



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 8, 2020 which reads as follows:

“G.R. No. 249186 – PEOPLE OF THE PHILIPPINES vs. AIZER ORGULA Y ROLA a.k.a “Ingki”

The Case

This appeal assails the Decision¹ dated May 24, 2019 of the Court of Appeals in CA-G.R. CR HC No. 09149 affirming the verdict of conviction against appellant Aizer Orgula y Rola a.k.a “Ingki” for statutory rape.

The Proceedings Before the Trial Court

The Charge

On November 14, 2013, appellant was charged with statutory rape under Article 335² of the Revised Penal Code (RPC), as amended by Republic Act No. 8353 (RA 8353),³ in relation to Republic Act

- over – seventeen (17) pages ...

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¹ Penned by Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justices Ricardo R. Rosario and Nina G. Antonio-Valenzuela, all member of the Eleventh Division, *rollo*, pp. 3-25.

² ARTICLE 335. *When and How Rape is Committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present. (*Revised Penal Code, Act No. 3815, [December 8, 1930]*)

³ The Anti-Rape Law of 1997, Republic Act No. 8353, September 30, 1997.

No. 7610 (RA 7610).⁴ The Information alleged, thus:

The undersigned upon a verified complaint of [AAA],⁵ a **minor 6 years old, assisted by her aunt [BBB]** hereby accuses **AIZER ORGULA y ROLA a.k.a. "Ingki"** of the crime of **RAPE in relation to R.A. 7610**, committed as follows:

That sometime or about 5:30 o'clock p.m. of November 11, 2013, particularly at the back of the house of herein respondent located in [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the (accused), armed with (a) knife, by means of force or intimidation, did then and there willfully, unlawfully, and feloniously *cover the mouth of one [AAA], a minor 6 years old (DOB:07/07/07), thereafter laid her down, removed her pajama and panty, and forcibly inserted his penis into the vagina of said minor-victim*, against her will and consent, to the damage and prejudice of said **minor-victim**.

CONTRARY to Art. 335 of the Revised Penal Code, as amended by Republic Act 8353.⁶ (emphases and italics in the original)

The case was raffled to the Regional Trial Court (RTC)-Branch 51, Tayug, Pangasinan. On arraignment, appellant pleaded not guilty.⁷ During the pre-trial, both the prosecution and the defense stipulated that the victim was only six (6) years old at the time the alleged

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⁴ ARTICLE III - SECTION 5. *Child Prostitution and Other Sexual Abuse.*

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(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; **Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape.** (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, Republic Act No. 7610, [June 17, 1992]*).

⁵ The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* [533 Phil. 703 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

⁶ Record, p. 1.

* III. Modification Requirements for Covered cases -

4. The cases covered by this Protocol shall be modified in the following manner:

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b. The *personal circumstances* or other information which tend to establish or compromise, directly or indirectly, the identities of the women and children victims, such as, but not limited to, their date of birth, **complete address**, complete names of parents, **relatives**, or other household members, shall be **blotted out** from the decision, resolution, and order of the courts in covered cases. (*Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names, Supreme Court Administrative Circular No. 83-15, [July 27, 2015]*)

⁷ Certificate of Arraignment dated November 28, 2013; *record*, p. 17.

offense was committed based on her Certificate of Live Birth.⁸ Trial ensued.

The prosecution presented the following witnesses: (1) the victim AAA; (2) AAA's guardian-aunt BBB; (3) AAA's grand-aunt Barangay Kagawad CCC; (4) Civilian Volunteer Officer Selino Dela Rosa y Sabas; (5) Arresting Officer PO1 Leonardo M. Lopez (PO1 Lopez); and (6) Medico-Legal Officer Dr. Eleonor T. Torio (Dr. Torio).⁹ On the other hand, the defense presented appellant and his sister Ivy Orgula.¹⁰

Version of the Prosecution

AAA testified that on November 11, 2013, around 5:30 in the afternoon, she went to appellant's house to watch television. While she was watching television, appellant, armed with a knife, arrived. He pointed the knife at her and dragged her towards the field at the back of his house.¹¹ He covered her mouth and laid her on the rice hay.¹² He immediately removed her pajama and panty, then held, squeezed, and forcibly inserted his penis into her vagina.¹³ While appellant was doing this, he warned her not to tell anyone or he would kill her, her mother, her grandfather, and BBB. She kept on resisting by pushing appellant's chest, but it was all in vain. He even kissed her on the neck. After his bestial act, he gave her back her panty and pajama. Then she heard BBB calling her from their house. She hurriedly ran into their house and told BBB that appellant had raped her.¹⁴

