



**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff -Appellee,

**G.R. No. 196051**

Present:

SERENO, *CJ.*,  
 Chairperson,  
 LEONARDO-DE CASTRO,  
 REYES,  
 PERLAS-BERNABE,\* and  
 LEONEN,\*\* *JJ.*

- versus -

**JADE CUAYCONG y**  
**REMONQUILLO,**  
 Accused-Appellant.

Promulgated:

**OCT 02 2013**

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**DECISION**

**LEONARDO-DE CASTRO, J.:**

Before Us is an appeal from the Decision<sup>1</sup> dated November 25, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03619, entitled *People of the Philippines v. Jade Cuaycong y Remonquillo*, which affirmed with modification the Joint Decision<sup>2</sup> dated July 25, 2008 of the Regional Trial Court of Las Piñas City, Branch 254 in Criminal Case Nos. 02-0575 and 02-0576. The trial court found appellant Jade Cuaycong y Remonquillo guilty beyond reasonable doubt of the crime of two counts of statutory rape as defined and penalized under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 6(5) of the Revised Penal Code. However, the Court of Appeals modified this to one count of statutory rape under the aforesaid penal provisions and one count of acts of lasciviousness as defined and penalized under Article 336 of the Revised Penal Code.

The pertinent portions of the two Informations both dated July 9, 2002 and which charge appellant with the felony of statutory rape read:

\* Per Special Order No. 1537 (Revised) dated September 6, 2013.  
 \*\* Per Special Order No. 1545 (Revised) dated September 16, 2013.  
<sup>1</sup> *Rollo*, pp. 2-18; penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Mario L. Guariña III and Rodil V. Zalameda, concurring.  
<sup>2</sup> *CA rollo*, pp. 43-56.

*nm*

[In Criminal Case No. 02-0575]

That on or about the 4<sup>th</sup> day of July 2002, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA<sup>3</sup>], seven (7)[-]year old girl, against her will and consent.<sup>4</sup>

[In Criminal Case No. 02-0576]

That on or about during the month of June 2001, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA], seven (7)[-]year old girl, against her will and consent.<sup>5</sup>

Appellant pleaded “NOT GUILTY” to both charges when he was arraigned on August 27, 2002.<sup>6</sup>

The testimonies and the evidence presented by both sides were summed in the assailed July 25, 2008 Joint Decision of the trial court in this wise:

[AAA] was born on August 20, 1994 (Exh. “A”) and is the daughter of [BBB] from a previous relationship. [Appellant] became [BBB]’s partner and they lived together, tagging along [AAA], who was then 7 years old, at the former’s residence at Real St., Aldana Plaza, Las Piñas City. Their relationship produced a son, named [DDD] born on January 22, 2002. Eight (8) months, after the birth of their son, they transferred residence and lived at Bernabe Compound, Pulang Lupa, of the same city.

[BBB] worked as a Guest Relation Officer (GRO) at the Buendia Kia Karaoke Bar from 9:00 p.m. to 10:00 a.m. While [BBB] was at work, the [appellant] would take care of [AAA] and their son.

On July 4, 2002 at about 10:00 o’clock in the evening, [AAA] and her brother was asleep. She felt that [appellant] laid himself beside her and started to remove her shorts. She told him not to remove it but [appellant] did not listen. [Appellant] also removed his pants, afterwards, he laid on top of her and kissed her. Then he inserted his penis to her vagina and kept it inside for a long time. [AAA] felt pain and cried. [Appellant] threatened to kill her mother if she will not keep quiet. Then she saw that her vagina was bleeding.

With the light coming from the adjacent house of their neighbor, [AAA] had a good glance at [appellant’s] sex organ. She described it as long as a ballpen or about five centimeters in length, brown and big.

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<sup>3</sup> In line with jurisprudence, fictitious initials are used in lieu of the victim-survivor’s real name. 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 families or household members, are also not disclosed. (*See People v. Cabalquinto*, 533 Phil. 703 [2006].)

<sup>4</sup> Records, p. 2.

<sup>5</sup> Id. at 207.

<sup>6</sup> Id. at 30.

The following day, [AAA] went to the house of [CCC], sister of her mother. [CCC]'s house was also located at the same Bernabe Compound near [AAA]'s house. [CCC] noticed that [AAA], unlike before, was unhappy and could not walk straight. She asked [AAA] what was the matter with her but the child just shook her head and did not answer. [CCC] even asked her what breakfast she wanted but the child did not answer instead she cried. Then she excused herself and went to the comfort room. While she was inside the comfort room, [CCC] heard her shouting. [CCC] asked her why she shouted and, [AAA] replied that her vagina was painful. [CCC] and her son [EEE] immediately ran towards the comfort room. Inside the comfort room, [CCC] saw fresh blood coming from [AAA]'s vagina. [CCC] asked [AAA] who touched her and the child said "Jade".

