Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 200792**
	Present:
- versus -	SERENO, *CJ.*, *Chairperson,* LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
	Promulgated:
NEIL B. COLORADO, Accused-Appellant.	NOV 14 2012

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DECISION

REYES, *J.*:

For the Court's review is the Decision[1] dated August 19, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03767, which affirmed with modification the Decision[2] dated June 19, 2008 in Criminal Case No. B-390 of the Regional Trial Court (RTC), Burgos, Pangasinan, Branch 70 finding herein accused-appellant Neil B. Colorado (Colorado) guilty beyond reasonable doubt of the crime of rape.

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1 Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Hakim S. Abdulwahid and Ramon A. Cruz, concurring; *rollo*, pp. 2-14.

2 Under the sala of Executive Judge Ma. Ellen M. Aguilar; records, pp. 266-273.

The Facts

Accused-appellant Colorado was charged with the crime of rape in an Information that reads:

> That sometime in December, 2002 in the evening in Sitio x x x, Brgy. Iliw-Iliw, Burgos, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the brother of [AAA],[3] inside their house, by means of force, threats and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a twelve (12) years (sic) old girl, against her will and consent, to her damage and prejudice.[4]

Colorado pleaded "not guilty" upon arraignment. During the pre-trial, the parties stipulated on the following: (1) the existence of the Medico Legal Certificate and the Birth Certificate of AAA; (2) that Colorado is a full-blood brother of AAA; and (3) that Colorado and AAA lived under the same roof.[5] After pre-trial, trial on the merits ensued.

Records indicate that AAA was born on October 10, 1990. She was the second to the youngest in a family of twelve siblings. Colorado was an older brother who lived with her, their parents and two other brothers, BBB and CCC, in Burgos, Pangasinan.

AAA testified that sometime in December 2002, her parents attended a wedding celebration somewhere in Hermosa, Dasol, Pangasinan, leaving behind AAA, Colorado and their two other brothers in the house. When their parents had not yet arrived in the evening, Colorado committed the dastardly act against AAA. She was twelve (12) years old at that time, while Colorado was already twenty-four (24) years old. He approached AAA, held her two hands, even threatened her with a knife and covered her mouth with a handkerchief. He then removed AAA's shorts and panty, inserted his penis into the young girl's vagina, then made a push and pull movement.

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[3] Under Republic Act No. 9262, also known as the "Anti-Violence Against Women and their Children Act of 2004", and its implementing rules, the real name of the victim and those of her immediate family members are withheld; fictitious initials are instead used to protect the victim's identity.

[4] Records, p. 266.

[5] Id. at 47.

AAA tried to resist her brother's sexual aggression, but miserably failed despite her efforts because of her brother's greater strength. Colorado later left AAA, who put back her shorts and underwear, but remained awake because of fear and trauma with what she had gone through.

On that same night, Colorado raped AAA twice more, unmindful of the presence of their two other brothers who were then sleeping inside the room where Colorado ravished AAA. In both instances, Colorado still threatened AAA with a knife, removed her shorts and panty, inserted his penis into his sister's vagina, then performed the push and pull movement. Colorado warned AAA that he would stab her should she report to anyone what he had done. AAA then did not dare reveal these incidents to anybody, until she had the courage to report them to their mother.

Also in her testimony before the trial court, AAA disclosed that she had been raped by Colorado when she was just nine (9) years old. She also revealed having been ravished on different dates by another brother, DDD, and a brother-in-law.

A Medico-Legal Certificate[6] prepared by Dr. Ma. Teresa Sanchez (Dr. Sanchez), Medical Officer III of the Western Pangasinan District Hospital who examined AAA on January 10, 2003, contained the following findings:

> =INTERNAL EXAM FINDINGS:
> -Nonparous Introitus-
> -Hymenal laceration at 6 o'clock position with bleeding-
> -Vagina admits 2 fingers with slight resistance-
> -Uterus small-
> -(+) bleeding-
> x x x x[7]

Colorado testified for his defense. He denied having raped AAA, arguing that he was not living with AAA in their parents' house in December 2002. Allegedly, he was at that time staying with an older sister

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6 Id. at 296.
7 Id.

in Osmeña, Dasol. Colorado claimed that on the night of the alleged incident, he was fishing with his brother-in-law, and that they returned to Osmeña, Dasol in the morning of the following day.

