



Republic of the Philippines  
**Supreme Court**  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 194833

Present:

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

- versus -

PORFERIO BALINO alias "Toto,"  
Accused-Appellant.

Promulgated:

JUL 02 2014

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DECISION

PEREZ, J.:

Before this Court is an appeal from the Decision<sup>1</sup> of the Twenty-Second Division of the Court of Appeals (CA), Cagayan de Oro City in CA-G.R. CR-HC No. 00648-MIN affirming *in toto* the Decision dated 10 March 2008<sup>2</sup> in Criminal Case No. 12362-02 rendered by the Regional Trial Court (RTC) of the City of Malaybalay, Branch 8. The RTC Decision found Porferio Balino guilty beyond reasonable doubt of the crime of statutory rape.

<sup>1</sup> Rollo, pp. 3-11; Penned by Associate Justice Edgardo A. Camello with Associate Justices Leoncia R. Dimagiba and Nina G. Antonio-Valenzuela concurring.

<sup>2</sup> Records (no proper pagination, should be pages 154-168); Penned by Judge Pelagio B. Estopia.

### **THE FACTS**

Porferio Balino (accused) was charged under the Information<sup>3</sup> docketed as Criminal Case No. 12362-02 for violation of Article 266-A of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353 (statutory rape), which reads as follows:

That on or about the middle part of August 2001, in the afternoon, at Purok 1A, barangay Poblacion, municipality of Danggagan, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and criminally with the use of force and intimidation have sexual intercourse with [AAA], an 8 year old child, against her will, to the damage and prejudice of [AAA] in such amount as may be allowed by law.

Upon arraignment, the accused pleaded not guilty to said charge.<sup>4</sup> Thereafter, a full-blown trial proceeded.

The factual findings of the trial court, quoted verbatim by the appellate court, are as follows:

Evidence for the prosecution.

The prosecution presented the first witness AAA, 10 years old, Grade I, out of school youth, and a resident of Purok 5, x x x, Bukidnon. She testified that:

She is the complainant-victim in this case, and that, she knows the accused being her neighbour and she frequently went to the house of the accused to watch TV; that her favorite is the MTV program; that she knows the name of the accused whom she pointed in the courtroom, as Porferio Balino; that in the middle of August 2001, she was watching the MTV program in the house of Porferio Balino. After the MTV show, the accused put off the television; that she was about to leave from the house of the accused but since her slipper was missing, she searched for it and found the same at the back of the house; but when she was about to leave, accused pulled her and brought her inside the house; he then closed the door in the kitchen and also closed the door by the sala, and then he brought her to the room and undressed her; that she was wearing then a blouse with a sleeve; After the accused undressed her, he then undressed himself, took off his clothing, his pants and his brief and then he put himself on top of her then kissed her and when she was about to shout for Mama, he covered her mouth; he kissed her and then he bit her mouth;

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<sup>3</sup> Id. at. 19; Information dated 24 July 2002.

<sup>4</sup> Id. (no proper pagination, should be page 106); RTC Order dated 11 November 2002.

then her vagina was bleeding because he inserted his penis she felt “very painful”; and he wipe the same with his clothing; that after the accused had sexual intercourse with her; He then dressed her and pushed her outside as a result of which her feet was sprained and her chest hit the ground. He said to me that he is going to kill me if I am going to reveal that he raped me. She was able to go home and when she returned home nobody was around; because her mother was working in Quirino; she did not tell her mother it was after a longtime because she was not yet around. She was 8 years old at that time; that she is afraid every time she saw the accused.

The second witness for the prosecution, BBB, 30 years old, married, high school graduate, housekeeper and a resident of Purok 5, x x x, Bukidnon. She testified that she is the mother of the private complainant-victim. x x x that she was able to know of the fact when the child was admitted to hospital that was September 2, 2001; x x x; that she knows the accused Porferio Balino x x x; that on September 2, 2001, in the morning, she was working with the farm of Quirino Tero, at new Salay, Bukidnon. x x x; After 4:30 in the afternoon, she went home she saw her daughter with a fever, that she took her to the (sic) on September 2 she brought the victim at the Emergency Hospital at Kibawe, Bukidnon; and on September 4, 2001 to provincial hospital at Cagayan de Oro City because of her vagina which was swelling and for the reason that the hospital at Kibawe did not have the things needed for her treatment; she was already losing consciousness, she cannot anymore talk and her eyes were already not normally functioning; the sex organ of my daughter was examined at the hospital of Cagayan de Oro; she was admitted on September 4 and was discharged somewhat in October 7, but continued check up was done on her even after she was discharged. x x x; she identified the Living Case Report issued by the hospital x x x during the pre-trial including the findings therein; she then reported the matter to the police. She learned that her daughter was raped because the Doctor said that your daughter was molested so she asked her daughter and she told her that it was Porferio Balino.

