIED** as follows: (1) appellant is found guilty of rape under subparagraph (b) of Article 266-A(1) of the Revised Penal Code, as amended, and not under subparagraph (d) thereof; (2) in view of the privileged mitigating circumstance appreciated in favor of appellant the penalty of *reclusion perpetua* is reduced to *reclusion temporal* and being a divisible penalty, the Indeterminate Sentence Law applies and the indeterminate penalty of 10 years of *prision mayor*, as minimum, to 17 years and 4 months of *reclusion temporal*, as maximum, is imposed upon the appellant; and (3) the amount of exemplary damages awarded by the lower courts is increased from ₱25,000.00 to ₱30,000.00. The award of civil indemnity and moral damages both in the amount of ₱50,000.00 are maintained. This case, however, shall be **REMANDED** to the court *a quo* for appropriate disposition in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

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81 *People v. Aguilar*, G.R. No. 177749, 17 December 2007, 540 SCRA 509, 528.

82 *People v. Bayrante*, G.R. No. 188978, 13 June 2012.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were 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