



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

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

G.R. No. 184762

Present:

SERENO, C.J.,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
PEREZ, and  
PERLAS-BERNABE, JJ.

- versus -

**DOMINGO GALLANO y**  
**JARANILLA,**  
Accused-Appellant.

Promulgated:

**FEB 25 2015**

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**DECISION**

**BERSAMIN, J.:**

To convict an accused charged with qualified rape instead of rape in its simple form not only condemns him to a more serious offense but also exposes him to an even greater liability. As such, the State is mandated to sufficiently allege in the information and to competently prove during trial the qualifying circumstances of minority and relationship with the same certainty as the crime itself.

**The Case**

This appeal assails the decision promulgated on December 14, 2007,<sup>1</sup> whereby the Court of Appeals (CA) affirmed with modification the judgment<sup>2</sup> rendered on March 22, 2004 by the Regional Trial Court (RTC), Branch 69, in Silay City, Negros Occidental finding appellant Domingo Gallano y Jaranilla guilty of the crime of rape, qualified by minority and relationship, and sentencing him to the supreme penalty of death therefor.

<sup>1</sup> *Rollo*, pp. 4-20; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justice Isaias P. Dicdican and Associate Justice Priscilla Baltazar-Padilla.

<sup>2</sup> *CA rollo*, pp. 14-18; penned by Judge Felipe G. Banzon.

### Antecedents

Gallano was arraigned and tried under the following information, viz:

That on or about 2 January 2003, in Silay City, Philippines and within the jurisdiction of this Honorable Court, the herein accused, with lewd design, and with force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his niece, AAA,<sup>3</sup> a 12-year-old minor, against the latter's will.

The aggravating circumstance of minority and relationship is present, the victim being 12 years old, and the accused being the victim's relative by affinity within the third civil degree.

ACTS CONTRARY TO LAW.<sup>4</sup>

The facts presented by the Prosecution were summed up thusly:

Private complainant, AAA, and her brother lived with their maternal aunt, BBB, BBB's husband, herein appellant, their children and BBB's brother in Barangay Guimbala-on, Silay City (TSN, October 6, 2003, pp. 3-4).

On January 2, 2003, BBB went to the hospital to take care of her father and stayed there for days. AAA was home and was about to make her brother go to sleep. She went inside the bedroom to a mat when appellant took her aside, undressed her and laid her down on the bed. Standing over her, appellant pointed his penis at her and warned her not to tell her mother, otherwise, he would kill her. When appellant's penis touched AAA's vagina, she felt pain and instinctively kicked him away. Feeling distraught, AAA ran outside and cried (TSN, October 20, 2003, pp. 5-7).

On January 8, 2003, BBB's brother went to the hospital, he told BBB that he saw AAA and appellant inside the room, standing and facing each other. This prompted BBB to ask AAA about the incident. At first, AAA hesitated and refused to talk but later admitted that she was raped. BBB brought AAA to the city health officer for examination on January 9, 2003 (TSN, October 6, 2003, pp. 4-5).<sup>5</sup>

The City Health Officer who examined AAA found hymenal lacerations on AAA's private part.<sup>6</sup>

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<sup>3</sup> Pursuant to Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*), and its implementing rules, the real names of the victim and of the members of her immediate family or household are withheld, and fictitious initials are used instead to represent them in order to protect their privacy. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 422.

<sup>4</sup> Records, p. 1.

<sup>5</sup> *CA rollo*, pp. 77-78.

<sup>6</sup> *Id.* at 79.

Gallano denied the charge, and asserted alibi, insisting that on the day the rape was committed he had been working in the sugarcane field, having left home for that purpose at 5:00 a.m. and returning only at 5:00 p.m.; that he had brought his lunch then because he would take an hour to walk from the sugarcane field to his house; and that he had learned of the charge of rape against him only after his arrest and detention.<sup>7</sup>

### Decision of the RTC

In its judgment, the RTC convicted Gallano of rape, qualified by minority and relationship, disposing:

WHEREFORE, PREMISES CONSIDERED, this Court finds accused DOMINGO GALLANO Y JARANILLA, Guilty (sic.) of the crime of Rape, defined in Article 266-A in relation to Article 266-B, paragraph 5, sub-paragraph 1, of Republic Act No. 8353, as his guilt had been established by the prosecution beyond any reasonable doubt.

