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*Wilfredo V. Lapid*  
 WILFREDO V. LAPID  
 Division Clerk of Court  
 Third Division

Republic of the Philippines  
 Supreme Court  
 Manila

FEB 28 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
 Plaintiff-appellee,

G.R. No. 210568

Present:

VELASCO, JR., J., *Chairperson*,  
 BERSAMIN,  
 LEONEN,  
 MARTIRES, and  
 GISMUNDO., JJ.

-versus-

BENJAMIN AUSTRIA,  
 Accused-appellant.

Promulgated:  
 November 8, 2017

*Benjamin Austria*

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DECISION

LEONEN, J.:

A stepfather's moral ascendancy or influence over his stepdaughter, who grew up knowing him as the only father she has ever had, supplants the element of violence or intimidation in a charge of rape. In this case, such influence over the stepdaughter is the reason why she silently endured years of sexual abuse without fighting back or confiding in anyone.

This Court is asked to review the Court of Appeals February 6, 2013 Decision<sup>1</sup> and August 13, 2013 Resolution<sup>2</sup> in CA-G.R. CR-H.C. No. 03855. The assailed Decision and Resolution affirmed the conviction of accused-

<sup>1</sup> CA Rollo, pp. 118-137. The Decision was penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio of the Eighth Division, Court of Appeals, Manila.

<sup>2</sup> Id. at 160-161. The Resolution was penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio of the Eighth Division, Court of Appeals, Manila.

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appellant Benjamin Austria (Austria) for three (3) counts of rape under Article 266-A(1)(a) and (d) of the Revised Penal Code, as amended by Republic Act No. 8353, in relation to Republic Act No. 7610, and imposed the penalty of *reclusion perpetua* for each count of rape.<sup>3</sup>

The facts, as found by the trial court and the Court of Appeals, are as follows:

On July 11, 2003, two (2) informations for rape were filed against Austria before the Regional Trial Court, Calauag, Quezon. The first information was docketed as Criminal Case No. 4380-C and read:

That on or about the year 1997, and sometime subsequent thereto, at Barangay Villa Hermosa, Municipality of Lopez, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously lay with and have carnal knowledge of one [AAA], then a minor, 10 years of age, against her will.

That the accused is the stepfather of the victim.<sup>4</sup>

The second information was docketed as Criminal Case No. 4381-C and read:

That on or about the month of January 2003, and sometime prior thereto, at Barangay Villa Hermosa, Municipality of Lopez, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously lay with and have carnal knowledge of one [AAA], then a minor, 16 years of age, against her will.

That the accused is the stepfather of the victim.<sup>5</sup>

On March 22, 2004, Austria pleaded not guilty<sup>6</sup> to the charges of rape against him.

Trial on the merits ensued. The prosecution presented the victim, AAA, and Dr. Yolanda Olea-Tenorio (Dr. Tenorio) as its witnesses.

AAA testified that Austria was her stepfather as he was legally married to her mother.<sup>7</sup>

<sup>3</sup> CA rollo, p. 45, RTC Decision.

<sup>4</sup> Records (Criminal Case No. 4380-C), p. 2.

<sup>5</sup> Records (Criminal Case No. 4381-C), p. 1.

<sup>6</sup> Records (Criminal Case No. 4380-C), p. 19.

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She also stated that from 1997 to July 2005, she lived in Barangay Villa Hermosa, Lopez, Quezon with her mother and her siblings, while Austria lived with them from 1997 to 2003.<sup>8</sup>

AAA testified that sometime in 1997, when she was 10 years old and in grade 4, she woke up at around 2:00 a.m. when Austria went inside her bedroom and removed her shorts and panty. Her other siblings were still sleeping but her mother had gone to the market to sell her wares.<sup>9</sup>

AAA cried when Austria removed her underwear. She tried to fight him off and pleaded for him to stop, but he threatened her and her family and warned her not to tell anybody about what happened.<sup>10</sup>

AAA testified that it was painful when Austria inserted his penis inside her vagina.<sup>11</sup>

AAA further testified that Austria regularly raped her from 1997 to 2003 every time her mother was not at home.<sup>12</sup>

One afternoon also in 1997, Austria told AAA to go with him to a grassy area in their kaingin. AAA already knew what would happen, but she went anyway because she feared for her and her mother's lives.<sup>13</sup>

When they reached the kaingin, Austria removed AAA's shorts and panty and raped her.<sup>14</sup>

AAA testified that Austria raped her for the last time sometime in January 2003, when she was 16 years old.<sup>15</sup>

AAA said that when her mother left for the market early in the morning, Austria came inside her room, lay down beside her, and started touching her private parts. AAA stated that even if Austria did not threaten her, she no longer resisted or fought back because of her fear of him and the harm he would inflict on her and her mother.<sup>16</sup>

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<sup>7</sup> TSN dated March 20, 2006, p. 25.

