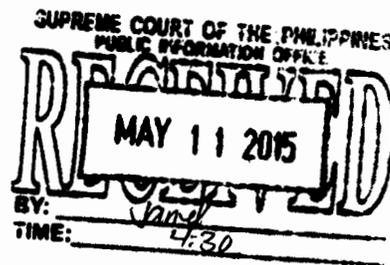




Republic of the Philippines  
**Supreme Court**  
Manila

FIRST DIVISION

**NOTICE**



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated 11 March 2015, which reads as follows:*

**G.R. No. 207636 - PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. CONRADO TABUADA y DELA CRUZ, Accused-Appellant.**

On appeal is the Decision<sup>1</sup> dated 15 February 2013 of the Court of Appeals in CA-G.R. CEB-CR HC No. 00012 affirming with modifications the Decision<sup>2</sup> dated 9 March 2004 of the Regional Trial Court (RTC) of Kabankalan City, Negros Occidental, Branch 61, in Criminal Case No. 97-1844, finding herein appellant Conrado Tabuada y Dela Cruz guilty beyond reasonable doubt of the crime of rape committed against her own daughter, AAA,<sup>3</sup> thereby sentencing him to suffer the supreme penalty of death and ordering him to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages. The Court of Appeals, however, reduced the penalty from death to *reclusion perpetua* pursuant to Republic Act No. 9346<sup>4</sup> but increased the awards of

<sup>1</sup> Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Carmelita Salandanan-Manahan and Maria Elisa Sempio Dy, concurring. *Rollo*, pp. 3-10.

<sup>2</sup> Penned by Judge Henry D. Arles; records, pp. 150-160.

<sup>3</sup> This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto*, 533 Phil. 703 (2006), wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of Republic Act No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective 15 November 2004.

<sup>4</sup> Known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

-over- ten (10) pages

moral damages from ₱50,000.00 to ₱75,000.00 and exemplary damages from ₱25,000.00 to ₱30,000.00.

Appellant was charged with the crime of rape in an Information dated 20 December 1996, which reads:

That on or about the 8<sup>th</sup> day of October, 1996, in the Municipality of XXX, Province of XXX, Philippines, and within the jurisdiction of this Honorable Court, **the above-named [appellant], who is the father of AAA, by means of force, violence and intimidation, did then and there, wil[|]fully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with the latter, a minor, 11 years old, against her will.**<sup>5</sup> (Emphasis supplied)

During arraignment, appellant pleaded NOT GUILTY to the charge.<sup>6</sup> Following the termination of the pre-trial conference, trial on the merits ensued.

The prosecution presented the testimonies of AAA, the victim herself; Dr. Linadale J. Cequiña (Dr. Cequiña), Municipal Health Officer of Sipalay, Negros Occidental, who physically examined AAA;<sup>7</sup> BBB, first cousin of AAA to whom she initially revealed her harrowing experience at the hands of her own father, the appellant; Howard Gemora, who witnessed the maltreatment committed by appellant to AAA on 8 October 1996; Rita Santes, Department of Social Welfare and Development (DSWD) Officer of Sipalay, Negros Occidental,<sup>8</sup> and CCC, uncle of AAA.<sup>9</sup>

To controvert the charge, the defense presented the testimonies of the appellant, who denied the accusation against him;<sup>10</sup> and DDD, appellant's son and AAA's younger brother.<sup>11</sup>

The antecedent facts, as succinctly summarized by the Court of Appeals, are as follows:

On [8 October 1996], at around eleven o'clock in the morning, AAA [who was then 11 years old having been born on 19 January 1985]<sup>12</sup>

<sup>5</sup> Records, pp. 1-2.

<sup>6</sup> Per RTC Order dated 24 April 1997; *id.* at 28.

<sup>7</sup> TSN, Testimony of Dr. Linadale J. Cequiña, 13 July 1999, pp. 2-7.

<sup>8</sup> TSN, Testimony of Rita Santes, 12 January 2000, pp. 2-11.

<sup>9</sup> TSN, Testimony of CCC, 12 January 2000, pp. 12-15.

<sup>10</sup> TSN, Testimony of appellant, 7 July 2000, pp. 4-38.

<sup>11</sup> TSN, Testimony of CCC, 20 June 2003, pp. 2-4.