BBB testified that on November 11, 2013, around 6 o'clock in the evening, she was at home cooking for dinner. When she called AAA, the latter arrived crying. One (1) of her ponytails got loosened.¹⁵ AAA told her that appellant pointed a knife at her and brought her into the field at the back of his house. He threatened to kill AAA, her mother, her grandfather, and herself should she tell anyone about the incident.¹⁶ She asked AAA what appellant exactly did to her. AAA was reluctant to tell at first but after persistent questioning, AAA finally said that appellant covered her mouth, laid

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⁸ See Pre-trial Order dated January 17, 2014, *id.* at 24-25; See also AAA's Certificate of Live Birth, *id.* at 12.

⁹ *Rollo*, p. 5.

¹⁰ *Id.* at 8.

¹¹ AAA's *Sinumpaang Salaysay* dated November 12, 2013; *record*, pp. 5-6.

¹² *Rollo*, p. 6.

¹³ TSN, September 30, 2015, pp. 13-14.

¹⁴ *Rollo*, p. 6.

¹⁵ *Id.*

¹⁶ BBB's *Sinumpaang Salaysay* dated November 12, 2013; *record*, p. 7.

her on the hay, undressed her, and forcibly inserted his penis into her vagina.¹⁷

BBB immediately reported the incident to the barangay captain who called Civilian Volunteer Officer Selino Dela Rosa y Sabas. BBB also reported the incident to Barangay Kagawad CCC who hurriedly looked for appellant. BBB, on the other hand, accompanied AAA to the San Quintin Police Station where they also reported the incident. Per police's advice, BBB brought AAA to the Eastern Pangasinan District Hospital for medical examination.¹⁸

CCC testified that at the time of the incident, she was inside her house just across the street where AAA and BBB lived. Suddenly, AAA and BBB came to her house. They were both crying. BBB reported to her that appellant raped AAA. She then looked for appellant in a nearby abandoned house, but he was not there. Since it was dark, she returned home to get her flashlight and continued the search. She proceeded to the makeshift comfort room at the back of the abandoned house and found appellant there. He was drunk, his upper body was naked, and he was seated on the toilet bowl. At that precise moment, Selino Dela Rosa y Sabas arrived. Together with Selino Dela Rosa y Sabas, he brought appellant to the barangay captain.¹⁹ Shortly, the police officers arrived and arrested appellant.²⁰

Selino Dela Rosa y Sabas testified that around 6 o'clock in the evening of November 11, 2013, the barangay captain's daughter came to his house and informed him that appellant raped AAA. He immediately searched for appellant in the fields. He also went to the nearby creek, but failed to find him there. While he was on his way to the guard house, he heard CCC shouting, "*He is here!*" He ran towards the area where CCC was and found appellant inside a makeshift comfort room outside an abandoned house.²¹ Appellant's upper body was naked. Together with CCC, he brought appellant to the barangay captain. Shortly, the police officers arrived.²²

PO1 Lopez testified that in the evening of November 11, 2013, he and PO2 Rey P. Andres were patrolling San Quintin, Pangasinan. Meanwhile, their desk officer directed them to respond to an alleged rape incident.²³ When they arrived in the area, they found appellant in

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¹⁷ *Id.*

¹⁸ *Rollo*, p. 6.

¹⁹ TSN, August 20, 2014, p. 23.

²⁰ *Rollo*, pp. 6-7.

²¹ TSN, December 1, 2014, p. 46.

²² *Rollo*, p. 7.