<sup>8</sup> Id. at 4-5.

<sup>9</sup> Id. at 6-7.

<sup>10</sup> Id. at 8.

<sup>11</sup> Id. at 8-9.

<sup>12</sup> Id. at 9-10.

<sup>13</sup> Id. at 12-13.

<sup>14</sup> Id. at 13.

<sup>15</sup> Id. at 10.

<sup>16</sup> Id. at 11-12.

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Austria then inserted his penis inside AAA's vagina, causing her to feel pain with the penetration.<sup>17</sup>

During her cross-examination, AAA admitted that Austria never held or showed her a weapon when he raped her, but she was still afraid of him because he threatened to kill her or her mother if she refused his advances.<sup>18</sup>

On April 10, 2003, AAA told her aunt, Crisanta Reyes (Reyes), of Austria's repeated abuse from 1997 to 2003. AAA claimed that she finally found the courage to reveal her ordeal to her aunt because she was already grown up and wanted the abuse to stop.<sup>19</sup> That same day, Reyes accompanied AAA to the police station.<sup>20</sup>

Austria was arrested that evening and it was only then that AAA's mother learned of what her daughter had gone through.<sup>21</sup>

The following day, AAA executed an affidavit against Austria.<sup>22</sup>

Also on April 11, 2003, AAA's mother accompanied her to Magsaysay Memorial District Hospital for a medical examination.<sup>23</sup>

The attending physician, Dr. Tenorio, gave the following diagnosis after examining AAA:

DIAGNOSIS:

Breasts- well developed  
External – no abnormal external findings,  
no bru[i]ses or hematoma  
– Pubic Hair- plenty  
IE – Hymen- intact  
Vagina- admits 1 finger with ease  
2 fingers with resistance  
with moderate menstrual flow<sup>24</sup>

Dr. Tenorio testified that upon examining AAA's vagina, she found that AAA's hymen was still intact.<sup>25</sup> However, Dr. Tenorio qualified that it

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<sup>17</sup> Id. at 12.

<sup>18</sup> Id. at 11 and 24

<sup>19</sup> Id. at 14–15.

<sup>20</sup> Id. at 15–16.

<sup>21</sup> Id. at 16.

<sup>22</sup> Id. at 16–17.

<sup>23</sup> Id. at 17–18.

<sup>24</sup> Folder of Exhibits, p. 5.

was possible for the hymen to remain intact even if a woman had been repeatedly raped. She also added that there was a documented case where a woman who gave birth still had an intact hymen after delivering a baby.<sup>26</sup>

The defense's only witness was Austria himself who denied ever raping AAA.<sup>27</sup>

Austria admitted that AAA was his stepdaughter, as AAA was his wife's daughter from another man, but he claimed that he raised her as his own child, provided for her needs, and paid for her schooling.<sup>28</sup>

Austria testified that AAA falsely accused him of rape because she was instructed by Reyes to do so.<sup>29</sup>

Austria claimed that AAA's relatives from her real father's side wanted to raise her, but he refused to give AAA to them; thus, these false rape charges by his stepdaughter were filed against him.<sup>30</sup>

On February 5, 2009, Branch 63, Regional Trial Court, Calauag, Quezon<sup>31</sup> found Austria guilty of the multiple charges of rape against him.

The Regional Trial Court found that AAA was steadfast in her testimony that Austria repeatedly raped her.<sup>32</sup>

The Regional Trial Court also took note that AAA referred to Austria as "Papa" during the trial, out of respect to her stepfather and benefactor. It opined that "it [was] improbable that [she] would [falsely] impute so grave a wrong to [Austria]."<sup>33</sup>

In contrast, the Regional Trial Court found Austria's testimony to be uncorroborated and unbelievable because he was unable to support his claim that AAA's relatives pushed her to file the false rape complaint against him so that he would lose custody over AAA.<sup>34</sup>

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<sup>25</sup> TSN dated January 23, 2006, pp. 5-7.

<sup>26</sup> Id. at 7-8.

<sup>27</sup> TSN dated June 11, 2008, pp. 9-12.

<sup>28</sup> Id. at 4-7.

<sup>29</sup> Id. at 9-10.

<sup>30</sup> Id. at 8 and 10.

<sup>31</sup> CA *rollo*, pp. 32-45. The Decision, docketed as Criminal Case Nos. 4380-C and 4381-C, was penned by Presiding Judge Manuel G. Salumbides.

