Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G. R. No. 196228

Present:

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

- versus -

Promulgated:

RENATO BESMONTE,
Accused-Appellant.

JUN 04 2014

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D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is the final appeal of Renato Besmonte from his conviction for two counts of the crime of statutory rape in Criminal Case Nos. RTC'01-596 and RTC'01-597, both entitled "*People of the Philippines v. Renato Besmonte*" by the Regional Trial Court (RTC), Branch 63, Calabanga, Camarines Sur on April 18, 2008,[1] which the Court of Appeals affirmed with slight modification through its Decision[2] promulgated on October 22, 2010 in CA-G.R. CR.-H.C. No. 03318.

Two separate Informations both dated August 21, 2001 charged accused-appellant with statutory rape committed as follows:

<u>Criminal Case No. RTC-01-596</u>

That sometime in the month of March, 2000, at x x x, Province of Camarines Sur, the said accused, with lewd design, by means of force and intimidation, willfully, unlawfully, and feloniously did lie, and succeeded

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1 CA *rollo*, pp. 22-34; penned by Judge Freddie D. Balonzo.

2 *Rollo*, pp. 2-18; penned by Associate Justice Samuel H. Gaerlan with Associate Justices Sesinando E. Villon and Francisco P. Acosta, concurring.

> in having carnal knowledge with [his] biological niece [AAA[3]], an Eight (8)[-]year old minor, against her will and consent, to her damage and prejudice[.]
>
> That one qualifying circumstance necessary for the imposition of Death Penalty is present in this case, as follows: the victim [AAA] was below eighteen years old at the time of the commission of the Rape incident being a mere eight[-]year old child at that time, and that the offender is a relative by consanguinity within the third [c]ivil degree.[4]
>
> Criminal Case No. RTC-01-597
>
> That on May 4, 2001, at about 9:00 x x x in the morning, in x x x, Province of Camarines Sur, the said accused, with lewd design, by means of force and intimidation, willfully, unlawfully, and feloniously did lie, and succeeded in having carnal knowledge with [his] biological niece [AAA], an Eight (8)[-]year old minor, against her will and consent, to her damage and prejudice[.]
>
> That one qualifying circumstance necessary for the imposition of Death Penalty is present in this case, as follows: the victim [AAA] was below eighteen years old at the time of the commission of the Rape incident being a mere eight[-]year old child at that time, and that the offender is a relative by consanguinity within the third [c]ivil degree.[5]

The cases were raffled to Branch 63 of the RTC of Calabanga, Camarines Sur.

Upon his arraignment on August 16, 2006, with the assistance of counsel *de oficio*, accused-appellant pleaded "*not guilty*" to the charges.[6]

A joint pre-trial conference was held on September 20, 2006; and thereat, the prosecution and the defense merely stipulated on the identities of the parties.

During the ensuing joint trial of the cases, the prosecution and the defense tried to establish their respective versions of the facts of the present case.

The prosecution presented the following witnesses, namely (*i*) AAA,[7] the private offended party, 14 years old, born on August 6, 1992; (*ii*) BBB,[8] the mother of AAA, 48 years old; and (*iii*) Dr. Janice C. Juan,[9] 30 years old, a third year medical resident of the Obstetrics and Gynecology Department,

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3 Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

4 Records (Criminal Case No. RTC'01-596), p. 1.

5 Records (Criminal Case No. RTC'01-597), p. 1.

6 Both cases were initially archived because accused-appellant could not be arrested as his whereabouts were unknown. On August 7, 2006, however, the cases were ordered revived upon the arrest of accused-appellant Besmonte. [Records (Criminal Case No. RTC'01-596), p. 33.]

7 TSN, January 16, 2007.

8 TSN, January 23, 2007.

9 TSN, January 24, 2007.

Bicol Medical Center; and several pieces of documentary evidence, specifically: (*i*) the Birth Certificate[10] of AAA; (*ii*) the Police Blotter;[11] (*iii*) the Medical Certificate[12] of AAA dated June 25, 2001, issued by Dr. Mayvelyn A. Tayag, Medical Officer III, Bicol Medical Center, Naga City; and (*iv*) the Clinical Data Sheet[13] relative to the medical procedure done on AAA.

