Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

VERGEL ANCAJAS and ALLAIN* ANCAJAS,
Accused-Appellants.

G.R. No. 199270

Present:

VELASCO, JR., *J., Chairperson,*
PERALTA,
VILLARAMA, JR.,
REYES, and
PERLAS-BERNABE,** *JJ.*

Promulgated:
October 21, 2015

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DECISION

PERALTA, *J.*:

Appellants Vergel Ancajas and Allain Ancajas are before us seeking a review of the Decision[1] dated April 27, 2011 of the Court of Appeals (*CA*) Cebu City, issued in CA-G.R. CEB-CR-HC No. 00857.

On October 19, 1998, appellants were charged before the Regional Trial Court (*RTC*), Branch 61, Bogo, Cebu City with the crime of Rape under the following Information,[2] the accusatory portion of which states:

> That on the 16th day of July 1998, between the hours of 8:00 to 9:00 o'clock in the evening, at the house of the victim at Taytayan,

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* Also spelled as "Alain" in his birth certificate.

** Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 10, 2014.

1 Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles, concurring; *rollo,* pp. 3-15.

2 Records, p. 1.

> Municipality of Bogo, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, confederating and conspiring with one another, with deliberate intent, by means of force and violence by boxing her on the stomach thereby rendering her unconscious, with intimidation and lewd design, did then and there willfully, unlawfully and feloniously, have carnal knowledge with AAA,[3] while she was in a state of unconsciousness.
>
> CONTRARY TO LAW.[4]

On their arraignment on February 23, 1999, appellants pleaded NOT GUILTY[5] to the crime charged.

Trial thereafter ensued.

AAA, nineteen (19) years old, is a household help of the spouses Constantino and Elvira Cueva. At around 8 o'clock in the evening of July 16, 1998, she asked permission from her employers to go to her parents' house.[6] AAA's house is located in Barangay Taytayan, Bogo, Cebu,[7] the same barangay where her employers' house is situated. On her way to her parents' house, she met appellants Vergel and Allain who wanted to go with her but she refused.[8] They suddenly held her hands but she was able to get free from their hold. She then decided to return to her employers' house[9] but when she thought about her parents' need for the money,[10] she just stayed and waited at the side of the road hoping that the appellants would go away.[11]

Thinking that appellants had already left, she continued walking to her parents' house but appellants reappeared and held her hands again.[12] She shouted for help and struggled to be freed from their hold but appellant Allain covered her mouth with a handkerchief[13] and appellant Vergel punched her in the stomach which caused her to lose consciousness.[14]

At about 1 o'clock in the morning of July 17, 1998, AAA regained her consciousness and she noticed that she was only wearing her t-shirt as her

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3 In consonance with our decision in *People v. Cabalquinto*, September 19, 2006, we withheld the real name of the rape victim and instead a fictitious initials is used to represent her.

4 Records, p. 1; Docketed as Criminal Case No. B-00457.

5 *Id.* at 9.

6 TSN, March 23, 1999, p. 8.

7 *Id.* at 7.

8 *Id.* at 9.

9 *Id.*

10 *Id.* at 10.

11 *Id.*

12 *Id.* at 13-14.

13 *Id.* at 14.

14 *Id.* at 15-16.

bra, panty and maong pants were on her side.[15] She felt pain all over her body. [16] Her vagina hurt[17] and it was covered with blood. Her panty and maong pants were also stained with blood.[18] She went back to her employers' house and told them that she was raped by appellants.[19]

At around 9 o'clock in the morning of the same day, AAA was accompanied by the Spouses Cuevas to the police station in Bogo, Cebu to report the rape incident.[20] The rape incident was contained in a police blotter and AAA was later instructed to undergo a physical examination which she did.[21]

Dr. Mary Ann Jabat (*Dr. Jabat*) of the Severo Verallo Memorial District Hospital, Bogo, Cebu, conducted an examination on AAA and issued a Medical Certificate[22] dated July 17, 1998. The medical findings and testimony of Dr. Jabat revealed that AAA had lacerations in the perineum and hymen (at 3 o'clock and 10 o'clock positions); her *labia majora* had erythema and slight edema; and the vaginal swab indicated the presence of spermatozoa. She said that the lacerations in the perineum and the hymen were due to the insertion of a foreign object or the male organ[23] and that the presence of spermatozoa signifies recent sexual intercourse.[24]

