



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES
Plaintiff-Appellee,

G.R. No. 248016

Present:

- versus -

ALBERTO "BERT" MARTINEZ a.k.a.
"ALBERTO BELINARIO",
Accused-Appellant.

PERALTA, *CJ.*, Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated:

DEC 02 2020

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DECISION

CAGUIOA, *J.*:

This is an appeal filed under Section 3(c), Rule 122 of the Rules of Court from the Decision¹ dated February 27, 2019 (Decision) of the Court of Appeals, Special Second Division (CA), in CA-G.R. CR-HC No. 10062. The CA affirmed the Decision² dated August 8, 2017 of the Regional Trial Court of La Trinidad, Benguet, Branch 9 (RTC), in Criminal Cases Nos. 11-

¹ *Rollo*, pp. 3-20. Penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Danton Q. Bueser.

² *CA rollo*, pp. 40-48. Penned by Judge Marietta S. Brawner-Cualing.

CR-8289, 11-CR-8290, and 11-CR-8291 finding accused-appellant Alberto Martinez, also known as Alberto Belinario (accused-appellant), guilty of three counts of rape under Article 266-A of the Revised Penal Code (RPC), as amended.³

The Facts and Antecedent Proceedings

Accused-appellant was charged with rape under the following Informations:

Criminal Case No. 11-CR-8289

That on or about the 1st day of January 2010, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, did [then] and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA],⁴ a minor being eleven (11) years[,] eleven (11) months and twenty[-]three (23) days of age at the time of the commission of the crime, by grabbing her hand and laid her down on his bed, undressed her, fondled her breasts, licked her vagina and inserted his penis into her vagina against her will and consent, which deeds debase, degrade and demean the intrinsic worth and dignity of the said [AAA] as a human being, to her great damage, prejudice and mental anguish.

CONTRARY TO LAW.⁵

Criminal Case No. 11-CR-8290

That on or about the 2nd day of October 2010, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, did [then] and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA], a minor being twelve (12) years of age at the time of the commission of the crime, by calling her to his room and once inside, he

³ *Rollo*, pp. 3-4.

⁴ The identity of the victims or any information which could establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, titled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, titled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (*See* footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 (2014), citing *People v. Lomaque*, 710 Phil. 338, 342 (2013). *See also* Amended Administrative Circular No. 83-2015, titled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017; and *People v. XXX and YYY*, G.R. No. 235652, July 9, 2018, 871 SCRA 424.)

⁵ *Rollo*, pp. 4-5.

locked the door and brought her to his bed, undressed her, sucked her breast, licked her vagina, and inserted his penis into her vagina against her will and consent, which deeds debase, degrade and demean the intrinsic worth and dignity of the said [AAA] as a human being, to her great damage, prejudice and mental anguish.

CONTRARY TO LAW.⁶

Criminal Case No. 11-CR-8291

That on or about the 3rd day of October 2010, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did [then] and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA], a minor being twelve (12) years of age at the time of the commission of the crime, by bringing her to the common comfort room and once inside, he brought down her pant[s] and panty, licked her vagina and brought out his penis and touched her vagina against her will and consent, which deeds debase, degrade and demean the intrinsic worth and dignity of the said [AAA] as a human being, to her great damage, prejudice and mental anguish.

CONTRARY TO LAW.⁷

During arraignment, accused-appellant pleaded not guilty to each of the charges.⁸ Thereafter, pre-trial and trial on the merits ensued.⁹ The RTC summarized the version of the prosecution as follows:

As culled from the evidence of the prosecution, it was shown that [AAA] was born on January 8, 1998 to [BBB] and [CCC]. She has five other siblings, the birth order of which is: [DDD], [EEE], [FFF], [GGG], [AAA] and [HHH]. The family is living in a one[-]story house with six rooms, five of which are being rented out to boarders and the sixth room was occupied by them. In one of these rooms, [accused-appellant] and his live-in partner were renting.

[AAA] narrates that from the time she was in Grade 1, [accused-appellant,] whom she refers to as Bert[,], would often ask her [for] favor[s], like buying food or kerosene for him. It was also then that he would usually abuse her.

She remembers that during the first incident, [accused-appellant] called her inside his room. When inside, he held her breast and injected something on her upper right arm. She felt dizzy and lost consciousness. When she regained consciousness[,], she saw [accused-appellant] sitting on the bench watching television and she felt pain on her breast. She sat up, put on her clothes which [accused-appellant] removed and he gave her money so she will not report the incident.

⁶ Id. at 5.

⁷ Id.

⁸ Id. at 6.

⁹ Id.



Another incident happened when [AAA] was in Grade 2. [Accused-appellant] would call her inside his room and he would insert his finger in her vagina. This was usually in the early mornings after his live-in partner would leave the house and occurred every three or four times a week.

In Grade 3, the abuses continued and escalated. He would call [AAA] to his room, remove her clothes, lick her breast and put oil in his penis and insert the same into her vagina.

In January 2010, while they were celebrating the New Year, [accused-appellant,] who was under the influence of liquor, again called [AAA] in his room. When they were inside, he locked the door, grabbed her hand and laid her down. He undressed her, fondled her breast, and licked her vagina. He then undressed his lower garment and inserted his penis inside her vagina. After the act, he gave her [P]50.00 not to tell anyone.

At noon of October 2, 2010, the same incident happened inside his room when he called her and he was able to suck her breast, lick her vagina and insert his penis into her vagina.