Accordingly, this Court sentences accused, DOMINGO GALLANO y JARANILLA, to suffer the Supreme Penalty of Death (sic.)

Accused, Domingo Gallano y Jaranilla, is, further, ordered by this Court to pay minor, [AAA], the sum of FIFTY THOUSAND PESOS (P50,000.00) as Moral Damages, and the sum of FIFTY THOUSAND PESOS (P50,000.00), all in Philippine Currency, as Exemplary Damages.

Accused, Domingo Gallano y Jaranilla, is ordered remitted to the National Penitentiary, Muntinlupa City, Rizal.

NO COSTS.

SO ORDERED.<sup>8</sup>

The RTC found AAA's testimony as credible, observing as follows:

Though a child, [AAA], demonstrated to this Court her capacity of observation, recollection and communication. She showed that she can perceive and perceiving, can make known her perception to this Court as she clearly and capably related the details of her sad and horrible experience at the hands of the accused. She withstood a thorough and exhaustive cross-examination. x x x It was a positive and credible account she presented before this Court. There was not a motive ascribed and/or, in the very least, suggested by the defense that might have raised doubt on her credibility and the credibility of the statements she made before this Court.<sup>9</sup>

Anent Gallano's alibi, the RTC stated:

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

<sup>8</sup> *CA rollo*, p. 18.

<sup>9</sup> *Id.* at 17.

The sugarcane field where accused, Domingo Gallano y Jaranilla, claimed he was at the time of the occurrence of the incident subject of the present criminal action was, likewise, located at Hda. Bias, Barangay Guimbala-on, a submitted distance of only four (4) kilometers away from the house where the submitted offense was committed easily accessible to the accused even by foot. Accused's statement was not corroborated nor substantiated by other evidence, oral or otherwise. Under the given circumstances, the physical impossibility of his presence at the scene of the crime, had not been established sufficiently and convincingly. The burden of proof in setting in evidence the factual circumstance/circumstances of the defense of alibi lies on the one who claims said defense, the accused in the present criminal action, which failed to do miserably.<sup>10</sup>

In characterizing the offense as qualified rape, the RTC ruled that AAA was definitely below 18 years old on January 2, 2003; and that such fact was not contested by Gallano.<sup>11</sup> As to the fact that AAA was Gallano's relative by affinity within the third civil degree, the RTC declared that such relationship had been sufficiently established.<sup>12</sup>

### Judgment of the CA

On appeal, Gallano challenged his conviction, contending that the RTC committed the following errors, to wit:

#### I.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE

#### II.

GRANTING ARGUENDO THAT ACCUSED-APPELLANT WAS GUILTY OF RAPING [AAA], THE COURT A QUO GRAVELY ERRED IN IMPOSING THE DEATH PENALTY.<sup>13</sup>

The CA affirmed Gallano's conviction for rape nonetheless because the State had established all the elements of rape, including the force and intimidation employed by Gallano.<sup>14</sup> It opined that there was no reason advanced by Gallano to warrant disturbing the RTC's appreciation of AAA's testimony; and agreed with the RTC that his alibi and denial were worthless. Anent the second error, the CA said that the records were "bereft of any independent evidence which would accurately show AAA's age,"<sup>15</sup>

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<sup>10</sup> Id.

<sup>11</sup> Id. at 18.

<sup>12</sup> Id.

<sup>13</sup> Id. at 44.

<sup>14</sup> Supra note 1.