²³ *Id.*

the custody of the barangay captain and a concerned citizen. The barangay captain told them that appellant raped a six (6) year old child.²⁴

Dr. Torio testified that on November 11, 2013, she examined AAA and formalized her findings in her Medico-Legal Certificate,²⁵ viz.:

Genital Exam: (+) erythema between labia majora and labia minora on right side, (+) fresh deep lacerated wound at 1 o'clock position, examining finger cannot penetrate the vaginal canal.²⁶

Version of the Defense

Appellant testified that on November 11, 2013, around 4 o'clock in the afternoon, he was watching DVD in his house, together with his siblings Ivy, Ricson, and Reggie. While they were watching, his mother told him to go to the house of his brother-in-law, Macky Dumayas.²⁷ Macky lived in Escobaran, Umingan about two (2) barangays away.²⁸ Since he just planted *palay* and was muddied, he first took a bath in his uncle's house which was just adjacent thereto. After his bath, he went to the comfort room at the back of a vacant house to change his clothes.²⁹ Meanwhile, he heard CCC and a *barangay tanod* calling him. He went out and followed the two (2) because they were supposed to tell him something.³⁰

CCC and the *barangay tanod* took him to the "tambayan." There, CCC accused him of raping her niece AAA. He denied the accusation. Despite his denial, the *barangay tanod* dragged and boxed him in the nape. Then, the barangay captain came. He slapped him but he did not react because he was so frightened. Shortly, a police mobile car arrived. The police officers handcuffed and brought him to the police station. He was detained for allegedly raping a child.³¹

Ivy Orgula testified that on November 11, 2013, around 5 o'clock in the afternoon, she was watching television with her other siblings, Reggie and Ricson when her brother appellant arrived. Their mother told appellant to rest for a while before taking a bath since he

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²⁴ *Id.*

²⁵ Medico-Legal Certificate dated November 11, 2013, *record*, p. 11.

²⁶ *Id.*

²⁷ *Rollo*, p. 8.

²⁸ TSN, February 18, 2016, p. 5.

²⁹ *Rollo*, p. 8.

³⁰ TSN, March 2, 2016, p. 5.

³¹ *Rollo*, p. 9.

would be sent to an errand to his brother-in-law's house. She saw appellant leave and take a bath. Meanwhile, she saw her siblings Reggie and Ricson now biking with AAA at the corner of the road. Suddenly, Ivy was called by her mother and asked her to watch over the food she was cooking.³² Later on, she went out of the house again and saw appellant being mauled and boxed by the barangay captain. Then, appellant was brought to the police station. Her brother did not rape AAA because at the time of the incident, she saw AAA biking with her other two (2) siblings while appellant was taking a bath.³³

The Trial Court's Ruling

By Decision³⁴ dated February 3, 2017, the trial court found appellant guilty as charged, *viz.*:

WHEREFORE, PREMISES CONSIDERED, the prosecution having proven the guilt of the accused beyond a shadow of doubt, AIZER ORGULA y ROLA a.k.a. Ingki is hereby found guilty of statutory rape committed against minor [AAA], and is hereby sentenced to suffer the penalty of *reclusion perpetua*.

Conformably with the existing jurisprudence, accused is hereby ordered to pay the private offended party the amounts of Php100,000.00 as civil indemnity, and Php100,000.00 as moral damages, and Php100,000.00 as exemplary damages. Further, the amount of damages awarded should earn interest rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

SO ORDERED.³⁵

The trial court found that the prosecution was able to establish the elements of statutory rape under Article 335 of the RPC, as amended by RA 8353, in relation to RA 7610, *viz.*: (1) AAA was proven to be only six (6) years old at the time of the rape incident based on her birth certificate;³⁶ (2) AAA positively testified that appellant was the person who sexually ravished her;³⁷ (3) AAA's testimony was corroborated by her aunts BBB and CCC, and the civilian volunteer Selino Dela Rosa y Sabas;³⁸ and 4) the medico-legal findings of Dr. Torio showed that AAA was, indeed, raped.

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³² *Id.* at 9-10.

³³ *Id.*

³⁴ Penned by Judge Rusty M. Naya, *CA rollo*, pp. 57-76.

³⁵ *Id.* at 76.

³⁶ *Id.* at 57-76.

³⁷ *Id.*

³⁸ *CA rollo*, pp. 57-76.

