Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES
Plaintiff-Appellee,

- *versus* -

DANIEL ALCOBER,
Accused-Appellant.

G.R. No. 192941

Present:

SERENO, *CJ.,*
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, and
REYES, *JJ.*

Promulgated:
NOV 13 2013

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DECISION

LEONARDO-DE CASTRO, *J.*:

This is an appeal[1] from the Decision[2] of the Court of Appeals dated May 29, 2009 in CA-G.R. CR.-H.C. No. 00063, which affirmed with modification the Decision[3] of the Regional Trial Court (RTC) of Carigara, Leyte finding accused-appellant Daniel Alcober guilty beyond reasonable doubt of the crime of rape.

Accused-appellant Alcober was charged in an Information dated February 12, 2001, as follows:

> That on or about the 20[th] day of July, 1999, in the municipality of Tuñga, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd designs and by use of force and intimidation then armed with a long bolo (sundang), taking advantage of the minority of the victim and

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1 CA *rollo*, pp. 144-147.
2 *Rollo*, pp. 5-16; penned by Associate Justice Edgardo L. de los Santos with Associate Justices Franchito N. Diamante and Rodil V. Zalameda, concurring.
3 CA *rollo*, pp. 13-28.

> their relationship, the accused being [the] common-law spouse of the victim's mother, did then and there wilfully, unlawfully and feloniously had (sic) carnal knowledge with AAA,[4] against her will and to her damage and prejudice.[5]

Accused-appellant pleaded not guilty to the offense charged.

During the pre-trial, accused-appellant admitted that the incident happened on the 20th day of July 1999 in the municipality of Tunga, Leyte, and that he is "the common-law spouse of the victim's mother." The prosecution furthermore proposed to have the accused-appellant admit that AAA was a minor at the time of the incident, but the court insisted that it be proven with a Birth Certificate.[6]

AAA testified that she was around 10 years old and was in Grade 5 when accused-appellant and her mother started living together as husband and wife. She considered accused-appellant to be her father and calls him "Tatay." Her mother is the one earning for the family, by selling bananas in Carigara, Leyte.[7]

On July 20, 1999, at around 2:00 a.m., AAA was in their house in Tunga, Leyte. Her mother was away, selling bananas in Carigara, while her younger siblings were upstairs, sleeping. At that time, AAA was in second year high school and was thirteen years old. After working on her school assignment, AAA cooked rice downstairs in the kitchen. While she was busy cooking rice, she did not notice the arrival of accused-appellant, who suddenly embraced her from her back. She identified accused-appellant as the person who embraced her since she immediately turned around and the place was illuminated by a kerosene lamp. AAA resisted and was able to release herself from accused-appellant's hold. Accused-appellant unsheathed the long bolo, locally called a *sundang*, from the scabbard on his waist and ordered her to go upstairs. Poking the *sundang* at AAA's stomach, he then ordered AAA to take off her shorts, and told her he will kill her, her siblings and her mother if she does not do as she was told.[8]

AAA complied with accused-appellant's orders. When she was lying on the floor, already undressed, accused-appellant placed the *sundang* beside her on her left side. He took off his shirt and shorts and went on top of her. AAA did not shout since accused-appellant threatened to kill them all if she did. He held her hair with his right hand and touched her private parts with his left hand. He then "poked" his penis into her vagina and made a push and pull movement. AAA felt pain. Accused-appellant kissed her and said

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4 The real names of the victim and her family, with the exception of accused-appellant, are withheld per Republic Act No. 7610 and Republic Act No. 9262, as held in *People v. Cabalquinto*, 533 Phil. 703 (2006).

5 Records, p. 1.

6 TSN, June 11, 2001, pp. 2-3.

7 TSN, July 31, 2001, pp. 4-5.

8 Id. at 5-9.

"Ah, you're still a virgin." When accused-appellant was done, he stood and said "If you will tell this to anybody, I will kill you."[9]

AAA did not tell her mother about the incident as she was afraid accused-appellant will execute his threat to kill them all. The sexual advances were thereafter repeated every time AAA's mother sold bananas on Wednesdays and Sundays.[10]

