



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 247750
Plaintiff-Appellee,

Present:

LEONEN, J., *Chairperson,*
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., *JJ.*

- versus -

Promulgated:

MAXIMO DINOY YBAÑEZ,
Accused-Appellant.

May 5, 2021

X-----~~MisRPCB-H~~-----X

DECISION

INTING, J.:

On appeal¹ is the Decision² dated April 3, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01919-MIN which affirmed with modification as to damages the Joint Decision³ dated February 26, 2018 of Branch 11, Regional Trial Court (RTC), Sindangan, Zamboanga del Norte in Criminal Case Nos. S-4290, S-4291, S-4292, and S-4225. The Joint RTC Decision convicted Maximo Dinoy Ybañez (accused-appellant) in Criminal Case Nos. S-4290 and S-4291, but acquitted him of the charges in Criminal Case Nos. S-4292 and S-4225.

Accused-appellant was charged with: a) three counts of Rape in accordance with Article 266-A of the Revised Penal Code (RPC), as

¹ See Notice of Appeal dated April 29, 2019, *rollo*, pp. 21-22.

² *Id.* at 5-20; penned by Associate Justice Florencio M. Mamauag, Jr. with Associate Justices Edgardo A. Camello and Evalyn M. Arellano-Morales, concurring.

³ CA *rollo*, pp. 42-60; penned by Presiding Judge Reymar L. Lacaña.

amended by Republic Act No. (RA) 8353,⁴ in relation to RA 7610;⁵ and b) Child Abuse under Section 10(a) of RA 7610 in the following Informations:

Criminal Case No. S-4290

That on or about the 2nd Day of May, 2009, in the [REDACTED], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste design, by means of fraudulent machination or grave abuse of authority, and when the offended party is deprived of reason, did then and there willfully, unlawfully, and feloniously have sexual intercourse with [REDACTED], 16 years old, knowing fully well the mental disability of the said minor, which is against her will and without her consent to the damage and prejudice to the said minor.

Contrary to law. (Viol. Of Art. 266-A of the RPC in relation to RA 7610.

Criminal Case No. S-4291

That on or about the 4th day of May, 2009, in the [REDACTED], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste design, by means of fraudulent machination or grave abuse of authority, and when the offended party is deprived of reason, did then and there willfully, unlawfully, and feloniously have sexual intercourse with [REDACTED], 16 years old, knowing fully well the mental disability of the said minor, which is against her will and without her consent to the damage and prejudice to the said minor.

Contrary to law (Viol. Of Art. 266-A of the RPC in relation to RA 7610.

Criminal Case No. S-4292

That on or about the 6th day of May, 2009, in the [REDACTED], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste design, by means of fraudulent machination or grave abuse of authority, and when the offended party is deprived of reason, did then and there willfully, unlawfully, and feloniously have sexual intercourse with [REDACTED], 16 years old, knowing fully

⁴ The Anti-Rape Law of 1997, approved on September 30, 1997.

⁵ Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, approved on June 17, 1992.

well the mental disability of the said minor, which is against her will and without her consent to the damage and prejudice to the said minor.

Contrary to law (Viol. Of Art. 266-A of the RPC in relation to RA 7610.

Criminal Case No. S-4225

That in the evening, on or about the 14th day of May, 2009, in the ██████████, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lust and lewd design, did then and there willfully, unlawfully, and feloniously commit acts of child abuse on the person of ██████████, a 16 year [sic], by [sic] hugging and kissing her against her will and without her consent which is prejudicial to the child's development.

Contrary to law (Viol. Of Sec. 10(a) of RA 7610.⁶

At the arraignment, accused-appellant entered his pleas of not guilty to all the charges. Trial on the merits ensued.

Version of the Prosecution

In the evening of May 2, 2009, private complainant AAA⁷ went to the house of accused-appellant's niece. It is there where accused-appellant, who is a quack doctor, treats his patients. AAA fondly called accused-appellant "Lolo," who treated her epilepsy upon her mother's request.⁸

On that evening, accused-appellant guided AAA towards a room and started massaging her arms. He then removed her shorts and

⁶ As cited from the Court of Appeals Decision dated April 3, 2019, *rollo*, pp. 6-7.