On the other hand, appellant's denial and alibi were unworthy of belief. His testimony was inconsistent with that of his sister Ivy. He narrated that around 4 o'clock in the afternoon, he was watching DVD with his three (3) siblings – Ivy, Ricson, and Reggie. Ivy, on other hand, recalled that around 5 o'clock in the afternoon, she was watching television only with her two (2) siblings, Ricson and Reggie, *sans* appellant. Too, Ivy testified that her mother asked her to watch over the food she was cooking. At that time, Ivy could not have seen where appellant exactly was. The trial court ruled that during this time, there was sufficient opportunity for appellant to accomplish his lascivious deed on AAA.³⁹

As for the penalty, the trial court noted that under Article 266-B of the RPC, as amended by RA 8353,⁴⁰ when rape is committed on a child below seven (7) years old, as in this case, the accused should be sentenced to death. But with the enactment of RA 9346,⁴¹ the imposition of death penalty can no longer be imposed. Thus, appellant's sentence was reduced to *reclusion perpetua*.⁴²

Proceedings before the Court of Appeals

On appeal, appellant essentially claimed, *viz.*: (1) the trial court did not have jurisdiction over the case since it was only the deputy provincial prosecutor who signed the Information; (2) AAA's allegation of rape was inconsistent with the medico-legal findings of Dr. Torio that the "examining finger cannot penetrate the vaginal canal;" (3) the testimonies of BBB, CCC, Selino Dela Rosa y Sabas were hearsay; and (4) his denial and alibi should be given more credence since they were clearly corroborated by her sister Ivy's testimony.⁴³

The People, through the Office of the Solicitor General (OSG), riposted in the main, thus: (1) appellant belatedly raised the issue of lack of authority of the deputy provincial prosecutor. At any rate, even assuming the same was timely raised, the provincial prosecutor may designate his signing authority to his or her deputy in the interest of

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³⁹ *Rollo*, p. 10.

⁴⁰ "Article 266-B. *Penalties*-

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

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"5) When the victim is a child below seven (7) years old; The Anti-Rape Law of 1997, Republic Act No. 8353, September 30, 1997.

⁴¹ Anti-Death Penalty Law, Republic Act No. 9346, June 24, 2006.

⁴² *CA rollo*, p. 75.

⁴³ Brief for the Accused-Appellant dated August 7, 2017, *id.* at 33-53.

the prosecution service; (2) the testimonies of BBB, CCC, and Selino Dela Rosa y Sabas were not hearsay. In fact, they corroborated AAA's testimony; and (3) Ivy's testimony did not negate the commission of rape. She was not with appellant all throughout the time the alleged rape took place.⁴⁴

The Court of Appeals' Ruling

In its assailed Decision⁴⁵ dated May 24, 2019, the Court of Appeals affirmed *in toto*.

The Court of Appeals agreed that the prosecution succeeded in proving beyond reasonable doubt all the elements of statutory rape. Records showed that appellant threatened the six (6) year-old AAA with a knife to force her to submit to his lustful desires.⁴⁶ The testimonies of BBB, CCC, and Selino Dela Rosa y Sabas also corroborated AAA's testimonies on all material points.⁴⁷

Appellant's claim that rape could not have been committed because Dr. Torio's medico-legal findings showed that the "examining finger cannot penetrate the vaginal canal" deserved scant consideration. Dr. Torio's Medico-Legal Certificate itself emphasized that AAA sustained "fresh deep lacerated wound" in her vagina when she examined her the very same day of the alleged rape incident. Thus, Dr. Torio's findings supported AAA's claim that appellant had sexual intercourse with her.⁴⁸

As for appellant's claim that the Information was defective, appellant was not able to prove that the deputy provincial prosecutor lacked authority to sign the Information. For an Information to be quashed based on the prosecutor's lack of authority, the absence of authority must be evident on its face. Here, the defect was not apparent. The Information showed it was signed by Deputy Provincial Prosecutor Noel C. Bince "By Authority of the Provincial Prosecutor."⁴⁹ It was possible that the provincial prosecutor delegated such authority to Deputy Prosecutor Bince pursuant to Section 9 of Republic Act No. 10071 or the Prosecution Service Act of 2010.⁵⁰ Too, the Information was subscribed and sworn to before Assistant

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⁴⁴ Brief for the Plaintiff-Appellee dated October 23, 2017; *id.* at 86-115.

⁴⁵ Penned by Associate Justice Perpetua T. Atal-Paño and concurred by of Associate Justices Ricardo R. Rosario and Nina G. Antonio-Valenzuela, *rollo*, pp. 3-25.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 19.

⁴⁹ Record, p. 1.

⁵⁰ *Rollo*, pp. 16-19.