<sup>12</sup> As evidenced by her Certificate of Live Birth; records, p. 54.

was at home[,] together with her brothers and sisters. When the [herein appellant, AAA's father,] arrived, he noticed that their house was in disarray. He then beat AAA all over her body using a piece of wooden (*ipil-ipil*) stick. Consequently, AAA ran away and the [appellant] pursued her. When he caught up with her, he tied AAA to a post where she lost consciousness. She awoke only after her brother splashed her with water. Thereafter, [appellant] brought her upstairs and explained that the beating was her fault. Suddenly, [appellant] took off AAA's panty, mounted on top of her and had sexual intercourse with her. AAA felt pain as [appellant's] penis penetrated her vagina. This also caused her to bleed. After the [appellant's] bestial act, he left for work. At around three o'clock in the afternoon, AAA went to her [first] cousin's house and revealed her harrowing experience in the hands of her father. Subsequently, AAA's [first] cousin and uncle accompanied her to the *Barangay Hall*[,] where she was interviewed regarding her traumatic experience. She was then brought to the Municipal Hall of Sipalay[,] where she was investigated by police officers and examined by [Dr. Cequiña, who found hymenal lacerations at 9, 10, 11 and 12 o'clock positions on AAA's vaginal opening that would heal within 7 to 10 days if without complication.]<sup>13</sup>

On the other hand, the [appellant] interposed denial as his defense, alleging that on the day that he allegedly raped AAA on [8 October 1996], he was preparing his family's meal. Suddenly, AAA ran away from their house and he chased her. The [appellant] caught up with AAA only when she slipped in the mud. He pulled her up and beat her with a wooden stick. He then tied both her wrists as she resisted. When they arrived home, the [appellant] asked AAA to change her muddy clothes, which she did in the presence of her siblings. Thereafter, he resumed the preparation of their meal. The [appellant] further testified that he could not have done the acts charged against him because he could not do that to his own daughter.<sup>14</sup>

After analyzing and weighing all the pieces of testimonial and documentary evidence, the trial court gave credence to the categorical, straightforward, spontaneous and frank testimony of AAA, thus, in its Decision dated 9 March 2004, it rendered a guilty verdict against appellant and meted him the supreme penalty of death. The decretal portion of the decision reads:

WHEREFORE, the Court finds [herein appellant] Conrado Tabuada guilty beyond reasonable doubt of the crime of rape as charged and hereby sentences him to suffer the supreme penalty of DEATH, to pay the victim civil indemnity in the amount of ₱75,000.00, moral damages in the amount of ₱50,000.00, exemplary damages in the amount of ₱25,000.00 and to pay the costs.

<sup>13</sup> As evidenced by Medico Legal Report dated 15 October 1996; id. at 12 and 55.

<sup>14</sup> Court of Appeals Decision dated 15 February 2013; *rollo*, pp. 4-5.

It is ordered that the [appellant] be immediately remitted to the National Penitentiary.<sup>15</sup>

The Court of Appeals, in a Decision dated 15 February 2013, affirmed appellant's conviction but modified the penalty of death to *reclusion perpetua* on the ground that the imposition of the death penalty was prohibited by Republic Act No. 9346. The awards of moral and exemplary damages were also increased from ₱50,000.00 to ₱75,000.00 and from ₱25,000.00 to ₱30,000.00, respectively. The dispositive portion of the decision states:

**WHEREFORE**, in view of the foregoing, the appeal is **DENIED**. The [9 March 2004] Decision of the [RTC], Branch 61, Kabankalan City, Negros Occidental[,] finding [herein appellant] Conrado Tabuada y Dela Cruz guilty beyond reasonable doubt of the crime of Rape in Criminal Case No. 97-1844 is **AFFIRMED** with **MODIFICATION** that he is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA (1) [₱]75,000.00 as civil indemnity;<sup>16</sup> (2) [₱]75,000.00 as moral damages; and (3) [₱]30,000.00 as exemplary damages, plus legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision. No pronouncement as to costs.<sup>17</sup>

Hence, this recourse<sup>18</sup> by the appellant on the lone assigned error that:

THE TRIAL COURT ERRED IN CONVICTING [HEREIN APPELLANT] DESPITE THAT THE PROSECUTION FAILED TO PROVE BEYOND REASONABLE DOUBT [APPELLANT'S] GUILT.<sup>19</sup>

In support thereof, appellant contends that: (1) it is highly suspicious and unnatural for him to rape her own daughter, AAA, at such time and setting, *i.e.*, around lunch time of 8 October 1996, as his other children were also in their house; and (2) there are inconsistencies between AAA's open court testimony and her sworn affidavit, *i.e.*, in her open court testimony, she claimed that after she was raped on 8 October 1996, she immediately went to her first cousin's house but, in her sworn affidavit, she stated that after she was raped, she just stayed at home and it was her first cousin who went to their house on 10 October 1996. With these, appellant holds that his guilt was not proven beyond reasonable doubt, thus, his acquittal for the crime charged is called for.

<sup>15</sup> Records, p. 160.

<sup>16</sup> This is the same amount awarded by the trial court, thus, this is not among those modified by the Court of Appeals.

<sup>17</sup> CA *rollo*, p. 134.

<sup>18</sup> This is *via* a Notice of Appeal dated 22 March 2013; *rollo*, pp. 11-12.

