



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **25 January 2021** which reads as follows:*

“G.R. No. 250430 (*People of the Philippines v. Dherick Jay Abiña y Sunga*). – The **SEPARATE MANIFESTATIONS** filed by counsel for accused-appellant Dherick Jay Abiña y Sunga (accused-appellant) dated September 2, 2020¹ and by the Office of the Solicitor General dated October 8, 2020² both in compliance with the Resolution³ dated February 24, 2020 are **NOTED**.

Rape is defined and penalized under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act No. 8353 (RA 8353), *viz.*:

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. (Emphasis supplied)

X X X X

¹ *Rollo*, pp. 26-28.

² *Id.* at 32-34.

³ *Id.* at 24-25.

Records show that AAA* was afflicted with a mental disability associated with *Down Syndrome* affecting her cognitive faculties. Per Dr. Angelita V. Catedral's Psychological Report⁴ dated September 30, 2016, AAA had a chronological age of 24 years old but with a **mental age of a 4 and ½ year-old child**. She only started talking at the age of five (5), and her motor skills were only developed at the age of seven (7).⁵ She cannot identify letters and numbers, nor can she read words and sentences.⁶ Her language, visual, and motor skills are poor, with an intelligence quotient score of 50.⁷ She requires assistance in basic self-help tasks such as wearing clothes, cleaning herself, and going to the toilet, among others.⁸ Her overall intellectual development and conceptual skills markedly lag behind those of her peers.⁹ Moreover, AAA's school narrative report as student of ██████████ Elementary School SPED Program shows that her academic tasks are limited to that of a kindergarten.¹⁰ Accused-appellant, himself did not contest AAA's mental disability.¹¹

Notwithstanding AAA's mental condition and limited communication skills, she recounted in detail through monosyllabic words and repeated gestures how accused-appellant had carnal knowledge of her on October 22, 2016. She was sleeping inside a room on the second floor of her aunt's house when accused-appellant suddenly barged in, removed all his clothes, fondled her breast, removed her pants, kissed her, and inserted his penis in her vagina causing her pain. AAA testified, thus:

Q: You pointed at Dherick Abiña. What did he do to you?

Interpreter: Witness pointing to the accused.

A: Hubad.

Q: Anong hinubad nya?

A: Pants

Q: Whose pants?

Interpreter: Witness saying the words "hubad pants" and pointing to the accused.

Q: What happened after accused removed his pants?

* The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* [533 Phil. 703 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

⁴ Record, pp 13-17.

⁵ *Id.* at 14.

⁶ *Id.* at 15.

⁷ *Id.*

⁸ *Id.* at 16.

⁹ *Id.*

¹⁰ *Id.* at 12.

¹¹ *Rollo*, p. 14.

Interpreter: Witness is pointing to the upper part of her body demonstrating as if lifting her blouse.

A: Hubad.

Q: Kaninong damit yung hinubad?

A: Dherick.

x x x x

Q: Pagkatapos nahubad ni Dherick yung pants nya at saka pang itaas niya, anong nangyari?

A: Kiss.

Q: Sinong kiss?

A: Si Dherick.

Q: Sinong kiss ni Dherick?

Interpreter: Witness pointing to her lips and pointing to the accused.

Q: Ikaw ang kiniss ni Dherick?

A: Opo.

Q: Tapos hinubad ni Dherick yung pants, tapos hinubad yung damit pang-itaas, tapos kiss ka ni Dherick, ano pang ginawa sa iyo?

A: Si Dherick hubad.

Q: Ang alin?

A: Damit.

Q: Damit nino, kaninong damit?

Interpreter: Witness pointing to her clothes.

x x x x

Q: Diba sabi mo kanina hubad ni Dherick yung damit mo? Tapos ano pang ginawa nya pagkahubad niya ng damit mo?

Interpreter: Witness pointing to her vagina.

Q: Bakit ka hubad, anong ginawa niya sa 'yo, bakit ka naggaganun?

A: Masakit.

Interpreter: Witness pointing to her vagina and saying masakit.

Q: Bakit masakit ang pepe mo, ano ginawa sa 'yo?

Interpreter: Witness is demonstrating her right point finger "pabalik-

balik sa tapat ng kanyang pepe.”

X X X X

Q: Ano pang ginawa sa ‘yo?

Interpreter: Witness also pointing to her left breast.

Q: Tapos ano pang ginawa nya?