Prosecutor Judylito V. Ulanday. At any rate, the records did not show that appellant even filed a motion to quash the Information before the trial court. Thus, appellant's failure to raise the objection before plea was deemed a waiver thereof.⁵¹

Lastly, the Court of Appeals ruled that since it was sufficiently proven that appellant was armed with a knife when he had carnal knowledge of the six (6) year old AAA, the imposable penalty should have been *reclusion perpetua* to death.⁵² Considering, however, that the death penalty had been expressly suspended,⁵³ it found that the trial court correctly sentenced appellant to *reclusion perpetua*.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution⁵⁴ dated December 10, 2019, appellant and the People both manifested⁵⁵ that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.

Issue

Did the Court of Appeals err in convicting appellant of statutory rape?

Ruling

We affirm the conviction.

Appellant was indicted for statutory rape under Article 335 of the RPC, as amended by RA 8353, in relation to RA 7610. Statutory rape is committed by sexual intercourse with a woman **below twelve (12) years of age regardless of her consent, or the lack of it, to the sexual act.**⁵⁶ Thus, to sustain a conviction therefor, the prosecution must prove: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.⁵⁷

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⁵¹ *Id.*

⁵² *Id.* at 23.

⁵³ RA 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

⁵⁴ *Rollo* pp. 32-33.

⁵⁵ *Id.* at 34-36 and 39-41.

⁵⁶ *People v. XXX*, G.R. No. 226467, October 17, 2018, citing *People v. Manaligod*, G.R. No. 218584, April 25, 2018, 862 SCRA 751, 756.

⁵⁷ See *People v. Manaligod*, G.R. No. 218584, April 25, 2018, 862 SCRA 751 756.

Here, both the trial court and Court of Appeals aptly found that the prosecution was able to sufficiently establish appellant's guilt beyond reasonable doubt. During the pre-trial conference, it was stipulated that AAA was only six (6) years old at the time of the incident as shown by her birth certificate,⁵⁸ thus, satisfying the first element.

Appellant's identity and the act of sexual intercourse were also established through the positive and vivid narration of AAA, viz.:

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Q: You claimed that you were led by Ingki at the back of the house particularly at the field. Is that correct?

A: Yes, sir.

Q: And he brought you to that portion where there was rice hay?

A: Yes, sir.⁵⁹

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COURT:

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Q: In your sworn statement, you mentioned specifically (in) your Answer No. 6, and I quote: "**Sa oras at petsa na aking nabanggit, nagtungo po ako sa bahay nila tito Ingki upang makinood ng telebisyon, ngunit makalipas ang ilang oras ng panood, bigla po niya akong hinila palabas ng kanilang bahay patungo sa bukid sa likod ng kanilang bahay habang dala-dala ay kutsilyo, nang marating po (namin) ang bukid na di kalayuan sa kanilang bahay, bigla po niyang tinakpan ang aking bibig gamit (ang) kanyang kamay at **pwersahan po niyang hinubad ang aking suot na pajama at panty** at nang tuluyan na po niyang matanggal ang aking panty, tsaka po niya sinimulang hawakan, pinisil (,) at ipinasok and kanyang ari sa aking ari, ma'am."** Do you still confirm and affirm that statement of yours?

A: Yes, sir.

Q: You mean that the **accused Aizer** inserted his private part in your private part. Is that correct?

A: Yes, sir.

Q: What did you feel, Madam Witness?

A: It is painful, sir.

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⁵⁸ See Pre-trial Order dated January 17, 2014, *record*, pp. 24-25.

⁵⁹ TSN, September 30, 2015, p. 9.

Q: After Aizer inserted his private part into your private part, what else did the accused do?

A: He gave me back my panty, sir.⁶⁰ (emphasis supplied)

AAA positively testified that appellant pointed a knife at her and dragged her into the field at the back of his house where he covered her mouth, laid her on the rice hay, forcefully undressed her, then held, squeezed, and forcibly inserted his penis into her vagina.

