



**Republic of the Philippines  
Supreme Court  
Manila**

**FIRST DIVISION**

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

**G.R. No. 193666**

Present:

SERENO, C.J.,  
Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, JJ.

– versus –

**MARLON CASTILLO y**  
**VALENCIA,**  
Accused-Appellant.

Promulgated:

**FEB 19 2014**

x ----- x

**DECISION**

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

This an appeal from the Decision<sup>1</sup> dated April 23, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02999 denying the appeal of the accused-appellant Marlon Castillo and affirming, with modification as to the award of damages, the Decision<sup>2</sup> dated April 11, 2007 of the Regional Trial Court (RTC) of Quezon City, Branch 86 in Criminal Case Nos. Q-03-119452 and Q-03-119453 which found the accused-appellant guilty of two counts of rape committed against his 12-year old daughter.

The Informations filed against the accused-appellant read:

A. Criminal Case No. Q-03-119452

That sometime during the period comprised between August 27, 1996 up to August 27, 1997, inclusive, in Quezon City, Philippines, the said accused, with grave abuse of authority, did then and there willfully,

<sup>1</sup> Rollo, pp. 2-18; penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon, concurring.

<sup>2</sup> CA rollo, pp. 17-25.

*mm*

unlawfully and feloniously commit sexual assault upon his daughter Nene<sup>3</sup>, a minor, then only six (6) years of age, by rubbing his penis on the labia of the vagina of said complainant, licking her vagina and breast and inserting his finger inside her vagina, against her will and without her consent, which act further debase[d], degrade[d] or demean[ed] the intrinsic worth and human dignity of said offended party as a human being, to the damage and prejudice of the said Nene.<sup>4</sup>

B. Criminal Case No. Q-03-119453

That on or about the month of November 2000, in Quezon City, Philippines, the said accused, with force, threat or intimidation and grave abuse of authority, did then and there willfully, unlawfully and feloniously commit sexual assault upon his daughter Nene, a minor, 12 years of age, by then and there mashing her breast, licking her vagina and breast and by vigorously rubbing his penis on the labia of her vagina, against her will and without her consent, which act further debase[d], degrade[d] or demean[ed] the intrinsic worth and human dignity of said offended party as a human being, to the damage and prejudice of the said Nene.<sup>5</sup>

The accused-appellant pleaded not guilty to the charge when arraigned.<sup>6</sup> Pre-trial was conducted and, thereafter, trial ensued.

The prosecution established that Nene, the private offended party, is the child of the accused-appellant. She was born on August 27, 1990.<sup>7</sup>

Nene could no longer remember the exact date her ordeal at the hands of the accused-appellant started. All she could remember was that the accused-appellant first molested her when she was six years old.<sup>8</sup> Her mother was not around at that time and the accused-appellant told Nene's siblings to go outside the house. Her father abused her in the bed placed in a corner of their house. He mashed her breasts and rubbed his sex organ against her vagina. He licked her breasts. He also licked her vagina and inserted his finger in it.<sup>9</sup> While he was doing these things to her, she resisted and cried but he scolded her and ordered her to be still. He also threatened to beat her and to kill her mother and brother.<sup>10</sup>

Nene's defilement by the accused-appellant was repeated several times. Thus, disregarding the accused-appellant's threats, Nene summoned the courage to tell her mother about the accused-appellant's bestiality.<sup>11</sup> A complaint was filed against the accused-appellant in the National Bureau of

---

<sup>3</sup> The real names of the victim and the members of her immediate family have been withheld and fictitious names have been used instead to protect the victim's privacy pursuant to Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), its implementing rules and relevant jurisprudence beginning with *People v. Cabalquinto* (533 Phil. 703 [2006]).

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

<sup>5</sup> Id. at 4.

<sup>6</sup> Id. at 56; Certificate of Arraignment.

<sup>7</sup> Id. at 25; Birth Certificate of Nene, Exhibit "B."

<sup>8</sup> *Rollo*, p. 5.

<sup>9</sup> Records, p. 22; *Sinumpaang Salaysay* of Nene, Exhibit "A."

