



Republic of the Philippines
 Supreme Court
 Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 250332

Plaintiff-Appellee, Present:

- versus -

GESMUNDO, C.J., Chairperson,
 CAGUIOA,
 LAZARO-JAVIER,
 LOPEZ, M.,* and
 LOPEZ, J., JJ.

ROGELIO TORENO, JR. y
 FLORES,

Accused-Appellant.

Promulgated:

NOV 23 2021

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DECISION

CAGUIOA, J.:

This is an appeal¹ filed under Section 13(c), Rule 124 of the Rules of Court from the Decision² dated September 11, 2019 of the Court of Appeals, Twentieth³ Division (CA), in CA-G.R. CR-HC No. 02792, which affirmed the Joint Decision⁴ dated January 31, 2018 of the Regional Trial Court of XXX⁵ City, Negros Occidental, Branch 58 (RTC), in Criminal Case Nos. RTC-4842 and RTC-4843.

* On wellness leave.

¹ Rollo, pp. 18-20.

² Id. at 5-17. Penned by Associate Justice Emily R. Aliño-Geluz with Associate Justices Pamela Ann Abella Maxino and Carlito B. Calpatura, concurring.

³ Spelled “Twentieth” in some parts of the *rollo* and *CA rollo*.

⁴ *CA rollo*, pp. 50-73. Penned by Presiding Judge Amy Alabado Avellano.

⁵ The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, entitled “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, entitled “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, entitled “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.)

The Facts

Accused-appellant Rogelio Toreno, Jr. y Flores (Rogelio) was charged with two (2) counts of Statutory Rape under the following Informations:⁶
[In Criminal Case No. RTC-4842:]

That sometime in the afternoon of December 2011 at Sitio [VVV],⁷ Barangay [WWW],⁸ [XXX] City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there wi[ll]fully, unlawfully[,] and feloniously have carnal knowledge of one [AAA],⁹ a child below twelve years of age, being then a five-year old minor, against her will and consent, to the damage and prejudice of said minor-victim.

CONTRARY TO LAW.¹⁰ (Emphasis in the original)

[In Criminal Case No. RTC-4843:]

That sometime in the afternoon of December 2011 at Sitio [VVV], Barangay [WWW], [XXX] City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there wi[ll]fully, unlawfully[,] and feloniously have carnal knowledge of one [BBB],¹¹ a child below twelve years of age, being then a seven-year old minor, against her will and consent, to the damage and prejudice of said minor-victim.

CONTRARY TO LAW.¹² (Emphasis in the original)

Upon arraignment, Rogelio pleaded “not guilty” to the crimes charged. Thereafter, pre-trial and trial on the merits ensued.¹³

During the trial proper, despite his actual age being 42 years old, Rogelio was allowed to have his direct testimony re-taken after it was alleged that his mental age was the same as that of an 8-year-old child.¹⁴ Questions to Rogelio were propounded in the vernacular, and leading questions were permitted by the court.¹⁵

Version of the Prosecution

BBB testified that in December of 2011, she was residing in the house of her aunt DDD¹⁶ at XXX City. One afternoon, while her aunt was in the field, Rogelio removed BBB’s shorts and laid her down. Then, Rogelio showed to her his penis and inserted it into her vagina. BBB felt pain, but did

⁶ Records (Criminal Case No. RTC-4842), p. 1; records (Criminal Case No. RTC-4843), p. 1.

⁷ Supra note 5.

⁸ Id.

⁹ Id.

¹⁰ Records (Criminal Case No. RTC-4842), p. 1.

¹¹ Supra note 5.

¹² Records (Criminal Case No. RTC-4843), p. 1.

¹³ *Rollo*, p. 6.

¹⁴ Id.

¹⁵ Id.