The Ruling of the RTC

On June 19, 2008, the RTC rendered its decision finding Colorado guilty beyond reasonable doubt of the crime of qualified rape, and sentencing him to suffer the penalty of *reclusion perpetua.* He was also ordered to pay AAA the amount of ₱50,000.00 as moral damages and ₱75,000.00 as civil indemnity. The dispositive portion of its decision reads:

> **WHEREFORE**, in view of the foregoing, this Court finds accused NEIL B. COLORADO, GUILTY beyond reasonable doubt of the crime of rape. In view of the enactment of Republic Act [No.] 9346 prohibiting the imposition of death penalty – this Court sentences the accused to suffer the penalty of RECLUSION PERPETUA.
>
> Further, accused shall indemnify [AAA] the amount of Php 50,000.00 as moral damages and Php 75,000.00 as civil indemnity. (People vs. Ambray, 303 SCRA 709).
>
> SO ORDERED.[8]

Feeling aggrieved, Colorado appealed from the RTC's decision to the CA, reiterating in his appeal the defenses of denial and *alibi*. He further sought his acquittal by arguing that the hymenal lacerations discovered by AAA's examining doctor, and considered by the trial court in determining his culpability, could have been caused not by him, but by the sexual aggressions committed by their brother DDD or their brother-in-law unto AAA.

The Ruling of the CA

The CA affirmed Colorado's conviction, but modified his civil liability. The decretal portion of its Decision dated August 19, 2011 reads:

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[8] Id. at 273.

> **WHEREFORE**, the appealed Decision of the Regional Trial Court of Burgos, Pangasinan (Branch 70), dated 19 June 2008, is **AFFIRMED** with the **MODIFICATION** that, in addition to the civil indemnity of Seventy-Five Thousand Pesos ([₱]75,000.00), appellant is ordered to pay the victim moral damages of Seventy-Five Thousand Pesos ([₱]75,000.00) instead of Fifty Thousand Pesos ([₱]50,000.00), and to pay exemplary damages of Thirty Thousand Pesos ([₱]30,000.00).
>
> ***SO ORDERED.***[9]

Hence, this appeal. Both Colorado and the Office of the Solicitor General, as counsel for plaintiff-appellee People of the Philippines, dispensed with the filing with the Court of supplemental briefs, and adopted instead their respective briefs with the CA.

This Court's Ruling

The appeal lacks merit.

Colorado was charged with the crime of rape, qualified by the victim's minority and her relationship to her ravisher, as defined and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code (RPC), as follows:

> Art. 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
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> 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.

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9 *Rollo*, p. 13.

> x x x x
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> Art. 266-B. *Penalties.* – x x x.
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> x x x x
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> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> > 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;
> >
> > x x x x

Both the RTC and the CA correctly ruled on the concurrence of the following elements of qualified rape, as defined in the aforequoted provisions of the RPC: (1) that the victim is a female over 12 years but under 18 years of age; (2) that the **offender** is a parent, ascendant, stepparent, guardian or **relative by consanguinity or affinity within the third civil degree**, or the common-law spouse of the parent of the victim; and (3) that the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.[10]

The age of the victim at the time of the crime's commission is undisputed. During the pre-trial, the parties agreed on the existence of AAA's Certificate of Live Birth,[11] a "certified true/xerox copy" of which forms part of the records and provides that AAA was born on October 10, 1990. AAA was then only 12 years old in December 2002, a significant fact that was sufficiently alleged in the Information. In *People v. Pruna*,[12] we held that the best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

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10 *People v. Arcillas*, G.R. No. 181491, July 30, 2012.
11 Records, p. 72.
12 439 Phil. 440, 470 (2002).

As to the second element, there is no dispute that Colorado is a full-blood brother of AAA, as this was also among the parties' stipulated facts during the case's pre-trial.