<sup>10</sup> TSN, December 14, 2004, pp. 4-8.

<sup>11</sup> Id. at 9-10.

Investigation which led to his detention. Nene's mother subsequently pleaded with Nene however, and they subsequently desisted from pursuing the complaint against him.<sup>12</sup> That was their mistake.

Sometime in the second week of November 2000, the accused-appellant abused Nene again by rubbing his penis against her vagina.<sup>13</sup>

She underwent a medical examination which resulted to the following findings:

#### GENERAL PHYSICAL EXAMINATION

Height: 139.0 cm.

Weight: 32.0 kg.

Fairly nourished, conscious, coherent, cooperative, ambulatory subject. Breasts, developing. Areolae, brown, measures 1.8 cm. in diameter. Nipples, brown, protruding, measures 0.4 cm. in diameter. No sign of extragenital physical injury was noted.

#### GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora, and minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, crescentric, short, thin, intact. Hymenal orifice, measures 1.0 cm. in diameter. Vaginal walls and rugosities, cannot be reached by the examining finger.

#### CONCLUSIONS:

1. No evident sign of extragenital physical injury was noted on the body of the subject at the time of examination.
2. Hymen, intact and its orifice small (1.0 cm. in diameter) as to preclude complete penetration by an average-sized adult Filipino male organ in full erection without producing any genital injury.<sup>14</sup>

In his defense, the accused-appellant denied the charges against him. He believes that Nene and her mother, "Nena," accused him of raping Nene because they believed him to be a cruel husband and father. He admitted being harsh to his wife and children, attributing it to the stress of being the family's sole breadwinner. "Rosing," his sister-in-law, witnessed his cruelty to his children and encouraged his daughter and wife to file the cases against him.<sup>15</sup>

After weighing the respective evidence of the parties, the trial court found the prosecution's evidence credible and sufficient to sustain the conviction of the accused-appellant. According to the trial court:

<sup>12</sup> Records, pp. 22-23; *see* also testimony of the accused-appellant, TSN, January 15, 2007, pp. 5-6.

<sup>13</sup> *Rollo*, p. 5; TSN, December 14, 2004, pp. 15-16.

<sup>14</sup> Records, p. 115; Medico-Legal Findings, Exhibit "F."

<sup>15</sup> *Id.* at 7-8.

*mtu*

The rape consisted of rubbing the penis of the accused to the labia of the vagina of the private complainant. Prevailing jurisprudence is to the effect that “the slightest introduction of the male organ into the labia of the victim already constitutes rape[”] x x x.<sup>16</sup> (Citations omitted.)

Thus, in a Decision dated April 11, 2007, the trial court found the accused-appellant guilty beyond reasonable doubt of two counts of qualified rape by sexual intercourse under Article 266-A(1) in relation to the first qualifying circumstance mentioned in Article 266-B of the Revised Penal Code, as amended. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1) In Criminal Case No. Q-03-119452, finding the accused Marlon Castillo y Valencia, **guilty beyond reasonable doubt** of the crime of rape defined and penalized under Article[s] 266-A and 266-B of the Revised Penal Code, as amended, in relation to RA 7610 and hereby sentences said accused to suffer the penalty of **reclusion perpetua**.

2) In Criminal Case No. Q-03-119453, finding the accused Marlon Castillo y Valencia, **guilty beyond reasonable doubt** of the crime of rape defined and penalized under Article[s] 266-A and 266-B of the Revised Penal Code, as amended, in relation to RA 7610 and hereby sentences him to suffer the penalty of **reclusion perpetua**.

In addition to the above penalties, the accused is hereby ordered to indemnify the private complainant the amount of ₱75,000.00 as moral damages.<sup>17</sup>

The accused-appellant appealed his case to the Court of Appeals. For him, the RTC erred in giving undue credence to the testimonies of the prosecution witnesses, particularly Nene. He claimed that Nene’s testimony contained many inconsistencies, improbabilities, ambiguities, and contradictions. She testified that she was six years old the first time the accused-appellant raped her while her mother was outside the house and at work, but stated in her *Sinumpaang Salaysay* dated November 23, 2000 that she was only four years old when the accused-appellant started sexually molesting her while her mother was inside the house sleeping. She also testified that the accused-appellant raped her by mashing her breast and trying to insert his sex organ into hers or rubbing his penis against her vagina, but she stated in her *Sinumpaang Salaysay* that he licked her breast and vagina, and inserted his penis and finger in her vagina.<sup>18</sup>

---

<sup>16</sup> CA *rollo*, p. 22.