¹⁶ Supra note 5.

not cry. She did not ask Rogelio why he was doing it to her, nor did Rogelio speak to her when he inserted his penis into her vagina. After the insertion of Rogelio's penis, BBB noticed a whitish fluid come out from Rogelio's penis. Afterwards, BBB wiped her vagina. Meanwhile, Rogelio just walked away. BBB did not tell her aunt DDD about the incident because she was afraid that Rogelio might kill her. She was also not able to report the incident to her mother because the latter was working in Cebu. Aside from that incident, BBB recalls another incident which happened in a nipa hut on a cassava plantation. There, Rogelio undressed her and inserted his penis into her vagina.¹⁷

AAA testified that she is living with her aunt in XXX City. She recalled that one day, Rogelio ordered her to go inside and get the grey strands of hair on his head. Then, Rogelio undressed her and inserted his penis into her vagina. AAA felt pain but she did not cry. AAA also recalled that Rogelio showed his penis to her and her sister in the cassava plantation. And, inside the nipa hut, Rogelio undressed AAA and inserted his penis into her vagina. AAA did not inform anyone about what happened because she was afraid that Rogelio would kill her.¹⁸

The testimony of Dr. Naomi Poca, who prepared the Suspected Child Abuse Reports of both BBB¹⁹ and AAA,²⁰ was stipulated upon by the parties.²¹

Version of the Defense

To refute the allegations of the prosecution, the defense presented the following witnesses, namely, Rogelio, DDD, and Dr. Ma. Jocelyn Gauzon-Gayares (Dr. Gauzon-Gayares). Their respective testimonies are summarized as follows:

Rogelio testified that he is 42 years old. He was arrested on June 24, 2012. He knows the victims, AAA and BBB, being the daughters of his aunt, CCC.²² CCC left the two children to the care of Rogelio's mother and the two children lived in his mother's house, together with Rogelio's younger brother, Ronald Toreno y Flores (Ronald). Meanwhile, Rogelio has been living alone in a separate house in XXX City since he was 20 years old. As his source of living, he plants corn and other vegetables, and sometimes, purchases them from other vendors, so he could sell them in Iloilo. He travels to Iloilo to sell the vegetables about twice a week. He is financially supporting his mother and his other sibling. He only visits his mother's house to bring her food, but he does not stay long. AAA and BBB do not visit him at his home. He also does not have a cassava plantation, since he only has a corn field.²³

¹⁷ *Rollo*, pp. 6-7.

¹⁸ *Id.* at 7.

¹⁹ Records (Criminal Case No. RTC-4843), p. 7.

²⁰ Records (Criminal Case No. RTC-4842), p. 7.

²¹ *Rollo*, p. 8.

²² *Supra* note 5.

²³ *Rollo*, p. 8.

DDD testified that she is the mother of Rogelio and the aunt of AAA and BBB. On December 26, the day after Christmas, DDD's younger sister, CCC, left her daughters and her son, to the care of DDD, since CCC could no longer support her children after the death of her (CCC's) husband. They lived in DDD's house in XXX City together with Ronald, Rogelio's younger brother. DDD sent BBB to school. CCC would just send ₱1,500.00 to DDD every two months, but it was Rogelio who mainly worked for the children's sustenance. Rogelio visits the house once a week to provide financial support. When Rogelio visits, he stays only for a short time since he has to resume working. DDD learned that the cases were filed against Rogelio two weeks after CCC took the children from her. Before that, the children stayed with DDD for more than a year. According to DDD, the children were close to Rogelio at home, but there was never an instance that they went with Rogelio to his house.²⁴

Dr. Gauzon-Gayares testified that on December 3, 2015 and January 12, 2016, she conducted examinations on Rogelio and the jail guard, and reduced her findings in a confidential report. In particular, she used the Gesell test to determine the approximation of Rogelio's mental age. She found that Rogelio is suffering from an intellectual disability, which is the new term for mental retardation, and that Rogelio's mental age was eight (8) years old. However, she did not find Rogelio to be psychotic, depressed, and anxious to make him incapable of standing trial. Dr. Gauzon-Gayares also observed that Rogelio had poor judgment, meaning his capacity to decide on things may be impaired.²⁵

Ruling of the RTC

In its Joint Decision dated January 31, 2018 the RTC found Rogelio guilty beyond reasonable doubt for two (2) counts of Statutory Rape, to wit:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused **ROGELIO TORENO, JR. y Flores GUILTY** beyond reasonable doubt of two (2) counts of **statutory rape**. He is sentenced:

1. In **Crim. Case No. RTC-4842** to suffer the penalty of **reclusion perpetua**; and
2. In **Crim. Case No. RTC-4843** to suffer the penalty of **reclusion perpetua**.