AAA was only six (6) years old during the rape incident and could not have narrated in detail what appellant did to her had she not actually experienced it. Settled is the rule that testimonies of child-victims are normally given full weight and credit. Youth and immaturity are generally badges of truth and sincerity.⁶¹ This rule becomes more compelling when such factual findings carry the full concurrence of the Court of Appeals, as in this case.⁶² For indeed, the trial court is in a better position to decide the question since it heard the witnesses themselves and observed their deportment and manner of testifying during the trial.⁶³ Clearly, AAA's credible testimony alone is sufficient to establish appellant's guilt even in the absence of BBB, CCC, and Selino Dela Rosa y Sabas's testimonies.⁶⁴

BBB, CCC, and Selino Dela Rosa y Sabas corroborated AAA's testimonies on what transpired on that fateful day of November 11, 2013 -- from the time AAA ran to and reported to BBB that she got raped by appellant in the field at the back of his house, to the time the incident was brought to the attention of the barangay officials including AAA's grandaunt Barangay Kagawad CCC, until AAA was eventually brought to the Eastern Pangasinan District Hospital for medical examination. Clearly, the testimonies of these three (3) witnesses are material in establishing appellant's culpability for rape.

We are not persuaded by appellant's argument that he could not have inserted his penis inside AAA's vagina since Dr. Torio's medico-legal findings stated that "examining finger cannot penetrate the vaginal canal." As the Court of Appeals aptly found, Dr. Torio's Medico-Legal Certificate unequivocally bore a finding that there was a "**fresh deep lacerated wound**" in AAA's vagina when she was examined on November 11, 2013 or the very same day appellant reportedly raped her. Indubitably, the medico-legal certificate

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⁶⁰ *Id.* at 13-14.

⁶¹ *People v. Padit*, 780 Phil. 69, 80 (2016).

⁶² See *People v. Regaspi*, 768 Phil. 593, 598 (2015).

⁶³ See *People v. Mabalo*, G.R. No. 238839, February 27, 2019; also see *People v. Bay-Od*, G.R. No. 238176, January 14, 2019.

⁶⁴ See *People v. Francica*, 817 Phil. 972, 990 (2017).

supported AAA's testimony that appellant succeeded in having carnal knowledge of her.

At any rate, we have pronounced time and again that even the slightest penetration or entry of the penis into the lips of the vagina consummate the crime of rape. Perfect penetration or rupture of the hymen is not essential. Partial penile penetration is as serious as full penetration; the rape is deemed consummated in either case.⁶⁵

Notably, against AAA's direct and straightforward testimony, appellant only offered denial and alibi. The trial court observed though that the testimonies of appellant and her sister Ivy were inconsistent on material points. Appellant testified that around 4 o'clock in the afternoon he was watching DVD with his siblings, while Ivy recalled that it was only around 5 o'clock when appellant came home. It was only her two (2) siblings Ricson and Reggie who were watching television with her. More, there was a considerable amount of time when Ivy was not aware at all where appellant exactly was. This gap of time was sufficient opportunity for appellant to have accomplished his bestial deeds on AAA who at her tender age was totally naive and oblivious of carnal desires.⁶⁶

As for appellant's claim that the Information filed against him was defective, it is now too late in the day to raise this as an issue. Appellant did not file a motion to quash the Information before the trial court based on this so called deficiency.⁶⁷ He belatedly raised the issue only before the Court of Appeals. In any event, by entering his plea, appellant was deemed to have waived his objections to the Information. Section 9, Rule 117 of the Revised Rules of Court is *apropos*:

SECTION 9. *Failure to Move to Quash or to Allege Any Ground Therefor.* — The **failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections** except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.⁶⁸

We agree with the Court of Appeals that there was absolutely no proof here that the deputy provincial prosecutor lacked the

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⁶⁵ See *People v. Salinas*, 302 Phil. 305, 310 (1994).

⁶⁶ CA *rollo*, pp. 74-75.

⁶⁷ *Rollo*, pp. 16-19.

⁶⁸ Revised Rules of Criminal Procedure, A.M. No. 00-5-03-SC, October 3, 2000.

requisite authority to sign the Information. On its face, the Information was signed by Deputy Provincial Prosecutor Noel C. Bince “**By Authority of the Provincial Prosecutor.**”⁶⁹ Section 9 of Republic Act No. 10071 or the Prosecution Service Act of 2010 confers upon the provincial prosecutor the power to authorize his assistants to perform his or her prosecutory duties, *viz.*:

SECTION 9. *Powers and Functions of the Provincial Prosecutor or City Prosecutor.* — The provincial prosecutor or the city prosecutor shall:

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(b) Investigate and/or cause to be investigated all charges of crimes, misdemeanors and violations of penal laws and ordinances within their respective jurisdictions, and have the necessary information or complaint prepared or made and filed against the persons accused. In the conduct of such investigations he/she or any of his/her assistants shall receive the statements under oath or take oral evidence of witnesses, and for this purpose may by *subpoena* summon witnesses to appear and testify under oath before him/her, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to any trial court;⁷⁰

Notably, the Information here was subscribed and sworn to before Assistant Prosecutor Judylyto V. Ulanday.