A: Pepe ko.

Q: Anong ginawa nya sa pepe mo?

A: Tusok nya.

X X X X

Q: xxx Bagay ba yung tinusok sa pepe mo, anong itsura?

A: Maga.

Q: Ano ang itsura nang tinusok sa pepe mo?

A: Tete.

Q: Tete pinasok sa pepe mo. Kaninong tete?

Interpreter: Witness pointing to the accused.¹² (Emphases supplied)

Clearly, AAA was still able to respond to the questions propounded by the prosecutor and the presiding judge. She was consistent and coherent in her answers and positively identified accused-appellant as the person who sexually violated her.

In *People v. Delos Santos*,¹³ the Court held that if the testimony of a mental retardate is coherent, the same is admissible in court. In several cases,¹⁴ the Court invariably upheld the conviction of the accused based mainly on statements given in court by the victim who was a mental retardate.

Here, AAA’s straightforward and categorical testimony is sufficient to support a verdict of conviction.¹⁵ And the fact that it was corroborated by physical evidence, her testimony assumed even more probative weight. Dr. Roy A. Camarillo’s medical examination of AAA revealed that the latter sustained linear abrasion in the right breast and deeply healed hymenal

¹² TSN, July 27, 2017, pp. 5-14.

¹³ 416 Phil. 510, 526 (2001).

¹⁴ See *People v. Padilla*, 361 Phil. 216 (1999); and *People v. Malapo*, 356 Phil. 75 (1998).

¹⁵ *People v. Suedad*, 786 Phil. 803, 813 (2016).

lacerations at 3 o'clock and 6 o'clock positions.¹⁶ Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration.¹⁷

Accused-appellant, nonetheless, undermines AAA's testimony because it would have been purportedly impossible to rape her in a house filled with AAA's relatives.

The argument fails.

Rape may be committed even in places where people congregate, in parks, along roadside, within school premises, and even inside an occupied house.¹⁸ For lust is not a respecter of people, time, or place.¹⁹ Indeed, the evil in man has no conscience – the beast in him bears no respect for anything, driving him to commit rape anywhere.²⁰

Next, accused-appellant claims that the testimonies of the prosecution witnesses contradicted each other. BBB testified that AAA went downstairs crying, while AAA said that she slept after the alleged incident happened. But the inconsistency accused-appellant points out to, if at all, pertains only to collateral or trivial matters and has no bearing on his culpability.²¹

Finally, accused-appellant asserts that the case was only filed due to a purported "bad blood" with AAA's aunt, CCC, who got mad because the latter thought he and his girlfriend used her house as a motel.

On this score, suffice it to state that ill-motive becomes inconsequential in light of AAA's clear narration of facts and positive identification of accused-appellant. *People v. Suedad*²² is in point:

The Court is also not convinced by appellant's proposition that ill feelings and ill motives of AAA, her mother and grandmother prompted the filing of the charges against him. **Ill-motives become inconsequential where there are affirmative or categorical declarations establishing appellant's accountability for the felony.** Not a few persons convicted of rape have attributed the charges against them to family feuds, resentment or revenge, however, these have never swayed us from giving full credence to the testimony of a complainant for rape, especially x x x AAA in the case at bar, who remained steadfast and unyielding throughout the long and tedious direct and cross-examination that she was sexually abused. (Emphasis and underscoring supplied)

¹⁶ Record, p. 15.

¹⁷ Supra note 15 at 814.

¹⁸ *People v. Dela Cruz*, 390 Phil. 961, 983 (2000).

¹⁹ *People v. Ofemiano*, 625 Phil. 92, 100 (2010).

²⁰ *People v. Alipio*, 618 Phil. 38, 47 (2009) as cited in *People v. Suedad*, supra note 15 at 815.

²¹ *People v. Mamaruncas*, 680 Phil. 192, 206 (2012).

²² Supra note 15 at 815.