DR. CRISTILDA ORTEGA VILLAPANE, x x x testified on the medical certificate marked as annex “B” and the injuries suffered by the victim.

Evidence for the accused.

PORFERIO BALINO, 59 years old, married, Grade VI, rubber topper, a resident of Poblacion, Dancagan, Bukidnon and now a detention prisoner. He testified that he is the accused; he denied the allegations in the information and further testified that: he knows the private complainant AAA, she being his neighbor in Dancagan, Bukidnon; that the said AAA frequently went to his house because she used to watch TV at their house but that habit was stopped when the accused in this case had an altercation with the father of AAA; that he knew the first time that he was charged of raping AAA when he was arrested in Dancagan, Bukidnon sometime in May 31, 2002, as he is

employed as a rubber topper in a rubber plantation owned by Diosdado Palencia located at Carohatan, Banisilan, North Cotobato.<sup>5</sup>

### **THE RULING OF THE RTC**

In its Decision dated 10 March 2008,<sup>6</sup> the RTC of the City of Malaybalay, Branch 8, convicted accused of statutory rape. The RTC gave weight to the positive testimony of AAA<sup>7</sup> and disregarded inconsistencies considering that testimonies of rape victims who are young and of tender age are credible, especially if they are without any motive to falsely testify against the accused. The court *a quo* declared that her demeanor as a witness during the trial manifested by her unhesitant spontaneous and plain responses to the questions further enhanced her claim to credibility and trustworthiness. Moreover, the testimony was corroborated by the findings of other witnesses, Dr. Cristilda O. Villapañe and the mother of AAA. Hence, it found the prosecution to have successfully discharged its burden of proving the guilt of appellant beyond reasonable doubt. It simply rejected his defense of alibi for being weak since the physical impossibility to have been at the scene of the crime at the time of its commission was not given credence.<sup>8</sup> Accused was thus sentenced to suffer the penalty of *reclusion perpetua*, and to pay the victim a fine of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 for actual damages.<sup>9</sup>

### **THE RULING OF THE CA**

On intermediate appellate review, the CA affirmed the RTC's Decision in convicting the accused. The CA adhered to the rule that the testimony of a young victim of rape deserves full credence and should not be dismissed as a mere fabrication. No woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, unless she is motivated solely by desire to have the culprit apprehended and punished.<sup>10</sup>

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<sup>5</sup> *Rollo*, pp. 4-6; CA Decision dated 10 August 2010.

<sup>6</sup> Records (no proper pagination, should be pages 154-168).

<sup>7</sup> Pursuant to R.A. No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes;" R.A. No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes;" Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective 15 November 2004; and *People v. Cabalquinto*, 533 Phil. 703 (2006), the real name of the rape victim is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed.

<sup>8</sup> Records (no proper pagination, should be page 164).

<sup>9</sup> *Id.* (no proper pagination, should be page 168).

<sup>10</sup> *Rollo*, pp. 7-8.

The evidence shows that the narration of AAA was clear and spontaneous. The CA ruled that AAA cannot be blamed if she failed to confide to her parents or neighbor what had happened to her immediately after the incident by reason of fear which the accused had successfully instilled in her.<sup>11</sup> The appellate court gave no credence to the defense of alibi and mere denial. It ruled that a denial is a weak defense which cannot prevail against a positive identification by the rape victim. Thus, a denial which is unsubstantiated by clear and convincing evidence is by nature, negative and self-serving evidence, undeserving of weight in law.<sup>12</sup> Consequently, the RTC Decision, which had sentenced accused to suffer the penalty of *reclusion perpetua* in lieu of death and awarded various damages to the victim, was affirmed by the appellate court.<sup>13</sup>

### **THE RULING OF THE COURT**

We resolve to deny the appeal for lack of merit, but we modify the amount of damages awarded.