Finally, on October 3, 2010, at around 6:00 or 7:00 o'clock in the evening, [accused-appellant] called [AAA] inside the comfort room because his live-in partner was in their room and he put down her undergarments to her knees, licked her vagina and touched his penis to her vagina.

During all these incidents, she could not prevent him doing all these things to her because he would create trouble in their residence and tell them that she was going out with somebody. However, on October 4, 2010 when [accused-appellant] was again calling for her to enter her [(sic)] room, [AAA] refused despite the trouble that he was creating by telling stories about her.

Alarmed why [accused-appellant] was acting this way towards [AAA], [BBB] confronted her daughter as to the actuations of [accused-appellant]. It was then that [AAA] revealed to her what [accused-appellant] had been doing to her since she was in Grade 1. They then filed a case against [accused-appellant].

When she was examined, it was found by Dr. Josefa Bentayen that there was an absence of hymenal tissue on the labia of [AAA] and there were healed injuries at the 4:00 o'clock position. Because of the condition of the injury, she stated that these injuries could have been occurred [(sic)] a year prior to her examination on November 24, 2010.

Further tests were conducted on [AAA] by the Municipal Social Welfare Officer of La Trinidad, Benguet who prepared the Social Case Study report of [AAA] and by Psychologist who diagnosed the cognitive functioning of [AAA] to be within a mild retardation level with a mental age of seven years and one month old.¹⁰

¹⁰ CA rollo, pp. 41-43.



On the other hand, the CA summarized the version of the defense as follows:

[Accused-appellant] denied the actuations hurled against him. He proffered no knowledge why AAA charged him of the crime of rape. [Accused-appellant] claimed that from 2001-2010, he and his live-in partner Claudia Carantes, were renting a room in the house of AAA's father, CCC. [Accused-appellant] also averred that on [November 6, 2010], while he was drinking with CCC and AAA's other sibling, EEE, the older sister of AAA, got angry and threw a stone at him because EEE said he was always mentioning AAA's name. As the stone did not hit him, he just went to his room so as not to aggravate the situation. [Accused-appellant] further alleged that the only reason he can think of for them filing these criminal suits against him is because he refused to vacate his rented room after he was asked to leave the same.¹¹

Ruling of the RTC

In its Decision dated August 8, 2017, the RTC found accused-appellant guilty of three counts of rape and rendered judgment as follows:

WHEREFORE, from the foregoing, there being proof beyond reasonable doubt that accused committed the crimes charged, ALBERTO "BERT" MARTINEZ, also known as ALBERTO BELINARIO is hereby found GUILTY of three (3) counts of rape as penalized under Article 2[6]6-A paragraph 1. He is hereby sentenced to suffer the penalty of imprisonment of *Reclusion Perpetua*.

He is further directed to pay [AAA] the following for each case:

- a. Civil indemnity of [P]75,000.00;
- b. Moral damages of [P]75,000.00;
- c. Exemplary damages of [P]75,000.00; and
- d. All monetary award for damages to earn interest at the legal rate of 6% [*per annum*] from the finality of this Decision until fully paid.

SO ORDERED.¹²

The RTC held that the prosecution was able to prove, through the clear and straightforward testimony of AAA, the elements of the crime: 1) that accused-appellant had carnal knowledge of the offended party and 2) that the offended party is under 12 years of age.¹³ As against AAA's positive

¹¹ *Rollo*, p. 8.

¹² *CA rollo*, pp. 48.

¹³ *Id.* at 44.



assertions, the RTC refused to give credence to accused-appellant's bare denial,¹⁴ which is an inherently weak defense.

In fact, the RTC noted that AAA's younger sister testified that she witnessed several instances when accused-appellant would be on top of AAA "doing the pumping motions."¹⁵ She likewise stated she saw accused-appellant placed his finger in the vagina of AAA and that she went to tell her mother but the latter did not believe her.¹⁶ Although the specific criminal acts charged in the aforementioned Informations were not witnessed by AAA's younger sister, the RTC reiterated the threshold principle that "[i]n rape cases, the accused may be convicted solely on the testimony of the victim, provided the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things."¹⁷

The RTC noted, however, that AAA had already turned 12 years old at the time when the other incidents occurred. Nevertheless, the RTC held that although AAA had already reached the age of 12 years, the prosecution proved that she had a mental age of seven years and one month. Accordingly, the RTC held that the accused-appellant may still be convicted for statutory rape.¹⁸

Ruling of the CA

On appeal, the CA affirmed accused-appellant's conviction in its Decision dated February 27, 2019 *in toto*. The dispositive part of the Decision reads:

WHEREFORE, all premises considered, the instant appeal is **DENIED**.

Accordingly, the *Decision dated 08 August 2017* of the Regional Trial Court, Branch 9, La Trinidad, Benguet, in Criminal Cases Nos. 11-CR-8289, 11-CR-8290 and 11-CR-8291, finding accused-appellant Alberto Martinez also known as Alberto Belinario guilty beyond reasonable doubt of three (3) counts of the crime of rape, sentencing him for each count to the penalty of *reclusion perpetua*, and ordering him to pay civil indemnity, moral damages and exemplary damages in the amount of [P]75,000.00 each, is hereby **AFFIRMED in toto**.

The Division Clerk of Court of this Court is directed to prepare the *Mittimus* for the immediate transfer of said accused-appellant from the

¹⁴ Id. at 47.