Going now to the proper designation of the crime and the penalty therefor, Article 266-B of the RPC⁷¹ provides that when rape is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death.⁷² Under the same provision, when the victim is a minor under seven (7) years old, the **death penalty** shall be imposed, *viz.*:

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

Whenever the rape is committed **with the use of a deadly weapon** or by two or more persons, the penalty shall be *reclusion perpetua* to death.

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

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⁶⁹ Record, p. 1.

⁷⁰ Prosecution Service Act of 2010, Republic Act No. 10071, April 8, 2010.

⁷¹ The enactment of RA 8353, has resulted in the new rape provisions of the RPC under Article 266-A in relation to 266-B; See *People v. Ejercito*, G.R. No. 229861, July 2, 2018.

⁷² See *People v. Mandagdag*, G.R. No. 228783, October 9, 2019.

5. When the victim is a child below seven (7) years old;

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In *People v. Repani*,⁷³ the Court elucidated that being in the nature of a qualifying circumstance, “use of a deadly weapon” increases the penalty by degrees, and cannot be treated merely as a generic aggravating circumstance which affects only the period of the penalty. Since the penalty of *reclusion perpetua* to death includes two (2) indivisible penalties, Article 63 of the RPC finds application such that when there are neither mitigating nor aggravating circumstances, the lesser penalty shall be imposed.⁷⁴

On the other hand, *People v. Tulagan*⁷⁵ decreed that if sexual intercourse is committed with a child below seven (7) years old, the proper designation of the crime is always “**qualified statutory rape**” for which the imposable penalty is death. Thus, in the recent case of *People v. Bay-od*,⁷⁶ the Court convicted Bay-od of **qualified statutory rape** for having carnal knowledge of a six (6) year old child. But since the death penalty cannot be imposed in view of RA 9346,⁷⁷ Bay-od’s sentence was reduced to “*reclusion perpetua without eligibility of parole.*”⁷⁸ Notably, Article 63 of the RPC provides that where 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 offense.⁷⁹

Here, it was properly alleged and duly proven that appellant was **armed with a knife** when he raped AAA, a **six (6)-year old child**. Consequently, two (2) qualifying circumstances are present in this case: **first**, the use of a deadly weapon under Article 266-B (2) which provides the penalty of *reclusion perpetua to death*; and **second**, the victim is a child below seven (7) years old under Article 266-B (6) (5) which prescribes the penalty of **death**.

In this regard, *People v. Arguta*⁸⁰ enunciates that the presence of **either** qualifying circumstance in rape *i.e.* (1) with the use of deadly weapon **or** (2) committed by two or more persons, necessitates the imposition of a higher imposable penalty. **The presence of either**

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⁷³ G.R. No. 232392 (Notice), January 10, 2018.

⁷⁴ *People v. Nuyte*, G.R. No. 219111, March 12, 2018, 858 SCRA 251, 272.

⁷⁵ G.R. No. 227363, March 12, 2019.

⁷⁶ G.R. No. 238176, January 14, 2019

⁷⁷ RA 9346 entitled “An Act Prohibiting the Imposition of Death Penalty in the Philippines.”

⁷⁸ G.R. No. 238176, January 14, 2019.

⁷⁹ *People v. Baluya*, 430 Phil. 349, 365 (2002).

⁸⁰ 758 Phil. 594, 601 (2015).

circumstance already qualifies the crime. If one is present, the remaining circumstance, if also attendant, is not a generic aggravating circumstance which would increase the penalty anew. The Court, however, did not apply the higher penalty of death because of RA 9346. Instead, Arguta was sentenced to *reclusion perpetua without eligibility of parole*.