As summarized by the Court of Appeals, the prosecution tried to establish from its testimonial and documentary pieces of evidence that –

> [AAA] alleged and testified that the first rape incident happened sometime in March 2000 when she was merely seven (7) years old. She was at their residence in x x x, together with her two (2) younger brothers, when the accused-appellant, her uncle[,] Renato Besmonte[,] whom she calls Pay Nato[,] arrived. Accused-appellant, while inside the house got a religious book called "Pasugo" and read the same. Thereafter, he told [AAA's] younger brothers to leave the house. Soon as the brothers left, Renato told [AAA] to lie down on the mat and removed her skirt and shirt. After which, he undressed himself and laid on top of [AAA]. Accused-appellant tried to insert his penis into her vagina but was unable to penetrate since [AAA] was crying because of pain. This prompted accused-appellant to leave.
>
> On the alleged second rape, [AAA] testified that on 4 May 2001, she was inside their house when Renato came and invited her to accompany him to get some "kaunayan" or "bongkokan" (a rootcrop which is given to the pigs as food) and so they went to the upland. While there, accused-appellant cleaned the surroundings, got a banana leaf, placed it on the ground, and told [AAA] to [sit] down to which she complied. Soon as [AAA] was seated, accused-appellant tried to look for lice in her hair. To [AAA's] surprise, accused-appellant suddenly threatened her by poking a fan knife at her chest and told her to lie down and remove her clothes. Thenceforth, he undressed himself, laid on top of her, and succeeded in inserting his penis into [AAA's] vagina. The latter felt pain and observed that her vagina was torn.
>
> After the incident, accused-appellant brought her to their house and ordered her to take a bath to remove the blood from her private parts. After [AAA] took a bath, she changed her clothes and accused-appellant brought her to an empty house which is about 15 to 20 minutes away from her house. There, accused-appellant told [AAA] to lie down on the hammock because she was very weak. He told her that he will return and then he left.
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> [AAA] waited for accused-appellant to return, but he did not. She walked herself home in such weak state until she reached their house where she saw her mother and siblings. [AAA] looked pale and hungry when she arrived home. When she was having dinner with her family, blood came out of her vagina after she stood up and coughed.

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10 Records (Criminal Case No. RTC'01-596), p. 58.
11 Id. at 66.
12 Id. at 61.
13 Id. at 62.

> The next day, [AAA's] mother brought her to a health center in x x x but since there was no available doctor, they proceeded to the x x x Police Station to complain about the rape incident. From the police station they were advised to go to the National Bureau of Investigation (NBI) since a doctor was there. She was examined and was told to go to the Bicol Medical Center to stop the bleeding.[14]

According to the Medical Certificate, AAA sustained an injury described in the following manner:

> Final Diagnosis:
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> Perineal laceration probably secondary to sexual abuse
>
> Surgical procedure done: Vaginal exploration and repair of 4th degree perineal laceration
>
> Period confined: May 5-8, 2001[15]

Dr. Janice Juan explained that a perineal laceration is a tear "that is through and through which means, there is a space in between the vagina and the rectum, the [tear] is from the vagina down to the rectum;"[16] that in repairing the perineal laceration, under anesthesia, the surgeon had to stitch together the torn tissues of AAA's vagina extending to her rectum; and, in answer to the trial court's query, that AAA's injury could have been the result of a forceful insertion of a blunt object like a penis.

For his defense, accused-appellant denied raping AAA on both occasions. He testified that AAA is the daughter of his brother; that his house was just 20 meters away from the house of AAA; that their farm was merely 50 meters away from his own home; and that in the morning of May 4, 2001, he was at the farm with his mother, Soledad, cutting grass; that at 11:00 a.m. of the same day, he went home to eat lunch and take a nap; that he returned to the farm at about 1:00 p.m. in the afternoon; that he would often babysit AAA; that from the time that AAA could only crawl, until she turned eight, accused-appellant would often hit her with a belt because he blamed AAA's mother, BBB, for his brother's insanity; and that he believes that BBB filed the trumped up charges of rape to get back at him for maltreating AAA.