¹⁵ Id. at 44.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 46.



Benguet Provincial Jail at La Trinidad, Benguet, to the New Bilibid Prisons at Muntinlupa City, Metro Manila.

SO ORDERED.¹⁹

In affirming the RTC, the CA held that AAA was able to clearly, positively, and convincingly narrate her miserable ordeal in the hands of accused-appellant.²⁰ The CA quoted the threshold principle that the testimonies of child-victims are generally given full weight and credence as a young woman would not concoct a story of defloration, endure the embarrassment and humiliation of a public disclosure that she had been ravished, allow an examination of her private parts, and undergo the ordeal of a public trial if her story was not true.²¹

Hence, this appeal.

Issue

Whether the CA erred in finding accused-appellant guilty for three counts of Rape under Article 266-A of the RPC.

The Court's Ruling

The appeal has partial merit. Article 266-A of the RPC reads:

Article 266-A. *Rape, When and How Committed.* — Rape is committed:

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

a) Through force, threat, or intimidation;

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

c) By means of fraudulent machination or grave abuse of authority;
and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

¹⁹ *Rollo*, p. 19.

²⁰ *Id.* at 13.

²¹ *Id.* at 13-14.



x x x x

In *People v. Biala*,²² the Court explained:

The gravamen of the offense of rape is sexual congress with a woman by force and without consent. If the woman is under 12 years of age, proof of force is not an element, as the absence of a free consent is conclusively presumed as the law supposes that a woman below this age does not possess discernment and is incapable of giving intelligent consent to the sexual act. Conviction will therefore lie, regardless of proof of force or intimidation provided sexual intercourse is proven. Force, threat, or intimidation are not elements of statutory rape, therefore proof thereof is unnecessary. But if the woman is 12 years of age or over at the time she was violated, sexual intercourse must be proven and also that it was done through force, violence, intimidation or threat.²³

In the instant case, the RTC and the CA both found that the prosecution proved that accused-appellant raped AAA on January 1, 2010, October 2, 2010, and October 3, 2010. During her direct examination, AAA testified:

- Q. Based on your statement madam witness, since when have you met the accused[-appellant]?
- A. When I was in Grade 1.
- Q. How old were you at that time?
- A. Seven (7) years old.
- Q. Okay. On question number 3 on the first page of your Sworn Statement you said here that Bert use[d] to call you and usually ask you to do a favor. Could you please tell the court what [were] these favors that the accused[-appellant] usually ask you to do?
- A. Yes, ma'am.
- Q. What are those?
- A. He sent me to buy food, kerosene.
- Q. And in addition[,] you stated here that he also called you inside his room is that true?
- A. Yes, ma'am.
- Q. Could you please tell the court?
- A. He held my breast.
- Q. Okay. And there was also a time when he injected something on you?
- A. Yes, ma'am.
- Q. Do you remember when did he injected [(sic)] that. Where were you injected?

²² G.R. No. 217975, November 23, 2015, 775 SCRA 381.

²³ Id. at 398-399. See also *People v. Chavez*, G.R. No. 235783, September 25, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65519>>.



CLERK OF COURT.

Witness pointed to her upper right arm.

x x x x

Q. So what happened next when he injected that to you?

A. I felt dizzy.

x x x x

Q. Based on your Sworn Statement you lose your consciousness[,] is that true?

A. Yes, ma'am.

Q. And when you regain[ed] your consciousness what happened next?

A. I saw him sitting on the bench watching T.V.

Q. Considering the fact that you were, you said that he injected something on you did you feel something, anything different from your body?

A. Yes, ma'am.

Q. Could you please tell the court what is that?

A. My body and then my breast.

Q. Did you feel something different?

A. Yes, ma'am.

Q. What is that different that you felt if you can describe?

A. I felt pain.

Q. Felt pain?

A. In my breast.

Q. Okay. What did you do next after that, you regain[ed] your consciousness and you felt something bad on your body?

A. I just sat and put on my clothes [that] he removed and [(accused-appellant)] gave me money so that I will not report.

Q. Referring also on question number 4 on page one of your statement when you were in Grade 2, if you could still remember the accused[-appellant] again called you inside his room?

A. Yes, ma'am.

Q. What happened next?

A. He removed my clothes and inserted his fingers to my vagina.

Q. Okay. You also said on your statement that he usually did that early in the morning and he will let his live[-]in partner leave. How many times in a week could you remember?

A. Three (3) or four (4) times a week.

Q. Did you inform you parents about this one?

A. No, ma'am.

Q. Why?



- A. Because he was threatening me that if I will report to my parents[,] he will kill me.
- Q. Now, when you were again in Grade 3, if you could remember he called you again in his room. What happened next?
- A. He removed my clothes and licked on my breast and he put oil on his penis and inserted it into my vagina.
- Q. And on your Sworn Statement also every time that he will call you and if you will not obey what does he do?
- A. He would get angry to me.
- Q. And there was also incident when he put something on your food is that true?
- A. Yes, ma'am.
- Q. And how did it taste?
- A. It is bitter.
- Q. On January 2010[,] you also stated here that was New Year on your statement, you said Bert was under the influence of liquor and he called you inside his room again[,] what happened next?
- A. He removed my clothes and kissed my vagina and inserted his penis into my vagina.
- Q. Okay. And you stated here that he gave you fifty (50) pesos?
- A. Yes, ma'am.
- Q. Why did he give you fifty (50) pesos?
- A. So that I will not report.
- Q. Okay. And on October 2, 2010[,] he called you again in his room?
- A. Yes, ma'am.
- Q. If you could remember[,] could you please tell again the court what happened next?
- A. He removed all my clothes and kissed my whole body and inserted his penis inside my vagina.
- Q. Okay. Did you tell your parents when it comes to this case already?
- A. Yes, ma'am.
- Q. Okay. So when you said on your statement on the second page that every time he will call you, you did not comply already?
- A. Yes, ma'am.
- Q. And he usually make trouble in your house is that correct?
- A. Yes, ma'am.
- Q. Until such time that your mother asked you [(sic)]?
- A. Yes, ma'am.
- Q. What did you tell your mother?
- A. I told her everything what he did to me.
- Q. Since the first time that the accused[-appellant] abused you?