<sup>17</sup> Id. at 24-25.

<sup>18</sup> Id. at 40-45.

*mm*

The accused-appellant also pointed to the inconsistency between Nene's testimony that she was born on August 27, 1990 and her statement that she was twelve years old when the accused-appellant raped her in November 2000. He also argued that he could not have raped Nene as she herself testified that she neither felt any pain nor did her genitalia bleed. The medical report even showed that Nene's hymen was still intact and showed no sign of any genital injury. According to the accused-appellant, these inconsistencies cast serious doubt on the truthfulness of Nene's rape allegations.<sup>19</sup>

In a Decision dated April 23, 2010, the Court of Appeals rejected the contentions of the accused-appellant. It found credible Nene's account during her testimony of her age and the manner she was ravished by her father. It held that the alleged inconsistencies in Nene's testimony were trivial and insufficient to render her account doubtful.<sup>20</sup> It further ruled that the accused-appellant committed rape by sexual assault under Article 266-A(2) of the Revised Penal Code, as amended. According to the appellate court:

[Nene's] testimony and *Sinumpaang Salaysay* agreed on the following matters: a) appellant licked her vagina; and b) appellant inserted his penis and finger into her vagina. As stated, she experienced all these lurid acts from her own father. Appellant cannot negate his liability by breaking down these acts and treating them separately. In any event, whether he penetrated his daughter with his penis or his finger does not affect his criminal liability for rape. Under Article 266-A of the Revised Penal Code, rape is committed by one who under any of the circumstances mentioned in paragraph 1, shall commit an act of sexual assault by inserting his penis into another's mouth or anal orifice or any instrument or object, into the genital or anal orifice of another person.<sup>21</sup>

Thus, the Court of Appeals denied the accused-appellant's appeal and affirmed the decision of the trial court, with modification as to the award of damages:

**ACCORDINGLY**, We **AFFIRM** the appealed Decision with **MODIFICATION** granting P75,000 as civil indemnity and P25,000 as exemplary damages in addition to the trial court's award of P75,000 as moral damages.<sup>22</sup>

The accused-appellant brings this appeal based on the very same grounds of his appeal in the Court of Appeals.<sup>23</sup> Like the Court of Appeals, however, we deny the accused-appellant's appeal.

---

<sup>19</sup>

Id.

<sup>20</sup>

*Rollo*, pp. 11-14.

<sup>21</sup>

Id. at 17.

<sup>22</sup>

Id. at 18.

<sup>23</sup>

Id. at 26-29. *See* Manifestation (In Lieu of Supplemental Brief) of the accused-appellant where he manifests that he has exhaustively discussed the assigned errors in the appellant's brief that he filed in the Court of Appeals and that he is adopting the same as his supplemental brief.

*MMW*

The alleged contradictions and inconsistencies refer to trivial matters. They are not material to the issue of whether or not the accused-appellant committed the acts for which he has been charged, tried and convicted.

Besides, Nene was only ten years old when she answered the questions contained in the *Sinumpaang Salaysay* and she was only fourteen years old when she testified. Error-free testimony cannot be expected, most especially when a witness is recounting details of a harrowing experience, one which even an adult would like to bury in oblivion.<sup>24</sup>

The age of Nene when the incidents of rape happened has been established by her birth certificate which shows that she was born on August 27, 1990.<sup>25</sup> With that data, the age of Nene at the time of the first incident sometime in October 1996 to October 1997 and her age at the time of the second incident in November 2000 become a simple matter of mathematical computation.