In accordance with Republic Act No. 9346, both sentences are without possibility of parole.

The accused is also ordered to each pay AAA and BBB the amounts of Php 100,000.00 as civil indemnity; Php 100,000.00 as moral damages; and Php 100,000.00 as exemplary damages or a total of Php 300,000.00 each.

²⁴ Id. at 8-9.

²⁵ Id. at 9.



An interest at the rate of six percent (6%) per annum shall be applied to the award of civil indemnity, moral[,] and exemplary damages from the finality of this decision until the satisfaction of the award.

The accused is to be credited for the time spent for his preventive detention in accordance with Art. 29 of the Revised Penal Code[,] as amended by RA 6127 and EO 214.

SO ORDERED.²⁶ (Emphasis in the original)

The RTC ruled that all the elements of Statutory Rape were duly proven by the prosecution. Further, both victims narrated and clearly described how Rogelio molested them. Although AAA could not remember the exact dates of the three incidents, she positively identified Rogelio as her molester in the three incidents. In the case of BBB, both incidents happened in December 2011 but in different places. Although the victims' accounts clearly established several criminal acts committed at different days and places, Rogelio was charged only with one count of Statutory Rape perpetrated against each child. Hence, he can be convicted only of one count of Statutory Rape, committed in December 2011, per victim. In addition, the RTC likewise ruled that the Rogelio's defenses of denial and alibi deserve scant consideration since it was not proven that it was physically impossible for the accused to be at the scene of the crimes when they were committed. Lastly, the RTC held that although the clinical expert testified that Rogelio is intellectually impaired and with poor judgment, the court witnessed Rogelio's intelligence as a witness.

For someone who did not finish schooling and claimed to have a mental age akin to an 8-year-old child, Rogelio cleverly answered complicated questions and smartly evaded the tricky ones.

Aggrieved, Rogelio appealed to the CA.

Ruling of the CA

On appeal, in its Decision dated September 11, 2019, the CA affirmed the RTC Joint Decision, to wit:

WHEREFORE, the appeal is DENIED. The Joint Decision dated January 31, 2018 of the RTC, Branch 58, [XXX City], Negros Occidental finding Rogelio Torreno, Jr. y Flores guilty beyond reasonable doubt in Criminal Case Nos. RTC-4842 and RTC-4843 is hereby AFFIRMED.

SO ORDERED.²⁷ (Emphasis in the original)

The CA held that the testimony of Dr. Gauzon-Gayares does not show that there was complete deprivation of intelligence, reason, or discernment on the part of Rogelio, and that his imbecility existed at the time of, immediately

²⁶ CA rollo, pp. 72-73.

²⁷ Rollo, p. 17.

preceding, or at a reasonable period after the commission of the crime. In fact, an examination of Dr. Gauzon-Gayares's testimony reveals that her findings were based on the examinations she conducted only on December 3, 2015 and January 12, 2016, roughly four years after the incidents of abuse had occurred. Also, when she was asked to approximate the mental age of Rogelio at the time of the incidents, Dr. Gauzon-Gayares could not provide a definite answer. From the foregoing, it is clear that Rogelio failed to prove his defense of imbecility with clear and convincing evidence.

Hence, this appeal.

Issue

The issue before the Court is whether the CA erred in finding Rogelio guilty beyond reasonable doubt for two (2) counts of Statutory Rape.

The Court's Ruling

After a careful review and scrutiny of the case, the Court affirms the conviction of Rogelio with modifications as to the nomenclature of the crime, as well as the imposable penalties and damages.