[CCC] decided to bring [AAA] to the nearby Health Center of Bernabe Compound. At the Center, a certain Dr. Norma Velasco saw [AAA] and found out that [AAA] had a hymenal laceration. Without issuing however any medical certification to that effect, Dr. Velasco referred [CCC] and [AAA] to the District Hospital at Pulanglupa, Las Piñas City.

Meanwhile, Dr. Velasco called the Women's Desk and Children's Welfare Section of the Las Piñas City Police Headquarters and reported the matter. Upon receipt of the report, P/S Insp Marilyn Samarita, head of the Section, immediately radioed SPO1 Fernando Gasgonia and PO2 Edmund Alfonso and instructed them to proceed to Bernabe Health Center. At the Health Center, SPO1 Gasgonia and PO2 Alfonso talked to [CCC] and [AAA] and thereafter together with the two, proceeded to the house of the [appellant]. Reaching the house, the police officers saw the [appellant] and [BBB] seated beside each other. Everything seemed normal between them. The police officers arrested the [appellant] after [AAA] had pointed to him. Bringing along [AAA], [BBB], [CCC] and the [appellant], the police officers proceeded to their headquarters and turned over the [appellant] to P/S Insp Samarita.

Upon learning what happened to her daughter and with a referral from the police station, [BBB] brought her to the crime laboratory in Camp Crame, where [AAA] underwent genital examination. The Medico-Legal Report No. M-2000-02 issued by Medico-Legal Officer of the PNP Crime Laboratory, Police Chief Inspector Pierre Paul F. Carpio contains, among others, a finding that reads: *Hymen; shallow fresh laceration at 3 o'clock position*. [AAA] was also seen to have warts in the vagina and was advised to proceed to the PGH-Child Protection Unit. At the Philippine General Hospital, they had [AAA] examined and thereafter, set her for the removal of the warts after the bleeding. The procedure took place on August 6, 2002 (Exhs. "C" and "C-1").

With the medical findings, PO2 Lucia C. Conmigo, also of the Women's Desk and Children's Welfare Section, prepared the investigation reports (Exhibit "G") and on the basis thereof, two counts of statutory rape were filed against the [appellant].

[AAA] likewise recalled that the same thing happened to her, at night, sometime in the month of June 2001 at the store which they also utilized as their residence. At that time, [AAA] was tending their store

while the [appellant] was then sleeping beside her brother. When [appellant] woke up, he approached her and removed her shorts and standing from behind, he inserted his penis to her anus. She felt pain and cried, so that [appellant] was forced to stop. She also disclosed the incident to [CCC].

The [appellant] denied the accusations hurled against him. He could not have raped [AAA] in June 2001 because he and [BBB] were not yet living-in together. [BBB] and her daughter [AAA] were then staying with the former's mother and siblings at Bernabe Compound, Pulanglupa, Las Piñas City while he lived with his parents at Plaza Quezon, also of the same city. In order to get to their place, [appellant] has to take a jeep for a ride.

In denying having raped [AAA] on July 4, 2002, [appellant] alleged that at around 6 o'clock in the evening, he went to visit his parents and returned home at around 10 o'clock in the evening. His coming home late made [BBB] furious since he could have come home earlier that night to take care of his son and [AAA], so she can go to work on time. Nonetheless, [BBB] left for work just the same. Not long after, [BBB] left the house, the [appellant] saw [AAA] scratching her vagina. To relieve her of the itchiness, he ordered her to wash her vagina. Instead of obeying him, [AAA] cried and threatened him by saying "magsusumbong ako". Irritated, [appellant] stood up and dragged her outside the house and closed the door. [AAA] nevertheless did what the [appellant] told her to do. After washing her vagina, she entered the house and then laid herself to sleep on the floor beside her brother. [Appellant] also laid himself at the other side of [DDD] who at that time was sick.