The grounds now being raised by Colorado to justify his exoneration delve mainly on the alleged absence of the crime's third element. He denies AAA's claim that he had ravished her, raising the defense of *alibi* and the alleged doubt and suspicion that should be ascribed to AAA's accusations. On this matter, settled is the rule that the findings of the trial court on the credibility of a witness deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. We have repeatedly recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies, because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth. The rule finds even more stringent application where the said findings are sustained by the CA. Thus, except for compelling reasons, we are doctrinally bound by the trial court's assessment of the credibility of witnesses.[13]

We then take due consideration of the trial court's findings of fact, its assessment of AAA's credibility, her testimony and the manner by which her statements were relayed, as discussed in the RTC's Decision convicting Colorado and which reads in part:

> **[AAA] testified directly and categorically how she was raped by the accused** Neil Colorado who is her full[-]blood brother sometime in the night of December 2002.
>
> That while [AAA] was sleeping with her older brother [BBB] and her younger brother [CCC]**, accused went near her and held her two (2) hands, covered her mouth with handkerchief. Thereafter, accused removed her short pants and underwear, and inserted his penis into her vagina**. After removing his penis[,] accused went back to sleep.

[13] *People v. Salazar*, G.R. No. 181900, October 20, 2010, 634 SCRA 307, 319-320, citing *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 467.

[AAA] however could no longer sleep because she was already afraid that the accused will return which the accused did. For the second time, accused raped [AAA]. Accused covered her mouth with a handkerchief, inserted his penis into her vagina and accused did the push and pull movement.

x x x x

When [AAA] declares that she has been raped, she says in effect all that would be necessary to show that rape did take place (PP. vs. Maglantay, 304 SCRA 272), for as long as the testimony of [AAA] is free from serious or major incongruence and unbridled by suspicion or doubt. **The testimony of [AAA] is simple, candid, straightforward and consistent on material points detailing every single bestial act of her brother in ravishing her. Moreover, [AAA] on several occasions** (August 1, 2006 and September 19, 2006) **was on the verge of crying and in fact shed tears during her direct examination. Crying of the victim during her testimony is evidence of the credibility of the rape charge with the verity born out of human nature and experience** (PP. vs. Agustin, 365 SCRA 167; PP vs. Garcia, supra). Though a medical certificate is not necessary to prove the commission of rape (PP. vs. Bares, 355 SCRA 435), but when the victim's testimony is corroborated by the physician's findings of penetration (Exh. "A") or hymenal laceration as when the hymen is no longer intact, there is sufficient foundation to find the existence of the essential requisite of carnal knowledge (PP. vs. Montejo, 355 SCRA 210; PP. [vs.] Bation, 305 SCRA 253). Further, **no young and decent woman in her right mind especially of tender age as that of [AAA] who is fifteen (15) years old would concoct a story of defloration, allow [an] examination of her private parts and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by he[r] desire to obtain justice for the wrong committed against he**r. (PP. vs. Albior, 352 SCRA 35; PP. [vs.] Vidal, 353 SCRA 194).[14] (Emphasis ours)

These observations were affirmed by the CA on appeal, as it held:

A conscientious review of the records shows that **AAA's testimonies in this case bear the marks of truthfulness, spontaneity and sincerity**. She was crying while answering questions about the rape incident. Obviously, the process called to her mind not only the mere details of the sexual abuse but the lingering hurt and pain that come with it. Her tears were unimpeachable testaments to the truth of her allegations.

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During cross-examination, AAA remained steadfast, unwavering and spontaneous. Significantly also, her testimony is supported by the medical evidence on record, which showed that she had a laceration in her hymen and was thus in a non-virgin state.[15] (Citations omitted and emphasis ours)

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14 Records, p. 271.

15 *Rollo*, pp. 10-11.

The Court finds no cogent reasons to overturn these findings. Indeed, it was established that Colorado succeeded in having carnal knowledge of the victim, employing force, threat and intimidation that allowed him to consummate his bestial act. AAA had positively identified Colorado as her rapist. Such identification of Colorado could not have been difficult for AAA considering that Colorado was a brother who lived with her in their parents' house. Even the failure of AAA to identify the exact date of the crime's commission is inconsequential to Colorado's conviction. In rape cases, the date of commission is not an essential element of the offense; what is material is its occurrence,[16] a fact that was sufficiently established given AAA's and her testimony's credibility.