⁷ The identity of the victim, or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; RA 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 85-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Persona Circumstances.

⁸ *Rollo*, p. 8.

underwear. He also removed his own shorts and brief. He explained that it was necessary for him to insert his penis inside AAA's vagina to cure her epilepsy. AAA, who is a minor and deprived of reason, agreed. Accused-appellant then made her lie down, went on top of her, and inserted his penis inside her vagina. AAA felt pain, but kept quiet.⁹

On May 4, 2009, AAA went again to accused-appellant's place for another session of treatment. After she took her medicine, accused-appellant led her to the comfort room. Thereupon, he removed his shorts and briefs. After which, he removed AAA's shorts and underwear. He reiterated to AAA that the insertion of his penis inside her vagina will cure her epilepsy.¹⁰

On May 6, 2009, the same incident happened. He brought AAA inside the comfort room and had carnal knowledge of her.¹¹

On May 13, 2009, AAA's mother arrived at their house after pasturing their horse in the fields. Upon seeing AAA, she observed that AAA was crying. At that point, AAA told her mother that she will no longer submit herself to accused-appellant's treatment. She narrated that accused-appellant touched her whole body, showed his penis, and inserted it into her vagina. Upon hearing the confession, AAA's mother confronted and mauled accused-appellant, who was then at their house. When accused-appellant resisted, she shouted for help. Her brother-in-law, *Barangay* Captain Manuel Bayawa (Brgy. Capt. Bayawa), heard the shouts so that he immediately went to AAA's house and later learned of the rape incidents. Brgy. Capt. Bayawa confronted accused-appellant, who then begged for forgiveness and made a promise to marry AAA. But AAA's relatives had accused-appellant arrested and brought him to the police station.¹²

On May 14, 2009, AAA was subjected to physical and genital examination by Dr. Lolita Hamoy (Dr. Hamoy). The medico-legal report prepared by Dr. Hamoy indicated that AAA's vaginal canal admits two fingers with ease and that her hymen was no longer intact.¹³

⁹ *Id.* at 8.

¹⁰ *Id.* at 9.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Version of the Defense

Accused-appellant, who was 87 years old at the time of the incident, had a different story. While he admitted that he personally knows AAA and that he is a quack doctor, he denied the accusations hurled against him. According to him, the charges were all fabricated by AAA's mother. In fact, he used to treat AAA of her epilepsy using herbal plants and roots.¹⁴

Ruling of the RTC

On February 26, 2018, the RTC acquitted accused-appellant in Criminal Cases No. S-4292 and S-4225 on the ground of reasonable doubt.¹⁵ However, it found accused-appellant guilty of two counts of Rape in Criminal Case Nos. S-4290 and S-4291. It observed that notwithstanding AAA's mental disability, she credibly narrated her ordeal in the hands of accused-appellant and positively identified him as the person who raped her.¹⁶

The RTC further found that accused-appellant's advanced age does not *ipso facto* mean that sexual intercourse is no longer possible as age is not a criterion taken alone in determining sexual interest and capability.¹⁷ Nevertheless, it considered accused-appellant's old age as mitigating his criminal liability. Without categorically stating that accused-appellant is guilty of two counts of Qualified Rape, the RTC appreciated the qualifying circumstance under paragraph 10, Article 266-B of the RPC *i.e.*, "[w]hen the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime."

Further, the RTC declared that accused-appellant, being a quack doctor, took advantage of AAA's mental condition and, through fraudulent machination, led AAA to believe that his act of inserting his penis into her vagina will cure her epilepsy. After considering the mitigating circumstance of accused-appellant's age pursuant to Article

¹⁴ *Id.* at 9-10.

¹⁵ *CA rollo*, p. 58.