A. Yes, ma'am.

Q. And that [was] when you were Grade 1?

A. Yes, ma'am.

Q. And how old were you again when you were in Grad[e] 1?

A. Seven (7) years old.

x x x x

Q. Going back before you informed your mother on October 3, 2010 at around 6:00 o'clock or 7:00 o'clock in the evening. You stated here that he called you inside the comfort room?

A. Yes, ma'am.

Q. And what happened again when he called you inside the comfort room?

A. He removed all my clothes and kissed my vagina and inserted his penis into my vagina.

Q. Okay. And on October 4, 2010[,] you stated here that when the accused[-appellant] was having drinking session with his friends at around 4:00 o'clock in the afternoon he called you, is that correct?

A. Yes, ma'am.

x x x x

Q. But according to your Sworn Statement you did not comply?

A. Yes, ma'am.

Q. What happened next? What did he do when you did not comply?

A. He is getting angry and when I played with my playmates he is there watching.

Q. Considering all these wallowing experiences how did it affect you?

A. I cannot sleep at night.

Q. So what did you do when you cannot sleep at night?

A. We went to the psychiatrist.²⁴

AAA confirmed during her cross examination that accused-appellant had been "doing bad things to her" since she was in Grade 1, that she considered him as a father, and that he would threaten that he would kill her family if she reported these "bad things" to her mother, viz.:

Q. And you said that since when you were in Grade 1 he had been doing bad things to you?

A. Yes, ma'am.

Q. Until 2010, until last year?

A. Yes, ma'am.

²⁴ Records, pp. 122-127. Transcript of Stenographic Notes (TSN) dated August 15, 2011. Underscoring supplied.

- Q. So from Grade 1 until last year, how was your relationship with Alberto Belinario?
- A. Because he was telling my mother that he would treat me as a daughter, so I considered him as a father. But still he was doing shameful acts to me.
- Q. So madam witness, why did you not report to your mother then that bad things have been done to you when you were in Grade 1 and in Grade 2[?]
- A. Because he was threatening that he will kill my family.²⁵

The Court agrees with the conclusions of the lower courts' that the prosecution sufficiently established, through the foregoing testimony, that accused-appellant had carnal knowledge of AAA on January 1, 2010, October 2, 2010, and October 3, 2010. The Court finds no compelling reason to deviate from the lower courts' findings and their calibration of the credibility of AAA, who related the details of her harrowing experiences in the hands of accused-appellant in a simple yet convincing and consistent manner.

The Court has held time and again that the testimony of a child-victim is normally given full weight and credit considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified was not true. Youth and immaturity are generally badges of truth and sincerity. Hence, there is neither cause nor reason to withhold credence from AAA's testimony.²⁶ As against AAA's positive assertions, the Court agrees with the Office of the Solicitor General that accused-appellant's mere defense of denial and alibi, *i.e.*, that he cannot recall what he was doing on January 1, 2010 but that he did not commit the crimes charged and that he was at a gambling house on October 2, 2010 and October 3, 2010,²⁷ deserve scant consideration. It is settled that the defenses of alibi and denial, when uncorroborated, are inherently weak and easily fabricated.

However, while the lower courts correctly convicted accused-appellant 1) of statutory rape in Criminal Case No. 11-CR-8289 and 2) of rape through intimidation in Criminal Case No. 11-CR-8291, they erred in convicting accused-appellant of rape through force under Criminal Case No. 11-CR-8290 as the prosecution failed to prove the element of force. It bears emphasis that AAA was already 12 years old in October of 2010. As such, carnal knowledge through force must be alleged and proved beyond reasonable doubt. This is discussed further below.

*Statutory rape under Criminal
Case No. 11-CR-8289 was*

²⁵ Id. at 128. Underscoring supplied.

²⁶ *People v. Biala*, supra note 22 at 398.

²⁷ *Rollo*, p. 18.

proven beyond reasonable doubt.

After a judicious examination of the records of the instant case, the Court finds no cogent reason to vacate the RTC's appreciation of the evidence as regards the January 1, 2010 incident, which was affirmed *in toto* by the CA. The Court agrees with the conclusions of the lower courts that the prosecution alleged²⁸ and proved the elements of statutory rape under Article 266-A, paragraph 1(d) of the RPC. In *People v. Valenzuela*,²⁹ the Court explained:

Rape under paragraph 3 [now under paragraph 266-A, paragraph 1(d)] of this article is termed *statutory rape* as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation, and physical evidence of injury are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. 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 evil from good.³⁰

The elements of statutory rape are: 1) that the accused had carnal knowledge of the offended party, and 2) the offended party is under 12 years of age. As held in *People v. Roy*,³¹ it is settled that to sustain a conviction under Article 266-A, paragraph 1(d), "x x x [i]t is enough that the age of the victim is proven and that there was sexual intercourse.[] As the law presumes absence of free consent when the victim is below the age of 12, it is not necessary to prove force, intimidation or consent as they are not elements of statutory rape x x x."³²

In the instant case, it was established by the evidence on record, *i.e.*, AAA's Birth Certificate,³³ that she was born on January 8, 1998 and was thus below the age of 12 on January 1, 2010.