[Appellant] woke up at around 9 o'clock in the morning of the following day, July 5, 2002. He was about to fix their bed, when two policemen arrived. The policemen invited him to go with them to the District Hospital because somebody wanted to talk to him. Before [appellant] could go with the policemen, [BBB] arrived. Together with [BBB] who was also invited by the policemen to go with them, [appellant] boarded the police mobile car. He was brought to the emergency room of the Las Piñas City District Hospital where he was asked by the policemen to sign a white paper which the [appellant] claimed he did not know, and he refused. From the Hospital, he was brought to the police sub-station at Zapote where [appellant] was again asked by the policemen to just admit the complaint; however, the policemen did not tell him what the complaint was. [Appellant] again refused. From the sub-station, [appellant] was brought by the policemen to the Women's Desk and Children's Welfare Section of the Las Piñas City Police Headquarters.

After several days at the police headquarters, [appellant] was finally brought to the Office of the City Prosecutor of Las Piñas City and it was only during this time that the [appellant] learned that he was being charged of rape by [AAA].

[Appellant] surmised that the reason why [BBB] and [AAA] charged him was to get rid of him as he was jobless and that [BBB] also wanted to live with her new lover, a German national named Jester, who offered to bring her and [AAA] abroad to become citizens of his country. [Appellant] had not personally met this German national but he knew of their relationship from the text messages which [appellant] read on

[BBB]'s cellphone. They quarreled most of the time because of other men with whom [BBB] used to flirt. However, [appellant] knew that [BBB] could do anything she wanted with her life because she was not married to him.

To support the theory that the charges were just based on a concocted story, the [appellant] presented his father, Jesus Cuaycong. He testified that when he learned that his son was detained, he immediately went to [BBB] to inquire what happened. During their conversation, he alleged that [BBB] admitted that the charges against his son were just [a] concoction of her mother and in due time, she would certainly arrange for their dismissal. While he was talking with [BBB], Jesus saw [AAA] playing outside their house like any normal child.<sup>7</sup>

At the end of the trial, the RTC convicted appellant on two counts of statutory rape under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 6(5) of the Revised Penal Code. The dispositive portion of the assailed July 25, 2008 Joint Decision of the trial court reads:

WHEREFORE, premises considered, there being proof beyond reasonable doubt that herein accused, JADE CUAYCONG y REMONQUILLO, has committed two (2) counts of Rape with the private complainant who at that time was under 12 years of age, defined and penalized under Article 266-A, paragraph 1, in relation to Article 266-B, 6<sup>th</sup> paragraph (5) of the Revised Penal Code, as amended by Republic Act No. 8353, the Court pronounced him GUILTY and accordingly, sentenced him to suffer the penalty of RECLUSION PERPETUA, for each case.

Accused is likewise ordered to pay private complainant [AAA], for each count of rape, Php75,000.00 as civil indemnity; Php75,000.00 as moral damages and Php25,000.00 as exemplary damages. Cost against the accused.<sup>8</sup>

Appellant then submitted his case for review to the Court of Appeals. However, the appellate court denied his appeal and affirmed with modifications the ruling of the trial court. We quote the dispositive portion of the assailed November 25, 2010 Decision of the Court of Appeals here:

WHEREFORE, in the light of the foregoing, we **DENY** the instant appeal. The Joint Decision appealed from is **AFFIRMED** with the modifications that the award of exemplary damages in Criminal Case No. 02-0575 is increased to ₱30,000.00, the penalty of *reclusion perpetua* and the other monetary awards are maintained; and that in Criminal Case No. 02-0576, the appellant is found guilty beyond reasonable doubt of the crime of acts of lasciviousness for which he is sentenced to suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum and that he is ordered to pay AAA ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages and ₱15,000.00 as exemplary damages.<sup>9</sup>

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<sup>7</sup> CA rollo, pp. 44-47.

<sup>8</sup> Id. at 56.

<sup>9</sup> Rollo, p. 18.

The Court of Appeals affirmed appellant's conviction of the felony of statutory rape in Criminal Case No. 02-0575. However, it did not uphold the conviction in Criminal Case No. 02-0576 because, while the Information alleged rape by carnal knowledge, the prosecution was able to prove rape by sexual assault since the rape incident at issue involved penile penetration of the victim's anus. Citing the seminal case of *People v. Abulon*,<sup>10</sup> the Court of Appeals modified the conviction of appellant from a charge of statutory rape to a charge of acts of lasciviousness.

Having lost in both the trial and appellate courts, appellant comes to us for a final appeal relying on the same assignment of error in his Appellant's Brief, to wit:

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE  
ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT  
OF THE CRIMES CHARGED.<sup>11</sup>

Appellant argues that the credibility of the victim in this case is very much suspect considering the following purportedly inconsistent facets of her testimony: (1) the description of how the victim was supposedly raped; (2) the total number of instances of rape committed against her by appellant; (3) the uncertainty of whether or not the victim saw appellant's penis; and (4) the doubt with respect to whether or not the victim was able to touch appellant's sexual organ.