¹⁶ *Id.* at 57-58.

¹⁷ *Id.* at 58.

63 of the RPC, it imposed upon accused-appellant the lesser penalty of *reclusion perpetua* instead of death. It also awarded to AAA civil indemnity, moral damages, and exemplary damages in the amount of ₱100,000.00 each. The dispositive portion of the RTC Joint Decision provides:

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

1. In Criminal Case Nos. S-4292 and S-4225, accused MAXIMO DINOY YBAÑEZ is *ACQUITTED* for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt; and

2. In Criminal Case Nos. S-4290 and S-4291, accused MAXIMO DINOY YBAÑEZ is found *GUILTY* beyond reasonable doubt and as principal of two (2) counts of rape and he is sentenced to suffer the penalty of *RECLUSION PERPETUA* and its accessory penalties as provided by law for each of these two counts of rape.

He is further ordered to pay private offended party AAA the amount of PhP100,000.00 as civil indemnity, PhP100,000.00 as moral damages and PhP100,000.00 as exemplary damages, for each count of rape, all with interest rate of 6% per annum from the date of finality of this judgment.

The accused being a detention prisoner, he shall be credited the preventive imprisonment he has undergone in the service of his sentence.

SO ORDERED.¹⁸

Aggrieved with the RTC Decision, accused-appellant appealed to the CA.

Ruling of the CA

In the assailed Decision, the CA affirmed accused-appellant's conviction for two counts of Rape, but reduced the awards of civil indemnity, moral damages, and exemplary damages to ₱75,000.00 each.¹⁹ It decreed:

¹⁸ *Id.* at 59-60.

¹⁹ *Rollo*, p. 19.

WHEREFORE, the 26 February 2018 Decision of the Regional Trial Court, Ninth Judicial Region, Branch 11, ██████████, Zamboanga del Norte in Criminal Cases No. S-4290 and No. S-4291 is AFFIRMED WITH MODIFICATION. The appellant is ORDERED to pay ██████████ the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages.

SO ORDERED.²⁰

Hence, the present appeal seeking the acquittal of accused-appellant.

In its Manifestation and Motion²¹ dated October 29, 2019, the People, through the Office of the Solicitor General, prayed that it be excused from filing a supplemental brief as it had already extensively addressed all the matters and issues raised by accused-appellant in its own Brief filed before the CA.

On November 11, 2019, accused-appellant also filed a Manifestation In Lieu of Supplemental Brief²² informing the Court that he would no longer file a supplemental brief and would adopt his Brief filed before the CA.

Issue

In the main, accused-appellant maintains his position that the prosecution failed to prove the elements of the crime of Rape given the noticeable insufficiency of evidence and AAA's doubtful credibility.

The Court's Ruling

The appeal has no merit.

At the outset, the Court finds it necessary to correct the designation of the offenses committed by accused-appellant in Criminal Case Nos. S-4290 and S-4291 which are on appeal before the Court.

²⁰ *Id.*

²¹ *Id.* at 29-32.

²² *Id.* at 43-44.

Notably, accused-appellant was charged with violation of Article 266-A of the RPC, as amended, in relation to RA 7610.

To correct, the Court deletes in this case the correlation of accused-appellant's violation of Article 266-A, as amended, to RA 7610.

In *People v. ZZZ*,²³ the Court reiterated its pronouncement in *People v. Tulagan*²⁴ (*Tulagan*) as basis for deleting the correlation of RA 7610 from the criminal liability of the accused-appellant therein for two counts of Rape defined under paragraph 1(a), Article 266-A and one count of Statutory Rape under paragraph 1(d), all penalized under Article 266-B of the RPC, as amended. The Court quoted *Tulagan* in this wise:

Assuming that the elements of both violations of Section 5(b)²⁵ of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information — e.g., carnal knowledge or sexual intercourse was due to "force or intimidation" with the added phrase of "due to coercion or influence," one of the elements of Section 5(b) of R.A. No. 7610; or in many instances wrongfully designate the crime in the Information as violation of "Article 266-A, paragraph 1 (a) in relation to Section 5(b) of R.A. No. 7610," although this may be a ground for quashal of the Information under Section 3(f) of Rule 117 of the Rules of Court — and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610. Indeed, **while R.A. No. 7610 is a special law specifically enacted to**

²³ G.R. No. 226144, October 14, 2020.