People v. Gahi,⁸¹ nonetheless, provides that while the concurrence of qualifying circumstances would not affect the term of imprisonment, they would be material in determining the amount of pecuniary damages to be imposed, *viz.*:

In any case, the death penalty has been abolished by the enactment of Republic Act No. 9346 which also mandated that the outlawed penalty be replaced with *reclusion perpetua*. A qualifying or aggravating circumstance, if properly alleged and proven, might not have the effect of changing the term of imprisonment but it would, nevertheless, be material in determining the amount of pecuniary damages to be imposed.⁸²
(emphasis supplied)

In *People v. Pusing*,⁸³ the Court found Pusing guilty of qualified rape under Article 266-B, paragraph 6 (1) and (10).⁸⁴ The victim was only twelve (12) years old and Pusing was his guardian and common law spouse of her mother. Too, Pusing knew that the victim has mental disability at the time she was raped. The Court thus affirmed the trial court's sentence of *reclusion perpetua without eligibility for parole* but increased the monetary awards of civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each.

Guided by the foregoing jurisprudence, therefore, the presence of **either** of the two (2) qualifying circumstances of the use of deadly weapon **or** that the victim AAA is below seven (7) years old already qualifies the crime of rape. Thus, the trial court correctly appreciated that AAA's age of six (6) years old alone already qualifies the crime of rape for which the higher penalty of death should be imposed. But due to the passage of RA 9346, the trial court correctly reduced

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⁸¹ 727 Phil. 642, 664 (2014).

⁸² *Id.*

⁸³ 789 Phil. 541, 553 (2016).

⁸⁴ Rape is qualified for the first charge as accused-appellant committed it with any of the following aggravating/qualifying circumstances under Article 266-B (6) (1) and (10):

1) When the victim is under eighteen (18) years of age and the offender is a . . . guardian . . . or the common law spouse of the parent of the victim;

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10) When the offender knew of the mental disability . . . of the offended party at the time of the commission of the crime. (*People v. Pusing*, supra).

appellant's sentence to *reclusion perpetua*. The Court of Appeals, too, affirmed the imposition of *reclusion perpetua*. The phrase "**without eligibility for parole,**" however, should be borne in the decision as provided in A.M. 15-08-02⁸⁵ to emphasize that appellant should have been sentenced to death penalty had it not been for RA 9346. More, to conform with the Court's pronouncements in *Tulagan*⁸⁶ and *Bay-od*,⁸⁷ the proper designation of the crime committed here should be modified from statutory rape to **qualified statutory rape**.

As for the damages, *People v. Jugueta*⁸⁸ instructs that for those crimes where the penalty imposed is death but reduced to *reclusion perpetua* because of RA 9346, the civil indemnity as well as the award for moral and exemplary damages shall be One Hundred Thousand Pesos (₱100,000.00) each. As discussed earlier, these amounts were awarded to the victim of qualified rape in *Pusing*.⁸⁹ Verily, the Court of Appeals correctly affirmed the trial court's award of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages to AAA.⁹⁰ We also affirm the imposition of six percent (6%) interest *per annum* on these amounts from finality of this Resolution until fully paid.⁹¹

ACCORDINGLY, the appeal is **DENIED**, and the Decision dated May 24, 2019 of the Court of Appeals in CA-G.R. CR HC No. 09149, **AFFIRMED with MODIFICATION**.

Appellant **AIZER ORGULA y ROLA a.k.a. "INGKI"** is **GUILTY of QUALIFIED STATUTORY RAPE** under Article 335 of the Revised Penal Code, as amended by RA 8353, in relation to RA 7610 and sentenced to *reclusion perpetua without eligibility for parole*. He is ordered to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. These amounts shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

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⁸⁵ Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, A.M. No. 15-08-02-SC, August 4, 2015.

⁸⁶ G.R. No. 227363, March 12, 2019.

⁸⁷ G.R. No. 238176, January 14, 2019.

⁸⁸ 783 Phil. 806, 845 (2016).

⁸⁹ Supra note 83.

⁹⁰ *People v. Jugueta*, supra note 88 at 848.

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II. For Simple Rape/Qualified Rape:

1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346:

Civil indemnity — P100,000.00



Moral damages — P100,000.00

Exemplary damages — P100,000.00

⁹¹ *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court 

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
106-B

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 09149)

The Hon. Presiding Judge
Regional Trial Court, Branch 51
Tayug, 2445 Pangasinan
(Crim. Case No. T-5694)

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