The defense failed to prove that Rogelio should be exempted from criminal liability due to imbecility under Article 12(1) of the Revised Penal Code (RPC).

To start, Rogelio claims that the RTC should have considered the testimony of Dr. Gauzon-Gayares, who conducted a mental examination on him and found him to be suffering from intellectual disability, the new term for mental retardation. Thus, according to Rogelio, he should be exempted from criminal liability for being an imbecile.

However, this argument has no merit.

Article 12(1) of the RPC states that an imbecile or insane person is exempt from criminal liability, unless the latter has acted during a lucid interval. Imbecility, like insanity, is a defense which pertains to the mental condition of a person. Our case law projects the same standards in respect of both insanity and imbecility, that is, the insanity or imbecility must constitute complete deprivation of intelligence in committing the criminal act, or total deprivation of freedom of will.²⁸

In *People v. Nuñez*,²⁹ the Court stated that an imbecile, within the meaning of Article 12, is one who must be deprived completely of reason or

²⁸ *People v. Buenaflor*, G.R. No. 93752, July 15, 1992, 211 SCRA 492, 499.

²⁹ G.R. Nos. 112429-30, July 23, 1997, 276 SCRA 9, 19.



discernment and freedom of will at the time of committing the crime. He is one who, while advanced in age, has a mental development comparable to that of children between two and seven years of age.

In *People v. Race, Jr.*,³⁰ the Court further defined an imbecile as a mentally defective person:

x x x An imbecile is "a mentally defective person of the second lowest order of intellectual potential (mental age between 3 and 7 years), usually requiring custodial and complete protective care." Imbecility is "(a) form of mental disease consisting in mental deficiency either congenital or resulting from an obstacle to the development of the faculties supervening in infancy. Idiocy. x x x For any process of reasoning, or any general observation or abstract ideas, imbeciles are totally incompetent. Of law, justice, morality, property, they have but a very imperfect notion, x x x."³¹

In *People v. Dalandas*,³² the Court discussed mental retardation in detail, to wit:

Mental retardation is a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning measured by standardized tests. It manifests itself in impaired adaptation to the daily demands of the individual's own social environment. Commonly, a mental retardate exhibits a slow rate of maturation, physical and/or psychological, as well as impaired learning capacity.

Although "mental retardation" is often used interchangeably with "mental deficiency," the latter term is usually reserved for those without recognizable brain pathology. The degrees of mental retardation according to their level of intellectual function are illustrated, thus:

Mental Retardation

LEVEL	DESCRIPTION TERM	INTELLIGENCE QUOTIENT (IQ RANGE)
I	Profound	Below 20
II	Severe	20-35
III	Moderate	36-52
IV	Mild	53-68

A normal mind is one which in strength and capacity ranks reasonably well with the average of the great body of men and women who make up organized human society in general, and are by common consent

³⁰ G.R. No. 93143, August 4, 1992, 212 SCRA 90.

³¹ Id. at 100-101.

³² G.R. No. 140209, December 27, 2002, 394 SCRA 433.

recognized as sane and competent to perform the ordinary duties and assume the ordinary responsibilities of life.

The traditional but now obsolescent terms applied to those degrees of mental retardation were (a) *idiot*, having an IQ of 0 to 19, and a maximum intellectual factor in adult life equivalent to that of the average two-year old child; (b) ***imbecile by an IQ of 20 to 49 and a maximum intellectual function in adult life equivalent to that of the average seven-year old child***; *moron* or *feble-minded*, having an IQ of 50 to 69 and a maximum intellectual function in adult life equivalent to that of the average twelve-year old child. Psychiatrists and psychologists apply the term "borderline" intelligence to those with IQ between 70 to 89. x x x