Appellant further highlights the testimony of Dr. Pierre Paul Carpio (Dr. Carpio), the medico-legal officer who examined AAA, to the effect that the victim informed him that the accused inserted his finger into her vagina as contradictory to AAA's testimony.

The petition is without merit.

Appellant's contention that the inconsistencies found in the victim's testimony warrant a finding of exculpatory reasonable doubt deserves scant consideration.

Jurisprudence tells us that for a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged since the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.<sup>12</sup> We have also declared that inconsistencies in the testimonies of witnesses, when referring only to minor details and collateral matters, do not affect the substance of their declaration, their veracity or the weight of their testimonies, moreover, they do not

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<sup>10</sup> 557 Phil. 428 (2007).

<sup>11</sup> CA rollo, p. 72.

<sup>12</sup> *People v. Laurino*, G.R. No. 199264, October 24, 2012, 684 SCRA 612, 619.

impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailants.<sup>13</sup>

In the case at bar, the alleged inconsistencies in AAA's testimony do not deviate from the fact that AAA categorically identified appellant as the one who raped her on July 4, 2002 and earlier sexually assaulted her sometime in June of the year 2001. The inconsistent statements pointed out by appellant merely affect minor and tangential aspects of AAA's testimony which do not significantly alter the integrity of her narrative concerning the incidents of rape and sexual assault which are the subject matter of this case.

With regard to the credibility of AAA's declarations against appellant as well as that of other prosecution witnesses, we see no cogent reason to veer away from the jurisprudential principle of affording great respect and even finality to the trial court's assessment of the credibility of witnesses. In *People v. Morante*,<sup>14</sup> we elaborated on this often reiterated doctrine in this manner:

[W]hen the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality. The trial judge has the advantage of observing the witness' deportment and manner of testifying. Her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" are all useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the [Court of Appeals]. (Emphases omitted.)

We find that the circumstance that two other judges heard the testimonies of BBB, the medico-legal officer, and a portion of AAA's testimony to be of no moment. The fact remains that the trial court judge who penned the RTC decision had the opportunity to also observe AAA's demeanor on the stand, as well as that of three other prosecution witnesses and all the defense witnesses. In any event, the Court has likewise minutely scrutinized the evidence on record and we have found no basis to overturn the factual findings of the trial court as affirmed by the Court of Appeals.

As for appellant's allegations and insinuations regarding ill motive on the part of AAA's mother, BBB, absent concrete supporting evidence, this argument has failed to convince us that the trial court's assessment of the

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<sup>13</sup> *People v. De los Reyes*, G.R. No. 177357, October 17, 2012, 684 SCRA 260, 276.

<sup>14</sup> G.R. No. 187732, November 28, 2012, 686 SCRA 602, 612 citing *People v. Arpon*, G.R. No. 183563, December 14, 2011, 662 SCRA 506, 523.

credibility of the victim and her supporting witnesses was tainted with arbitrariness or blindness to a fact of consequence.

In this case, we uphold the legal doctrine which states that it is unnatural for a parent, more so for a mother, to use her offspring as an engine of malice especially if it will subject her child to humiliation, disgrace and even stigma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement.<sup>15</sup>

Likewise, we reiterate the principle that no young girl, such as AAA, would concoct a sordid tale, on her own or through the influence of BBB as per appellant's intimation, undergo an invasive medical examination then subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice. We explained this rule, yet again, in *People v. Garcia*<sup>16</sup> where we held:

Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction. (Citations omitted.)

Moreover, it is worthy to note that AAA broke down in tears when she was narrating the ordeal that she endured in the hands of appellant.<sup>17</sup> We have established in jurisprudence that the crying of a victim during her testimony is evidence of the truth of the rape charges because the display of such emotion indicates the pain that the victim feels when asked to recount her traumatic experience.<sup>18</sup> Thus, not unlike the minor inconsistencies in her testimony, this barefaced expression of grief serves only to strengthen AAA's credibility.

With regard to appellant's assertion that Dr. Carpio's testimony indicated that the shallow hymenal laceration present in AAA's vagina rules out the probability of any penetration by a male sexual organ and could only have been caused by the insertion of a finger, we rule that the said testimony does not negate the occurrence of rape. A perusal of the transcript would reveal that the same medico-legal officer did not totally discount the

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<sup>15</sup> *People v. Batula*, G.R. No. 181699, November 28, 2012, 686 SCRA 575, 588.