Soledad, for her part, testified that for the entire month of March 2000, accused-appellant accompanied her to the farm; that he never left her sight; that they stayed at the farm from 7:00 a.m. up to 11:00 a.m., and from 1:00 or 2:00 p.m. up to 5:00 p.m.; and that in between, they went home to eat lunch.

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14 *Rollo*, pp. 4-6.
15 Records (Criminal Case No. RTC'01-596), p. 61.
16 TSN, January 24, 2007, p. 5.

After trial and upon evaluation of the evidence on record, the RTC found the accused-appellant guilty of two counts of statutory rape. The dispositive part of the Decision dated April 18, 2008 reads:

> WHEREFORE, in view of the foregoing, the prosecution in both cases, having proven the guilt of accused RENATO BESMONTE beyond reasonable doubt, he is hereby convicted of the offense of statutory rape defined and penalized under Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by RA 8353 and sentenced to suffer the following penalties:
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> 1. In Crim. Case No. RTC'01-596, accused RENATO BESMONTE is hereby sentenced to suffer the penalty of Reclusion Perpetua. He is likewise ordered to pay the victim, [AAA] civil indemnity in the amount of □50,000.00 and moral damages in the amount of □50,000.00 and to pay the costs;
>
> 2. In Crim. Case No. RTC'01-597, accused RENATO BESMONTE is hereby sentenced to suffer the penalty of Reclusion Perpetua. He is likewise ordered to pay the victim [AAA] civil indemnity in the amount of □50,000.00 and moral damages in the amount of □50,000.00 and to pay the costs.
>
> Considering that accused RENATO BESMONTE has undergone preventive imprisonment, he shall be credited in the service of his sentence with the time he has undergone preventive imprisonment subject to the condition provided for by law. Accused is likewise meted the accessory penalty of perpetual absolute disqualification as provided for under Article 41 of the Revised Penal Code.[17]

Aggrieved, accused-appellant appealed the aforequoted decision to the Court of Appeals based on the following assignment of errors that: (I) THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT IN CRIMINAL CASE NO. RTC'01-596 DESPITE [AAA'S] OWN TESTIMONY TO THE CONTRARY;" (II) THE TRIAL COURT GRAVELY ERRED IN GIVING UNDUE WEIGHT AND CREDENCE TO HIGHLY IMPROBABLE AND QUESTIONABLE ACCOUNT OF [AAA]; and (III) THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[18]

In a Decision promulgated on October 22, 2010, the Court of Appeals affirmed the ruling of the RTC with modification. The dispositive part provides:

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17 CA *rollo*, pp. 33-34.

18 Id. at 46.

> **WHEREFORE**, premises considered, the assailed Joint Decision dated 18 April 2008, of the Regional Trial Court, Calabanga, Camarines Sur, Branch 63, finding the accused-appellant Renato Besmonte guilty beyond reasonable doubt of two (2) counts of Rape defined under Article 266-A and penalized by Article 266-B of the Revised Penal Code, as amended by RA 8353, is hereby **AFFIRMED with modification**. Accused-appellant is ordered, in each case, to pay private complainant, [AAA], the increased civil indemnity in the amount of Seventy-Five Thousand Pesos (□75,000.00); moral damages in the amount of Seventy-Five Thousand Pesos (□75,000.00); and exemplary damages in the amount of Twenty-Five Thousand Pesos (□25,000.00).[19]

Undaunted, the accused-appellant filed a Notice of Appeal dated November 4, 2010.[20]

In his Brief,[21] accused-appellant argued that the prosecution failed to prove his guilt beyond reasonable doubt. Specifically, he insisted that the alleged raped in March 2000 did not happen as the same was merely fabricated by BBB. In support thereof, he averred that (*i*) it was AAA herself who admitted that it was BBB who told her to make mention of the supposed rape committed in March 2000; (*ii*) AAA admitted in open court that the supposed rape committed in March 2000 did not happen; and (*iii*) the "resolution in the preliminary investigation conducted for the alleged rape cases instituted by BBB was to file only one case of rape."[22] Further, he maintained that AAA's account of the alleged second incident of rape was highly incredible considering that she did not even bother to escape from accused-appellant; or why she even went with the accused-appellant in the first place in view of the supposed earlier incident of rape. Lastly, accused-appellant questions the motive of BBB in filing the twin criminal complaints against him – that BBB had an axe to grind against him for physically maltreating AAA through the years.