The mental retardation of persons and the degrees thereof may be manifested by their overt acts, appearance, attitude and behavior. The dentition, manner of walking, ability to feed oneself or attend to personal hygiene, capacity to develop resistance or immunity to infection, dependency on others for protection and care and inability to achieve intelligible speech may be indicative of the degree of mental retardation of a person. Those suffering from severe mental retardation are usually undersized and exhibit some form of facial or body deformity such as mongolism, or gargolism. The size and shape of the head is indicative of microphaly. The profoundly retarded may be unable to dress [themselves], or wash or attend to bowel and bladder functions so that [their] appearance may be very unclean and untidy unless they receive a great deal of nursing care. There may be marked disturbance of gait and involuntary movements. Attempts to converse with a mental retardate may be limited to a few unintelligible sounds, either spontaneous or in response to attempts that are made by the examiner to converse, or may be limited to a few simple words or phrases. All the foregoing may be testified on by ordinary witnesses who come in contact with an alleged mental retardate.³³ (Emphasis supplied; italics in the original)

It must also be emphasized that Article 800 of the Civil Code provides that "[t]he law presumes that every person is of sound mind, in the absence of proof to the contrary." In this relation, the defense of imbecility or insanity is in the nature of a confession or avoidance. The defendant who asserts is, in effect, admitting to the commission of the crime. Consequently, the burden of proof shifts to the defendant, who must prove his or her defense with clear and convincing evidence.³⁴

In the instant case, the defense failed to overcome the presumption of soundness of mind. In fact, Rogelio's defense of imbecility is belied by the following:

First, an examination of the testimony of Dr. Gauzon-Gayares reveals that her findings were based on the examinations she conducted only on December 3, 2015 and January 12, 2016, roughly four (4) years after the incidents occurred.³⁵ Moreover, when Dr. Gauzon-Gayares was asked

³³ Id. at 438-440.

³⁴ *People v. Pantoja*, G.R. No. 223114, November 29, 2017, 847 SCRA 300, 310.

³⁵ *Rollo*, p. 13.



regarding the approximate mental age of Rogelio at the time of the incidents, **she could not provide a definite answer:**³⁶

[Cross-Examination by Pros. Martin Raymund B. Carmona:]

Q - You said eight (8) years old. The incident which was alleged in the information of this case happened in December 2011. Basing on your findings, what would be his mental age considering that at the time you examined him, his mental age was that of an 8-year-old?

A - **I cannot say that, Sir.** But usually if you say that a person is intellectually disabled, then the rate of growth of the brain would be retarded. It would be slower than the chronological age. And for this individual, since the intellectual ability seems to be 8 years old, at best, based on Gesell, **most likely** his mental age at that time, since he was already an adult, was also 8 years old, at best.

x x x x

[Re-Direct Examination by Atty. Jo-Ana Marie P. Desuyo:]

ATTY. DESUYO (Q): Doctor, you mentioned a while ago that if a person suffers from mental retardation, his capacity to judge is impaired. Is that correct?

WITNESS (A): Yes, Ma'am.

Q - And you also said that, at the time of the alleged incident, his mental age would be approximately also at 8 years old?

A - **I could not be certain.**

Q - But possibly?

A - Possibly.³⁷ (Emphasis and underscoring supplied)

Second, it is worth emphasizing that the testimony of DDD, Rogelio's mother, reveals that at the time the two victims were in her care, it was Rogelio who worked to provide for the children's needs.³⁸ In fact, based on Rogelio's own testimony, he has been living alone in a separate house since he was 20 years old.³⁹ He makes his own money by planting corn and other vegetables and selling them in Iloilo.⁴⁰ He has also been financially supporting his mother and his other siblings.⁴¹ These actions clearly show that he was not completely deprived of intelligence, as required in Article 12(1) of the RPC. **To the mind of the Court, if Rogelio in fact had the mental age of an 8-year-old child, he would not have been able to carry out all these responsibilities and**

³⁶ Id.

³⁷ TSN, June 30, 2016, pp. 6-8; see also, id. at 13-14.

³⁸ *Rollo*, id. at 14.

³⁹ Id. at 8.

⁴⁰ Id.

⁴¹ Id.

perform all these tasks. Surely, an 8-year-old child would not be able to live alone and take care of himself or herself, create his or her own livelihood, and even provide for his or her family and other people.