This Court finds no valid reason to depart from the time-honored doctrine that where the issue is one of credibility of witnesses, and in this case their testimonies as well, the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case.<sup>14</sup>

Upon perusal of the records of the case, we see no reason to reverse or modify the findings of the RTC on the credibility of AAA's testimony, less so in the present case, in which its findings were affirmed by the CA. It is worthy to mention that the court *a quo* was in the best position to weigh the evidence presented during trial and ascertain the credibility of the witnesses who testified. In addition, there is no showing that the lower court overlooked, misunderstood, or misapplied facts or circumstances of weight which would have affected the outcome of the case.<sup>15</sup>

This Court is not unaware that due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the

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<sup>11</sup> Id. at 8-9.

<sup>12</sup> Id. at 9.

<sup>13</sup> Id. at 10.

<sup>14</sup> *People v. Lardizabal*, G.R. No. 89113, 29 November 1991, 204 SCRA 320, 329.

<sup>15</sup> *People v. Estrada*, G.R. No. 178318, 15 January 2010, 610 SCRA 222, 231 citing *People v. Dalisay*, G.R. No. 188106, 25 November 2009, 605 SCRA 807, 814-815.

victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. Inconsistencies in the victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding.<sup>16</sup>

In *People v. Sapigao, Jr.*,<sup>17</sup> this Court expounded on the rationale for the abovementioned guideline:

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."

Applying the foregoing jurisprudential pronouncements in the present case and based on the findings of the trial court, AAA's demeanor during her testimony reveals the pain of remembering that ill-fated event. Her narration of the entire traumatic ordeal was clear, candid, and straightforward, one which certainly could not be considered as a common child's tale. Undoubtedly, both the trial and appellate courts properly applied the long-standing rule in rape cases that testimonies of victims which are given in a categorical, straightforward, spontaneous, and frank manner

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<sup>16</sup> *People v. Dion*, G.R. No. 181035, 4 July 2011, 653 SCRA 117, 133.

<sup>17</sup> 614 Phil. 589, 599 (2009) cited in *People v. Dion*, G.R. No. 181035, 4 July 2011, 653 SCRA 117, 133-134.

are considered worthy of belief, for, as correctly pointed out, no woman would concoct a story of defloration, allow an examination of her private parts and thereafter allow herself to be perverted in a public trial if she was not motivated solely by the desire to have the culprit apprehended and punished.

It bears emphasis that sexual intercourse with a girl below twelve years of age is statutory rape. Thus, force, intimidation, and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place.<sup>18</sup> The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.<sup>19</sup> In the case at bench, AAA, while recounting her unfortunate ordeal, positively identified the accused as the perpetrator; she never wavered in this identification.

This Court has likewise repeatedly held that the date of the commission of rape is not an essential element of the crime. It is not necessary to state the precise time when the offense was committed except when time is a material ingredient of the offense. In statutory rape, time is not an essential element except to prove that the victim was a minor below twelve years of age at the time of the commission of the offense.<sup>20</sup> Therefore, given the victim's established date of birth on the basis of the evidence adduced, she was definitely short of 12 years of age when the crime of rape was committed against her.

Moreover, accused's defense of alibi and denial is weak and cannot succeed to overturn his conviction. We find that the appellate court correctly ruled that the accused failed to prove with clear and convincing evidence that it was physically impossible for him to have been in the scene of the crime when the crime of rape happened. The victim's credible testimony was a sufficient basis for the CA to sustain the RTC's Decision convicting the accused. Accordingly, the prosecution positively established the elements of rape required under Article 335 of the Revised Penal Code. *First*, the victim was a woman below twelve years of age. This was established by the presentation of AAA's certificate of live birth<sup>21</sup> as part of her evidence. *Second*, the accused succeeded in having carnal knowledge

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<sup>18</sup> *People v. Pancho*, 462 Phil. 193, 201 (2003).

<sup>19</sup> *People v. Natan*, 581 Phil. 649, 655 (2008).

<sup>20</sup> *People v. Teodoro*, G.R. No. 172372, 4 December 2009, 607 SCRA 307, 321 citing *People v. Ching*, 563 Phil. 433; *People v. Jalbuena*, G.R. No. 171163, 4 July 2007, 526 SCRA 500; and *People v. Invencion*, 446 Phil. 775 (2003).