Moreover, as regards Nene's age when the first incident of rape happened, Nene clarified what the accused-appellant perceives to be an inconsistency in her part. In her answer to the clarificatory questioning of the prosecutor, she categorically stated that she was six years old at that time:

ACP Taylor: Now, in Par. 10 of your complaint affidavit[/*Sinumpaang Salaysay*], it did not state [how] the incident transpired and where. Please tell me clearly, in connection with Par. 10 of your complaint affidavit[/*Sinumpaang Salaysay*] dated 23 Nov. 2000, when did this incident transpire?

[Nene]: **Hindi ko na po maalaala pero ang sigurado po ako ay ako ay six years old po lamang ako noon.**<sup>26</sup> (Emphasis supplied.)

The alleged contradiction about the whereabouts of Nene's mother at the time of the first incident of rape is inconsequential to the fact that the accused-appellant raped Nene at that time. Whether her mother, who is the accused-appellant's wife, was outside the house or sleeping inside the house at that time would not disprove the accused-appellant's rape of Nene. Case law proves that circumstances of time, place, and even the presence of other persons are not considerations in the commission of rape. Thus, we have held in *People v. Mendoza*<sup>27</sup>:

[R]ape is no respecter of time and place. It can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house or where there are other occupants, and

<sup>24</sup> *People v. Osing*, 402 Phil. 343, 350 (2001).

<sup>25</sup> Records, p. 25; Birth Certificate of Nene, Exhibit "B."

<sup>26</sup> Id. at 46.

<sup>27</sup> 440 Phil. 755, 772 (2002).

even in the same room where there are other members of the family who are sleeping. (Citations omitted.)

The alleged variance in the narration in Nene's *Sinumpaang Salaysay* and during her testimony of the specific acts of the accused-appellant which constituted the rape is more apparent than real. During trial, Nene affirmed and confirmed the truthfulness of the statements contained in her *Sinumpaang Salaysay*.<sup>28</sup> The *Sinumpaang Salaysay* was formally offered as evidence for the prosecution.<sup>29</sup> When a sworn statement has been formally offered as evidence, it forms an integral part of the prosecution evidence which complements and completes the testimony on the witness stand.<sup>30</sup> Indeed, Nene's *Sinumpaang Salaysay* and testimony during trial complement, rather than contradict, each other. Thus, taken together, they give a more complete account of the dastardly acts done by the accused-appellant against his own daughter.

The medical report, which showed that Nene's hymen was still intact and revealed no sign of any genital injury, was consistent with Nene's statement that her genitalia did not bleed as a result of what the accused-appellant did to her. Contrary to the accused-appellant's contention, therefore, the medical report corroborated, rather than contradicted, Nene's testimony.

More importantly, proof of hymenal laceration is not an element of rape. Nor is proof of genital bleeding. An intact hymen does not negate a finding that the victim was raped. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape.<sup>31</sup> Besides, rape can now be committed even without sexual intercourse, that is, by sexual assault.

Both Informations in Criminal Case Nos. Q-03-119452 and Criminal Case No. Q-03-119453 alleged that the accused-appellant's acts of sexual molestation of his daughter Nene were attended by grave abuse of authority. The prosecution was able to establish that circumstance. In particular, the accused-appellant gravely abused his parental authority, particularly his disciplinary authority, over Nene and used it to further his lechery. In incestuous rape cases, the father's abuse of the moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants. His moral and physical domination is sufficient to cow the daughter-victim into submission to his beastly desires.<sup>32</sup> In this case, Nene feared the accused-appellant. In fact, the accused-appellant himself admitted in his testimony that he was a cruel husband and father and

---

<sup>28</sup> TSN, December 14, 2004, p. 12.

<sup>29</sup> Records, p. 160; *see* Order dated September 26, 2006.

<sup>30</sup> *People v. Servano*, 454 Phil. 256, 277 (2003).

<sup>31</sup> *People v. Pangilinan*, G.R. No. 183090, November 14, 2011, 660 SCRA 16, 31.

<sup>32</sup> *People v. Dominguez, Jr.*, G.R. No. 180914, November 24, 2010, 636 SCRA 134, 159.