On January 8, 2001, accused-appellant ordered AAA to pack and go with him to Tabontabon, Leyte, threatening once more to kill her siblings if she does not comply. In Tabontabon, accused-appellant once again forced AAA to have sex with him. The following day, AAA's mother, accompanied by police officers of Tunga, Leyte, arrived, searching for AAA and the accused-appellant. AAA was finally able to talk to her mother, which led to AAA's filing a complaint for rape against accused-appellant. Accused-appellant was arrested a few days later on January 11, 2001.[11]

Dr. Rogelio Gariando, Municipal Health Officer IV of the Carigara District Hospital, requested a vaginal smear in the course of his physical examination of AAA. Dr. Gariando testified that the specimen secured from AAA at around 2:00 p.m. of January 10, 2001 was positive for the presence of spermatozoa.[12] Medical Technologist II of Carigara District Hospital, Alicia Adizas, confirmed the finding of Dr. Gariando.[13]

BBB, the mother of AAA, testified that she and accused-appellant Alcober lived together from 1989 to 2001. BBB and accused-appellant had three children, who were three, eight and ten years old, as of her testimony on October 30, 2001. AAA, however, was her daughter with a previous live-in partner. AAA was six years old when she and accused-appellant Alcober started living together. BBB was the one who supported their family the entire time they lived together, since accused-appellant was not always gainfully employed. AAA called accused-appellant "Tatay."[14]

BBB resided in Tunga, Leyte, while AAA was living with BBB's sister, CCC. The house of CCC was around one kilometer away from her and accused-appellant's house. AAA, however, was frequently in BBB's house since she had lunch there and since it was nearer to her school than CCC's house. BBB remembered AAA crying on July 20, 1999, but when she asked AAA, the latter told her that she was merely fondled by accused-appellant. AAA was 13 years old on July 20, 1999.[15]

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9 Id. at 9-13.
10 Id. at 14.
11 Id. at 15-20.
12 TSN, October 9, 2001, pp. 3-4.
13 TSN, November 16, 2001, pp. 6-8.
14 TSN, October 30, 2001, pp. 2-4.
15 Id. at 4-7.

On January 8, 2001, when BBB learned that accused-appellant took AAA to Tabontabon, Leyte, she immediately looked for them in Burauen, Leyte. When she failed to find them there, she reported the apparent abduction of AAA to the PNP in Tunga. Together with an uncle of accused-appellant, she reached Tabontabon at around 9:30 in the morning, but found only AAA. She asked AAA why she went with accused-appellant, to which AAA replied that she was threatened by accused-appellant that he would kill them all. AAA also told her that she was actually raped by accused-appellant on July 20, 1999.[16]

For the defense, Tunga resident Ernesto Davocol testified that sometime on July 20, 1999, he saw AAA and accused-appellant, carrying a bag and a bolo, in front of the municipal cemetery of Tunga, Leyte. They hailed and boarded a jeep bound for Tacloban.[17]

Accused-appellant Alcober testified that on October 20, 1999,[18] at around 2:00 a.m., he was inside their house in Tunga, Leyte, drinking coffee in the kitchen when AAA unzipped her shirt and told him that "this is the gift that I am offering you that you are longing for too long." They then proceeded to have consensual sexual intercourse. He claimed that this was the only time that they had sexual intercourse. On cross-examination, accused-appellant admitted that AAA sometimes called him Papa and that he did not give her monetary support since she grew up at her uncle's house. Accused-appellant clarified that AAA was not in their house on July 20, 1999 and that their sexual intercourse occurred on October 20, 1999. Accused-appellant categorically admitted that he had sex with his 13-year old stepdaughter on October 20, 1999. Accused-appellant further testified on cross that BBB watched him having sexual intercourse with AAA and that BBB was crying while watching them. To prove that the sexual intercourse was consensual, accused-appellant presented in court what he claimed was the underwear of AAA, alleging that they agreed to exchange underwear with each other.[19]

On March 15, 2002, the RTC of Carigara, Leyte rendered its Decision finding accused-appellant guilty of the crime of rape. The dispositive portion of the Decision is as follows:

> WHEREFORE, premises considered, pursuant to paragraph 1(a), Art. 266-A and the second paragraph of Art. 266-B (Rape Law of 1997, R.A. No. 8353) of the Revised Penal Code as amended, and further amended by R.A. No. 7659, (The Death Penalty Law), the Court found DANIEL ALCOBER, GUILTY beyond reasonable doubt of the crime of

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16 Id. at 6-10.