²⁴ G.R. No. 227363, March 12, 2019.

²⁵ Section 5 of Republic Act No. 7610 provides:

Section 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be; Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period;

provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development, We hold that it is contrary to the legislative intent of the same law if the lesser penalty (*reclusion temporal medium to reclusion perpetua*) under Section 5(b) thereof would be imposed against the perpetrator of sexual intercourse with a child 12 years of age or below 18.

Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, is not only the more recent law, but also deals more particularly with all rape cases, hence, its short title "*The Anti-Rape Law of 1997*." R.A. No. 8353 upholds the policies and principles of R.A. No. 7610, and provides a "stronger deterrence and special protection against child abuse," as it imposes a more severe penalty of *reclusion perpetua* under Article 266-B of the RPC. x x x²⁶ (Emphasis in the original.)

Here, with the rectification of accused-appellant's crimes under Criminal Case Nos. S-4290 and S-4291 by deleting the correlation to RA 7610, he should be convicted under the RPC upon the Court's finding of his guilt beyond reasonable doubt. However, as will be explained below and to clarify any ambiguity in the nomenclature of the crimes, accused-appellant must be held guilty for Qualified Rape under Article 266-A in relation to Article 266-B of the RPC, as amended.

Article 266-A of the RPC, as amended, defines 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:

- 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

²⁶ *People v. ZZZ*, *supra* note 23, citing *People v. Tulagan*, *supra* note 24. Citations omitted.

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.

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.

For a charge of Rape by sexual intercourse under Article 266-A of the RPC, as amended, to prosper, the prosecution must prove that: a) the offender had carnal knowledge of a woman; and b) he accomplished this act under the circumstances mentioned in paragraph 1(a), (b), (c), and (d) thereof. The gravamen of Rape is sexual intercourse with a woman against her will.²⁷

As in this case, the Informations in Criminal Case Nos. S-4290 and S-4291 allege that accused-appellant had carnal knowledge of AAA under the circumstances in Article 266-A, paragraph 1(b)—when the offended party is deprived of reason, and paragraph 1(c)—by means of fraudulent machination or grave abuse of authority.

The Court finds that the prosecution was able to establish that accused-appellant had carnal knowledge of AAA, a 16-year-old minor, through fraudulent machination and with knowledge that AAA was mentally disabled. As aptly found by the RTC, AAA's mental disability was established by the following circumstances: (1) the investigating prosecutor's Resolution dated September 25, 2009 stating that AAA was deprived of reason; (2) the RTC's observation that during her examinations, AAA always looked down as if afraid and ashamed and could hardly respond to the questions; (3) the RTC's observation that AAA had a childlike innocence especially when she consented to accused-appellant's act of inserting his penis into her vagina as a cure to her ailment; and (4) AAA suffers from epilepsy.²⁸ Further, as correctly ruled by the RTC, accused-appellant and AAA personally knew each other; and it was accused-appellant's knowledge of AAA's mental disability which emboldened and encouraged him to commit the crime through fraudulent machination by telling AAA that inserting his penis

²⁷ *People v. Ejercito*, 834 Phil. 837, 844 (2018).

²⁸ *CA rollo*, pp. 52-53; *Rollo*, p. 10.

into her vagina, or having sexual intercourse with him will cure her ailment.²⁹

Notwithstanding her mental disability, AAA narrated her tragic ordeal in the hands of accused-appellant in a clear, straightforward, and convincing manner. There is likewise no ill motive on AAA's part in filing the complaint against accused-appellant.