*mm*

that he treated his wife and children harshly.<sup>33</sup>

Therefore, the trial and the appellate courts correctly ruled that Nene's testimony against the accused-appellant is credible enough and sufficient enough to sustain the accused-appellant's conviction. Nene was clear and categorical in her testimony that her father, the accused-appellant, with grave abuse of authority, threat and intimidation, sexually violated her in the two instances subject of the Informations in Criminal Case Nos. Q-03-119452 and Q-03-119453, respectively. The records bear this out.<sup>34</sup>

In particular, Nene related that, sometime when she was six years old, the accused-appellant rubbed his sex organ against hers, licked her vagina and inserted his finger in it, all the while threatening her. Nene also recounted that, sometime in the second week of November 2000, the accused-appellant, in grave abuse of his parental authority, sexually molested her again by rubbing his penis against her vagina.

Nevertheless, there is a need to clarify the crimes for which the accused-appellant has been convicted.

The trial court found the accused-appellant guilty of qualified rape by sexual intercourse under Article 266-A(1) of the Revised Penal Code, as amended, in relation to the first qualifying circumstance enumerated in Article 266-B of the same law,<sup>35</sup> namely, that Nene is under 18 years of age and the accused-appellant is her father. On the other hand, the appellate court found the accused-appellant to have committed qualified rape by sexual assault under Article 266-A(2) of the Revised Penal Code, as amended, in relation to the first qualifying circumstance mentioned in Article 266-B.<sup>36</sup>

There is thus a substantial variance in the rulings of the trial and the appellate courts as regards the felony which the accused-appellant committed. The difference in their rulings is significant because rape by sexual intercourse and rape by sexual assault have different elements. We explained this matter in *People v. Espera*<sup>37</sup>:

As the felony is defined under Article 266-A, rape may be committed either by sexual intercourse under paragraph 1 or by sexual assault under paragraph 2.

Rape by sexual intercourse is a crime committed by a man against a woman. The central element is carnal knowledge and it is perpetrated under any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1.

---

<sup>33</sup> TSN, January 15, 2007, pp. 3-6.

<sup>34</sup> TSN, December 14, 2004.

<sup>35</sup> CA *rollo*, pp. 23-24.

<sup>36</sup> *Rollo*, p. 13.

<sup>37</sup> G.R. No. 202868, October 2, 2013.

*gmc*



On the other hand, rape by sexual assault contemplates two situations. *First*, it may be committed by a man who inserts his penis into the mouth or anal orifice of another person, whether a man or a woman, under any of the attendant circumstances mentioned in paragraph 1. *Second*, it may be committed by a person, whether a man or a woman, who inserts any instrument or object into the genital or anal orifice of another person, whether a man or a woman, under any of the four circumstances stated in paragraph 1. (Citations omitted.)

Moreover, under Article 266-B of the Revised Penal Code, as amended, qualified rape by sexual intercourse and qualified rape by sexual assault are punished differently. In particular, qualified rape by sexual intercourse is punishable by death. In view of Republic Act No. 9346<sup>38</sup> which prohibited the imposition of the death penalty, however, qualified rape is punishable by *reclusion perpetua*.<sup>39</sup> On the other hand, qualified sexual assault is punishable by *reclusion temporal*.

It is noteworthy that under the Information in Criminal Case No. Q-03-119452, the accused-appellant can be held liable for either of two crimes: (1) qualified statutory rape by sexual intercourse under Article 266-A(1)(d) of the Revised Penal Code, as amended, which punishes as rape a man's carnal knowledge of a woman under twelve years of age, even though there was no force, threat, intimidation, or grave abuse of authority, or (2) qualified statutory rape by sexual assault under Article 266-A(2) in connection with sub-paragraph (d) of the same Article 266-A(1). Both are qualified by the first qualifying circumstance under Article 266-B of the Revised Penal Code, as amended.

As stated earlier, the trial court convicted the accused-appellant for qualified statutory rape by sexual intercourse, finding that the accused-appellant's sex organ penetrated Nene's genitalia. Such finding is, however, mistaken. What Nene testified to was that her father, the accused-appellant, rubbed his penis against her vagina. However, such "rubbing of the penis" against the vagina does not amount to penetration which would consummate the rape by sexual intercourse.

