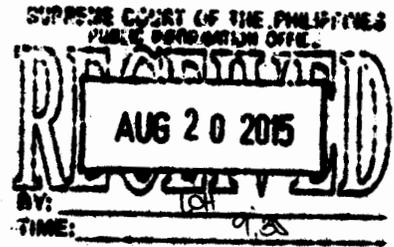




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Baguio City

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **06 April 2015** which reads as follows:

**G.R. No. 208681 (People of the Philippines v. Jose Ambasy Walding)**. - We resolve the appeal filed by appellant Jose Ambasy Walding (*appellant*) from the decision<sup>1</sup> dated November 15, 2012 of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 04280, penned by Associate Justice Myra V. Garcia-Fernandez, and concurred in by Associate Justices Magdangal M. de Leon and Stephen C. Cruz. The appealed decision affirmed with modification the October 5, 2009 decision<sup>2</sup> of the Regional Trial Court (*RTC*), Branch 64 of Abatan, Baguias, Benguet, convicting the appellant of three (3) counts of qualified rape, committed against his 12-year-old daughter, AAA.

The Informations alleged that the appellant had carnal knowledge of AAA on three (3) occasions. The first rape was committed in the evening of May 11, 2007 at their house. The second and third rapes were committed on May 16, 2007 at around 1:00 o'clock and 4:00 o'clock in the afternoon, respectively, inside the nipa hut at their vegetable garden at Tocgongan in Cabiten, Benguet. On all occasions, the appellant placed his knife/bolo near them while committing the acts. AAA did not resist and did not immediately disclose the incidents to anyone because the appellant threatened to kill her.

The appellant denied the charges against him. He claimed that he was alone at their house on May 11, 2007. On May 16, 2007, he was likewise alone and was working at their vegetable garden. He averred that AAA might have accused him of rape because he used to scold her for refusing to go to school and even slapped her once.

On October 5, 2009, the RTC rendered its decision holding the appellant guilty of three (3) counts of qualified rape under Article 266-A(1) of the Revised Penal Code (*RPC*), as amended. The RTC gave credence to the consistent, candid and straightforward testimony of AAA as to the alleged sexual abuses committed by her own biological father on May 11, 2007 and twice on May 16, 2007. The medical findings and testimony of Dr. Hilda G. Kimakim (*Dr. Kimakim*), who physically examined AAA, corroborated the latter's testimony. Dr. Kimakim found old healed hymenal lacerations, which may have been inflicted months before the examination. These defeated the appellant's defenses of denial and alibi. Accordingly, the RTC sentenced the appellant to suffer the penalty of *reclusion perpetua*, without eligibility for parole.

<sup>1</sup> Rollo, pp. 2-11.

<sup>2</sup> CA rollo, pp. 40-53.

The RTC also ordered the appellant to pay AAA the amount of ₱225,000.00 as civil indemnity; ₱150,000.00 as moral damages; and ₱75,000.00 as exemplary damages, in the three cases.

On appeal, the CA upheld the appellant's conviction of three (3) counts of qualified rape but modified the damages awarded. The CA increased the amount of moral damages from ₱50,000.00 to ₱75,000.00 for each count of rape, and of exemplary damages from ₱25,000.00 to ₱30,000.00, likewise for each case.

### Our Ruling

We affirm the appellant's conviction, but modify the amount of civil indemnity and damages awarded. We also impose interest at the rate of 6% per annum on all the monetary awards for damages to be reckoned from the date of finality of this resolution until fully paid.

Under Article 266-A, paragraph 1(a) of the RPC, as amended, there is rape when the offender had carnal knowledge of a woman and he accomplished such act through force, threat, or intimidation. In incestuous rape of a minor, actual force or intimidation need not be employed where the overpowering moral influence of the father would suffice.<sup>3</sup> The physical and moral dominion of the father is sufficient to cow the victim into submission to his beastly desires.<sup>4</sup> To raise the crime of simple rape to qualified rape under Article 266-B, paragraph 1 of the RPC, as amended, the twin circumstances of minority and her relationship to the offender must concur.<sup>5</sup>

All the foregoing circumstances are present in the case at bar. The prosecution duly established and proved the age of AAA and her relationship with the appellant through her Certificate of Live Birth.<sup>6</sup> Carnal knowledge is evidenced by AAA's testimony and the medical findings of Dr. Kimakim.

It is well-settled that the findings of facts and assessment of credibility of witnesses are matters best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying.<sup>7</sup>

The CA affirmed the RTC's factual findings and assessment on the credibility and truthfulness of AAA's testimony. We see no reason that

<sup>3</sup> *People v. Dominguez*, G.R. No. 180914, November 24, 2010, 636 SCRA 134, 150, citing *People v. Orillosa*, G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 698.

<sup>4</sup> *Rollo*, p. 9.

<sup>5</sup> *People v. Amistoso*, G.R. No. 201447, January 9, 2013, 688 SCRA 376, 386.

<sup>6</sup> *Rollo*, pp. 7-8.

<sup>7</sup> *People v. Traigo*, G.R. No. 199096, June 02, 2014, citing *People v. Lasola*, 376 Phil. 349, 358 (1999).

would justify the reversal of the trial and the appellate courts' findings that the appellant had carnal knowledge of his 12-year-old daughter on three (3) occasions.

Additionally, Dr. Kimakim found old healed hymenal lacerations during the physical examination of AAA. This supports AAA's positive declaration that the appellant had carnal knowledge of her.