<sup>19</sup> Brief for the Accused-Appellant dated 29 June 2012; CA *rollo*, p. 81.

This Court is not persuaded.

At the outset, the assigned error, as well as the aforesaid contentions of the appellant, hinge on the issue of credibility of AAA. Settled is the rule that when the issue of credibility is concerned, the appellate court will generally not disturb the findings of the trial court, being in a better position to describe the question, having heard the witnesses and observed the deportment and manner of testifying during the trial, unless certain facts of substance and value had been placidly overlooked which, if considered, might affect the result of the case.<sup>20</sup> This rule finds an even more stringent application where the findings are sustained by the Court of Appeals.<sup>21</sup>

In the present case, there is no cogent and compelling reason to depart from the lower courts' findings that appellant, indeed, raped AAA and his guilt therefor was satisfactorily established beyond reasonable doubt.

To ascertain the guilt or innocence of the accused in rape cases, the courts have been traditionally guided by three settled principles, to wit: (a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.<sup>22</sup>

Since the crime of rape is essentially one committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced *coitus*. Thus, in a prosecution for rape, the credibility of the victim is almost always the single and most important issue to deal with. If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.<sup>23</sup>

In this case, the trial court characterized AAA's testimony as categorical, straightforward, spontaneous and frank. AAA vividly recounted her harrowing experience at the hands of her own father, the appellant. Despite the gruelling cross-examination, AAA remained steadfast in her testimony. AAA narrated that after she was beaten by the appellant, she was

<sup>20</sup> *People v. Mendiola*, 392 Phil. 195, 201 (2000).

<sup>21</sup> *People v. Campomanes*, G.R. No. 187741, 9 August 2010, 627 SCRA 494, 504.

<sup>22</sup> *People v. Marcos*, 607 Phil. 642, 651 (2009), citing *People v. Orquina*, 439 Phil. 359, 365-366 (2002).

<sup>23</sup> *People v. Marcos*, *id.*

ordered to go upstairs. Unaware of the danger that awaited her, AAA acceded. While thereat, appellant told AAA that the beating was her fault. Thereafter, appellant removed AAA's underwear, placed himself on top of her and inserted his penis into her vagina. AAA felt pain as appellant's penis penetrated her vagina. Such penetration caused her vagina to bleed. This narration of AAA was corroborated by the medical findings of Dr. Cequiña, who found hymenal lacerations at 9, 10, 11 and 12 o'clock positions on AAA's vaginal opening, which lacerations would heal within 7 to 10 days if without complication.

With the foregoing, it cannot be doubted that AAA's testimony is credible and worthy of belief.

Moreover, this Court has consistently held that when the victim says that she has been raped, she says in effect all that is necessary to show that rape has been committed, and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof. This is all the more true where the complainant is the daughter of the accused because it is absurd that a daughter would accuse her own father of this heinous crime had she really not been aggrieved.<sup>24</sup>

Appellant's contention that it was impossible for him to rape AAA at the alleged time and place because of the presence of his other children deserves scant consideration. To note, appellant ordered AAA to go upstairs leaving his other children at the ground floor of their house. It was at that moment that he raped AAA. This Court has observed in numerous cases that lust does not respect either time or place. The evil in man has no conscience -- the beast in him bears no respect for time and place, driving him to commit rape anywhere, even in places where people congregate such as in parks, along the roadside, within school premises, and inside a house where there are other occupants.<sup>25</sup>

The alleged inconsistencies between AAA's open court testimony and her sworn affidavit refer only to minor and inconsequential matters that have nothing to do with the essential elements of the offense with which appellant is charged.<sup>26</sup> This Court has repeatedly ruled that inconsistencies between the sworn statements and direct testimony given in open court do not necessarily discredit the witness since affidavits are oftentimes incomplete

<sup>24</sup> *People v. Llamo*, 380 Phil. 759, 776-777 (2000).

<sup>25</sup> *People v. Mahinay*, 596 Phil. 847, 854 (2009).

<sup>26</sup> *People v. Magno*, 357 Phil. 439, 448 (1998).

and are generally inferior to the testimony of the witness in open court.<sup>27</sup> Otherwise stated, sworn statements/affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which has transpired. Testimonies given during trials are much more exact and elaborate. Thus, testimonial evidence carries more weight than sworn statements/affidavits.<sup>28</sup>

In contradiction to the damning evidence presented by the prosecution, what appellant could muster is only the defense of bare denial. As between the self-serving testimony of appellant and AAA's categorical, straightforward and spontaneous narration on how the appellant ravished her on 8 October 1996, coupled with the medical findings of hymenal lacerations on her vaginal opening, as well as her positive identification of the appellant as her ravisher, the latter is entitled to greater weight.<sup>29</sup>

Now, since the rape was committed on 8 October 1996, the applicable law is Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, which took effect on 31 December 1993.<sup>30</sup> Section 11 of the amendatory law specifically provides:

**Section 11.** Article 335 of the same Code is hereby amended to read as follows:

Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. **When the woman is under twelve years of age or is demented.**

The crime of rape 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 attendant circumstances:**

<sup>27</sup> *People v. Silvestre*, 366 Phil. 527, 546 (1999).