The Office of the Solicitor General (OSG), for appellee People of the Philippines, rebutted the foregoing points with the following counter-arguments: (*i*) that based on the testimonies of AAA, BBB, and Dr. Janice Juan, including the presentation of the Birth Certificate of AAA, the prosecution was able to establish all the elements of the crime of statutory rape, the qualifying circumstance of relationship, as well as the identity of the individual who raped her on the two occasions subject of the present case; (*ii*) that it is of no moment if BBB reminded AAA of the date of the first incident of rape because for a child of tender years, AAA cannot be expected to have kept track of dates; (*iii*) that AAA's failure to remember the exact date of the first rape incident is inconsequential, what is more significant is that she was able to clearly and convincingly recount and narrate the ordeal she went through in the hands of accused-appellant; (*iv*)

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19 *Rollo,* pp. 17-18.

20 CA *rollo,* pp. 149-151.

21 Id. at 44-64. Since the parties manifested that they would no longer submit any supplemental brief, the Court considers the same arguments raised by the parties before the Court of Appeals.

22 Id. at 54-55.

that it is "neither difficult to understand nor hard to believe that [AAA's] passive submission was due to the fact that [accused-appellant] not only exercised moral ascendancy over her but also seriously instilled fear in her as a result of his past maltreatment;" and (*v*) as to the ill motive imputed against BBB, that the same is unworthy of belief as no mother in her right mind would use her daughter as an instrument to settle her grudge.[23]

The Court finds the appeal bereft of merit.

Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353,[24] define and punish statutory rape as follows:

> Article 266-A. *Rape, When and How Committed.* – Rape is committed –
>
> 1) By a man who shall have carnal knowledge of a woman x x x:
>
> x x x x
>
> 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.
>
> Article 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Basic in the prosecution of statutory rape is that there must be concurrence of the following elements: (1) the victim is a female under 12 years of age or is demented; and (2) the offender has carnal knowledge of the victim.[25] Thus, to successfully convict an accused for said crime, it is imperative for the prosecution to prove that the age of the woman is under 12 years and carnal knowledge took place.[26]

In this case, accused-appellant was charged with two counts of statutory rape. The RTC and the Court of Appeals were one in finding that accused-appellant twice had carnal knowledge of AAA, a child of tender years[27] at the time of the commission of the two counts of rape. Despite his vigorous protestations, the Court agrees in the finding that the crime of rape committed by accused-appellant against AAA was proved by the prosecution beyond reasonable doubt on the basis of the following:

a) AAA's credible, positive and categorical testimony relative to the circumstances surrounding her rape; and

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23 Id. at 86-123; Appellee's Brief.

24 "An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, Amending for the Purpose Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes;" effective on October 22, 1997.

25 *People v. Teodoro*, G.R. No. 175876, February 20, 2013, 691 SCRA 324, 332.

26 *People v. Teodoro*, G.R. No. 172372, December 4, 2009, 607 SCRA 307, 314.

27 AAA was only seven years old in March 2000, and eight years old on May 4, 2001.

b) The physical evidence consistent with AAA's assertion that she was raped.

Consequently, this appeal is denied, and the conviction of accused-appellant for two counts of statutory rape is affirmed.

Accused-appellant would have the Court reverse his conviction for the first count of statutory rape on the ground that AAA admitted in open court that the rape committed in March 2000 did not happen.[28]

His attempt is futile. A review of the transcript of the testimony of AAA clarified such misleading assertion – her testimony that nothing happened simply meant that accused-appellant tried to insert his penis into her vagina but was unsuccessful because it did not fit. In fact, AAA cried out with pain at his attempts to put it in; and her cry of pain was what prompted accused-appellant to leave abruptly. That she suffered severe pain inside her genitalia while his penis was penetrating her, could only be understood in light of the foregoing explanation made herein about his penis attaining some degree of penetration beneath the surface of her genitalia.