It was likewise established beyond reasonable doubt, through the straightforward, positive, and convincing testimony of AAA, that accused-

²⁸ Id. at 4. The Information in Criminal Case No. 11-CR-8289 states: "That on or about the 1st day of January 2010, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, did [then] and there wilfully, unlawfully and feloniously have carnal knowledge with one [AAA], a minor being eleven (11) years[,] eleven (11) months and twenty[-]three (23) days of age at the time of the commission of the crime, by grabbing her hand and laid her down on his bed, undressed her, fondled her breasts, licked her vagina and inserted his penis into her vagina against her will and consent, which deeds debase, degrade and demean the intrinsic worth and dignity of the said [AAA] as a human being, to her great damage, prejudice and mental anguish."

²⁹ G.R. No. 182057, February 6, 2009, 598 SCRA 157.

³⁰ Id. at 164-165.

³¹ G.R. No. 225604, July 23, 2018, 873 SCRA 208.

³² Id. at 216. See also *People v. Eulatio*, G.R. No. 214882, October 16, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65784>>.

³³ CA rollo, p. 46.

appellant had carnal knowledge of AAA on the aforementioned date. Indeed, AAA narrated that while they were celebrating the New Year, accused-appellant, who was then under the influence of liquor, called AAA to his room, locked the door, grabbed her hand, laid her down, undressed her, fondled her breast, licked her vagina, and inserted his penis into her vagina.³⁴ Thereafter, he gave her ₱50.00 not to tell anyone.³⁵

As the elements of statutory rape were duly proven beyond reasonable doubt, the Court affirms the conviction of accused-appellant for the rape committed on January 1, 2010.

Rape through intimidation under Criminal Case No. 11-CR-8291 was likewise proven beyond reasonable doubt.

After a careful review of the records and the transcript of stenographic notes, the Court likewise affirms the findings of the RTC and the CA that the prosecution alleged³⁶ and proved the elements of rape through intimidation for the acts committed on October 3, 2010. In *People v. Ricamora*,³⁷ the Court explained:

For rape to exist it is not necessary that the force or intimidation employed be so great or of such character as could not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard and fast rule. It is therefore enough that it produces fear — fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. Intimidation would also explain why there are no traces of struggle which would indicate that the victim fought off her attacker.³⁸

In *People v. Arivan*,³⁹ the Court elucidated:

x x x The law does not impose upon a rape victim the burden of proving resistance, particularly when intimidation is exercised upon the victim and the latter submits herself to the appellant's advances out of fear for her life or personal safety. The test remains to be whether the threat or

³⁴ Id. at 42.

³⁵ Id.

³⁶ *Rollo*, p. 5. The Information in Criminal Case No. 11-CR-8291 states "That on or about the 3rd day of October 2010, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did [then] and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA], a minor being twelve (12) years of age at the time of the commission of the crime, by bringing her to the common comfort room and once inside, he brought down her pant[s] and panty, licked her vagina and brought out his penis and touched her vagina against her will and consent, which deeds debase, degrade and demean the intrinsic worth and dignity of the said [AAA] as a human being, to her great damage, prejudice and mental anguish."

³⁷ G.R. No. 168628, December 6, 2006, 510 SCRA 514.

³⁸ Id. at 528. Underscoring supplied.

³⁹ G.R. No. 176065, April 22, 2008, 552 SCRA 448.

intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of her attacker, the threat would be carried out. It is thus not necessary for the victim to have resisted unto death or to have sustained physical injuries in the hands of the accused. So long as the intercourse takes place against the victim's will and she submits because of genuine apprehension of harm to her and her family, rape is committed.⁴⁰

In *People v. Galang*,⁴¹ the Court held:

Intimidation in rape cases is not calibrated or governed by hard and fast rules. Since it is addressed to the mind of the victim and is therefore subjective. x x x Where such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength. If resistance would nevertheless be futile because of a continuing intimidation, then offering none at all would not mean consent to the assault as to make the victim's participation in the sexual act voluntary.⁴²

As applied to the instant case, the Court finds that the prosecution established beyond reasonable doubt the elements of rape under Article 266-A, paragraph 1(a), *i.e.*, 1) accused-appellant had carnal knowledge of AAA 2) through intimidation.⁴³

In the instant case, AAA testified that accused-appellant began sexually abusing her in various ways, *i.e.*, by injecting her with some substance and touching her breasts, inserting his finger into her vagina, licking her breast, kissing her vagina, and inserting his penis into her vagina, when she was only seven years old.⁴⁴ She could not, however, recall the specific dates.⁴⁵ When she refused to obey him, AAA testified that accused-appellant would get angry,⁴⁶ and create trouble at their residence.⁴⁷ She said that when she did not follow him, he would get angry and she would see him watching her such that she could not sleep at night.⁴⁸ During her direct and cross-examination, she unequivocally stated that she did not tell her parents because accused-appellant threatened that he would kill her⁴⁹ and her family.⁵⁰ AAA unequivocally testified that accused-appellant called her inside the comfort room, removed her clothes, kissed her vagina, and inserted his penis into her vagina on October 3, 2010.⁵¹ AAA revealed these incidents to her mother soon after.