<sup>32</sup> Id. at 42.

<sup>33</sup> Id.

<sup>34</sup> Id.

The Regional Trial Court also did not give due weight to the defense's claim that AAA's intact hymen belied her claims of repeated rape. The Regional Trial Court emphasized that jurisprudence has consistently held that an intact hymen does not mean that rape did not take place, since consummated rape does not require that the hymen be penetrated or ruptured. Furthermore, the Regional Trial Court asserted that a young girl would not subject herself to the rigors of a public trial unless she was seeking justice for the abuse inflicted on her.<sup>35</sup>

The Regional Trial Court held that the prosecution was able to prove three (3) separate incidents of rape.<sup>36</sup> It also held that the offenses charged against Austria were qualified because of AAA's minority and his relationship with her as her stepfather.<sup>37</sup> The *fallo* of the Regional Trial Court Decision read:

**PREMISES CONSIDERED**, the Court is morally convinced that BENJAMIN AUSTRIA is **GUILTY** of three (3) counts of Rape beyond reasonable doubt and sentences him to **RECLUSION PERPETUA** in lieu of DEATH, for each count, applying the provisions of R.A. 9346 which prohibits the imposition of death penalty. The Court hereby awards the victim:

1. **Civil indemnity of P75,000.00** since the crime is qualified by circumstances warranting the imposition of death penalty;
2. **Moral damages** amounting to another **P75,000.00** because it is assumed that the victim has suffered moral injuries without proof thereof; and
3. **Exemplary damages** in the amount of **P25,000.00** in the presence of qualifying circumstances of minority and relationship (People v. Quiatchon, G.R. No. 170236, August 31, 2006).

**SO ORDERED.**<sup>38</sup> (Emphasis in the original)

On March 20, 2009,<sup>39</sup> the Regional Trial Court directed the transmittal of the records of the case to the Court of Appeals upon Austria's timely filing of his Notice of Appeal.<sup>40</sup>

On February 6, 2013, the Court of Appeals<sup>41</sup> affirmed the Regional Trial Court Decision.

The Court of Appeals held that AAA's minority and her relationship with Austria were duly alleged and proven.<sup>42</sup> The Court of Appeals also held

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<sup>35</sup> Id. at 43.

<sup>36</sup> Id. at 44.

<sup>37</sup> Id. at 45.

<sup>38</sup> Id.

<sup>39</sup> Id. at 47.

<sup>40</sup> Id. at 46.

<sup>41</sup> Id. at 118-137.

that the prosecution was able to prove the multiple charges of rape against Austria beyond reasonable doubt.<sup>43</sup>

The Court of Appeals gave great weight to the Regional Trial Court's assessment of the credibility, or lack thereof, of the witnesses and confirmed the Regional Trial Court's finding that AAA testified in a straightforward and candid manner.<sup>44</sup>

The Court of Appeals likewise brushed aside Austria's defense that the lack of physical signs or marks of penetration in AAA's vagina was proof that she was not repeatedly raped for years, as she claimed.<sup>45</sup> The *fallo* of the Court of Appeals Decision read:

**WHEREFORE**, in view of the foregoing, the instant appeal is hereby **DENIED**. The February 5, 2009 Decision of the Regional Trial Court of Calauag, Quezon, Branch 63, in Criminal Case Nos. 4380-C and 4381-C is **AFFIRMED with MODIFICATION** in that the award of exemplary damages is increased from P25,000.00 to P30,000.00

**SO ORDERED.**<sup>46</sup> (Emphasis in the original)

On August 13, 2013, the Court of Appeals<sup>47</sup> denied Austria's Motion for Reconsideration.<sup>48</sup>

On September 6, 2013, Austria filed his Notice of Appeal.<sup>49</sup>

On September 27, 2013, the Court of Appeals<sup>50</sup> gave due course to Austria's Notice of Appeal and directed the elevation of the records of his case to this Court.

On March 5, 2014, this Court<sup>51</sup> noted the records forwarded by the Court of Appeals and notified the parties that they may file their respective supplemental briefs.

On April 30, 2014, the prosecution filed its Manifestation,<sup>52</sup> indicating its intention to adopt the Appellee's Brief it had filed before the Court of

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<sup>42</sup> Id. at 136.

<sup>43</sup> Id. at 125-126.

<sup>44</sup> Id. at 127.

<sup>45</sup> Id. at 134-135.

<sup>46</sup> Id. at 137.

<sup>47</sup> Id. at 160-161.

<sup>48</sup> Id. at 144-150.

<sup>49</sup> Id. at 162-164.