On the other hand, appellants strongly denied the accusation and interposed the defense of alibi. They both claimed that they were not at the crime scene where AAA's alleged rape happened as they were somewhere else. Appellant Allain claimed that at around 7:00 p.m., he went to fetch her sister Lucille Reichards who was talking with friends at Kit Prisilla's house; and that he and his sister went home at around 9:00 p.m. and never went out again.[25] While appellant Vergel claimed that at around 8:00 p.m., he bought barbeque and passed by Kit's house where he saw co-appellant Allain and their sister Lucille talking;[26] that when he went back home a little later, he already saw appellant Allain in their house. Appellant Vergel left their house again at 9:00 p.m. as he was called by Kit to tally the collection of the masiao tips; and that he went home at around 10:00 p.m.[27] They both testified that Kit's house is 100 meters from their house[28] and that AAA's

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15 *Id.* at 17-18.
16 *Id.* at 16.
17 *Id.* at 26.
18 *Id.* at 18.
19 *Id.* at 19; TSN, November 11, 1999, p. 6.
20 TSN, March 23, 1999, p. 27.
21 *Id.*
22 Records, p. 7.
23 TSN, January 25, 2000, p. 13.
24 *Id.*
25 TSN, August 17, 2005, pp. 24-26.
26 TSN, August 24, 2005, pp. 3-7.
27 *Id.* at 7-9.
28 *Id.* at 8; TSN, August 17, 2005, p. 10.

house is also 100 meters from their house.[29] Appellants' sister Lucille and their mother Amparo Ancajas corroborated their alibis.

The defense also presented Dr. Jesus Cerna, a medico legal expert, who gave a different explanation on Dr. Jabat's medical findings,[30] and Doroteo Booc, appellants' brother-in-law, to show that he saw AAA walking with a male companion on that fateful night.[31] Appellant Allain's birth certificate was presented to show that he was still seventeen (17) years old at the time the alleged rape of AAA was committed.[32] Also presented was the police blotter which contained four (4) names as suspects on AAA's rape but the same police blotter also contained in the progress report that AAA only suspected accused-appellants as her rapists and refused to acknowledge the other two.

On March 28, 2007, the RTC rendered its Decision,[33] the dispositive portion of which states:

> WHEREFORE, premises considered, accused Vergel Ancajas and Allain Ancajas are hereby found guilty beyond reasonable doubt of the crime of rape and they are hereby sentenced to suffer the penalty of *Reclusion Perpetua.*
>
> Further, each accused is hereby ordered to pay the private complainant the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.
>
> Pursuant to Circular No. 4-92, as amended by Circular No. 63-97 of the Court Administrator, the Jail Warden of the Cebu Provincial Detention and Rehabilitation Center (CPDRC), Cebu City, is hereby directed to immediately transfer the two (2) accused to the custody of the National Bilibid Prison, Muntinlupa City, Metro Manila.
>
> Let a copy of this decision be furnished the Jail Warden, CPDRC for his information, guidance and compliance.
>
> SO ORDERED.[34]

The RTC ratiocinated that the elements of the crime of rape were duly proven by the prosecution and the fact of rape had been corroborated in its material details by the medical findings of Dr. Jabat. It found that AAA had positively identified appellants whom she was familiar with being her neighbors and childhood friends.

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29 TSN, August 17, 2005, p. 11.
30 TSN, March 14, 2003, pp. 9-29.
31 TSN, September 26, 2003. p. 8.
32 TSN, March 8, 2006, p. 6; Exhibit "2".
33 Per Executive Presiding Judge Antonio D. Marigomen. CA *rollo,* pp. 68-96.
34 *Id.* at 96.

Appellants filed a motion for reconsideration which the RTC denied in its Resolution[35] dated July 25, 2007. The RTC ruled on the issue of appellant Allain's minority by saying that the penalty imposed upon the two accused is *reclusion perpetua* which is a single indivisible penalty; and pursuant to Article 63 of the Revised Penal Code, the said penalty should be applied and imposed regardless of the presence of the mitigating circumstance of minority. The RTC further said that the benefits of a suspended sentence shall not apply to appellant Allain because he is convicted of an offense punishable by *reclusion perpetua,* citing Section 32, A.M. No. 02-1-18-SC, the *Rule on Juveniles in Conflict with the Law.*

Appellants filed their Notice of Appeal which the CA gave due course. The parties were required to submit their respective briefs and upon their compliance, the case was submitted for decision.