It is settled that sufficient basis exists to conclude that sexual intercourse took place where a victim's testimony is corroborated by the physical findings of penetration.<sup>8</sup> The CA also correctly appreciated the presence of threat or intimidation based on the fact that the appellant placed his knife/bolo while committing the sexual abuses, and threatened to kill AAA if she would reveal what happened.

The appellant's defenses of denial and alibi cannot overcome AAA's positive declarations. As correctly pointed out by both the RTC and the CA, denial is essentially the weakest form of defense. It can never overcome an affirmative testimony particularly when it comes from the mouth of a credible witness.<sup>9</sup> In this case, the appellant's bare denial and alibi are not supported by any clear and convincing evidence.

We also repeatedly held that no young girl would fabricate a sordid tale of so serious a crime as rape at the hands of her own father, undergo physical examination, then subject herself to the stigma and embarrassment of public trial, if her motive was other than a fervent desire to seek justice.<sup>10</sup> This holds true in the present case. Thus, the appellant's contention of allegedly scolding and having slapped AAA as reasons for filing the cases against him is untenable.

In the absence of any evidence showing that the trial judge overlooked or disregarded some significant facts or circumstances which would affect the outcome of the case, we sustain the conclusions of the trial and the appellate courts to warrant the appellant's conviction of the crime of qualified rape.

Qualified rape is punishable by *reclusion perpetua*, without eligibility for parole, in accordance with Article 266-B of the RPC, as amended, in relation to Republic Act No. 9346.<sup>11</sup> Thus, the penalty imposed upon the appellant by both the CA and the RTC is correct.

In rape cases, the award of civil indemnity is mandatory upon proof of the commission of rape, whereas moral damages are automatically awarded

<sup>8</sup> *People v. Gaduon*, G.R. No. 181473, November 11, 2013, 709 SCRA 129, 156.

<sup>9</sup> *People v. Fontillas*, G.R. No. 184177, December 15, 2010, 638 SCRA 721, 731-732, citing *People v. Mendoza*, 490 Phil. 737 (2005).

<sup>10</sup> *People v. Osmá, Jr.*, G.R. No. 187734, August 29, 2012, 679 SCRA 428, 441.

<sup>11</sup> An Act Prohibiting the Imposition of Death Penalty in the Philippines.

without the need to prove mental and physical suffering. Exemplary damages are also imposed, as example for the public good and to protect minors from all forms of sexual abuse.<sup>12</sup>

In this case, the CA awarded ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages. However, in view of the depravity of the crime of multiple rape of a minor by her father, we further increase the amount of civil indemnity and moral damages from ₱75,000.00 to ₱100,000.00, and of exemplary damages from ₱30,000.00 to ₱100,000.00, for each case, conformably with recent jurisprudence on qualified rape.<sup>13</sup>

In line with the current jurisprudence, we also impose interest at the rate of 6% per annum on all the monetary awards for damages, to be reckoned from the date of the finality of this Resolution until their full satisfaction.

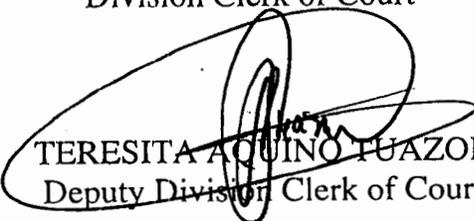
**WHEREFORE**, premises considered, we **AFFIRM** the Decision of the Court of Appeals dated November 15, 2012 in CA-G.R. CR-H.C. No. 04280 with the following **MODIFICATIONS**: (a) the awards of civil indemnity and moral damages are both increased from ₱75,000.00 to ₱100,000.00, while the award of exemplary damages is increased from ₱30,000.00 to ₱100,000.00, for each count of qualified rape; and (b) all the damages awarded for each case shall earn interest at the rate of 6% per annum, computed from the date of the finality of this Resolution until their full satisfaction.

**SO ORDERED.**

Very truly yours,

MA. LOURDES C. PERFECTO  
Division Clerk of Court

By:

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court 11/17

<sup>12</sup> *People v. Buclao*, G.R. No. 208173, June 11, 2014.

<sup>13</sup> *People v. Tabayan*, G.R. No. 190620, June 18, 2014.

- PAGE 5 -

PUBLIC ATTORNEY'S OFFICE (reg)  
(ATTY. MADONNA L. EBREO)  
Department of Justice  
PAO-DOJ Agencies Building, NIA Road  
corner East Avenue, Diliman  
1104 Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)  
134 Amorsolo Street  
1229 Legaspi Village  
Makati City

JOSE AMBAS y WALDING (reg)  
Accused-Appellant  
c/o The Director  
Bureau of Corrections  
1770 Muntinlupa City

THE DIRECTOR (reg)  
Bureau of Corrections  
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 64  
Abatan, Baguias, Benguet  
(Crim. Case Nos. 521-CR-07, 522-CR-07 and 523-CR-07)

COURT OF APPEALS (x)  
Ma. Orosa Street  
Ermita, 1000 Manila  
CA-G.R. CR H.C. No. 04280

OFFICE OF THE CHIEF ATTORNEY (x)  
OFFICE OF THE REPORTER (x)  
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)  
LIBRARY SERVICES (x)  
Supreme Court, Manila  
[for uploading pursuant to A.M. No. 12-7-1-SC]

JUDGMENT DIVISION (x)  
Supreme Court, Manila

*Please notify the Court of any change in your address.*  
GR208681. 04/06/15 (183)URES 