⁴⁰ Id. 467-468. Underscoring supplied; emphasis omitted.

⁴¹ G.R. Nos. 150523-25, July 2, 2003, 405 SCRA 301.

⁴² Id. at 307-308. Underscoring supplied.

⁴³ See *People v. Soriano*, G.R. No. 172373, September 25, 2007, 534 SCRA 140.

⁴⁴ Records, p. 7.

⁴⁵ Id. at 8.

⁴⁶ Id. at 124. TSN dated August 15, 2011.

⁴⁷ Id. at 125.

⁴⁸ Id. at 127.

⁴⁹ Id. at 124.

⁵⁰ Id. at 128.

⁵¹ Id. at 129.

The fact that the foregoing traumatic incidents occurred on several occasions was corroborated by AAA's younger sister, who testified:

Q. Now on the first page of the document that you executed on the third paragraph, you said here that sometime in 2009[,] the friend of my sister [(sic)] was looking for her because there was something to give her?

A. Yes, ma'am.

x x x x

Q. Now based on your Affidavit you also went to the room of Alberto Martinez?

A. Yes, ma'am.

x x x x

Q. Could you please tell the court what did you see?

A. I saw Alberto inserted his fingers in the vagina of my sister.

Q. Okay. And when you saw that Alberto was inserting his finger inside your sister's vagina what did you do next?

A. I went home and I told my mother what I saw but she did not believe me.

Q. Okay. It was again on the sixth paragraph of your Affidavit you said here that one time again [(sic)] you cannot remember the exact date when you, [AAA], and your playmates were playing hide and seek, is that correct?

A. Yes, ma'am.

x x x x

Q. And you said here that [AAA] when it[']s time to hide, you noticed that [AAA] and Alberto Martinez went together to hide inside the room of [accused-appellant]?

A. Yes, ma'am.

x x x x

Q. And what did you do next when you followed them to the room of Alberto Belinario?

A. I saw that Alberto Belinario was doing something to my elder sister.

Q. What was he doing to your elder sister? What did you see?

A. I saw him removed [(sic)] the clothes of my sister and I saw him "[ikinkinod]" doing the pumping movement.

x x x x

Q. And according to you, you said here that Alberto said that he wanted to join your game "hilo-hilotan[",] is that correct?

A. Yes, ma'am.

x x x x

Q. And what happened next when he said to you that he wanted your sister [AAA] to be his partner?

A. When we were there playing he made my sister lay down in his bed and he was also doing the push and pull movement.

Q. What was [(sic)] the, so he asked [AAA] to lay on his bed?

A. Yes, ma'am.

Q. And what did he do next when he asked [AAA] to lay down on his bed?

A. He massaged her but it seems that he was not actually massaging her but he was actually doing the push and pull movement.⁵²

Notably, the foregoing acts began while AAA was only a young child of seven years and continued until AAA was 12 years old. On the other hand, accused-appellant was already around 40 years old and was living with his live-in partner as boarders in AAA's house.⁵³ Indeed, AAA testified that she considered him as a father.⁵⁴

In view of the foregoing, the Court finds that the element of intimidation has been duly proved. Again, intimidation must be evaluated on a case to case basis in light of the circumstances, perception, and judgment of the victim. Indeed, "x x x [t]he age, size and strength of the parties should be taken into account in evaluating the existence of the element of force or intimidation in the crime of rape x x x."⁵⁵ It is sufficient if it "x x x produces fear — fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident x x x."⁵⁶ The recurrence of accused-appellant's abominable deeds, the wide discrepancy in their ages and accused-appellant's many threats prove beyond reasonable doubt that AAA submitted herself to accused-appellant's carnal desires out of a reasonable fear and genuine apprehension of harm to her and her family.⁵⁷ To reiterate, "x x x [i]f resistance would nevertheless be futile because of a continuing intimidation, then offering none at all would not mean consent to the assault as to make the victim's participation in the sexual act voluntary."⁵⁸

In view of the foregoing, the Court likewise affirms the conviction of accused-appellant under Criminal Case No. 11-CR-8291 for the rape committed on October 3, 2010.

⁵² Id. at 133-137. TSN dated August 23, 2011. Underscoring supplied.

⁵³ CA rollo, p. 41.

⁵⁴ Records, p. 128.

⁵⁵ *People v. Nequia*, G.R. No. 146569, October 6, 2003, 412 SCRA 628, 640.

⁵⁶ *People v. Ricamora*, supra note 37, at 528. See also *People v. Soriano*, supra note 43.

⁵⁷ *People v. Arivan*, supra note 39, at 467-468.

⁵⁸ *People v. Galang*, supra note 41, at 308.

*Rape through force under
Criminal Case No. 11-CR-8290
was not proven.*

As regards the October 2, 2010 incident covered by Criminal Case No. 11-CR-8290 however, the Court is constrained to acquit the accused-appellant as the prosecution failed to prove the element of force. At this juncture, the Court reiterates *People v. Lagramada*,⁵⁹ which held:

In a criminal prosecution, the law always presumes that the defendant is not guilty of any crime whatsoever, and this presumption stands until it is overcome by competent and credible proof. Where two conflicting probabilities arise from the evidence, the one compatible with the presumption of innocence will be adopted. It is therefore incumbent upon the prosecution to establish the guilt of the accused with moral certainty or beyond reasonable doubt as demanded by law.