On April 27, 2011, the CA rendered its Decision affirming the RTC decision.

Dissatisfied, appellants filed this appeal for a final review of their conviction. In our Resolution[36] dated January 18, 2012, we notified the parties that they may file their respective supplemental briefs if they so desire within thirty (30) days from notice. Both parties manifested[37] that they are adopting the briefs they filed before the CA.

Appellants claim that based on AAA's testimony, the element of carnal knowledge was not established since she claimed to be unconscious, hence, she would not know the act allegedly done to her; that she only believed that they had carnal knowledge of her because she felt pain on her vagina. They claim that there were inconsistencies in her testimony and that her conduct after the alleged rape negate the commission thereof.

The issue for resolution is whether the prosecution was able to prove beyond reasonable doubt appellants' guilt for the crime of rape.

Article 266-A[38] of the Revised Penal Code provides for the elements of the crime of rape as follows:

> Art. 266-A- Rape: *When And How Committed.* - Rape is committed: 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

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35 Records, p. 251.

36 *Rollo,* p. 19.

37 *Id.* at 25; 35-37.

38 The applicable law when the crime was committed was RA 8353, the Anti-Rape Law of 1997, which took effect on October 22, 1997. The new provisions on Rape are found in Arts. 266-A to 266-D of the Revised Penal Code.

> a) Through force, threat, or intimidation;
> b) When the offended party is deprived of reason or otherwise unconscious;
> c) By means of fraudulent machination or grave abuse of authority; and
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

The prosecution must prove that (1) the accused had carnal knowledge of the complainant; and, (2) that the same was accomplished under any of the above-enumerated circumstances. Inasmuch as the crime of rape is essentially committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced sexual intercourse.[39] Therefore, in a prosecution for rape, the credibility of the victim is almost always the single and most important issue to deal with. Thus, if the victim's testimony meets the test of credibility, the accused can justifiably be convicted on the basis of this testimony; otherwise, the accused should be acquitted of the crime.[40]

Appellants' claim that rape was not was established as AAA had been unconscious during its alleged commission is not persuasive.

While it is true that there was no direct evidence to establish that appellants had carnal knowledge of AAA as the latter was unconscious, however, proof of the commission of the crime need not always be by direct evidence, for circumstantial evidence could also sufficiently and competently establish the crime beyond reasonable doubt.[41] Indeed, the Court had affirmed convictions for rape based on circumstantial evidence.[42]

Circumstantial evidence is sufficient for conviction if (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; (3) and the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[43] A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.[44]

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39 *People v. Cias,* 665 Phil. 470, 481 (2011).
40 *Id.* citing *People v. Lazaro*, 613 Phil. 200, 207 (2009).
41 *People of the Philippines v. Bobby Belgar,* G.R. No. 182794, September 8, 2014.
42 *Id.,* citing *People v. Tabarangao,* 363 Phil. 248, 261 (1999); *People v. Abiera,* G.R. No. 93947, May 21, 1993, 222 SCRA 378, 384; *People v. Ulili,* G.R. No. 103403, August 24, 1993, 225 SCRA 594, 606; *People v. Santiago,* 274 Phil. 847, 859 (1991).
43 Rules of Court, Rule 133, Sec. 4.
44 *People v. Evangelio, et al.,* 672 Phil. 229, 243 (2011), citing *Diega v Court of Appeals,* 629 Phil. 385, 396 (2010).

Here, AAA was on her way to her parents' house when appel+lants, her neighbors since childhood, appeared and held her hands. She struggled and shouted but appellant Allain covered her mouth with a handkerchief to prevent her from shouting, while appellant Vergel punched her in the stomach which caused her to lose consciousness. When she regained consciousness, she felt pain all over her body and her vagina. She found her bra, bloodied panty and maong pants beside her. She went back to her employers' house and told them that appellants raped her. AAA's testimony was corroborated by Dr. Jabat's declaration that the lacerations in AAA's perineum and hymen were due to the insertion of a foreign object or the male organ and the presence of spermatozoa signified recent sexual intercourse. It is well settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisites of carnal knowledge.[45] The lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.[46]

We find no error committed by the RTC, as affirmed by the CA, in giving credence to AAA's testimony. In fact, it was put down in record that AAA was crying while she was testifying before the trial court.[47] It has been held in several cases that the crying of a victim during her testimony is evidence of the truth of the rape charges, for the display of such emotion indicates the pain the victim feels when she recounts the detail of her traumatic experience.[48]

