

## THIRD DIVISION

G.R. No. 261962 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee,  
v. XXX,<sup>1</sup> Accused-appellant.

Promulgated:

JAN 27 2025

~~Miss DCB-nt~~

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## CONCURRING OPINION

CAGUIOA, J.:

I agree with the *ponencia* that the prosecution was able to establish beyond reasonable doubt that accused-appellant XXX had carnal knowledge of AAA<sup>2</sup>, who was just 10 years old at the time of the incident. Likewise, I concur in finding that XXX committed statutory rape, not qualified rape of a minor.

For one to be convicted of qualified rape of a minor, the twin circumstances of minority and relationship must be present.<sup>3</sup> Minority here means that the victim is below the statutory age;<sup>4</sup> while relationship means that 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.<sup>5</sup> Otherwise, if only minority is present, the accused should be convicted of statutory rape.

Here, the minority of AAA is undisputed;<sup>6</sup> however, relationship is wanting. While it is expressly stated in the Information that XXX is AAA's relative by consanguinity within the third civil degree,<sup>7</sup> the parents of AAA divulged during trial that AAA was adopted.<sup>8</sup> Therefore, XXX and AAA are not related to each other.

I.

<sup>1</sup> In line with Amended Administrative Circular No. 83-2015 dated September 5, 2017, titled "Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances," the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

<sup>2</sup> *Id.*

<sup>3</sup> *People v. ABC260708*, G.R. No. 260708, January 23, 2024 [Per J. M. Lopez, *En Banc*], available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/69314>.

<sup>4</sup> The term "statutory age" shall mean either "below 12 years old" or "under 16 years old" depending on whether the crime of rape was committed before or after the effectivity of Republic Act No. 11648, respectively. *See id.*

<sup>5</sup> Republic Act No. 8353, sec. 2.

<sup>6</sup> *Ponencia*, p. 11.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 11.

Republic Act No. 8353 or the Anti-Rape Law of 1997 expanded the definition of rape under Article 266 of the Revised Penal Code and added that the crime shall be qualified when, among others, the victim is a minor 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.

When Republic Act No. 8353 was passed, the prevailing rule in adoption cases was that *the relationship created by adoption was limited only to the adopter and the adoptee* (henceforth, the “doctrine of exclusivity”).

The doctrine of exclusivity was first set out by the Court in the landmark case of *Teotico v. Del Val Chan*<sup>9</sup> (*Teotico*). In brief, *Teotico* involved the probate of the will of a certain Maria Mortera y Balsalobre Vda. De Aguirre (Maria) who died without issue in July 1955. Ana del Val Chan (Ana), claiming to be an adopted child of Francisca Mortera (Francisca), the deceased sister of Maria, opposed the probate. According to the Court, Ana may not intervene in the probate proceeding since she did not have any interest in the estate, in the will, or in the property to be affected by it. The Court ruled that she is not an heir of Maria since she is only an adopted daughter of Francisca. Under the law, the relationship created by adoption is exclusive only to the adopter and the adoptee. Thus, “no relationship is created between the adopted and the collaterals of the adopting parents,”<sup>10</sup> viz.:

The oppositor cannot also derive comfort from the fact that she is an adopted child of Francisca Mortera because **under our law the relationship established by adoption is limited solely to the adopter and the adopted and does not extend to the relatives of the adopting parents or of the adopted child except only as expressly provided for by law. Hence, no relationship is created between the adopted and the collaterals of the adopting parents.** As a consequence, the adopted is an heir of the adopter but not of the relatives of the adopter.

The relationship established by the adoption, however, is limited to the adopting parent, and does not extend to his [or her] other relatives, except as expressly provided by law. **Thus, the adopted child cannot be considered as a relative of the ascendants and collaterals of the adopting parents, nor of the legitimate children which they may have after the adoption, except that the law imposes certain impediments to marriage by reason of adoption. Neither are the children of the adopted considered as descendants of the adopter. The relationship created is exclusively between, the adopter and the adopted, and does not extend to the relatives of either.** (Tolentino, Civil Code of the Philippines, Vol. 1, p. 652)

Relationship by adoption is *limited to adopter and adopted*, and does not extend to other members of the family

<sup>9</sup> 121 Phil. 392 (1965) [Per J. Bautista, *En Banc*].