<sup>28</sup> *People v. Mangat*, 369 Phil. 347, 360 (1999).

<sup>29</sup> *People v. Manegdeg*, 375 Phil. 154, 171 (1999).

<sup>30</sup> *People v. Manalili*, 608 Phil. 498, 521 (2009).

1. when the **victim is under eighteen (18) years of age and the offender is a parent**, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.
2. (Emphasis supplied.)

Clearly, therefrom, sexual intercourse with a girl below 12 years old is statutory rape, which elements are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age.<sup>31</sup> Sexual congress with a girl under 12 years old is always rape.<sup>32</sup> In the instant case, the first element has been satisfied by the testimony of the victim, who categorically narrated before the trial court that the appellant raped her on 8 October 1996 by undressing her, placing himself on top of her and inserting his penis into her vagina; and the second, by her birth certificate presented during the trial, showing that she was born on 19 January 1985, thus, she was only 11 years old when she was raped on 8 October 1996.

A qualifying circumstance is also present in this case, which will raise the nature of the crime to a higher category, *i.e.*, the victim is under eighteen (18) years of age and the offender is a parent. The concurrence of the minority of the victim and her relationship to the offender were properly alleged in the Information and proven during trial. As previously stated, AAA, having been born on 19 January 1985 per her birth certificate, was only 11 years old, a minor, when she was raped by the appellant on 8 October 1996. Likewise, appellant himself admitted during trial that he is AAA's father. Under prevailing jurisprudence, admission in open court of relationship has been held to be sufficient and, hence, conclusive to prove relationship with the victim.<sup>33</sup> Moreover, AAA's birth certificate showed that appellant is her father. Hence, the concurrence of minority and relationship raised the crime of statutory rape to qualified rape.

In this case, though both the trial court and the Court of Appeals appreciated the aggravating/qualifying circumstances of minority and relationship and even applied the penalty for qualified rape, yet, they designated the crime committed by the appellant as merely rape. As such, this Court hereby corrects the designation of the crime committed by the appellant and finds him guilty of qualified rape instead.

<sup>31</sup> *People v. Peralta*, 619 Phil. 268, 274 (2009).

<sup>32</sup> *People v. Marcos*, *supra* note 22.

<sup>33</sup> *People v. Tabayan*, G.R. No. 190620, 18 June 2014.

The reduction of the penalty imposed upon appellant from death, which is the impossible penalty for qualified rape in accordance with the provision of Section 11 of Republic Act No. 7659, to *reclusion perpetua* is proper pursuant to Republic Act No. 9346. This, notwithstanding, the appellant is still not eligible for parole following Section 3 of the said law.<sup>34</sup>

With regard to the awards of civil indemnity, moral and exemplary damages, this Court deems it proper to increase the same in line with *People v. Gambao*,<sup>35</sup> which set the minimum indemnity and damages where death is the penalty warranted by the facts but is not impossible under present law, as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.<sup>36</sup> This Court, thus, increased the awards of civil indemnity, moral damages and exemplary damages from ₱75,000.00 to ₱100,000.00, from ₱75,000.00 to ₱100,000.00 and from ₱30,000.00 to ₱100,000.00, respectively.

**WHEREFORE**, premises considered, the Decision of the Court of Appeals in CA-G.R. CEB-CR HC No. 00012 dated 15 February 2013 is hereby **AFFIRMED** with the following **MODIFICATIONS**: (1) appellant is found guilty beyond reasonable doubt of qualified rape; and (2) the awards of civil indemnity, moral and exemplary damages are all increased from ₱75,000.00 to ₱100,000.00, from ₱75,000.00 to ₱100,000.00 and from ₱30,000.00 to ₱100,000.00, respectively.

**SO ORDERED.**

Very truly yours,

  
**LIBRADA C. BUENA**  
Deputy Division Clerk of Court  


221

<sup>34</sup> **Sec. 3.** Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

<sup>35</sup> G.R. No. 172707, 1 October 2013, 706 SCRA 508.

<sup>36</sup> *People v. Tabayan*, supra note 33.



The Solicitor General (x)  
Makati City

Court of Appeals  
6000 Cebu City  
(CA-G.R. CEB-CR HC No. 00012)

The Hon. Presiding Judge  
Regional Trial Court, Br. 61  
Kabankalan City 6111 Negros Occidental  
(Crim. Case No. 07-1844)

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