We find the presence of conspiracy in this case between the appellants. Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.[49]

The prosecution had established that appellants held AAA's hands, and when she tried to shout, appellant Allain covered her mouth with a handkerchief and appellant Vergel punched her in the abdomen which caused her to lose consciousness. It is fundamental for conspiracy to exist that there must be unity of purpose and unity in the execution of the unlawful objective which were present in this case.[50]

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45 *People v. Batula,* G.R. No. 181699, November 28, 2012, 686 SCRA 576, 586.
46 *Id.,* citing *People v. Belen,* 432 Phil. 881, 893 (2002).
47 TSN, March 23, 1999, p. 11.
48 *People v. Baun,* 584 Phil. 560, 574 (2008).
49 *People v. Evangelio, supra* note 44, at 246, citing *Go v. The Fifth Division, Sandiganbayan*, 549 Phil. 783, 805 (2007).
50 *People v. Rebutar,* 181 Phil. 35, 43 (1979).

We find that the RTC correctly rejected appellants' defense of denial and alibi. AAA positively identified appellants as the persons who raped her. She knew them as they were neighbors since childhood. Denial fails in the light of AAA's positive declaration.

Appellants' alibi is also unavailing. For alibi to prosper, it does not suffice to prove that the accused was at another place when the crime was committed, but it must also be shown that there was physical impossibility for him to have been at the scene of the crime.[51] Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[52] Appellant Allain testified that at around 7:00 p.m. to 9:00 p.m. of July 16, 1998, he was at Kit's house, which was located around 100 meters away from their own house. On the other hand, appellant Vergel testified that he passed by Kit's house at past 8:00 p.m. and saw Allain thereat. Notably, appellant Allain testified that AAA's house is also 100 meters away from their house. Thus, it would show that Kit's house is also in the same vicinity where the crime was committed. Hence, it was not physically impossible for the appellants to be at the *locus criminis* at the time of the incident.

Appellants' argument that AAA's conduct after the alleged sexual assault, *i.e.,* washing her bloodied panty and maong pants, and washing her private part, are not the normal behavior of a woman who had just been raped deserves scant consideration.

It is not accurate to say that there is a typical reaction or norm of behavior among rape victims.[53] On the contrary, people react differently to emotional stress and no standard form of behavior can be anticipated of a rape victim following her defilement.[54] What is notable in the records was the fact that after she had regained consciousness at 1 o'clock in the morning of July 17, 1998, she immediately went back to her employers' house and narrated to them what appellants had done to her, later reported the rape incident to the police and underwent a physical examination of her private parts. Her actions indeed showed her desire to obtain justice for what appellants did to her.

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[51] *People v. Mitra,* 385 Phil. 515, 536 (2000), citing *People v. Silvestre,* G.R. No. 109142, May 29, 1995, 244 SCRA 479, citing *People v. Penillos,* G.R. No. 65673, January 30, 1992, 205 SCRA 546; *People v. Martinado,* G.R. No. 92020, October 19, 1992, 214 SCRA 712. See *People v. Buka,* 205 SCRA 557 (1992); *People v. Devaras,* G.R. No. 48009, February 3, 1992, 205 SCRA 676; *People v. Casinillo,* G.R. No. 97441, September 11, 1992, 213 SCRA 777; *People v. Florida*, G.R. No. 90254, September 24, 1992, 214 SCRA 227.

[52] *People v. Marquez,* 400 Phil. 1313, 1328 (2000), citing *People v. De Labajan,* 375 Phil. 1022, 1032 (1999), citing *People v. Navales,* G.R. No. 112977, January 23, 1997, 266 SCRA 569, see also *People v. Javier,* G.R. No. 84449, March 4, 1997, 269 SCRA 181 (1997); *People v. Amaca,* 277 SCRA 215 (1997) and *People v. Midtimod,* 283 SCRA 395 (1997).

[53] *People v. Islabra,* G.R. Nos. 152586-87, March 30, 2004, 426 SCRA 547, 559, citing *People v. Santos,* G.R. Nos. 138308-10, September 26, 2001, 366 SCRA 52, 59.

[54] *Id.,* citing *People v. Iluis,* 447 Phil. 517, 528 (2003).

Appellants' contention that if AAA was positive as to their identification as the perpetrators of the crime charged, why were there two other names included in the police blotter, is also unmeritorious.