<sup>10</sup> *Id.* at 398.



of either; but the adopted is prohibited to marry the children of the adopter to avoid scandal.” (An Outline of Philippines Civil law by Justice Jose B. L. Reyes and Ricardo C. Puno, Vol. 1, p. 313; *See also* Caguioa, Comments and Cases on Civil Law, 1955, Vol. 1, pp. 312-313; Paras, Civil Code of the Philippines, 1959 ed., Vol. 1, p. 515)<sup>11</sup> (Emphasis supplied)

The doctrine of exclusivity in *Teotico* was reiterated by the Court in *Sayson v. Court of Appeals*<sup>12</sup> (1992), *Reyes v. Elquero*<sup>13</sup> (2020), and in *People v. XXX257134*<sup>14</sup> (XXX251734) (2023), which also involved sexual abuse cases.

In XXX257134, the Court did not appreciate the qualifying circumstance of relationship because under the doctrine of exclusivity, the victim and the accused therein were not related to each other, the latter being only the “adoptive uncle” of the victim. Thus, the accused therein was convicted of sexual assault in its simple form only.

Since the crime was committed by XXX in 2012, the doctrine of exclusivity must likewise be applied herein. Considering that AAA is only an adopted daughter of XXX’s sister, AAA and XX are likewise not related to each other. Accordingly, XXX should be convicted of statutory rape since the qualifying circumstance of relationship is absent.

## II.

I am mindful that under Republic Act No. 11642 or the Domestic Administrative Adoption and Alternative Child Care Act of 2022, the State has unequivocally pronounced that the legitimate filiation that is created between the adopter and the adoptee shall be extended to the adopter’s parents, adopter’s legitimate siblings, and legitimate descendants.<sup>15</sup> The Implementing Rules and Regulations of Republic Act No. 11642 provide that the effect of adoption shall retroact to the date the petition for adoption is filed.<sup>16</sup> Accordingly, with the enactment of Republic Act No. 11642, an adoptee gains a family, not just a parent.

However, even with the provision on the retroactive application of Republic Act No. 11642, the law may not be applied to the crime committed

<sup>11</sup> *Id.*

<sup>12</sup> 282 Phil. 332 (1992) [Per J. Cruz, First Division].

<sup>13</sup> 881 Phil. 66 (2020) [Per J. Gaerlan, Third Division].

<sup>14</sup> G.R. No. 257134, February 6, 2023 [Per J. Kho, Second Division], available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/69094>.

<sup>15</sup> Section 41. *Legitimacy*.—The adoptee shall be considered the legitimate child of the adopter for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate children born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family. The legitimate filiation that is created between the adopter and adoptee shall be extended to the adopter’s parents, adopter’s legitimate siblings, and legitimate descendants.

The adopter is also given the right to choose the name by which the child is to be known, consistent with the best interest of the child.

<sup>16</sup> Implementing Rules and Regulations of Republic Act No. 11642, art. VI, sec. 69.

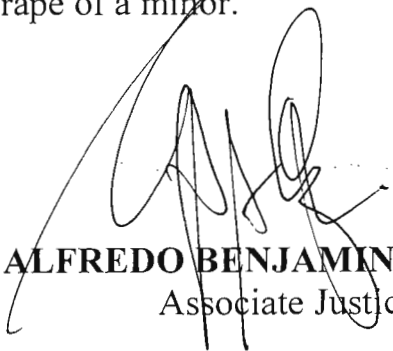


by XXX in 2012 because of the Constitutional prohibition against *ex post facto* laws. In brief, an *ex post facto* law refers to:

One — (a) which makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action; or **(b) which aggravates a crime or makes it greater than it was when committed; or (c) which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed;** or (d) which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant; or (e) which assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful; or (f) which deprives a person accused of a crime of some lawful protection to which he [or she] has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.<sup>17</sup> (Emphasis supplied)

Under Republic Act No. 11642, the filiation created by adoption between AAA and her adopters is extended to the latter's legitimate siblings, making XXX and AAA related to each other within the third civil degree. Since Republic Act No. 11642 will qualify the crime committed by XXX, the Court cannot apply the provisions of said law in the present case.

In view of the foregoing, I **CONCUR** that XXX should be held liable for statutory rape and not qualified rape of a minor.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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<sup>17</sup> *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 572 Phil. 71, 86–87 (2008).