<sup>15</sup> Id. at 16.

pointing out that even AAA had been uncertain about her own age;<sup>16</sup> and that contrary to the State's theory, as advanced by the Office of the Solicitor General (OSG), AAA's testimony to prove her age had been insufficient because Gallano's admission of it had not been express and clear.<sup>17</sup> Prescinding from these observations, the CA sustained the RTC's finding of AAA's minority because:

Be that as it may, the minority age of the victim was not questioned by the defense. Although this Court held that the age of the victim is not certain, her still being a minor below eighteen (18) years old is not contested. This Court has to rely on the observation as stated in the assailed decision that the Court *a quo* is quite certain that the victim is definitely below 18 years of age on January 2, 2003.<sup>18</sup>

The CA modified the penalty because of the intervening passage of Republic Act No. 9346,<sup>19</sup> whereby the death penalty was prohibited from being imposed in case of conviction, and instead imposed *reclusion perpetua* on Gallano.<sup>20</sup> The CA awarded civil indemnity of ₱75,000.00, moral damages awarded to ₱75,000.00, and exemplary damages to ₱25,000.00.<sup>21</sup>

### Issues

Hence, this appeal, with Gallano reiterating the alleged errors by the CA, arguing that he should not be convicted of rape upon the sole testimony of AAA that had been tainted with improbabilities and contrariness to human experience. Hence, his guilt had not been established beyond reasonable doubt.<sup>22</sup>

### Ruling

The conviction of Gallano is affirmed, but the characterization of the crime as qualified rape is set aside. He could be held guilty only of simple rape.

Rape is a crime that is almost always committed in isolation or in secret, usually leaving only the victim to testify about the commission of the crime.<sup>23</sup> As such, the accused may be convicted of rape on the basis of the victim's sole testimony provided such testimony is logical, credible, consistent and convincing.<sup>24</sup> Moreover, the testimony of a young rape victim is given full weight and credence considering that her denunciation against

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<sup>16</sup> Id.

<sup>17</sup> Id. at 17.

<sup>18</sup> Id.

<sup>19</sup> *An Act Prohibiting the Imposition of Death Penalty in the Philippines.*

<sup>20</sup> *Rollo*, p. 18.

<sup>21</sup> Id. at 19.

<sup>22</sup> *CA Rollo*, pp. 49-55.

<sup>23</sup> *People v. Manalili*, G.R. No. 184598, June 23, 2009, 590 SCRA 695, 706.

<sup>24</sup> *People v. Ortega*, G.R. No. 186235, January 25, 2012, 664 SCRA 273, 282.

him for rape would necessarily expose herself and her family to shame and perhaps ridicule.<sup>25</sup> Indeed, it is more consistent with human experience to hold that a rape victim of tender age will truthfully testify as to all matters necessary to show that she was raped.<sup>26</sup>

After reviewing the records, the Court concludes that the trial court was not arbitrary in its appreciation of the proof of rape, and, therefore, the CA correctly ruled that the crime of rape was established beyond reasonable doubt even upon the lone testimony of the victim herself. With the lower courts not being shown by Gallano to have overlooked any matter or circumstance of weight that could alter the result in his favour, their appreciation must be viewed with respect. It is settled that the findings of fact by the trial court are accorded great weight, and are even held to be conclusive and binding unless they were tainted with arbitrariness or oversight.<sup>27</sup> This respect is but a recognition that the trial court is better situated to assess the testimonies and evidence laid out before it during the trial.<sup>28</sup>

Nonetheless, Gallano was guilty only of simple rape, not of qualified rape. In order that the accused is convicted of qualified rape under Article 266-B (1) of the *Revised Penal Code*, two requisites must be met, namely: (1) the victim must be a less than 18 years old; and (2) the offender must either be related to the victim by consanguinity or by affinity within the third civil degree, or is the common-law spouse of the parent of the victim. These two requisites must be both alleged and proved with absolute certainty.<sup>29</sup> Otherwise, the accused could only be held guilty of simple rape. The qualifying circumstances of relationship and minority remain to be relevant in the crime of rape despite the abolition of the death penalty under R.A. No. 9346. The accused's civil liability depends on the mode of rape he committed.<sup>30</sup>

Although Gallano's relationship with AAA went uncontroverted because both he and BBB had testified that they were legally married,<sup>31</sup> AAA's minority was not thereby competently established.