The same police blotter stated a notation that:

> Progress Report on Rape Alarm (Entry Nr. 98-257). As per sworn statement of offended party AAA that the alleged suspects were Allain Ancajas and Vergel Ancajas and she refused (sic) the other suspects.[55]

The inclusion of the two additional names was cured by the sworn statement of AAA and her categorical declaration[56] in open court that appellants were the perpetrators of the crime charged and no other. It is well entrenched that entries in a police blotter, although regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries, for these are often incomplete and inaccurate. These, therefore, should not be given undue significance or probative value as to the facts stated therein.[57]

Appellants' claim that a DNA test on the spermatozoa found on AAA's vagina should have been submitted for DNA testing to know whether the sperm indeed came from both appellants or from AAA's boyfriend.

It has already been established that appellants were the ones who raped AAA. The DNA test is not essential, while there exists other evidence pinning down appellants as the perpetrators.[58] Moreover, if the prosecution had not conducted such DNA test, appellants should have moved for such test during the trial to prove their innocence.

All told, we find that the prosecution has discharged its burden of proving the guilt of the appellants beyond reasonable doubt.

Under Article 266-B, in relation to Article 266-A(1) of the Revised Penal Code, as amended, simple rape is punishable by *reclusion perpetua.* However, when rape is committed by 2 or more persons, the penalty is *reclusion perpetua* to death. The RTC imposed the penalty of *reclusion perpetua* on both appellants notwithstanding that appellant Allain was only 17 years old, a minor, at the time of the commission of the crime on July 16, 1998. His birth certificate[59] showed that he was born on December 19, 1980. The RTC did not consider such minority saying that the penalty

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55 Records, p. 155.
56 TSN, March 23, 1999, pp. 7-20.
57 *Beltran, Jr., et al. v. Court of Appeals,* 662 Phil. 296, 311 (2011).
58 *People v. Lucero,* 659 Phil. 518, 539 (2011).
59 Records, p. 154.

imposed upon the two accused is *reclusion perpetua* which is a single indivisible penalty; and pursuant to Article 63 of the Revised Penal Code, the said penalty should be applied and imposed regardless of the presence of the mitigating circumstance of minority.

We beg to differ.

To begin with, on May 20, 2006, Republic Act (RA) No. 9344, otherwise known as the *Juvenile Justice and Welfare Act of 2006,* took effect. RA No. 9344 provides for its retroactive application, as held in *People v. Sarcia,*[60] which stated:

> [Sec. 68 of Republic Act No. 9344] allows the retroactive application of the Act to those who have been convicted and are serving sentence at the time of the effectivity of this said Act, and who were below the age of 18 years at the time of the commission of the offense. With more reason, the Act should apply to this case wherein the conviction by the lower court is still under review.

Hence, RA No. 9344 should be considered in determining the imposable penalty on appellant Allain even if the crime was committed seven years earlier. Section 6 of RA No. 9344 provides:

> SEC. 6. *Minimum Age of Criminal Responsibility.* - A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.
>
> A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.
>
> The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

In *Madali, et al. v. People*,[61] we held that discernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case.

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60 615 Phil. 97, 128 (2009).

61 612 Phil. 582, 606 (2009).

In this case, it was established that appellant Allain acted with discernment as shown by his act of covering AAA's mouth with a handkerchief to prevent her from shouting and conspired with appellant Vergel in raping AAA.

As the crime of rape was committed by two persons, the penalty imposable under Article 266 (B) of the Revised Penal Code is *reclusion perpetua* to death. Pursuant to Article 63[62] of the Revised Penal Code, if the penalty prescribed by law is composed of two indivisible penalties, the lesser penalty shall be imposed if neither mitigating nor aggravating circumstances are present in the commission of the crime. Since no aggravating circumstances attended the commission of the crime, the lesser penalty of reclusion perpetua is imposable. Appellant Allain was only 17 years old when he committed the crime; he is, therefore, entitled to the privileged mitigating circumstance of minority under Article 68(2) of the Revised Penal Code which provides that the penalty to be imposed upon a person under 18 but above 15 shall be the penalty next lower than that prescribed by law, but always in the proper period.