<sup>21</sup> Records (no proper pagination, should be page 130); Exhibit "A," Certificate of Live Birth.

with the victim. AAA was steadfast in her assertion that the accused was the one who took her in the room of his house; and that the accused succeeded in inserting his penis into her private part, as a result of which she felt pain. As earlier stated, AAA's testimony was further corroborated by the medical findings of Dr. Cristilda O. Villapañe as contained in the medical report<sup>22</sup> presented during trial. Taken collectively, the above testimonial and documentary evidence clearly established the commission of the crime of rape against AAA by the accused.

Finally, the RTC and the CA correctly imposed the penalty of *reclusion perpetua* in lieu of death under Article 266-A of the Revised Penal Code, as amended by R.A. No. 8355, or the Anti-Rape Law of 1997, in relation to R.A. No. 9346, which prohibits the imposition of the death penalty. Likewise, as provided under Section 3 of R.A. No. 9346, the appellant shall not be eligible for parole under the Indeterminate Sentence Law.

As to the civil indemnity, the award to the rape victim is mandatory when rape is found to have been committed; while moral damages must also be awarded in rape cases without need of proof other than the fact of rape since it is assumed that the victim suffered moral injuries entitling her to such an award. However, in view of the most recent pronouncements of this Court, we modify the awards of civil indemnity and moral damages by the appellate court and increase the respective amount to ₱100,000.00.<sup>23</sup>

Insofar as actual or compensatory damages are concerned, Article 2199 of the Civil Code of the Philippines provides as follows:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has **duly proved**. Such compensation is referred to as actual or compensatory damages. (Emphasis supplied)

As we have consistently pronounced, in conformity the foregoing provision, there must be pleading and proof of actual damages suffered for the same to be recovered. In addition to the fact that the amount of loss must be capable of proof, it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. The burden of proof of the damage suffered is, consequently, imposed on the

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<sup>22</sup> Records (no proper pagination, should be page 89); Exhibit "B," Living case Report dated 26 February 2002.

<sup>23</sup> *People v. Halil Gambao y Esmail, et al.*, G.R. No. 172707, 1 October 2013.



party claiming the same who should adduce the best evidence available in support thereof, like sales and delivery receipts, cash and check vouchers and other pieces of documentary evidence of the same nature. In the absence of corroborative evidence, it has been held that self-serving statements of account are not sufficient basis for an award of actual damages. Corollary to the principle that a claim for actual damages cannot be predicated on flimsy, remote, speculative, and insubstantial proof, courts are, likewise, required to state the factual bases of the award.<sup>24</sup> Thus, in the instant case, failure to comply with the twin requirements of pleading and proof for the grant of actual damages, the amount of ₱25,000.00 cannot be awarded.

Lastly, we find it proper to award exemplary damages in the amount of ₱100,000.00. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as deterrent against elders who abuse and corrupt the youth.<sup>25</sup>

**WHEREFORE,** premises considered, we **AFFIRM** the 10 August 2010 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00648-MIN with **MODIFICATIONS** that the amount of civil indemnity is increased from ₱50,000.00 to ₱100,000.00, and moral damages awarded is increased from ₱50,000.00 to ₱100,000.00, and that Porferio Balino is further **ORDERED** to **PAY** the victim the amount ₱100,000.00 as exemplary damages, in accordance with prevailing jurisprudence. The award of actual damages of ₱25,000.00 is deleted as it is without evidentiary support.

In addition, an interest at the rate of six percent (6%) per annum is imposed on all the damages awarded in this case, from the date of finality of this judgment until they are fully paid.<sup>26</sup>

**SO ORDERED.**

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

<sup>24</sup> *Oceaneering Contractors (Phils.), Inc. v. Barretto*, G.R. No. 184215, 9 February 2011, 642 SCRA 596, 607.

<sup>25</sup> See *People v. Tormis*, G.R. No. 183456, 18 December 2008, 574 SCRA 903.

<sup>26</sup> Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, s. 2013, effective 1 July 2013; See *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, G.R. No. 189871, 13 August 2013.

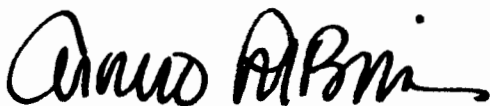
WE CONCUR:



**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 had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



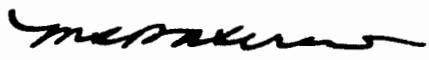
**ANTONIO T. CARPIO**

Associate Justice

Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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.

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