<sup>16</sup> G.R. No. 200529, September 19, 2012, 681 SCRA 465, 477-478.

<sup>17</sup> TSN, December 5, 2005, p. 18.

<sup>18</sup> *People v. Batula*, supra note 15 at 585.



possibility of rape and, in fact, he admitted that he was not competent to conclude what really caused the shallow hymenal laceration. The pertinent portion of Dr. Carpio's testimony reads:

[PROSECUTOR MONTESA]

Q In your professional opinion, was the minor whom you examined a victim of sexual abuse or rape?

A Sir, I am not in a position to qualify if it is a rape or a sexual abuse.

Q I am asking your opinion?

A As per examination, there is a recent loss of virginity and as per statistics in Crame, in our examination, that finding laceration, it is usually related to sexual abuse or rape.<sup>19</sup>

During cross-examination by defense counsel, Dr. Carpio even gave the inference that partial penetration of the penis could have caused the shallow hymenal laceration found inside AAA's vagina, to wit:

[ATTY. SION]

Q In your expert opinion Mr. Witness, if in the event a penis is inserted would it cause a shallow fresh laceration at 3 o'clock position?

A It de[p]ends [on] the penetration, Ma'am.

Q A full penetration, Mr. Witness?

A A full penetration will cause deeper laceration.

Q Not shallow laceration?

A Yes, Ma'am. It will cause more laceration with the hymen and it is very post fourchette the open parts of the genital at the lower and it is more fragile. It is usually abraded or lacerated if penis was inserted.

Q But in this case that part of the vagina was preserve[d]?

A Yes, Ma'am.<sup>20</sup>

Jurisprudence states that carnal knowledge as an element of rape does not require full penetration since all that is necessary for rape to be consummated is for the penis of the accused to come into contact with the lips of the pudendum of the victim.<sup>21</sup> Moreover, it is equally settled that hymenal rupture, vaginal laceration or genital injury is not indispensable because the same is not an element of the crime of rape.<sup>22</sup>

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<sup>19</sup> TSN, June 22, 2005, pp. 15-16.

<sup>20</sup> Id. at 20-22.

<sup>21</sup> *People v. Abrencillo*, G.R. No. 183100, November 28, 2012, 686 SCRA 592, 598.

<sup>22</sup> *People v. Soria*, G.R. No. 179031, November 14, 2012, 685 SCRA 483, 505.

Anent Dr. Carpio's testimony that AAA told him that a finger, not a penis, was inserted inside her vagina,<sup>23</sup> we rule that this does not seriously affect AAA's credibility nor diminish the straightforward and consistent statements that she made in open court which tells otherwise. During AAA's lengthy direct examination by the prosecutor and, especially, during her strenuous cross-examination by defense counsel, she never wavered from her conviction that, on July 4, 2002, appellant inserted his penis inside her sex organ. The relevant portions of AAA's testimony during her cross-examination are reproduced here:

[ATTY. SION]

Q And in fact, you said that it was inserted because you can feel that something was inserted into your vagina?

A Yes, Ma'am.

Q And you were sure that it was the penis of your Kuya Jade?

A Yes, Ma'am.

x x x x

Q During the last incident on July 4, 2002, you were very certain that the penis of the accused was inserted into your vagina?

A Yes, Ma'am.

x x x x

Q But the truth is that the accused has repeatedly inserted his entire penis into your vagina during those times?

A Yes, Ma'am.<sup>24</sup>

In addition, we have previously ruled that expert testimony is merely corroborative in character and not essential to conviction since an accused can still be convicted of rape on the basis of the sole testimony of the private complainant.<sup>25</sup> In other words, the medico-legal officer's testimony cannot be considered to possess comparative weight to that of the victim's assertions of rape and, thus, can be disregarded without affecting the finding of guilt imposed upon the accused.

It is settled in jurisprudence that in a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing and consistent with human nature and the normal course of things.<sup>26</sup> We agree with the findings of the trial court, which was affirmed by the Court of Appeals, that AAA's testimony clearly and convincingly narrated the details of how she was raped by appellant. The significant snippets of her testimony read:

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<sup>23</sup> TSN, June 22, 2005, p. 11.

<sup>24</sup> TSN, May 11, 2006, pp. 12-19.

<sup>25</sup> *People v. Colorado*, G.R. No. 200792, November 14, 2012, 685 SCRA 660, 673.