Hence, the imposable penalty must be reduced by one degree, *i.e.,* from *reclusion perpetua,* which is *reclusion temporal.* Being a divisible penalty, the Indeterminate Sentence Law is applicable.[63] To determine the minimum of the indeterminate penalty, *reclusion temporal* should be reduced by one degree, *prision mayor*, which has a range of from six (6) years and one (1) day to twelve (12) years. There being no modifying circumstances attendant to the crime, the maximum of the indeterminate penalty should be imposed in its medium period. The minimum of the indeterminate penalty should be taken from the full range of *prision mayor*.[64]

Section 38 of RA No. 9344 provides that when the child below 18 years of age who committed a crime and was found guilty, the court shall place the child in conflict with the law under suspended sentence even if such child has reached 18 years or more at the time of judgment. Thus:

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62 Art. 63 of the Revised Penal Code provides:

Article 63. *Rules for the application of indivisible penalties.* - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

63 *People v. Mercado,* 445 Phil. 813, 827 (2003).

64 *People v. Chua,* 479 Phil. 53, 71 (2004).

> SEC. 38. *Automatic Suspension of Sentence.* – Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided,* however, That suspension of sentence shall still be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt.
>
> Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

Notwithstanding, the RTC did not apply the law saying that the benefits of a suspended sentence shall not apply to appellant Allain because he is convicted of an offense punishable by *reclusion perpetua* making reference to Section 32, A.M. No. 02-1-18-SC,[65] Rule on Juveniles in Conflict with the law.

We do not agree.

In *People v. Sarcia*,[66] we ruled on the applicability of Section 38, RA No. 8344 even if the minor therein was convicted of *reclusion perpetua* and we ratiocinated as follows:

> The above-quoted (Section 38 of RA No. 9344) provision makes no distinction as to the nature of the offense committed by the child in conflict with the law, unlike P.D. No. 603 and A.M. No. 02-1-18-SC. The said P.D. and Supreme Court (*SC*) Rule provide that the benefit of suspended sentence would not apply to a child in conflict with the law if, among others, he/she has been convicted of an offense punishable by death, *reclusion perpetua* or life imprisonment. In construing Sec. 38 of R.A. No. 9344, the Court is guided by the basic principle of statutory construction that when the law does not distinguish, we should not distinguish. Since R.A. No. 9344 does not distinguish between a minor who has been convicted of a capital offense and another who has been convicted of a

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65 Sec. 32. *Automatic Suspension of Sentence and Disposition Orders*. - The sentence shall be suspended without need of application by the juvenile in conflict with the law. The court shall set the case for disposition conference within fifteen (15) days from the promulgation of sentence which shall be attended by the social worker of the Family Court, the juvenile, and his parents or guardian *ad litem*. It shall proceed to issue any or a combination of the following disposition measures best suited to the rehabilitation and welfare of the juvenile; care, guidance, and supervision orders; Drug and alcohol treatment; Participation in group counseling and similar activities; Commitment to the Youth Rehabilitation Center of the DSWD or other centers for juvenile in conflict with the law authorized by the Secretary of DSWD.

x x x x

The benefits of suspended sentence shall not apply to a juvenile in conflict with the law who has once enjoyed suspension of sentence, or to one who is convicted of an offense punishable by death, *reclusion perpetua* or life imprisonment, or when at the time of promulgation of judgment the juvenile is already eighteen (18) years of age or over. (Emphasis supplied)

66 *Supra* note 60.

lesser offense, the Court should also not distinguish and should apply the automatic suspension of sentence to a child in conflict with the law who has been found guilty of a heinous crime.

Moreover, the legislative intent, to apply to heinous crimes the automatic suspension of sentence of a child in conflict with the law can be gleaned from the Senate deliberations on Senate Bill No. 1402 (Juvenile Justice and Delinquency Prevention Act of 2005), the pertinent portion of which is quoted below:

> If a mature minor, maybe 16 years old to below 18 years old is charged, accused with, or may have committed a serious offense, and may have acted with discernment, then the child could be recommended by the Department of Social Welfare and Development (DSWD), by the Local Council for the Protection of Children (LCPC), or by my proposed Office of Juvenile Welfare and Restoration to go through a judicial proceeding; but *the welfare, best interests, and restoration of the child should still be a primordial or primary consideration. Even in heinous crimes, the intention should still be the child's restoration, rehabilitation and reintegration.* x x x [67]

In fact, the Court *En Banc* promulgated on November 24, 2009, the *Revised Rule on Children in Conflict with the Law*, which echoed such legislative intent.[68]

Although suspension of sentence still applies even if the child in conflict with the law is already 18 years of age or more at the time the judgment of conviction was rendered, however, such suspension is only until the minor reaches the maximum age of 21 as provided under Section 40 of RA No. 9344, to wit:

> SEC. 40. *Return of the Child in Conflict with the Law to Court.* – If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

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67 *People v. Sarcia, supra,* at 128-129 (Citations omitted).