*People v. Pruna*<sup>32</sup> states the controlling guidelines in evaluating evidence presented to prove a rape victim's minority, to wit:

x x x [W]e hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

<sup>25</sup> *People v. Dela Cruz*, G.R. No. 177572, February 26, 2008, 546 SCRA 703, 718.

<sup>26</sup> *Id.*

<sup>27</sup> *People v. Pandapatan*, G.R. No. 173050, April 13, 2007, 521 SCRA 304, 324.

<sup>28</sup> *Id.*

<sup>29</sup> *People v. Velasco*, G.R. Nos. 135231-33, February 28, 2001, 353 SCRA 138, 152-153.

<sup>30</sup> See *Sierra v. People*, G.R. No. 182941, July 3, 2009, 591 SCRA 666, 691.

<sup>31</sup> TSN, October 6, 2003, p. 6; TSN, February 16, 2004, p. 3.

<sup>32</sup> G.R. No. 138471, October 10, 2002, 390 SCRA 577.

1. 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.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. **If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:**

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. **In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.**

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him. (Emphasis supplied)<sup>33</sup>

The testimonies relevant to AAA's age were given as follows:

1. BBB testified that AAA was 13 years old at the time when her testimony was taken but there was no birth certificate to prove AAA's age.<sup>34</sup>

2. BBB declared that she took AAA when the latter was only nine months old.<sup>35</sup>

3. AAA attested that she was 13 years old at the time of the taking of her testimony but she did not know when she was born.<sup>36</sup>

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<sup>33</sup> Id. at 603-604.

<sup>34</sup> TSN, October 6, 2003, p. 3.

<sup>35</sup> Id.

<sup>36</sup> TSN, October 20, 2003, p. 4.

4. AAA said that she had been staying with BBB for about four years prior to the time her testimony was taken.<sup>37</sup>
5. Gallano mentioned that he did not know AAA's age,<sup>38</sup> but he answered on cross-examination that AAA was from 12 to 13 years old when asked if he knew AAA's age in 2003.<sup>39</sup>
6. Gallano stated on cross-examination that AAA had been living with them since she was seven years old.<sup>40</sup>

It is clear that the Prosecution failed to adduce AAA's certificate of live birth, the best evidence to prove AAA's age in the context of *Pruna*. The Prosecution did not also present any acceptable substitutionary documentary evidence to prove the same. Instead, the Prosecution relied on the testimonies of AAA and BBB to establish AAA's minority.

Did the testimonies of AAA and BBB suffice to prove AAA's minority even if coupled with Gallano's supposed admission of the same?

We answer in the negative.

BBB, who was AAA's aunt, was qualified to testify on AAA's pedigree, like her age and her date of birth. Section 40, Rule 130 of the Rules of Court expressly stated so.<sup>41</sup> Conformably with *Pruna*,<sup>42</sup> BBB's testimony would have sufficed considering that the information alleged that AAA was 12 years old at the time of the commission of the crime, and the Prosecution was trying to prove that AAA was below 18 years old for the purpose of qualifying the rape committed by the accused. Yet, *Pruna* dictated that BBB's testimony must be clear and credible.<sup>43</sup> BBB's testimony failed this test. Although BBB recalled that she had taken AAA under her wing when the latter had been nine months old,<sup>44</sup> BBB was apparently contradicted by AAA's declaration that she had been staying with BBB and her family for about four years reckoned from the time she gave her testimony in court.<sup>45</sup> Gallano complicated the contradiction between BBB and AAA by attesting that AAA had started staying with them when she had been only seven years old.<sup>46</sup> The effect of the contradictions was to cast

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<sup>37</sup> Id.

<sup>38</sup> TSN, February 16, 2004, p. 4.

<sup>39</sup> Id. at 10.

<sup>40</sup> Id.

<sup>41</sup> Section 40. *Family reputation or tradition regarding pedigree*. — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engravings on rings, family portraits and the like, may be received as evidence of pedigree.

<sup>42</sup> Supra note 32.

<sup>43</sup> Supra note 33, at 603.

<sup>44</sup> Supra note 35.

<sup>45</sup> Supra note 37.