Carnal knowledge, the other essential element in consummated statutory rape, does not require full penile penetration of the female.[29] In *People v. Campuhan,*[30] the Court made clear that the mere touching of the external genitalia by a penis **capable of consummating the sexual act** is sufficient to constitute carnal knowledge. All that is necessary to reach the consummated stage of rape is for the penis of the accused capable of consummating the sexual act to come into contact with the lips of the pudendum of the victim. This means that the rape is consummated once the penis of the accused capable of consummating the sexual act *touches* either *labia* of the pudendum. And *People v. Bali-Balita*[31] instructed that the **touching** that constitutes rape does not mean mere epidermal contact, or stroking or grazing of organs, or a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis*, but rather the erect penis touching the *labias* or sliding into the female genitalia. Consequently, the conclusion that touching the *labia majora* or the *labia minora* of the pudendum constitutes consummated rape proceeds from the physical fact that the *labias* are physically situated beneath the *mons pubis* or the vaginal surface, such that for the penis to touch either of them is to attain some degree of penetration beneath the surface of the female genitalia. It is required, however, that this manner of touching of the *labias* must be sufficiently and convincingly established.

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28 CA *rollo*, pp. 54-55.
29 *People v. Teodoro*, supra note 25 at 332-333.
30 385 Phil. 912, 920-921 (2000).
31 394 Phil. 790, 808-810 (2000).

For the Court, the proof of the touching of the penis of accused-appellant and the *labias* of AAA had been convincingly established – from AAA's categorical testimony, to wit:

Q In March 2000, do you know where your Pay Nato lives?
A Yes, ma'am.

Q Where does he live?
A Just beside us.

Q You said that he is just beside your house. Does he visit your house?
A Yes, ma'am.

Q When he visits your house, what does he do there?
A Sometime he was just passing his time there.

Q Do you remember what happened to you in the month of March year 2000?
A Yes, ma'am.

Q What happened to you?
A He was at our house.

Q While you were at your house, who arrived?
A None, ma'am.

Q Who were with you at your house?
A [CCC] and [DDD].[32]

Q Did you see your Pay Nato on that time?
A Yes, ma'am.

Q What was he doing at that time?
A He got a "Pasugo" and he was reading.

Q What is that "Pasugo?"
A A religious reading material.

Q Why, what is your religion?
A Iglesia ni Cristo.

Q You said that your Pay Nato was reading. What did he do next?
A He told my siblings to get out.

Q You mentioned that on that day your siblings were [CCC] and [DDD] who were with you. How old was [CCC] at that time?
A 5 years old.

Q What about [DDD]?
A 3 years old.

Q What about you, how old are you in the year 2000?

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32 CCC and DDD are AAA's younger brothers.

A 7 years old.

Q Alright, you said that your uncle Pay Nato asked your two (2) brothers to leave the house. What did he do next, if any?
A He told me to lie down on the mat.

Q After he told you to lie down on the mat, what did he do next, if any?
A He removed my skirt and T-shirt.

Q And after he removed your skirt and T-shirt what did he do next?
A He removed his apparels, his shorts and brief.

Q After your Pay Nato removed his shorts and brief, what did he do next?
A He laid on top of me.

Q After he laid on top of you what did he do next?
A He tried to insert his penis into my vagina but it was not able to enter.

Q You said that he was not able to insert his penis into your vagina. Why, what happened?
A Because I was crying.

Q Why were your crying?
A Because I felt pain.

Q Will you describe to us the position of your legs when your uncle was trying to insert his penis into your vagina?

INTERPRETER:

The witness is demonstrating her position while her Pay Nato was trying to insert his penis into her vagina. Witness parted her legs.

Q Did you feel if your Pay Nato's penis was able to touch your vagina?
A Yes, ma'am.

Q After you cried because you felt pain, what happened next?
A He went out.[33] (Emphases supplied.)

that his penis had gone beyond her *mons pubis* and had reached her *labias majora* and *minora*. Therefore, the Court affirms the RTC and the Court of Appeals' finding of the consummation of the rape by accused-appellant against AAA sometime in March 2000, notwithstanding the mere approximation of the date and time of its occurrence.