68 Section 48. *Automatic Suspension of Sentence and Disposition Orders.* – If the child is found guilty of the offense charged, the court, instead of executing the judgment of conviction, shall place the child in conflict with the law under suspended sentence, without need of application. Suspension of sentence can be availed of even if the child is already eighteen years (18) of age or more but not above twenty-one (21) years old, at the time of the pronouncement of guilt, without prejudice to the child's availing of other benefits such as probation, if qualified, or adjustment of penalty, in the interest of justice.

The benefits of suspended sentence shall not apply to a child in conflict with the law who has once enjoyed suspension of sentence, but shall nonetheless apply to one who is convicted of an offense punishable by *reclusion perpetua* or life imprisonment pursuant to the provisions of Rep. Act No. 9346 prohibiting the imposition of the death penalty and in lieu thereof, *reclusion perpetua,* and after application of the privileged mitigating circumstance of minority. (Emphasis supplied.)

> If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

The RTC did not suspend the sentence of appellant Allain pursuant to Section 38 of RA No. 9344. Appellant is now 34 years old, thus, Section 40 is also no longer applicable. Nonetheless, we have extended the application of RA No. 9344 beyond the age of 21 years old to give meaning to the legislative intent of the said law.

In *People v. Jacinto*,[69] we ruled:

> These developments notwithstanding, we find that the benefits of a suspended sentence can no longer apply to appellant. The suspension of sentence lasts only until the child in conflict with the law reaches the maximum age of twenty-one (21) years. Section 40 of the law and Section 48 of the Rule are clear on the matter. Unfortunately, appellant is now twenty-five (25) years old.
>
> Be that as it may, to give meaning to the legislative intent of the Act, the promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in accordance with the Act in order that he/she is given the chance to live a normal life and become a productive member of the community. The age of the child in conflict with the law at the time of the promulgation of the judgment of conviction is not material. What matters is that the offender committed the offense when he/she was still of tender age.
>
> Thus, appellant may be confined in an agricultural camp or any other training facility in accordance with Sec. 51 of Republic Act No. 9344.
>
> Sec. 51. *Confinement of Convicted Children in Agricultural Camps and Other Training Facilities.* – A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.
>
> Following the pronouncement in *Sarcia,* the case shall be remanded to the court of origin to effect appellant's confinement in an agricultural camp or other training facility.[70]

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69 661 Phil. 224 (2011).

70 *People v. Jacinto, supra,* at 256-257. (Citations omitted)

Thus, appellant Allain shall be confined in an agricultural camp or other training facility pursuant to Section 51 of RA No. 9344.

The civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00 ordered by the RTC to be paid by each appellant are hereby affirmed. We, however, find that exemplary damages should also be awarded to set a public example and to protect hapless individuals from sexual molestation.[71] We, therefore, award the amount of ₱30,000.00 as exemplary damages in accordance with prevailing jurisprudence.[72]

The damages awarded shall earn legal interest at the rate of six percent (6%) per annum to be reckoned from the date of finality of this judgment until fully paid.[73]

WHEREFORE, premises considered, the Decision dated April 27, 2011 of the Court of Appeals Cebu City, issued in CA-G.R. CEB-CR-HC No. 00857 is **AFFIRMED** with **MODIFICATION**. Appellant Vergel Ancajas is imposed the penalty of *reclusion perpetua*. In view of the privileged mitigating circumstance appreciated in favor of appellant Allain Ancajas, and the absence of other modifying circumstances attendant to the crime, he is sentenced to suffer the penalty of ten (10) years and one day of *prision mayor* maximum, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum. Both appellants are each **ORDERED** to pay ₱30,000.00 exemplary damages. The award of civil indemnity and moral damages, both in the amount of ₱50,000.00 to be paid by each appellant, are maintained. The award of damages shall earn legal interest at the rate of six percent (6%) per annum from the finality of this judgment until fully paid.

The case against appellant Allain Ancajas shall be **REMANDED** to the trial court for appropriate disposition in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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71 *People v. Delfin,* G.R. No. 190349, December 10, 2014, citing *People v. Bayrante*, G.R. No. 188978, June 13, 2012, 672 SCRA 446, 466.

72 *Id.*

73 *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 459.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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