Moreover, AAA's narration was corroborated by the medical findings of Dr. Hamoy, who found that the former's vaginal canal admits two fingers with ease and that her hymen was no longer intact.³⁰ When the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge. Laceration, whether healed or fresh, is the best physical evidence of forcible defloration.³¹

The RTC and the CA correctly ruled that accused-appellant's defenses of denial and alibi are untenable. Denial and alibi are inherently weak and constitute self-serving negative evidence which cannot prevail over the declaration of a credible witness who testified on affirmative matters. Here, AAA's positive testimony that accused-appellant sexually abused her deserves more credence than that of the latter's uncorroborated defenses.

Under the circumstances, the Court must uphold the factual findings of the trial court in the absence of any showing that in assessing the witnesses' credibility, in relation to their testimonies, it has overlooked or misconstrued any relevant fact that would alter the result of the case.³²

However, the Court modifies the RTC's findings as to the crime committed, the penalty imposed, and the indemnities awarded.

²⁹ CA rollo, p. 53.

³⁰ Rollo, p. 9.

³¹ *People v. Manaligod*, 831 Phil. 204, 213 (2018), citing *People v. Clores, Jr.*, 475 Phil. 99, 107 (2004).

³² See *People v. Gomez*, 826 Phil. 561, 568 (2018), citing *People v. Gabriel*, 807 Phil. 516, 528 (2017).

To recall, while the RTC appreciated the qualifying circumstance under paragraph 10, Article 266-B of the RPC, as amended, it convicted accused-appellant for "Rape" only. On the other hand, the CA, without discussing the absence or presence of the qualifying circumstance under paragraph 10, Article 266-B, affirmed accused-appellant's conviction for "Rape."

One of the qualifying circumstances of Simple Rape, as provided under Article 266-B of the RPC, as amended, is when the offender knew of the mental disability, emotional disorder, and/or physical handicap of the offended party at the time of the commission of the crime. In such a case, the proper penalty is death.³³

Because the prosecution was able to establish that accused-appellant knew of AAA's mental disability at the time of the commission of the crimes, accused-appellant committed not merely two counts of Simple Rape, but two counts of Qualified Rape.

Accused-appellant may properly be convicted of Qualified Rape without violating his due process rights and the right to be informed of the nature and cause of the accusations against him as will be explained hereunder.

In *People v. Rosales*,³⁴ the lower courts found appellant therein guilty of Rape and imposed the penalty of *reclusion perpetua*. However, considering the presence of the special qualifying circumstance of appellant's knowledge of the victim's mental retardation, the same being properly alleged in the Information charging him of the crime of Rape and proven during trial, the Court imposed on appellant the supreme penalty of death.³⁵ The Court explained:

Taking into consideration the positive and categorical declaration of AAA and the medical findings to support her claims,

³³ Paragraph 10, Article 266-B of the Revised Penal Code provides:

ART. 266-B. *Penalties*. — x x x x

x x x x

10. When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

x x x x

³⁴ 715 Phil. 285 (2013).

³⁵ *Id.* at 298.

we affirm the lower courts' unanimous finding that AAA, by proof beyond reasonable doubt, was raped by the appellant.

x x x x

Under the aforementioned provisions, when rape is committed by an assailant who has knowledge of the victim's mental retardation, the penalty is increased to death. This circumstance must be alleged in the information being a qualifying circumstance which increases the penalty to death and changes the nature of the offense from simple to qualified rape.

Although appellant denied any knowledge about AAA's mental condition, it was he himself who volunteered the information that he had been living with AAA for four (4) months in his house. It is therefore logical to assume that appellant was fully aware of the workings of AAA's mental faculties. Furthermore, AAA's mental condition was sufficiently established by medical findings, as well as the testimony of AAA's mother.

Considering the presence of the special qualifying circumstance of the appellant's knowledge of the victim's mental retardation, the same being properly alleged in the Information charging the appellant of the crime of rape and proven during trial, this Court imposes on the appellant the supreme penalty of death. But with the enactment of Republic Act No. 9346, the imposition of the death penalty has been prohibited. This Court accordingly imposes the penalty of *reclusion perpetua* without eligibility for parole.