<sup>26</sup> *People v. Viojela*, G.R. No. 177140, October 17, 2012, 684 SCRA 241, 251.

[PROSECUTOR MONTESA]

Q You said that at that time you were sleeping, what happen[ed] next after that?

A He lay beside me.

Q Who lay beside you, AAA?

A Jade, sir.

Q And after Jade lay beside you, what happen[ed] next?

A He removed my short[s].

Q And then what else did he do, if any?

A He laid on top of me.

Q And after he laid on top of you, what else happen[ed]?

A (no answer)

x x x x

[COURT]

Q According to you when the accused went to you he removed your shorts, is this true?

A Yes, your honor.

Q Now, when he was removing your shorts, did you say anything?

A Yes, your honor.

Q What did you tell him?

A That he should not remove my shorts.

x x x x

Q Now, what did the accused do to his pants after he laid on top of you?

A He removed also the pants.

x x x x

Q Now, according to you[,] Kuya Jade removed his pants and he laid on top of you, now, what did Kuya Jade do to you after he removed his pants?

A “Tinusok niya ang kanyang titi sa akin.”

x x x x

[PROSECUTOR MONTESA]

Q What part of your body was the organ “tinusok”? Was it “tinusok sa private part or pepe”?

A Yes, in my “pepe”.

Q And what else did he do after he, as you said, “tinusok” his private organ to your “pepe”?

A He was kissing me.

Q And after that, what happened next?

A And he told me to keep quiet.

Q And did you say anything to him after he told you to keep quiet?

A He said I should keep silent or else he will kill my Mama.<sup>27</sup>

With respect to appellant's denial of all the charges against him, we ascribe no weight to such an assertion considering that his claim lacked sufficient corroboration. We have consistently stated in jurisprudence that denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility because 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.<sup>28</sup>

As for the Court of Appeals' ruling that the charge of rape in Criminal Case No. 02-0576 should be downgraded to an act of lasciviousness, we find no justification to disturb the same. As correctly cited by the Court of Appeals, it was settled in *Abulon* that:

In view of the material differences between the two modes of rape, the first mode is not necessarily included in the second, and *vice versa*. Thus, since the charge in the Information in Criminal Case No. SC-7424 is rape through carnal knowledge, appellant cannot be found guilty of rape by sexual assault although it was proven, without violating his constitutional right to be informed of the nature and cause of the accusation against him.

However, following the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120, Rules of Criminal Procedure, appellant can be found guilty of the lesser crime of acts of lasciviousness. Said provisions read:

SEC. 4. *Judgment in case of variance between allegation and proof.* – When there is a variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SEC. 5. *When an offense includes or is included in another.* – An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitutes the latter. And an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.

<sup>27</sup> TSN, December 5, 2005, pp. 15-31.

<sup>28</sup> *People v. Colorado*, supra note 25 at 672.

Indeed, acts of lasciviousness or *abusos dishonestos* are necessarily included in rape.<sup>29</sup>

On the basis of the foregoing disquisition, we affirm the conviction of appellant of one (1) count of statutory rape for which he is to suffer the penalty of *reclusion perpetua* and one (1) count of act of lasciviousness for which he is to suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. The award of damages is likewise affirmed.


**WHEREFORE**, premises considered, the Decision dated November 25, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03619, finding appellant Jade Cuaycong in Criminal Case Nos. 02-0575 and 02-0576, is hereby **AFFIRMED** with **MODIFICATION** that appellant is ordered to pay the private offended party interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

**SO ORDERED.**

  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice

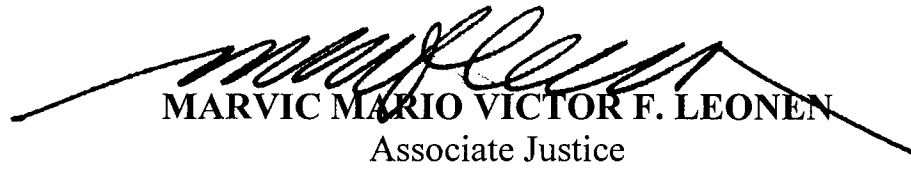
WE CONCUR:

  
MARIA LOURDES P. A. SERENO  
Chief Justice  
Chairperson

  
BIENVENIDO L. REYES  
Associate Justice

  
ESTELA M. PERLAS-BERNABE  
Associate Justice


<sup>29</sup> *People v. Abulon*, supra note 10 at 455.



MARVIC MARIO VICTOR F. LEONEN  
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