In her *Sinumpaang Salaysay* dated November 23, 2000, Nene stated:

10. T: Papaano ka nire-rape ng Papa mo?  
S: Iyung ari niya inilalagay sa pekpek ko. Dinidilaan niya ang dede ko pati ang pekpek ko. Iyung daliri niya ipinapasok sa butas ng pekpek ko.<sup>40</sup>

She explained this further on clarificatory questioning:

ACP Taylor: [O]key[,] to be more clear (sic), please tell me basically,

<sup>38</sup> An Act Prohibiting the Imposition of Death Penalty in the Philippines.

<sup>39</sup> Id., Section 2(a).

<sup>40</sup> Records, p. 22; *Sinumpaang Salaysay* of Nene, Exhibit "A."

what exactly did your father do to you when you were six years old and when you were residing in QC?

[Nene]: Yung nga po yung ari niya idinidikit sa ari ko at kinukuskus nya yung ari niya sa ari ko tapos dinidilaan niya yung ari ko pati susu ko at pinapasok pa niya yung finger niya sa ari ko[.]

ACP Taylor: You said and I quote, “kinukuskus niya yung ari niya sa ari [k]o”. Now[,] **may penetration ba, ipinap[a]sok ba niya sa ari mo yung ari niya?**

[Nene]: **Hindi naman po pero kinukuskos nya po[.]**<sup>41</sup> (Emphases supplied.)

At the witness stand, Nene testified as follows during direct-examination:

Q: Will you please tell us how the accused raped you?

A: He was mashing my breast and **he was trying to insert his penis to my vagina.**

x x x x

Q: So when the accused raped you for the first time, what did you feel?

A: I don't know, Sir.

Q: Did you not feel pain at that time?

A: No, Sir.

Q: Was there any blood on your vital part when he raped you?

A: None, Sir.<sup>42</sup> (Emphasis supplied.)

On cross-examination, Nene testified:

Q: You also testified that you did not feel pain when the accused allegedly raped you, is that correct?

A: Yes, Sir.

Q: And also there was no blood coming from the vagina?

A: Yes, Sir.

Q: And it was only because the accused rubbed his penis to your vagina, is that correct?

A: Yes, Sir.<sup>43</sup>

Thus, Nene's statements in her *Sinumpaang Salaysay* and testimony at the witness stand established that her father mashed her breast, kissed and licked her vagina, inserted his finger in her sex organ, and rubbed his sex organ against hers but he did not penetrate her vagina.

<sup>41</sup> Id. at 46.

<sup>42</sup> TSN, December 14, 2004, pp. 4 and 8.

<sup>43</sup> Id. at 14-15.

*mm*

Jurisprudence dictates that in order for rape to be consummated, there must be penetration of the penis into the vagina.<sup>44</sup> The concept of penetration required in rape by sexual intercourse has been explained in *People v. Campuhan*<sup>45</sup> as follows:

[A] grazing of the surface of the female organ or touching the *mons pubis* of the *pudendum* is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, *i.e.*, touching of either *labia* of the *pudendum* by the penis, there can be no consummated rape; at most, it can only be attempted, if not acts of lasciviousness.

This Court is aware of cases where the conviction of the accused for consummated rape has been upheld even if the victim testified that there was no penetration and the accused simply rubbed his penis in the victim's vagina.<sup>46</sup> However, in those cases, there were pieces of evidence such as the pain felt by the victim, injury to the sex organ of the victim (*e.g.*, hymenal laceration), and bleeding of the victim's genitalia. Here, the victim not only categorically stated that there was no penetration, she also stated that she felt no pain and her vagina did not bleed. Thus, the appellant cannot be convicted for qualified rape by sexual intercourse.

Nevertheless, his conviction in Criminal Case No. Q-03-119452 cannot be downgraded to qualified attempted rape. The prosecution has alleged and proved that there was qualified rape by sexual assault when the accused-appellant kissed and licked his daughter Nene's vagina and inserted his finger in her sex organ.