The significance of raising the crime charged from simple rape to qualified rape relates to the award of damages. Since the crime of rape is perpetrated with a qualifying circumstance which required the imposition of the death penalty, the civil indemnity and moral damages for the victim shall be increased to P75,000.00 each. Also, the award of exemplary damages in the amount of P30,000.00 is in order.

Similarly, in *People v. Amistoso*,³⁶ the Court observed that a perusal of the Information against appellant reveals that the allegations therein actually constitute a criminal charge for Qualified Rape. Thus, appellant cannot claim that he had been deprived of due process in any way. He adequately understood from the Information that he was being charged with the rape of his own daughter to which he proffered the defense of denial and alibi, totally refuting the fact of rape regardless of how it was purportedly committed.³⁷

³⁶ 701 Phil. 345 (2013).

³⁷ *Id.* at 356.

The same rule applies in this case. Both the RTC and the CA, in vague terms, convicted accused-appellant of Rape and imposed the penalty of *reclusion perpetua*. Nonetheless, it is very clear from the Informations that the allegations therein actually constitute criminal charges for Qualified Rape under paragraph (1)(a), Article 266-A, in relation to paragraph 10, Article 266-B of the RPC, as amended. To be sure, the Informations satisfactorily mentioned and charged accused-appellant with carnal knowledge of the minor victim knowing fully well of her mental disability. The allegations in the Informations are sufficiently clear to inform him of the acts he is being held liable for, and adequate to enable him to form a defense for Qualified Rape. More importantly, the prosecution was able to prove such qualifying circumstance during the trial.

While the age of the offender, which is over 70 years old, is a generic mitigating circumstance, it will not affect the sentence imposed on accused-appellant. When the law prescribes a penalty composed of two indivisible penalties and the commission of the act is neither attended by mitigating nor aggravating circumstances, the lesser penalty shall be applied.³⁸ Under Article 266-B of the RPC, the penalty of death shall be imposed when the offender knew of the mental disability, emotional disorder, and/or physical handicap of the offended party at the time of the commission of the crime. But in view of RA 9346³⁹ which prohibits the imposition of death penalty and pursuant to A.M. No. 15-08-02-SC,⁴⁰ the proper penalty against accused-appellant for each count of Qualified Rape should be *reclusion perpetua* without eligibility for parole.

³⁸ Paragraph 2, Article 63 of the Revised Penal Code provides:

Art. 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:

x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

x x x


³⁹ Entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," approved on June 24, 2006.

⁴⁰ Entitled, "Guidelines for the Proper Use of the Phrase 'Without Eligibility for Parole' in Indivisible Penalties," approved on August 4, 2015.

As to the award of damages, in view of the prevailing jurisprudence, the awards of ₱75,000.00 civil indemnity, ₱75,000.00 moral damages, and ₱75,000.00 exemplary damages should be increased to ₱100,000.00 each for every count of Qualified Rape. All the monetary awards shall earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until paid in full.⁴¹


WHEREFORE, the appeal is **DENIED**. The assailed Decision dated April 3, 2019 in CA-G.R. CR-HC No. 01919-MIN is hereby **AFFIRMED** with **MODIFICATIONS** in that accused-appellant Maximo Dinoy Ybañez is found guilty of two counts of Qualified Rape in Criminal Case Nos. S-4290 and S-4291, and he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole for each count. Further, the civil indemnity, moral damages, and exemplary damages shall be in the amount of ₱100,000.00 each for every count of Qualified Rape. All the monetary awards shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until paid in full.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

⁴¹ *People v. XXX*, G.R. No. 225339, July 10, 2019, citing *People v. Jugueta*, 783 Phil. 806 (2016).


JHOSEP V. LOPEZ
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.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

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.


ALEXANDER G. GESMUNDO
Chief Justice