17 TSN, January 30, 2002, pp. 2-6.

18 Accused-appellant was asked about his whereabouts on July 20, 1999, but he answered using the date October 20, 1999. Later into the testimony, accused-appellant Alcober stated that AAA was not at home on July 20, 1999. Accused-appellant, however, admitted during pre-trial that the incident occurred on July 20, 1999. (TSN, June 11, 2001, p. 2.)

19 TSN, March 5, 2002, pp. 2-11.

> Rape and sentenced to suffer the maximum penalty of DEATH, and indemnify [AAA] the amount of Seventy[-]Five (₱75,000.00) Thousand Pesos and pay moral damages in the amount of Fifty Thousand (₱50,000.00) Pesos and pay the cost.[20]

On May 29, 2009, the Court of Appeals affirmed the RTC Decision with several modifications:

> **WHEREFORE**, in view of the foregoing premises, the assailed Decision of the Regional Trial Court, Branch 13 in Carigara, Leyte in Criminal Case No. 4025 is hereby AFFIRMED with MODIFICATIONS. Finding accused-appellant Daniel Alcober GUILTY beyond reasonable doubt as principal of the crime of rape qualified by the use of a deadly weapon, the Court sentences him to *reclusion perpetua*. Accused-appellant is further ordered to pay the following sums: Php75,000 as civil indemnity; Php75,000 as moral damages; and Php25,000 as exemplary damages. Costs against accused-appellant.[21]

Accused-appellant appeals to this Court with the following Assignment of Errors:

> I
>
> THE COURT A QUO GRAVELY ERRED IN COMPLETELY IGNORING THE SWEETHEART THEORY INTERPOSED BY ACCUSED-APPELLANT.
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> II
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> THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.[22]

Accused-appellant asserts that AAA's testimony that the sexual intercourse between them was *not* consensual is "patently incredible." According to accused-appellant, AAA could have escaped after she was raped for the first time on July 20, 1999. Since AAA was already residing in her aunt's house, she should never have returned to BBB and accused-appellant's house in order to prevent the repeated sexual intercourse after July 20, 1999 and the before the incident in Tabontabon.[23] Accused-appellant furthermore claim that the delay in revealing her alleged sexual ordeals from July 20, 1999 up to January 10, 2001 creates serious doubts as to her contention that she was raped.[24]

We must emphasize that when the accused in a rape case claims, as in the case at bar, that the sexual intercourse between him and the complainant

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20 CA *rollo*, p. 74.
21 *Rollo*, p. 15.
22 CA *rollo*, p. 49.
23 Id. at 51-52.
24 Id. at 52.

was consensual, the burden of evidence shifts to him, such that he is now enjoined to adduce sufficient evidence to prove the relationship. Being an affirmative defense, it must be established with convincing evidence, such as by some documentary and/or other evidence like mementos, love letters, notes, pictures and the like.[25] Thus, in *People v. Mirandilla, Jr.*,[26] we held:

> The sweetheart theory as a defense, however, necessarily admits carnal knowledge, the first element of rape. Effectively, it leaves the prosecution the burden to prove only force or intimidation, the coupling element of rape. x x x.
>
> This admission makes the sweetheart theory more difficult to defend, for it is not only an affirmative defense that needs convincing proof; after the prosecution has successfully established a *prima facie* case, the burden of evidence is shifted to the accused, who has to adduce evidence that the intercourse was consensual. (Citations omitted.)

Other than his self-serving testimony, however, accused-appellant failed to adduce evidence of his supposed relationship with AAA. The testimony of Davocol as regards seeing AAA and accused-appellant on July 20, 1999 boarding a jeep bound for Tacloban does not in any way suggest a romantic or sexual relationship between them. On the other hand, we are convinced that the sordid version of facts presented by accused-appellant is nothing but a depraved concoction by a very twisted and obnoxious imagination. Accused-appellant's tale of being seduced by his 13-year old stepdaughter who calls him "Tatay" or "Papa," and having sexual intercourse with her while her mother was watching and crying is not only nauseatingly repulsive but is likewise utterly incredible. It is unthinkable for BBB, who helped AAA file the complaint and testified against accused-appellant, to just passively endure such an outrage happening before her very eyes. The trial court, which observed the demeanor of AAA, BBB and the accused-appellant on the witness stand, did not find accused-appellant's account plausible, and instead gave full faith and credence to the testimonies of AAA and BBB. The trial court, in fact, described accused-appellant's demeanor as boastful and his narration as a make-believe story:

> While at the witness stand, the accused boastfully testified and took out from the back pocket of his pants a panty of a woman which according to him was given to him by [AAA] after their sexual intercourse to which he exchanged it with his own brief as a proof that [AAA] enjoyed having sexual intercourse with him; viz:
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> x x x x
>
> PROS. MERIN:
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> Q – So, you are telling this court that [AAA] was enjoying?

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25 *People v. Bautista*, G.R. No. 140278, June 3, 2004, 430 SCRA 469, 490.

26 G.R. No. 186417, July 27, 2011, 654 SCRA 761, 772.

A – Yes, sir, and her panty is even here. I brought this to the Court as evidence.

Q – What was then in your mind that you would make your own stepdaughter without a panty after you had sex with her? What was in your mind?
A – Because this was given to me by her and we exchanged our underwear, she gave me her panty and I gave her my brief.

Q – And it was in the presence of her mother?
A – Yes sir. TSN p[p]. 10-11. March 5, 2002.)

This make-believe story of the sex escapade of accused Daniel Alcober and the minor [AAA], conveying to the court that the 13 year old [AAA] enjoyed the morbid situation that [befell] on her life is unavailing and deserves no credence. The trauma, the shame and the embarrassment and the public humiliation to which [accused-appellant] has forced the minor child to stop her studies, denying her the proper education and a bright future, all because of the [insatiable] beastful lust of her stepfather who virtually reduced her to a sex slave, a pawn for almost two (2) years, who cannot do anything but obey the whims and caprices of the accused Alcober until he was apprehended and formally charged in court on March 21, 2001. x x x.[27]

Accused-appellant's incredulous testimony appears even more unconvincing in contrast to the believable account of AAA of the incident on July 20, 1999:

Q: After you noticed that it was your stepfather who embraced you, what else transpired, if any?
A: I resisted, but at that time he was always bringing with him a long bolo, locally known as "sundang." He took it off from the scabbard.

Q: You mean when he embraced you, he was already holding a long bolo?
A: It was still tucked at his waist, together with the scabbard.

Q: You said that you resisted. When was that time when he unsheathed his bolo then tucked on his waist?
A: When I resisted.

x x x x

Q: When you went upstairs, what next transpired, if any?
A: He ordered me to take off my short pants.

Q: What was then your attire that time?
A: I was then wearing shorts and t-shirt.

Q: How about that bolo, what did the accused do with that bolo?
A: It was poked on me.

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27 CA *rollo*, pp. 72-73.

Q: Where, what portion of your body?
A: Towards my stomach.

Q: Did you comply with his order that you would have to undress yourself and took your attire?
A: Yes sir.

Q: Why did you have to comply to that?
A: Because, he told me that if I will not follow him, he will kill me, my brothers and sisters and my mother.

x x x x

Q: After you were already undressed, what next transpired, if any?
A: That was the time that he placed his long bolo "sundang" beside me on my left side.

Q: You mean, you were already lying on the floor?
A: Yes sir.

Q: Now, after he placed that bolo beside you, what next transpired, if any?
A: He took off his t-shirt and shorts and thereafter, he placed himself on top of me.

Q: Did you not make any shout that which you would be heard?
A: I did not shout, because he told me not to shout or make any noise.

Q: Did you comply to such order?
A: Yes sir.

Q: Why?
A: Because, he threatened me that if I shout, he will kill me, all of us.

Q: After he placed himself on top of you, what did the accused do, if any?
A: He held every part of my body.

x x x x

Q: What portion of your body was touched by the accused?
A: My breast.

Q: What else, if any?
A: Until down.

Q: You mean, to include your vagina?
A: Yes sir.

Q: How did he touch your breast, your vagina and other extremities of your body. Describe that.
A: While he places himself on top of me, his other hands was used in touching other parts of my body.

Q: What hand was touching the other parts of your body?
A: His right hand.