<sup>50</sup> Id. at 165.

<sup>51</sup> *Rollo*, p. 27.

<sup>52</sup> Id. at 29-33.

Appeals. Meanwhile, the accused filed his Supplemental Brief<sup>53</sup> on May 13, 2014.

In its Appellee's Brief,<sup>54</sup> the prosecution asserts that it has established accused's guilt beyond reasonable doubt for the crime of statutory rape.<sup>55</sup>

The prosecution also points out that AAA's intact hymen does not negate her testimony that the accused repeatedly raped her, since this Court has repeatedly held that full penile penetration of the vagina is not needed for rape to be consummated. Furthermore, the elastic nature of the hymen makes it possible for it to remain intact despite repeated sexual intercourse or rape.<sup>56</sup>

The prosecution contends that the trial court's evaluation of the credibility of the witness, or lack thereof, should be given due weight considering its opportunity to observe the witness' demeanor while testifying.<sup>57</sup>

The prosecution emphasizes that it is highly improbable that a young girl like AAA will expose herself to the humiliation and rigors of a public trial had she not really been abused by her stepfather.<sup>58</sup>

Finally, the prosecution stresses that the accused's defense of denial was inherently weak specially when weighed against AAA's positive and categorical testimony.<sup>59</sup>

In his Appellant's Brief,<sup>60</sup> accused insists that AAA's testimony must fail in light of Dr. Tenorio's testimony that AAA's hymen remained intact.<sup>61</sup>

While the accused acknowledges that this Court has repeatedly stated that a physical examination finding the victim to be a virgin does not rule out the possibility of rape, he claims that the alleged numerous penile penetrations should have left physical marks on AAA's body if it were true that he repeatedly raped her for years. He further emphasized that considering AAA's small stature, the supposed sexual abuse she was

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<sup>53</sup> Id. at 36-43.

<sup>54</sup> CA *rollb*, pp. 87-109.

<sup>55</sup> Id. at 96-103.

<sup>56</sup> Id. at 103-104.

<sup>57</sup> Id. at 104-105.

<sup>58</sup> Id. at 105.

<sup>59</sup> Id. at 106.

<sup>60</sup> Id. at 57-70.

<sup>61</sup> Id. at 64-65.



constantly subjected to for years should have left traces of its commission on her body. However, this was not the case.<sup>62</sup>

The accused asserts that “[p]hysical evidence is a mute but eloquent manifestation of truth[.]”<sup>63</sup> In this case, physical evidence ran counter to the testimonial evidence presented by the prosecution; hence, he insists that physical evidence should prevail.<sup>64</sup>

Although Dr. Tenorio examined AAA only in 2003, when she was already 16 years old, accused, in his Supplemental Brief,<sup>65</sup> emphasizes that Dr. Tenorio examined AAA at two (2) instances: first, when she was 10 years old, and the second, when she was 16 years old. He claimed that during both instances, Dr. Tenorio examined AAA immediately after the alleged acts of rape by the accused and found AAA’s hymen to be intact.<sup>66</sup>

The only issue to be resolved by this Court is whether or not accused-appellant Benjamin Austria’s guilt for the charges of rape against him was proven beyond reasonable doubt.

## I

Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, provides the elements for the crime of rape:

Article 266-A. *Rape; When and How Committed.* — Rape is committed:

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
  - a. Through force, threat, or intimidation;
  - b. When the offended party is deprived of reason or otherwise unconscious;
  - c. By means of fraudulent machination or grave abuse of authority; and
  - d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

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<sup>62</sup> Id. at 65 and 67.

<sup>63</sup> Id. at 67.

<sup>64</sup> Id.

<sup>65</sup> *Rollo*, pp. 36–43.

<sup>66</sup> Id. at 36–37.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Rape by sexual intercourse is carnal knowledge by a man of a woman under any of the circumstances enumerated in Article 266-A(1)(a-d).<sup>67</sup> Rape under Article 266-A(1)(d) is also called statutory rape "as it departs from the usual modes of committing rape."<sup>68</sup> The child victim's consent in statutory rape is immaterial because the law presumes that her young age makes her incapable of discerning good from evil.<sup>69</sup> *People v. Gutierrez*<sup>70</sup> explained the elements of statutory rape:

Statutory rape is committed when (1) the offended party is under 12 years of age and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.<sup>71</sup>

The defense did not dispute AAA's claim that she was 10 years old at the time she was first raped in 1997 at their house and at the kaingin. Her birth certificate<sup>72</sup> was presented into evidence before the trial court and was not questioned by the defense. Therefore, what only needs to be proven is whether or not AAA and the accused had sexual intercourse because "sexual congress with a girl under 12 years old is always rape."<sup>73</sup>

AAA testified as follows:

Q [PROS. FLORIDO] Now, let us clarify this incident. You stated that you were raped or molested by your stepfather in the year 1997, how old are you at that time?