While the Court of Appeals correctly convicted the accused-appellant for rape by sexual assault, it erred in affirming the penalty imposed by the trial court -- *reclusion perpetua*, which was for qualified rape by sexual intercourse. As stated earlier, under Article 266-B of the Revised Penal Code, as amended, the penalty for qualified rape by sexual assault is *reclusion temporal*. There being neither mitigating nor aggravating circumstance which attended the crime, the penalty is imposable in its medium period which has a duration of 14 years, 8 months and 1 day to 17 years and 4 months, and the maximum period of the indeterminate penalty will be taken from this. The minimum period of the indeterminate sentence will be within the range of *prision mayor* which has a duration of 6 years and 1 day to 12 years, as it is the penalty next lower to *reclusion temporal*. Thus, the accused-appellant's penalty for qualified rape by sexual abuse in Criminal Case No. Q-03-119452 should be modified to an indeterminate sentence the minimum period of which is 12 years of *prision mayor* and the

<sup>44</sup> *People v. Asuncion*, 417 Phil. 190, 197 (2001).

<sup>45</sup> 385 Phil. 912, 922 (2000).

<sup>46</sup> These cases include *People v. Alviz*, G.R. Nos. 144551-55, June 29, 2004, 433 SCRA 164; *People v. Asuncion*, *supra* note 44; *People v. Castillo*, 274 Phil 940 (1991); and, *People v. Alimon*, 327 Phil. 447 (1996).

maximum period of which is 17 years and 4 months of *reclusion temporal*.

As regards the conviction of the accused-appellant in Criminal Case No. Q-03-119453, this too should be modified.

In her *Sinumpaang Salaysay* dated November 23, 2000, Nene simply stated:

17. T: Kailan nangyari iyung huling paggalaw sa iyo ng Papa mo?  
S: Noong lingo.
18. T: Ito bang nakaraang Linggo lang?  
S: Opo.<sup>47</sup>

Her testimony at the witness stand is as follows:

- Q: In the information, you mentioned that you were again sexually abused by your father when you were already 12 years old?  
A: Yes, Sir.
- Q: And this was the last time your father raped you?  
A: Yes, Sir.
- Q: Do you recall the month?  
A: November 2000.
- Q: So in November of 2000 you were raped again by your father?  
A: Yes, Sir, the last time.
- Q: While rubbing his penis, did he not insert it to your vagina?  
A: Yes, Sir.
- Q: So he was just rubbing his penis to your vagina?  
A: Yes, Sir.<sup>48</sup>

Thus, Nene's statements in her *Sinumpaang Salaysay* and testimony at the witness stand established that, in November 2000, her father rubbed his sex organ against hers. This cannot be qualified rape by sexual assault. As the fact of penetration was not clearly established, this is only attempted qualified rape by sexual intercourse.

There is an attempt to commit rape when the offender commences its commission directly by overt acts but does not perform all acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.<sup>49</sup> In this connection, *People v. Bon*<sup>50</sup> is instructive:

<sup>47</sup> Records, p. 22; *Sinumpaang Salaysay* of Nene, Exhibit "A."

<sup>48</sup> TSN, December 14, 2004, pp. 15-16.

<sup>49</sup> *People v. Bon*, 536 Phil. 897, 916 (2006).

<sup>50</sup> Id.

[U]nder Article 6 of the Revised Penal Code, there is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In the crime of rape, **penetration is an essential act of execution to produce the felony.** Thus, for there to be an attempted rape, the accused must have commenced the act of penetrating his sexual organ to the vagina of the victim but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, is not completed.<sup>51</sup> (Emphasis supplied.)

In this case, the accused-appellant commenced the act of having sexual intercourse with Nene but failed to make a penetration into her sexual organ not because of his spontaneous desistance but because of the relatively small size of her orifice as indicated in the medical findings conducted upon Nene after the November 2000 incident.