Q: And where was his left hand, then?
A: It was on my hair.

x x x x

Q: After he did that touching of your private parts, your breast, vagina and touching your hair gently, what transpired next?
A: He took my womanhood.

Q: How?
A: He poked his penis to my vagina.

x x x x

Q: After the accused poked his penis to your vagina, what did the accused then do after poking his penis to your vagina?
A: He did the act of pulling and pushing.

x x x x

Q: When this penis of the accused was placed in your vagina as you earlier testified, what else did you feel?
A: I felt the pain.

Q: After he was through with this push and pull movement, what did the accused do next, after he caressed you and told you that statement that you are still a virgin?
A: He stood up and said this things, "if you will tell this to anybody, I will kill you."

Q: Did you tell your mother of what the accused did to you?
A: I did not.

Q: Why?
A: Because I was afraid he will execute his threats to kill us all.[28]

Contrary to the assertions of accused-appellant, the fact that AAA was not able to escape when she had the opportunity to do so, her continued visit to their home after the incident, and her delay in filing the complaint does not at all contradict her credibility. As discussed by the Court of Appeals, when a rape victim is paralyzed with fear, she cannot be expected to think and act coherently. Her failure to take advantage of an opportunity to escape does not automatically vitiate the credibility of her account.[29] Similarly, in *People v. Lazaro*,[30] we propounded on the impropriety of judging the actions of child rape victims by the norms of behavior that can be expected from adults under similar circumstances:

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28 TSN, July 31, 2001, pp. 7-13.
29 CA *rollo*, p. 134.
30 G.R. No. 186379, August 19, 2009, 596 SCRA 587, 601-602.

> It is not uncommon for a young girl to conceal for some time the assault on her virtue. Her initial hesitation may be due to her youth and the molester's threat against her. Besides, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation. It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances. x x x. It is, thus, unrealistic to expect uniform reactions from them. Certainly, the Court has not laid down any rule on how a rape victim should behave immediately after she has been violated. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Indeed, different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience. x x x. (Citations omitted.)

Indeed, AAA's explanation for the delay in reporting the crime is more than adequate:

> Q: Would you kindly tell the Court the reason why you did not immediately file a case against your stepfather on July 20, 1999?
> A: Because I was afraid of his threat that he will kill my mother, my brother and sisters including me.
>
> Q: When was this threat by the way?
> A: At the time when I was already at the kitchen.
>
> Q: You mean this date of July 20, 1999?
> A: Yes, sir.[31]

In all, we do not find sufficient ground to overturn the guilty verdict rendered by the lower courts. We note, however, that the trial court and the Court of Appeals differed in the penalty imposed and in their appreciation of aggravating circumstances. We proceed to pass upon these matters.

The trial court imposed the death penalty upon accused-appellant on the basis of the fifth paragraph, number 1, of Article 266-B of the Revised Penal Code, which provides:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
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> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim[.]

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31 TSN, September 14, 2001, p. 14.

The Court of Appeals, however, found the fifth paragraph of Article 266-B inapplicable. According to the appellate court, although it is undisputed that accused-appellant is the common-law spouse of the victim's mother, the records are bereft of independent evidence to prove that AAA is a minor, apart from the testimonies of AAA and her mother.[32]

We disagree.

In *People v. Pruna*,[33] the Court established the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, as follows:

> 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
>
> 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
>
> 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, **the testimony, if clear and credible, of the 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:
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> > 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. (Emphases supplied, citation omitted.)

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32 *Rollo*, pp. 13-14.

33 439 Phil. 440, 470-471 (2002).

In the case at bar, no birth or baptismal certificate or school record showing the date of birth of AAA was presented.