A I was then ten years old, sir.

Q Do you go to school at that time?

A I was then in Grade Four, sir.

COURT

When did it happen, what year?

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<sup>67</sup> *People v. Soria*, 698 Phil 676, 687 (2012) [Per J. Del Castillo, Second Division].

<sup>68</sup> *People v. Teodoro*, 622 Phil. 328, 337 (2009) [Per J. Brion, Second Division].


<sup>69</sup> *Id.*, at 337.

<sup>70</sup> 731 Phil. 352 (2014) [Per J. Leonen, Third Division].

<sup>71</sup> *Id.*, at 357.

<sup>72</sup> Folder of Exhibits, p. 6.

<sup>73</sup> *People v. Garbida*, 639 Phil 107, 116 (2010) [Per J. Velasco, First Division], citation omitted.



A 1997, Your Honor.

COURT

Where did it happen, what year?

A At our house, Your Honor, [i]n Brgy. Villa Hermosa.

PROS. FLORIDO

Q You were grade four then in the year 1997 and it happened at your house located at Brgy. Vil[il]a Hermosa, Lopez, Quezon. How many times this incident happened to you in the year 1997, if you can recall?

A Several times, sir.

Q The first time that you can recall that your stepfather raped you, [w]ill you please recall at what place this rape case happened to you, particularly at your house, in what place at your house?

A At our bedroom, sir. (The witness is crying)

Q Can you recall what time was it the first time that he was raped you?

A Around 2:00 a.m.,[,] sir, because my mother used to vend.

Q You mean to say early in the morning?

A Yes, sir, it is usually when my siblings are still asleep.

Q And at that time your mother was at the tiangge (market), is that what you mean?

A Yes, sir, she usually lives home at that time.

Q And when your mother left already and your brothers still sleepy, do you recall what did your step father do to you the first time he raped you?


A My step father went to my bedroom and he removed my clothing including my short and panty. I was then crying because I was already thinking of what would happen but I was then afraid.

Q When he removed your short and panty and you were crying thinking the intention of your stepfather, did you fight back and plea for mercy?

A Yes, sir, but he threatened me that if I tell on him on anybody, something bad would happened to me.

Q And you believe that?

A Yes, sir, I was really afraid.



Q Did he successfully rape you after that?

A Yes, sir.

.....

PROS. FLORIDO

When you said that he successfully raped you, did he insert his penis to your vagina?

A Yes, sir.

Q What did you feel, if you felt anything?

A It was painful, sir.<sup>74</sup> (Grammatical errors in the original)

.....

Q [PROS. FLORIDO] Going back in the year 1997. Can you recall any instance that your father raped you not in your house located at Villa Hermosa?

A Yes, sir.

Q Where?

A At our kaingin, sir.

Q How far is it from your house?

A It is far, sir, because we could not see our housie from there.

Q And more or less, what time was it?

A It was already in the afternoon because my mother had gone home to cook food for supper.

Q And will you please narrate the incident happened at the kaingin?

A He asked me to go at the grassy portion where nobody could see us.

Q Did it not occur to your mind that he will do something wrong with you?

A I was already thinking that way, sir.

Q Why did you accede to his invitation?

A Because he might do something bad to my mother and to me.

Q That he will kill you?

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<sup>74</sup> TSN dated March 20, 2006, pp. 6-9.

A Yes, sir.

Q And you believe that?

A Yes, sir.

Q What did he do to you at the kaingin. Please narrate it to us?

A He removed my short and my panty, sir, but he did not take away my clothes.

Q And your step father was able to rape you?

A Yes, sir.<sup>75</sup>

As for the last time she was raped by the accused, AAA testified that sometime in the early morning of January 2003, when her mother had left for the market and her siblings were fast asleep, the accused went inside her room and lay down beside her. He then started to fondle her private parts and inserted his penis inside her vagina.<sup>76</sup>

AAA no longer fought the accused because she continued to fear him and remembered his threats that he would kill her and her mother if she fought back or refused him.<sup>77</sup>

AAA's testimony is consistent with her Sinumpaang Salaysay,<sup>78</sup> which she executed on April 11, 2003, when she was already 16 years old:

Tanong : Ano ang dahilan at ikaw ay naririto sa himpilan ng pulisya sa Lopez, Quezon sa tanggapan ng Women's Desk at nagbigay ng salaysay?

Sagot : Dahil po sa taong gumahasa sa akin.