The penalty for qualified attempted rape is *prision mayor*. As no mitigating or aggravating circumstance attended the crime, the penalty is imposable in its medium period, which has a duration of 8 years and 1 day to 10 years, from which the maximum period of the indeterminate penalty will be taken. The minimum period of the indeterminate sentence will be within the range of *prision correccional*, which has a duration of 6 months and 1 day to 6 years, as it is the penalty next lower to *prision mayor*.<sup>52</sup> Thus, the accused-appellant's conviction in Criminal Case No. Q-03-119453 should be modified to attempted qualified rape by sexual intercourse for which he is imposed an indeterminate sentence with a minimum period of 6 years of *prision correccional* and a maximum period of 10 years of *prision mayor*.

With the modification of the crimes for which the accused-appellant has been convicted and of the corresponding penalties imposed on him, a modification of the award of damages is also in order.

For the qualified rape by sexual assault, in line with prevailing jurisprudence, the accused-appellant should pay Nene ₱30,000.00 civil indemnity. This is mandatory upon a finding of the fact of rape. Moreover, the award of moral damages is automatically granted without need of further proof, it being assumed that a rape victim has actually suffered moral damages entitling her to such award. Nene is, thus, entitled to recover ₱30,000.00 moral damages pursuant to prevailing case law. In addition, for purposes of the award of damages, the qualifying circumstances of minority and relationship entitle Nene to an award of ₱30,000.00 exemplary damages.<sup>53</sup>

For the attempted qualified rape by sexual intercourse, in accordance with recent case law, the accused-appellant should pay Nene ₱30,000.00

---

<sup>51</sup> Id. at 918.

<sup>52</sup> *People v. Briosos*, G.R. No. 182517, March 13, 2009, 581 SCRA 485, 500.

<sup>53</sup> *Flordeliz v. People*, G.R. No. 186441, March 3, 2010, 614 SCRA 225, 237-238.

*mtw*

civil indemnity, ₱25,000.00 moral damages, and ₱10,000.00 exemplary damages.<sup>54</sup>

As the Court of Appeals correctly ruled, interest at the rate of six percent (6%) *per annum* shall be imposed on all damages awarded from the date of finality of this judgment until fully paid, pursuant to prevailing jurisprudence.<sup>55</sup>

**WHEREFORE**, the Decision dated April 23, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02999 is hereby **AFFIRMED with MODIFICATION** as follows:

1) In Criminal Case No. Q-03-119452, the accused-appellant Marlon Castillo y Valencia, is found **GUILTY** beyond reasonable doubt of the crime of qualified rape by sexual assault for which he is sentenced to suffer an indeterminate penalty the minimum period of which is 12 years of *prision mayor* and the maximum period of which is 17 years and 4 months of *reclusion temporal*.

The accused-appellant is further ordered to pay the victim ₱30,000.00 civil indemnity, ₱30,000.00 moral damages and ₱30,000.00 exemplary damages.

2) In Criminal Case No. Q-03-119453, the accused Marlon Castillo y Valencia, is found **GUILTY** beyond reasonable doubt of attempted qualified rape by sexual intercourse for which he is imposed an indeterminate sentence with a minimum period of 6 years of *prision correccional* and a maximum period of 10 years of *prision mayor*.

The accused-appellant is further ordered to pay the victim ₱30,000.00 civil indemnity, ₱25,000.00 moral damages, and ₱10,000.00 exemplary damages.

The amounts awarded to the victim in Criminal Case Nos. Q-03-119452 and Q-03-119453 shall earn legal interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

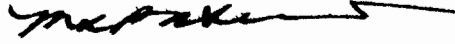
**SO ORDERED.**

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

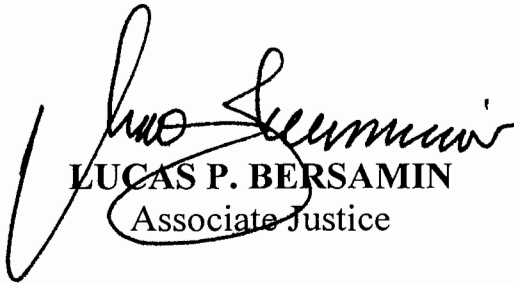
<sup>54</sup> *People v. Brioso*, supra note 52.

<sup>55</sup> *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

WE CONCUR:



**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson



**LUCAS P. BERSAMIN**  
Associate Justice



**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**BIENVENIDO L. REYES**  
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