With respect to the rape committed on May 4, 2001, which is subject of Criminal Case No. RTC'01-597, the Court concurs with the RTC and the Court of Appeals' conclusion that AAA's testimonial account thereon and

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33 TSN, January 16, 2007, pp. 4-6.

the physical injury that she sustained as a result thereof sufficiently and convincingly established the commission of the second count of statutory rape. Accused-appellant tried to interject reasonable doubt thereto by claiming that AAA's account of the second incident was highly incredible considering that she did not even bother to escape from accused-appellant; or why she even went with accused-appellant in the first place in view of the supposed earlier incident of rape.

But the Court, in *People v. Jastiva*[34] taught that it does not follow that because the victim failed to shout for help or struggle against her attacker means that she could not have been raped. The force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other.[35] And physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety,[36] or the exercise of the moral ascendancy of the rapist over the victim.

In this case, the OSG succinctly put things in perspective when it argued that "[AAA] could hardly be faulted for behaving as she did. Being in her early years, and [accused-appellant] exercising moral ascendancy over her, she could not be expected to go against his orders, especially when the history of violence between them is considered. Such history has instilled fear upon her which started since she was still a child x x x her passive submission to the sexual act will neither mitigate nor absolve [accused-appellant] from liability." In any case, with such shocking and horrifying experience, it would not be reasonable to impose upon AAA any standard form of reaction, especially at such tender age. Time and again, this Court has recognized that different people react differently to a given situation involving a startling occurrence.[37] The workings of the human mind placed under emotional stress are unpredictable, and people react differently - some may shout, others may faint, and still others may be shocked into insensibility even if there may be a few who may openly welcome the intrusion.[38] More to the point, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused.[39]

As to the accused-appellant's defenses of denial and alibi, it cannot prevail over the prosecution witnesses' positive testimonies, coupled with the physical evidence consistent with AAA's assertion that she was raped. The defense of denial has been invariably viewed by the Court with disfavor for it can easily be concocted and is a common and standard defense ploy in

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34 G.R. No. 199268, February 12, 2014.
35 *People v. Barcena*, 517 Phil. 731, 742 (2006).
36 *People v. Moreno*, 425 Phil. 526, 538 (2002).
37 *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 115.
38 *People v. Taguilid*, G.R. No. 181544, April 11, 2012, 669 SCRA 341, 351, citing *People v. San Antonio, Jr.*, 559 Phil. 188, 205 (2007).
39 *People v. Batiancila*, 542 Phil. 420, 429-430 (2007).

prosecutions for rape. In order to prosper, the defense of denial must be proved with strong and convincing evidence.[40] Alas, accused-appellant presented no such evidence in this case.

That accused-appellant presented his mother to corroborate his alibi that he was at the farm on the date of the first charge of rape; and interposed a vehement denial for the second one, are of no significance. Such prevarication was devoid of any persuasion due to it being easily and conveniently resorted to, and due to denial being generally weaker than and not prevailing over the positive assertions of an eyewitness. It has been held that for the defense of alibi to prosper, the accused must prove the following: (*i*) that he was present at another place at the time of the perpetration of the crime; and (*ii*) that it was physically impossible for him to be at the scene of the crime during its commission. Physical impossibility involves the distance and the facility of access between the crime scene and the location of the accused when the crime was committed; the accused must demonstrate that he was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.[41] Here, accused-appellant utterly failed to satisfy the above-quoted requirements. From his own testimony, he impressed upon the Court that the distance between the farm and AAA's house is merely 50 meters. Certainly, 50 meters is not too far as to preclude the presence of accused-appellant at the house of AAA, and/or for him to slip away from his mother unnoticed. But that he presented his mother to attest to his presence at the farm during the times that the two counts of rape were said to have been committed, did not help him one bit. If truth be told, his testimony and that of his mother contradicted each other on material points; hence more deleterious to his defense.

Accused-appellant testified that (*i*) his mother would sometime send him to the house of AAA for some errands and that, particularly in March 2000, AAA was always left in his care; and (*ii*) in May 2001, it was only in May 4, 2001, that he was with his mother at the farm and AAA was not left in his care. On the other hand, Soledad insisted that in the month of March 2000, accused-appellant was with her 24/7, and she never sent him to AAA's house for any errand; and that in May 2001, there was never an instance that he went to the house of AAA.