Contrary to Colorado's contention, AAA's claim that two other siblings were sleeping in the same room where she was raped did not render her statements incredible. Time and again, we have taken into consideration how rapists are not deterred by the presence of people nearby, such as the members of their own family inside the same room, with the likelihood of being discovered, since lust respects no time, locale or circumstance.[17]

As against AAA's credible testimony, Colorado's defenses lack persuasion. While Colorado denied in his testimony that he lived with AAA, such fact was already admitted by the parties during the pre-trial. His defense that he was in Osmeña, Dasol at the time of the crime's commission was even uncorroborated by any other witness. By jurisprudence, denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the appellant and his involvement in the crime attributed to him.[18] Moreover, for the defense of *alibi* to prosper, two requisites must concur: first, the appellant was at a different place at the time

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[16] *People v. Pangilinan*, G.R. No. 183090, November 14, 2011, 660 SCRA 16, 32; see also *People v. Dollano, Jr*., G.R. No. 188851, October 19, 2011, 659 SCRA 740, 753-754.

[17] *People v. Platilla*, 428 Phil. 520, 531 (2002), citing *People v. Lapiz*, 394 Phil. 160, 173 (2000) and *People v. Watimar*, 392 Phil. 711, 724 (2000).

[18] *People v. Espino, Jr*., G.R. No. 176742, June 17, 2008, 554 SCRA 682, 702.

the crime was committed; and second, it was physically impossible for him to be at the crime scene at the time of its commission.[19] The defense failed to establish these requisites. On the contrary, Colorado testified that from Osmeña, where he claimed to have lived with an older sister, he could normally reach his parents' house by a three-hour walk. There were also other means of transportation in these two places,[20] which then could have allowed Colorado to travel the distance over a shorter period of time.

Colorado also questions the weight of Dr. Sanchez's medico-legal certificate, arguing that AAA's hymenal lacerations could have resulted from the sexual aggressions allegedly committed against her by DDD and their brother-in-law. Such contention, however, deserves no consideration, given that results of an offended party's medical examination are merely corroborative in character. As explained by the Court in *People v. Balonzo*,[21] a medical certificate is not necessary to prove the commission of rape, as even a medical examination of the victim is not indispensable in a prosecution for rape. Expert testimony is merely corroborative in character and not essential to conviction. An accused can still be convicted of rape on the basis of the sole testimony of the private complainant.[22] Furthermore, laceration of the hymen, even if considered the most telling and irrefutable physical evidence of sexual assault, is not always essential to establish the consummation of the crime of rape. In the context that is used in the RPC, "carnal knowledge," unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured.[23] Thus, even granting that AAA's lacerations were not caused by Colorado, the latter could still be declared guilty of rape, after it was established that he succeeded in having carnal knowledge of the victim.

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19 *People v. Estrada*, G.R. No. 178318, January 15, 2010, 610 SCRA 222, 233.
20 TSN, November 28, 2007, p. 6; Records, p. 230.
21 G.R. No. 176153, September 21, 2007, 533 SCRA 760.
22 Id. at 774.
23 *People v. Tagun*, 427 Phil. 389, 403-404 (2002).

Given the foregoing, the CA did not err in affirming the trial court's conviction of Colorado. The crime is qualified by the victim's minority and her relationship to Colorado, yet the appellate court correctly explained that the imposable penalty is *reclusion perpetua*, in lieu of death, taking into account the provisions of Republic Act (R.A.) No. 9346 that prohibit the imposition of death penalty in criminal cases. We however clarify that Colorado shall be ineligible for parole, a requirement under Section 3 of R.A. No. 9346 that was not mentioned in the assailed CA decision and which, must then be rectified by this Decision.[24] The civil indemnity, moral damages and exemplary damages, as modified and awarded by the CA, conform to prevailing jurisprudence.

WHEREFORE, in view of the foregoing, the Decision dated August 19, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 03767 is **AFFIRMED** with **MODIFICATION** in that accused-appellant Neil B. Colorado is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole. The accused is likewise ordered to pay legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision until fully satisfied.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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[24] See *People v. Bodoso*, G.R. No. 188129, July 5, 2010, 623 SCRA 580, 605-606.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
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.

MARIA LOURDES P. A. SERENO
Chief Justice