Besides, it is highly unusual, nay, unnatural for any family member, especially an aunt whom AAA considers as a mother to concoct a false charge of Rape and then use her niece as an instrument to settle her purported grudge.²³

In *People v. Deniega*,²⁴ the Court clarified that if the rape victim was mentally-retarded or intellectually-disabled whose mental age is less than 12 years old, the Rape is committed under **paragraph 1(d) and not paragraph 1(b), Article 266-A of the RPC, as amended**. The Court elucidated, *viz.*:

Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. **Both are considered incapable of giving rational consent because both are not yet considered to have reached the level of maturity that gives them the capability to make rational decisions, especially on matters involving sexuality.** Decision-making is a function of the mind. **Hence, person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age.** Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A(1)(d), the interpretation should be in accordance with either the chronological age of the child if he or she is not suffering from intellectual disability, or **the mental age if intellectual disability is established.** (Emphasis and underscoring supplied)

In the fairly recent case of *People v. Castillo*,²⁵ the Court *En Banc* emphasized that when the rape victim is mentally disabled whose mental age is below 12 years old, the crime should be classified as Statutory Rape under Article 266-A, **paragraph 1 (d) of the RPC, as amended**. In that case, the rape victim therein was found mentally disabled whose chronological age was fourteen (14) years old but with a mental age of a five (5) year-old child.

Following *Castillo*, accused-appellant's conviction here should also be classified as Statutory Rape.

Under Article 266-B, paragraph 10 of the RPC, as amended by RA 8353,²⁶ the maximum penalty shall be imposed when the offender committed

²³ *People v. Santos*, 532 Phil. 752, 767 (2006) as cited in *People v. Suedad*, supra note 15 at 814.

²⁴ 811 Phil. 712, 722 (2017).

²⁵ G.R. No. 242276, February 18, 2020.

²⁶ Article 266-B. Penalty -

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

x x x x

the crime, knowing of the intellectual disability of the offended party.²⁷

While AAA's mental disability remains undisputed, her mental condition, standing alone, cannot be considered to qualify the rape for the purpose of imposing the maximum penalty.²⁸ The Information did not allege that accused-appellant was aware of AAA's mental disability as defined by the statute, nor was the prosecution able to adduce evidence that accused-appellant knew of AAA's mental disability at the time the crime was committed. *People v. Toralba*²⁹ is in point:

The Court has often reiterated that **circumstances qualifying the imposition of the death penalty in rape cases must be designated with specificity in the information** in order to **duly apprise** the accused of the nature of the charges leveled against him. The failure to do so in the present case will **result in the accused's conviction for no higher than simple rape, as provided under Article 266-A, paragraph 1, punishable by *reclusion perpetua*.**

The **information in the instant case undisputably fails to allege** any circumstance under Article 266-B that would qualify the rape and involve the imposition of capital punishment. x x x **Neither did the information allege that the accused was aware of the mental disability of Cornelia, as set out in Article 266-B, par. 10.**

The fact that such mental retardation, or the accused's knowledge thereof, was subsequently brought into evidence, does not work to amend the charges as laid out in the information, which altogether preclude the conviction of the accused for qualified rape. x x x (Emphasis and underscoring supplied)

In accordance with prevailing jurisprudence,³⁰ we maintain the award of damages, thus: a) ₱75,000.00 as civil indemnity; b) ₱75,000.00 as moral damages; and c) ₱75,000.00 as exemplary damages. These amounts shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

WHEREFORE, the appeal is **DENIED** and the Court of Appeals' Decision in CA-G.R. CR-HC No. 10938 dated July 11, 2019, **AFFIRMED with MODIFICATION**. Accused-appellant **Dherick Jay Abiña y Sunga** is found **GUILTY of Statutory Rape** under Article 266-A, paragraph 1(d) of the Revised Penal Code. He is sentenced to *reclusion perpetua* and ordered to **PAY AAA ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages**. These amounts shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

²⁷ *People v. Tayaban*, 821 Phil. 391, 405 (2017).

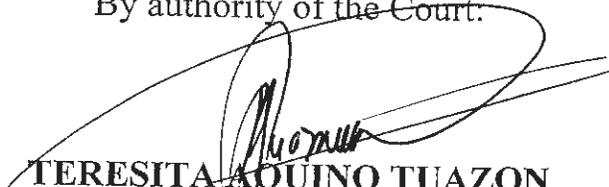
²⁸ *People v. Toralba*, 414 Phil. 793, 805 (2001).

²⁹ *Id.*

³⁰ *People v. Jugueta*, 783 Phil. 806, 849 (2016).

SO ORDERED.” (Rosario, *J.*, additional member, per Special Order No. 2797 dated November 5, 2020)

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court

17 MAR 2021

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HON. PRESIDING JUDGE (reg)
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*with copy of CA Decision dated 11 July 2019.
Please notify the Court of any change in your address.
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