Third, the legal teaching trenchantly maintained in our jurisprudence is that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case.⁴²

In *People v. Acero*,⁴³ the Court held that observations of the trial court regarding the mental state of the victim, are accorded high respect:

In *People vs. Arnel Almacin*, we held that evidence other than a psychometric evaluation can prove mental retardation or abnormality. In *People vs. Mario Dumanon, et al.*, a case of recent vintage, we held that mental retardation can be proved by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court. **And the observation of the trial court, its impression of the demeanor and deportment of the victim and its conclusions anchored thereon are accorded high respect if not conclusive effect on the appellate court.** In *State vs. Haner*, the Supreme Court of Iowa declared:

Her answers to questions show that she is almost an imbecile, *unless she was feigning imbecility. The judge and jury saw and heard her on the witness stand, and we cannot put ourselves in the place of the judge and jury. Her appearance and demeanor while testifying were most important considerations in determining her mental capacity, and, under the circumstance, we think it is not proper to interfere with the verdict.* Another consideration, which, no doubt, had its influence with the court and jury, was that the complainant was a mere child when this calamity came upon her. She was but little past the age of consent. If she had been under the age of 13 years, mere carnal knowledge would have constituted the crime of rape without any evidence of mental weakness or imbecility.⁴⁴ (Emphasis supplied; italics in the original)

Similarly, in the instant case, the mental state of Rogelio is best left to the sound discretion of the trial court since it had the opportunity to personally examine and witness the demeanor and state of mind of the accused.

The Court thus subscribes to the observation of the RTC that Rogelio exhibited intelligence at the times he was called to the witness stand despite

⁴² *People v. Rupal*, G.R. No. 222497, June 27, 2018, 869 SCRA 66, 88.

⁴³ G.R. Nos. 146690-91, March 17, 2004, 425 SCRA 643.

⁴⁴ *Id.* at 649-650.

Dr. Gauzon-Gayares's testimony that Rogelio is intellectually impaired and has poor judgment.⁴⁵ The RTC scrutinized Rogelio's testimony and ruled:

Although the clinical expert testified that the accused is intellectually impaired and with poor judgment, the court witnessed Rogelio's intelligence as a witness. In fact, **there were times when he already anticipated questions and provided defensive answers:**

“Q: Where is your house, by the way?

A: Sitio Nursery, Mama's place.

Q: Your house?

A: Mine is far.

Q: Do you have the same house as that of your mother?

A: We have the same house but mine is far.

x x x

Q: Do you also visit your mother?

A: I would just bring her food. I won't (sic) stay long.

Q: When did you start living all by yourself?

A: I've been living all by myself for so long now. Since I was 20.

x x x

Q: Are you close with these children, AAA and BBB?

A: We are not that close with these children. If my mother is not around, she would leave the kids with Vivian Esquerda.”

For someone who did not finish schooling and claimed to have a mental age akin to an eight-year-old, **the accused cleverly answered complicated questions and smartly evaded the tricky ones:**

“Q: What you meant was you don't mingle with these children, you don't show any affection like embracing them, play with them and such, because you are avoiding stories and comments from other people?

A: Yes, I avoided any untoward stories and issues, but then this alleged complaint was filed against me.

Q: Why would you avoid any stories when you are just playing. What's wrong with that?

A: As far as I am concerned, I just went there to bring food then left. That's all.

x x x

Q: But can you think of any reason why these kids lie?

⁴⁵ CA rollo, p. 70.

A: That's really my problem and my concern why they imputed this kind of crime against me. They filed a rape case when, in fact, I did not do it."