Pursuant to number 4 of the guidelines, however, in the absence of the foregoing documents (certificate of live birth or authentic document), the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused. In the case at bar, AAA testified that she was 13 years old on July 20, 1999 and that her birthday was in February.[34] Accused-appellant, who insists that the incident occurred on October 20, 1999, expressly and clearly admitted that AAA was still 13 years old on that date, which was three months later:

> Q: I am referring to October 20, 1999 when she accompanied her mother[,] you made sex with your stepdaughter on October 20, 1999 when she was still 13 years of age?
> A: Yes, sir.[35]

Several more questions were propounded to accused-appellant to ascertain that he was aware of AAA's minority at the time of the sexual intercourse, and accused-appellant's answers plainly showed that he was fully cognizant of this fact:

> Q: But you would admit that you have sexual intercourse with [AAA] while she was still 13 years old?
> A: No, sir, it was her uncle who raped her and that was according to [AAA] on that date of July 20, 1999.
>
> Q: I am referring to October 20, 1999 when she accompanied her mother you [had] sex with your stepdaughter on October 20, 1999 when she was still 13 years of age?
> A: Yes, sir.
>
> Q: Is it not a conscious revolting act in your part to have sex with your stepdaughter who was still a minor when your wife was in the premises where you live?
> A: The mother of [AAA] knew that sexual intercourse happened to us on that early morning.
>
> Q: You mean to tell this Court that you made sex with a minor daughter of your common-law-wife in her presence?
> A: Yes, sir she was by the door.
>
> Q: You mean, she was looking [at] both of you having sex?
> A: Yes, sir.
>
> Q: You would like this Court to believe that your own wife was there looking at you having sex with her daughter, her eldest minor daughter?

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34 TSN, July 31, 2001, pp. 5-6.
35 TSN, March 5, 2002, p. 9.

> A: It depends to the Court if the Court will believe to that I have stated but that is the truth.[36]

Furthermore, BBB categorically testified that AAA was 13 years old at the time material to this case. To be sure, there is no disparity between the evidence for the prosecution and the defense on the point that the accused had carnal knowledge of AAA when she was only 13 years old.

Taking into account that the minority of the victim and accused-appellant's being the common-law spouse of the victim's mother, this Court finds it proper to appreciate this qualifying circumstance under the fifth paragraph, item number 1, Article 266-B of the Revised Penal Code.

The Court of Appeals also made several modifications with regard to the appreciation of aggravating circumstances. The trial court considered the aggravating circumstances of dwelling, use of weapon, force and intimidation, nighttime and ignominy.[37] The Court of Appeals correctly modified the RTC Decision in finding the appreciation of force and intimidation improper for being an element of the crime of rape. The Court of Appeals likewise correctly reversed the consideration of dwelling, nocturnity and ignominy as these circumstances were not alleged in the Information. Furthermore, this Court observes that nocturnity cannot be appreciated in this case since there was no showing that it was deliberately sought to prevent the accused from being recognized or to ensure his escape.[38]

The Court of Appeals, however, affirmed the appreciation of the aggravating circumstance of use of a deadly weapon. We agree with this assessment. As discussed by the Court of Appeals, this circumstance was sufficiently alleged in the Information and proven during the trial through AAA's credible testimony, which clearly showed that the *sundang* was used to make the victim submit to the will of the offender.

The proper penalty for qualified rape is *reclusion perpetua* pursuant to Republic Act No. 9346 which prohibited the imposition of the death penalty. Consistent with prevailing jurisprudence, we modify the amount of exemplary damages for qualified rape by increasing the same from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00) following established jurisprudence.[39]

WHEREFORE, the Decision of the Court of Appeals dated May 29, 2009 in CA-G.R. CR.-H.C. No. 00063 which affirmed with modifications the finding of the Regional Trial Court of Carigara, Leyte finding accused-appellant Daniel Alcober guilty beyond reasonable doubt of the crime of

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36 Id.
37 Records, p. 69.
38 *See People v. Fortich*, 346 Phil. 596, 617 (1997).
39 *People v. Galvez*, G.R. No. 181827, February 2, 2011, 641 SCRA 472, 484-485.

rape, is further **MODIFIED** as follows: (1) accused-appellant Alcober is hereby found **GUILTY** of the crime of rape qualified by minority and relationship under number 1, fifth paragraph, Article 266-B of the Revised Penal Code for which the penalty of *reclusion perpetua* without eligibility for parole is imposed; (2) aside from the civil indemnity of ₱75,000.00 and moral damages of ₱75,000.00, the liability of accused-appellant for exemplary damages is hereby increased to ₱30,000.00; and (3) accused-appellant Alcober is likewise **ORDERED** to pay AAA interest at the legal rate of six percent (6%) per annum in all amounts of damages awarded, commencing from the date of finality of this Decision until fully paid.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
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