Tanong : Sino naman ang taong sinasabi mo na gumahasa saiyo?

Sagot : Ang aking pong Step Father na si Benjamen Austria.

Tanong : Saan at kailan naganap ang sinasabi mong pangyayari?

Sagot : Doon po sa aming bahay sa Bgry Villahermosa, Lopez, Quezon noong pong ako ay eded ko ay sampong taon gulang pa lamang at hanggang ngayon ay ako ay pinagsamantalahan pa ng aking ama amahan.

Tanong : Maliban saiyo, mayroon bang nakakaalam sa nangyari saiyo, lalot higit sa panggagahasa saiyo?

<sup>75</sup> Id. at 12-13.

<sup>76</sup> Id. at 10-12.

<sup>77</sup> Id. at 11.

<sup>78</sup> Folder of Exhibits, p. 4.

- Sagot : Ang akin pong kapatid sa ina na si [BBB].
- Tanong : Papaano naganap ang pangyayari isalaysay mo nga sa ilang pangungusap lamang:
- Sagot : Noong pong akoy Grade 4 noong naganap ang unang pangyayari na akoy kanyang halayin o gahasain sa aming loob ng bahay sa dahilan wala ang aking ina at mga kapatid at tinakot pa niya ako na may mangyayaring masama sa aking ina kapag akoy nagsumbong ang natatatandaan ko ay ako ay hinubuan niya ng panty at siya ay pumatong sa akin hindi naman ako makasigaw sa dahilang takot na takot ako sa aking Step Father na si Benjamin Austria kaya pag akoy kanyang hinahalay o ginagahasa ay hindi na lamang ako kumikibo sa dahilan nakatatak na sa isip ko na baka may masamang mangyari sa aking ina, kaya pag-aalis ang aking ina at mga kapatid pagpupunta sa palengke o maglalaba kahit umaga o tanghali ay ako ay kanyang hinahalay sa aming loob ng bahay. At ang isa pa pong pangyayari ay ng akoy kanyang halayin o gahasain sa kaingin doon din sa Bgry Villahermosa na akoy kanyang niyaya doon at pagkatapos ay hinubo ang panty ko at akoy kanyang hinalay o ginahasa ng patintig at sa dami po ng pangyayari ay hindi ko na matandaan kung anong petsa o buwan o oras ang mga pangyayaring naganap sa akin at hanggang ang huli nga po ay nitong buwan ng January 2003 doon din po sa aming bahay sa Bgry Villahermosa, Lopez, Quezon at nitong mga huling araw ay niyaya pa rin niya ako pero tumanggi na ako kaya naisipan ko ng ipaalam sa aking kapatid ang mga nangyari sa akin at sa mga aking mga kaibigan at sa aking Tiyahin na si Crisanta Reyes, kaya ang ginawa nila ay pumunta sa pulis at isinumbong ang mga pangyayari sa aking.<sup>79</sup> (Grammatical errors in the original)

As shown by her testimony, AAA was able to narrate in a straightforward and categorical manner the repeated sexual abuse she experienced under the accused.

The moral ascendancy or influence of the accused over AAA as her stepfather “supplants the element of violence or intimidation.”<sup>80</sup> This explains why even if the accused never once threatened her with a weapon before forcing himself on her, her ingrained fear of him and what he could do to her and her mother led her to bear his constant abuse in silence.<sup>81</sup>

Compared to AAA’s candid and categorical testimony, the accused’s defense of denial must fail. *Imbo v. People*<sup>82</sup> emphasized that the self-

<sup>79</sup> Folder of Exhibits, p. 4.

<sup>80</sup> *People v. Buclao*, 736 Phil 325, 328 (2014) [Per J. Leonen, Third Division], citation omitted.

<sup>81</sup> TSN dated March 20, 2006, p. 24.

<sup>82</sup> 758 Phil 430 (2015) [Per J. Perez, First Division].

serving defense of denial falters against the “positive identification by, and straightforward narration of the victim.”<sup>83</sup> This Court has likewise repeatedly held that the lone yet credible testimony of the offended party is sufficient to establish the guilt of the accused.<sup>84</sup>

The accused’s defense that AAA was induced by her relatives to file a bogus charge of rape against him in retaliation for his past refusal to give them custody over AAA is not worthy of belief.