The accused's level of intelligence cannot be doubted given the way he answered the questions. Even his consistent demeanor on the witness stand – confident, unshaken, and establishing eye contact – showed badges of a man who knew how to skirt around issues. He tried his best to put as much distance between himself and the victims in order to support his claim of denial and alibi. What he did not realize, however, is that his answers, documented in *toto* in the transcript of stenographic notes dated May 18, 2017, belied the clinician's findings that his mental age, is equivalent to that of an eight-year-old child. Besides, the findings on mental age, based on the Gesett [(sic)] test administered by Dr. Gauzon-Gayares, cannot be taken with moral certain[t]y. Even the clinical expert said that although [the] Gesell test is reliable, it is just one test. It was still prudent to subject the accused to other tests to be conducted by a psychologist-psychometrician.⁴⁶ (Emphasis supplied)

From the foregoing, it is clear that Rogelio failed to prove his defense of imbecility with clear and convincing evidence. As correctly held by the CA, since the defense of imbecility is in the nature of confession or avoidance, Rogelio's failure to prove the same merits his conviction for Statutory Rape.⁴⁷

The prosecution proved beyond reasonable doubt all the elements of Statutory Rape and Qualified Statutory Rape.

Rogelio further attempts to evade liability by arguing that the prosecution failed to prove his guilt beyond reasonable doubt.

The Court disagrees.

The elements of Statutory Rape are as follows: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, intimidation or grave abuse of authority.⁴⁸ Further, Article 266-B(5) of the RPC states that the crime of Statutory Rape is qualified when the victim is a child below seven (7) years old.

In the instant case, all the elements of Statutory Rape were proven by the prosecution:

First, AAA and BBB were five (5) years old and seven (7) years old, respectively, at the time of the rape incident. Thus, as to AAA, the crime committed was Qualified Statutory Rape as she was only five (5) years old at the time she was raped by Rogelio.

⁴⁶ Id. at 70-71.

⁴⁷ *Rollo*, p. 15.

⁴⁸ *People v. Ronquillo*, G.R. No. 214762, September 20, 2017, 840 SCRA 405, 412.



Second, Rogelio had carnal knowledge of the victims. With regard to this element, Rogelio argues that since the victim did not have visible hymenal injuries, there is a possibility that the rape charge is false.

However, the Court agrees with the RTC that –

Despite the lack of hymenal injuries in the private parts of both children, conviction is still inevitable. As noted by Dr. Poca, the lack of evident injury at the time of the medical examination **cannot exclude sexual abuse**. Given the long interval between the date of the incidents (December 2011) and the date of the medical examination (January 26, 2012), it is not unlikely that hymenal injuries had been fully healed and invisible to the naked eye, digital camera, or colposcopy during the ano-genital examination. A medical examination of the victim is not indispensable in the prosecution of a rape case, and no law requires a medical examination for [a] successful prosecution of the case.⁴⁹ (Emphasis and underscoring supplied)

Further, AAA and BBB categorically and positively testified that Rogelio had carnal knowledge of them.

AAA clearly testified that Rogelio inserted his penis inside her vagina:

Q - So, while staying at the house of your Nanay [DDD] together with your sister and Rogelio Toreno, do you recall any unusual incident wherein this Rogelio molested you?

A - Yes.

Q - Can you tell us how this Rogelio molested you?

A - He ordered me to get some of his grey hair on his head, then he told me to go inside and then he undressed me.

Q - After this Rogelio undressed you, what did he do?

A - **He inserted his penis inside my vagina.**

Q - So that incident happened inside the house of your Nanay [DDD]?

A - Yes.

Q - Going back to the incident, after Rogelio inserted his penis inside your vagina, what did you feel?

A - I felt pain.⁵⁰ (Emphasis supplied)

Likewise, BBB clearly narrated Rogelio's sexual acts:

Q - So, on that afternoon of December 2011, what did Rogelio do to you?

⁴⁹ CA rollo, pp. 69-70.

⁵⁰ TSN, September 26, 2013, p. 14; see also id. at 64-65.

A - He undressed me, then, he laid me down and put his body on top of me.

Q - Did Rogelio undress your pants or just your shirt?

A - Only my shorts.

A - And then he laid you down?

Q - Yes.

Q - After Rogelio undressed you and laid you down, what else did he do to you?