When a person cries rape, society reacts with sympathy for the victim, admiration for her bravery in seeking retribution for the crime committed against her, and condemnation for the accused. However, being interpreters of the law and dispensers of justice, judges must look at each rape charge sans the above proclivities and deal with it with caution and circumspection. Judges must free themselves of the natural tendency to be overprotective of every girl or woman decrying her defilement and demanding punishment for the abuser. While they ought to be cognizant of the anguish and humiliation the rape victim goes through as she demands justice, they should equally bear in mind that their responsibility is to render justice in accordance with law.

Hence, accused shall be presumed innocent until the contrary is proved. Before the accused in a criminal case may be convicted, the evidence must be strong enough to overcome the presumption of innocence and to exclude every hypothesis except that of the guilt of the defendant. If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not pass the test of moral certainty and will not suffice to support a conviction.⁶⁰

In relation thereto, *People v. Bermas*,⁶¹ discussed the peculiar nature of rape charges in this wise:

x x x [I]n rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature. This is a matter best assigned to the trial court which had the first[-]hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Hence, the trial court's findings carry very great weight and substance.

⁵⁹ G.R. Nos. 146357 & 148170, August 29, 2002, 388 SCRA 173.

⁶⁰ Id. at 193-194. Underscoring supplied.

⁶¹ G.R. No. 234947, June 19, 2019, 905 SCRA 455.



However, it is equally true that in reviewing rape cases, the Court observes the following guiding principles:

- (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;
- (2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution;
- (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

This must be so as the guilt of an accused must be proved beyond reasonable doubt. Before he is convicted, there should be moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it. Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning [his] verdict. x x x⁶²

It bears emphasis that the Information specifically alleged that accused-appellant had carnal knowledge of AAA through force, *viz.*:

Criminal Case No. 11-CR-8290

That on or about the 2nd day of October 2010, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, did [then] and there wilfully, unlawfully and feloniously have carnal knowledge with one [AAA], a minor being twelve (12) years of age at the time of the commission of the crime, by calling her to his room and once inside, he locked the door and brought her to his bed, undressed her, sucked her breast, licked her vagina, and inserted his penis into her vagina against her will and consent, which deeds debase, degrade and demean the intrinsic worth and dignity of the said [AAA] as a human being, to her great damage, prejudice and mental anguish.

CONTRARY TO LAW.⁶³

While AAA convincingly testified as regards the fact of carnal knowledge on October 2, 2010, her testimony, as shown above, was bereft of any categorical statement that accused-appellant used force in accomplishing the lustful deed.⁶⁴

⁶² Id. at 464-465. Citations and emphasis omitted; underscoring supplied.

⁶³ *Rollo*, p. 5. Underscoring supplied.

⁶⁴ *People v. Estopito*, G.R. No. 136144, January 15, 2002, 373 SCRA 212, 220.



The Court is aware and, in fact, affirms the principle that “x x x the absence of external signs of physical injuries does not prove that rape was not committed, for proof thereof is not an essential element of the crime of rape x x x”⁶⁵ and that “x x x the force employed in rape need not be irresistible so long as it is present and brings the desired result. All that is necessary is that the force be sufficient to fulfill its evil end, or that it be successfully used; it need not be so great or be of such a character that it could not be repelled. x x x”⁶⁶ While force need not be irresistible however, it must still be present and such presence must be sufficiently alleged and proved beyond reasonable doubt. Unfortunately, the afore-quoted testimonial evidence offered to prove force under this particular charge is definitely inadequate and grossly insufficient to establish the guilt of accused-appellant with the required quantum of evidence.⁶⁷ There is no testimony whatsoever about the nature of the force employed, or about any struggle, or even resistance however slight.

It is settled that “x x x [i]n rape cases alleged to have been committed by force[,] it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused upon his victim to achieve his end. Failure to do so is fatal to its cause.”⁶⁸ Although it is peculiar that a young child of only 12 years of age is incapacitated to enter into ordinary contracts but is deemed capacitated to give “consent” to sexual intercourse, the question is a matter of wisdom better directed to the legislative branch of government. For purposes of resolving the instant case, jurisprudence on the matter is explicit – if the woman is 12 years of age or over at the time she was violated, sexual intercourse through force, violence, intimidation or threat must be alleged and proved by the prosecution beyond reasonable doubt.⁶⁹

Time and again, the Court has held that “[e]ach and every charge of rape is a separate and distinct crime that the law requires to be proven beyond reasonable doubt. The prosecution’s evidence must pass the exacting test of moral certainty that the law demands and the rules require to satisfy the burden of overcoming the appellant’s presumption of innocence.”⁷⁰

As previously discussed, the prosecution sufficiently proved that the carnal acts were attended by intimidation. In addition, the prosecution proved that although AAA had already turned 12 on October 2, 2010, she had the mental age of seven years and one month.⁷¹ However, neither of these circumstances is relevant to Criminal Case No. 11-CR-8290 as they

⁶⁵ *People v. Balleno*, G.R. No. 149075, August 7, 2003, 408 SCRA 513, 519.

⁶⁶ *Id.*

⁶⁷ See *People v. Dulay*, G.R. Nos. 95156-94, January 18, 1993, 217 SCRA 132, 153.