*People v. Venturina*<sup>85</sup> aptly stated that “[n]ot even the most ungrateful and resentful daughter would push her own father to the wall as the fall guy in any crime unless the accusation against him is true.”<sup>86</sup>

As the trial court pointed out, AAA continued to call the accused “Papa” during the trial because even if he was not her biological father, he was the one who supported her and sent her to school.<sup>87</sup> She grew up knowing the accused to be her father and giving him the respect due him. The accused likewise did not deny this and claimed that he treated AAA as his own daughter.<sup>88</sup>

## II

The accused’s argument that AAA’s intact hymen negates her accusation that he repeatedly sexually abused her must fail in light of the fact that hymenal laceration is not an element of rape. *People v. Araojo*<sup>89</sup> expounds on the evidentiary weight of a hymenal laceration in a charge of rape:

The absence of external signs or physical injuries on the complainant’s body does not necessarily negate the commission of rape, hymenal laceration not being, to repeat, an element of the crime of rape. A healed or fresh laceration would of course be a compelling proof of defloration. What is more, the foremost consideration in the prosecution of rape is the victim’s testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim’s testimony alone, if credible, is sufficient to convict.<sup>90</sup> (Citations omitted)

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<sup>83</sup> Id. at 437.

<sup>84</sup> *Ricalde v. People*, 751 Phil 793, 807 (2015) [Per J. Leonen, Second Division]; *Garingarao v. People*, 669 Phil. 512, 522 (2011) [Per J. Carpio, Second Division]; *People v. Tagaylo*, 398 Phil. 1123, 1131–1132 (2000) [Per CJ Davide, Jr, First Division].

<sup>85</sup> 694 Phil. 646 (2012) [Per J. Del Castillo, Second Division].

<sup>86</sup> Id. at 655.

<sup>87</sup> *CA Rollo*, p. 42, RTC Decision.

<sup>88</sup> TSN dated June 11, 2008, p. 6.

<sup>89</sup> 616 Phil. 275 (2009) [Per J. Velasco, Jr., Third Division].

<sup>90</sup> Id. at 288.

The accused cites *People v. Dela Cruz* to support his claim that the hymen or vagina of a young girl who had sexual intercourse with a grown man will show evidence of penile penetration in the form of laceration or healed laceration.<sup>91</sup> Thus, he posits that AAA's intact hymen, as attested to by Dr. Tenorio, is firm proof that no sexual abuse, much less repeated sexual abuse, actually occurred.<sup>92</sup>

However, a careful reading of *People v. Dela Cruz*<sup>93</sup> shows that this Court acquitted the accused based on reasonable doubt due to the complainant's actuations after the supposed rape incident and the inordinate delay in filing the complaint for it.

The complainant in *People v. Dela Cruz* resumed selling her kakanin after she was supposedly raped by the accused when she was merely seven (7) years old.<sup>94</sup> *People v. Dela Cruz* stressed that such behavior was not the "natural reaction of an outraged woman robbed of her honor."<sup>95</sup> Furthermore, it took complainant 12 years before she filed a complaint for rape against the accused. Thus, *People v. Dela Cruz* declared that such a delay was "devastating"<sup>96</sup> and created doubt on the veracity of her accusations of rape against the accused.<sup>97</sup>

As regards complainant's lack of genital injury, *People v. Dela Cruz* merely pointed out that her intact hymen "does not offer much to indicate the commission of the offense."<sup>98</sup> *People v. Dela Cruz* never proclaimed or even implied that the absence of genital injuries disproved an accusation of rape.

*People v. Opong*<sup>99</sup> stressed that the state of the complainant's hymen is not an essential element for the successful prosecution of a charge of rape.

An intact hymen does not negate a finding that the victim was raped, and a freshly broken hymen is not an essential element of rape.

In *People v. Gabayron*, we sustained the conviction of accused for rape even though the victim's hymen remained intact after the incidents because medical researches show that negative findings of lacerations are of no significance, as the hymen may not be torn despite repeated coitus. It was noted that many cases of pregnancy had been reported about women with unruptured hymens, and that there could still be a finding of

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<sup>91</sup> CA rollo, pp. 65-66.

<sup>92</sup> Id. at 67.

<sup>93</sup> 388 Phil 678 (2000) [Per J. Vitug, Third Division].

<sup>94</sup> Id. at 687.

<sup>95</sup> Id. at 687.

<sup>96</sup> Id. at 689.

<sup>97</sup> Id. at 689-690.

<sup>98</sup> Id. at 687.

<sup>99</sup> 577 Phil 571 (2008) [Per J. Chico-Nazario, Third Division].



rape even if, despite repeated intercourse over a period of years, the victim still retained an intact hymen without signs of injury.