A - **He showed to me his penis then he inserted it to my vagina.**

Q - Meaning to say, after he undressed you[,] he undressed himself and showed you his penis and right after he inserted his penis to your vagina. Is that correct?

A - Yes.

Q - So after Rogelio inserted his penis to your vagina[,] what did you feel?

A - I felt pain.⁵¹ (Emphasis supplied)

Thus, based on the foregoing, the prosecution was able to prove all the elements of Qualified Statutory Rape and Statutory Rape.

Proper award of penalties and damages.

However, the Court deems it proper to amend the penalties and damages imposed by the CA.

In Criminal Case No. RTC-4842, since AAA was below seven (7) years old at the time she was raped, Rogelio should be held liable for Qualified Statutory Rape under Article 266-A, paragraph 1(d) in relation to Article 266-B(5) of the RPC. He is thus sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and is ordered to pay the victim One Hundred Thousand Pesos (₱100,000.00) as civil indemnity, One Hundred Thousand Pesos (₱100,000.00) as moral damages, and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages.⁵²

In Criminal Case No. RTC-4843, Rogelio should be held liable for Statutory Rape under Article 266-A paragraph 1(d) in relation to Article 266-B. He is thus sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay the victim Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity,

⁵¹ TSN, September 26, 2013, id. at 4; see also CA *rollo*, id. at 65-66.

⁵² *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382-383.

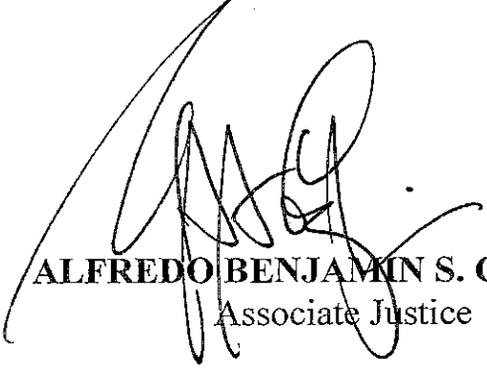
Seventy Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy Five Thousand Pesos (₱75,000.00) as exemplary damages.⁵³

WHEREFORE, premises considered, the appeal is **DISMISSED** for lack of merit. The Court hereby **AFFIRMS WITH MODIFICATIONS** the findings of fact and conclusions of law in the Decision dated September 11, 2019 of the Court of Appeals, Twentieth Division, in CA-G.R. CR-HC No. 02792:

1. In Criminal Case No. RTC-4842, Rogelio Toreno, Jr. y Flores is found **GUILTY BEYOND REASONABLE DOUBT for Qualified Statutory Rape** under Article 266-A, paragraph 1(d) in relation to Article 266-B(5) of the Revised Penal Code. He is thus sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and is ordered to pay the victim One Hundred Thousand Pesos (₱100,000.00) as civil indemnity, One Hundred Thousand Pesos (₱100,000.00) as moral damages, and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages.
2. In Criminal Case No. RTC-4843, Rogelio Toreno, Jr. y Flores is found **GUILTY BEYOND REASONABLE DOUBT for Statutory Rape** under Article 266-A paragraph 1(d) in relation to Article 266-B. He is thus sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay the victim Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy Five Thousand Pesos (₱75,000.00) as exemplary damages.

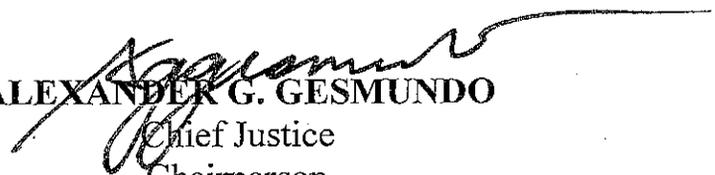
All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

⁵³ Id. at 383.


AMY C. LAZARO-JAVIER
Associate Justice

(On wellness leave)
MARIO V. LOPEZ
Associate Justice


JHOSEP V. LOPEZ
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.


ALEXANDER G. GESMUNDO
Chief Justice