<sup>46</sup> Supra note 40.



doubt on BBB's personal knowledge of AAA's age and date of birth, rendering BBB's testimony on AAA's minority unreliable.

Nevertheless, the OSG submits that AAA's testimony was enough to prove her age because Gallano admitted to the same during cross-examination.<sup>47</sup>

We disagree with the State. The guidelines under *Pruna* require that the accused's admission of the age of the victim must be express and clear.<sup>48</sup> That was not the case herein, for not only did Gallano declare that he did not know how old AAA was at the time of the commission of the crime, but also that he had been vague and indefinite on the matter as borne out by his tentative response of "12 or 13 years old" when asked during cross-examination if he knew AAA's age in 2003.<sup>49</sup> In other words, Gallano's admission was not express and clear enough to establish AAA's minority beyond moral certainty.

With the State not having established AAA's minority with absolute certainty, the Court rules out qualified rape as the crime committed by Gallano. We reiterate that in the prosecution of rape in its qualified form, the victim's minority must be averred and established "with equal certainty and clearness as the crime itself."<sup>50</sup> As a consequence, Gallano committed only simple rape, thus precluding the application of R.A. No. 9346. Pursuant to Article 266-A of the *Revised Penal Code*, the proper penalty is *reclusion perpetua*.

It further appears that despite already entertaining doubt about AAA's minority, the CA still affirmed Gallano's conviction for qualified rape by depending on the "certainty" of the RTC's findings on AAA's minority.<sup>51</sup> Such affirmance by the CA was unwarranted because it was contrary to the guidelines defined by the Court in *Pruna*.<sup>52</sup> The affirmance should be treated as another reversible error on the part of the CA, considering that all doubts in a criminal prosecution should be resolved in favor of the accused.

The modification of Gallano's civil liabilities is another consequence of the Prosecution's failure to establish AAA's minority. To conform to prevailing jurisprudence, the award of civil indemnity must be reduced to ₱50,000.00.<sup>53</sup> The award of moral damages is similarly reduced to ₱50,000.00 in view of prevailing jurisprudence.<sup>54</sup> Meanwhile, the award for exemplary damages is increased to ₱30,000.00 to conform to recent

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<sup>47</sup> *CA Rollo*, p. 89.

<sup>48</sup> *Supra* note 33, at 604.

<sup>49</sup> *Supra* notes 38 and 39.

<sup>50</sup> *People v. Villanueva*, G.R. No. 138364, October 15, 2003, 413 SCRA 431, 444.

<sup>51</sup> *Supra* note 16.

<sup>52</sup> *Supra* note 32.

<sup>53</sup> *People v. Roxas*, G.R. No. 200793, June 4, 2014.

<sup>54</sup> *People v. Gahi*, G.R. No. 202976, February 19, 2014.

jurisprudence.<sup>55</sup> The amounts of damages awarded should earn interest at the rate of 6% *per annum* from the finality of this judgment until said amounts are fully paid.<sup>56</sup>

**WHEREFORE**, the Court **AFFIRMS** the decision promulgated on December 14, 2007 with the **MODIFICATION** that appellant **DOMINGO GALLANO y JARANILLA** is pronounced **GUILTY** beyond reasonable doubt of **SIMPLE RAPE** and is sentenced to suffer *reclusion perpetua*, and to pay the victim AAA ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱30,000 as exemplary damages, with all such amounts to earn interest of 6% *per annum* from the finality of this decision until full payment. The petitioner shall pay the costs of suit.

**SO ORDERED.**



LUCAS P. BERSAMIN  
Associate Justice

**WE CONCUR:**



MARIA LOURDES P. A. SERENO  
Chief Justice



TERESITA J. LEONARDO-DE CASTRO  
Associate Justice



JOSE PORTUGAL PEREZ  
Associate Justice



ESTELA PERLAS-BERNABE  
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

<sup>55</sup> *People v. Bacatan*, G.R. No. 203315, September 18, 2013.

<sup>56</sup> *People v. Vitero*, G.R. No. 175327, April 3, 2013, 695 SCRA 54, 69.