In *People v. Capt. Llanto*, citing *People v. Aguinaldo*, we likewise affirmed the conviction of the accused for rape despite the absence of laceration on the victim's hymen since medical findings suggest that it is possible for the victim's hymen to remain intact despite repeated sexual intercourse. We elucidated that the strength and dilatibility of the hymen varies from one woman to another, such that it may be so elastic as to stretch without laceration during intercourse; on the other hand, it may be so resistant that its surgical removal is necessary before intercourse can ensue.

In *People v. Pallete* and in *People v. Castro*, the rape victims involved were minors. The medical examination showed that their hymen remained intact even after the rape. Even then, we held that such fact is not proof that rape was not committed.<sup>100</sup> (Citations omitted)

The Regional Trial Court found that AAA remained steadfast even on cross-examination when she testified that the accused repeatedly raped her. Furthermore, it highlighted that it deduced no ill-motive on AAA's part to falsely charge the accused since she continued to call him "Papa" out of respect for him.<sup>101</sup> Its findings were upheld by the Court of Appeals, which likewise found that AAA testified in a straightforward and candid manner, consistently referring to the accused as the one who raped her.<sup>102</sup>

The rule is settled that the trial court's factual findings and evaluation of witnesses' credibility and testimony should be entitled to great respect, unless it is shown that the trial court may have "overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."<sup>103</sup>

### III

Rape becomes qualified when committed by a parent or step-parent against his child less than 18 years of age. This is provided for under Article 266-B, paragraph 1:

Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

....

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

<sup>100</sup> Id. at 592–593.

<sup>101</sup> CA rollo, p. 42, RTC Decision.

<sup>102</sup> Rollo, p. 11.

<sup>103</sup> *People v. De Jesus*, 695 Phil. 114, 122 (2012) [Per J. Brion, Second Division].

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1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

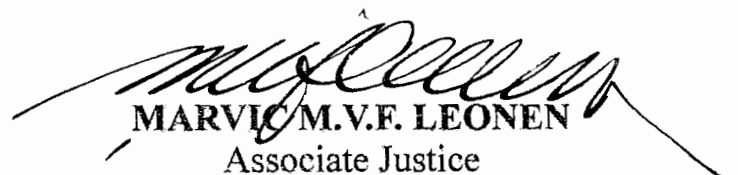
As to the circumstances qualifying rape, the prosecution established that AAA was 10 years old when she was first raped by the accused in 1997 and that she was 16 years old when he last raped her in January 2003. It was likewise established that the accused was her stepfather, being legally married to her mother.<sup>104</sup>

This Court also notes that while it was never denied that AAA was the accused's stepdaughter, the accused was named as AAA's father in her birth certificate.<sup>105</sup>

Having proven minority and relationship, the lower courts correctly imposed the penalty of *reclusion perpetua* for each count of qualified statutory rape and qualified rape without the benefit of parole in lieu of the imposition of death penalty.<sup>106</sup> However, this Court increases the amount of civil indemnity from ₱75,000.00 to ₱100,000.00; moral damages from ₱75,000.00 to ₱100,000.00; and exemplary damages from ₱30,000.00 to ₱100,000.00 pursuant to the prevailing jurisprudence.<sup>107</sup>

**WHEREFORE**, the February 6, 2013 Decision and August 13, 2013 Resolution of the Court of Appeals in CA-GR. CR-H.C. No. 03855, finding accused-appellant Benjamin Austria guilty beyond reasonable doubt of two (2) counts of qualified statutory rape and one (1) count of qualified rape is **AFFIRMED** with **MODIFICATION**. Accused-appellant Benjamin Austria is sentenced to suffer the penalty of three (3) counts of *reclusion perpetua* to be served successively, without the benefit of parole. He is also ordered to pay AAA, for each count of rape, the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, with legal interest at the rate of six percent (6%) per annum from the finality of this decision until its full satisfaction.

**SO ORDERED.**

  
MARVIC M.V.F. LEONEN  
Associate Justice

<sup>104</sup> TSN, March 20, 2006, p. 25.

<sup>105</sup> Folder of Exhibits, p. 6.

<sup>106</sup> *People v. Lumaho*, 744 Phil 233, 246 (2014) [Per J. Perez, First Division].

<sup>107</sup> *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382-383 [Per J. Peralta, En Banc].

WE CONCUR:

*[Signature]*  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson

*[Signature]*  
**LUCAS R. BERSAMIN**  
 Associate Justice

*[Signature]*  
**SAMUEL R. MARTIRES**  
 Associate Justice

*[Signature]*  
**ALEXANDER G. GESMUNDO**  
 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.

*[Signature]*  
**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.

*[Signature]*  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice

CERTIFIED TRUE COPY  
*[Signature]*  
**WILFREDO V. LAPIDAN**  
 Division Clerk of Court  
 Third Division  
 FEB 28 2018