As to his claim that BBB was impelled in filing the two charges of statutory rape by her anger against accused-appellant for the latter's constant physical maltreatment of AAA, the same deserves scant consideration as well. To quote the Court of Appeals:

> What We found in accused-appellant's testimony is that the accused-appellant, together with his mother, is the one harboring an ill-felling against [AAA] and her mother. We concur with the trial court when it

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40 *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

41 *People v. Ramos*, G.R. No. 190340, July 24, 2013, 702 SCRA 204, 217-218.

> ruled that "[AAA] could not, at her tender age concoct stories that she has been raped unless it is not true. [AAA] who is of tender years especially one unexposed to the ways of the world, would impute a crime as serious as rape to her own uncle if it were not true. To the mind of the trial court, and Ours too, [AAA] and [BBB] were impelled solely by a desire to let justice finds (sic) its way. Likewise, [BBB], as a mother of the victim, would not wish to stamp the child falsely with stigma that follows a rape only for the purpose of punishing a person against whom she has a grudge." Other than the fact that the alleged ulterior motive is not supported by any evidence, We also find it implausible x x x.[42]

All told, this Court is convinced beyond reasonable doubt that accused-appellant, the uncle of AAA, committed the two counts of statutory rape by having carnal knowledge of AAA, a child below 12 years of age. Note, however, that Article 266-B, paragraph 6(1), qualifies the rape by a relative by consanguinity or affinity within the third civil degree of the victim who is below 18 years of age. The presence of the qualifying circumstances of relationship and minority raises the crime of statutory rape to qualified rape. Under Article 266-B of the Revised Penal Code, the proper penalty to be imposed is:

> 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:
>
> 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.

The qualifying circumstances of relationship (niece and uncle, who is a relative by consanguinity within the third civil degree) and minority (AAA, who was born on August 6, 1992, was only 7 years and 7 months and 8 years and 9 months old in March 2000 and May 4, 2001, respectively, when the two rape incidents occurred) were duly alleged in the Information and proved during the trial.

Notwithstanding the provisions of Article 266-B of the Revised Penal Code, as amended, the RTC and the Court of Appeals correctly held that the appropriate penalty that should be imposed upon appellant is *reclusion perpetua.* This is in accordance with the provisions of Republic Act No. 9346, entitled an Act Prohibiting the Imposition of Death Penalty in the Philippines. Section 2 of Republic Act No. 9346 imposes the penalty of *reclusion perpetua* in lieu of death, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code. Section 3 of Republic Act No. 9346 further provides that persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to

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42 *Rollo*, pp. 12-13.

reclusion perpetua, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Relative to the award of damages, with current jurisprudence on the matter of qualified rape, the Court of Appeals fittingly increased the amounts of the award for moral and civil damages from ₱50,000.00 to ₱75,000.00 for each count of rape. However, the award of ₱25,000.00 as exemplary damages must also be increased to ₱30,000.00.

But this Court notes also that both the RTC and the Court of Appeals overlooked the imposition of interest on all damages awarded to AAA, the private offended party, at the legal rate of six percent (6%) per annum from the date of the finality of this Court's decision in conformity with present jurisprudence.[43] Thus, this Court deems it necessary to modify the civil liability of accused-appellant to impose legal interest on all damages due AAA.

WHEREFORE, the *Decision* dated October 22, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03318 is **AFFIRMED with MODIFICATION**. Accused-appellant Renato Besmonte is found **GUILTY** beyond reasonable doubt of two counts of the crime of qualified rape and is sentenced to suffer the penalty of *reclusion perpetua* for each count and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages likewise for each count. Accused-appellant Renato Besmonte is further ordered to pay legal interest on all damages awarded in this case at the rate of six percent (6%) per annum from the date of finality of this decision until fully paid.

SO ORDERED.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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[43] *People v. Diaz*, G.R. No. 200882, June 13, 2013, 698 SCRA 535, 546, citing *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

LUCAS R. 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