⁶⁸ *People v. Oropesa*, G.R. No. 229084, October 2, 2019 citing *People v. Tionloc*, G.R. No. 212193, February 15, 2017, 818 SCRA 1.

⁶⁹ *People v. Chavez*, supra note 23.

⁷⁰ *People v. Valenzuela*, supra note 29, at 175.

⁷¹ CA rollo, p. 46.

were not alleged in the information. “x x x It is a fundamental rule that every element of the crime charged must be aptly alleged in the information so that the accused can be fully informed of the nature and cause of the accusation. Anything less would be an infringement of his constitutional rights.”⁷²

The constitutional right to be informed of the nature and cause of the accusations against him⁷³ requires “x x x that [any] offense charged be stated with clarity and with certainty to inform the accused of the crime he is facing in sufficient detail to enable him to prepare his defense.”⁷⁴ It is corollary to the broader right to be presumed innocent until the contrary is proved. Ineluctably, the Constitution requires the State to describe each purported criminal act with sufficient certainty because an accused is presumed to have no independent knowledge of the facts constituting the offenses charged.⁷⁵ Thus, the written accusation must fully “x x x appraise the accused of the nature of the charge against him [in order] to avoid possible surprises that may lead to injustice x x x.”⁷⁶

It bears emphasis that the State, through the prosecution, bears the burden of sufficiently informing the accused of the accusations against him so as to enable him to properly prepare his defense.⁷⁷ The reason is intuitive – as against the virtually limitless power and resources of the State, a person can only rely 1) on his or her constitutional rights to criminal due process and 2) on the court to uphold and give meaning to these rights. As the Court held in *Secretary of Justice v. Lantion*,⁷⁸ “[t]he individual citizen is but a speck of particle or molecule *vis-a-vis* the vast and overwhelming powers of government. His only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need x x x.”⁷⁹

The Court takes opportunity to remind the State, as represented by the public prosecutor, to be more conscientious in performing its duties and to exert more diligence in crafting Informations and in prosecuting criminal cases. “x x x [P]rosecutors perform the unique function, essential in the maintenance of the rule of law and peace and order, of ensuring that those who violate the law are brought to justice x x x.”⁸⁰ The primary duty of the

⁷² *People v. Estopito*, supra note 64, at 220.

⁷³ Article III, Section 14, paragraph 2 of the CONSTITUTION states:

Section 14. x x x.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

⁷⁴ *Enrile v. People*, G.R. No. 213455, August 11, 2015, 766 SCRA 1, 32.

⁷⁵ *Id.* at 35.

⁷⁶ *Id.* at 33.

⁷⁷ *People v. Solar*, G.R. No. 225595, August 6, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65742>>.

⁷⁸ *Secretary of Justice v. Lantion*, G.R. No. 139465, January 18, 2000, 322 SCRA 160.

⁷⁹ *Id.* at 619.

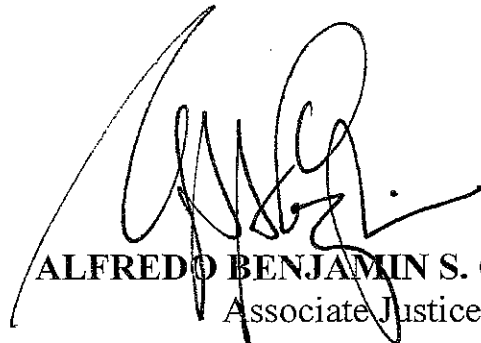
⁸⁰ *People v. Solar*, supra note 77.

public prosecutor is to see that justice is done — to the State, that its penal laws are not broken and order is maintained; to the victim, that his or her rights are vindicated; and to the offender, that he is justly punished for his or her crime.⁸¹ In crafting the Criminal Case 11-CR-8290, the prosecution grievously failed to deliver justice.

WHEREFORE, premises considered, the Decision dated February 27, 2019 of the Court of Appeals, Special Second Division, in CA-G.R. CR-HC No. 10062 is hereby **AFFIRMED** with the following **MODIFICATIONS**:

- (a) In Criminal Case No. 11-CR-8289, accused-appellant is hereby found **GUILTY** beyond reasonable doubt of rape under Article 266-A, paragraph 1(d), sentenced to suffer the penalty of *reclusion perpetua*, and ordered to pay the offended party: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.
- (b) In Criminal Case No. 11-CR-8291, accused-appellant is hereby found **GUILTY** beyond reasonable doubt of rape under Article 266-A, paragraph 1(a), sentenced to suffer the penalty of *reclusion perpetua*, and ordered to pay the offended party: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.
- (c) In Criminal Case 11-CR-8290, accused-appellant is hereby **ACQUITTED**.
- (d) All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the finality of this decision until fully paid.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁸¹ *People v. Pareja*, G.R. No. 202122, January 15, 2014, 714 SCRA 131, 160.

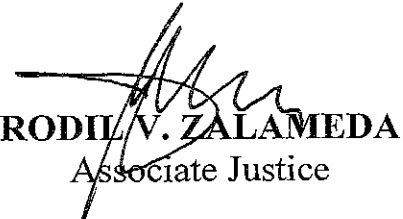
WE CONCUR:



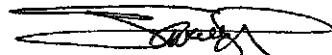
DIOSDADO M. PERALTA
Chief Justice
Chairperson



ROSMARI D. CARANDANG
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
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.



DIOSDADO M. PERALTA
Chief Justice

