REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **20 January 2021** *which reads as follows*:

"**G.R. No. 244840** ***(People of the Philippines v. Margarito Pablo y Castañeda @ Itoy)***. – Accused-appellant Margarito Pablo *y* Castañeda @ Itoy (accused-appellant) was indicted for Statutory Rape under Article 266 of the Revised Penal Code, as amended by Article 266-A paragraph 1(d), in relation to Article 266-B paragraph 5 of Republic Act No. 8353 (RA 8353). 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.**[1] To sustain a conviction therefor, the prosecution must prove that: (a) the accused had carnal knowledge of the complainant and (b) the complainant is below twelve (12) years of age.[2]

Both elements are present here.

The prosecution was able to establish that accused-appellant had carnal knowledge of AAA

AAA's[3] grandmother BBB testified that she saw accused-appellant sitting on the sidecar of a bicycle while cradling AAA on his lap.[4] **Accused-**

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[1] See *People v. XXX*, G.R. No. 226467, October 17, 2018.

[2] See *People v. Boras*, 401 Phil. 852, 862 (2000) and *People v. Manaligod*, 831 Phil. 204, 207 (2018).

[3] 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.

[4] TSN, January 27, 2006, pp. 4-5.

appellant's left hand was on his right knee while his right arm was embracing AAA.[5] On the other hand, AAA was slapping accused-appellant's face and trying to break free from his embrace. When AAA finally broke free from accused-appellant, she immediately ran towards the store where BBB was. She was crying. When BBB asked her what happened, AAA mumbled *"Itoy"* while pointing to accused-appellant outside. **AAA also pointed to the lower part of her body. When BBB removed AAA's dress, she saw blood on her panty.** BBB's direct examination reveals, thus:

> Q: Do you remember where were you on March 1, 2005 at around 7:00 p.m.
> A: I was in front of our store at ou[r] house, ma'am.[6]
>
> x x x x
>
> Q: Do you remember having [something] unusual happened to [AAA]?
> A: Yes, ma'am.
>
> Q: What was that?
> A: On March 1, 2005 at 7:00 p.m. x x x Margarito [Itoy] was outside carrying my granddaughter [seated] on his lap, ma'am.
>
> Q: After that what did you observe?
> A: Suddenly my granddaughter entered the house[,] she approached me and [cried], ma'am.[7]
>
> x x x x
>
> Q: After that what happened next?
> A: **My granddaughter was pointing to her front lower portion of her body, ma'am.**
>
> Q: When you noticed that your granddaughter pointed to the lower part of the body what did you do if any?
> A: **I hurriedly removed her panty and checked, ma'am.**
>
> Q: After that what happened?
> A: **I saw blood on her panty, ma'am.**
>
> Q: What did you do [afterwards]?
> A: I asked her what happened to her.
>
> Q: What was your granddaughter['s] reply?
> A: **She said Margarito Pablo "Itoy" outside and at the same time she pointed [she seated] on his lap, ma'am.**[8]

Per BBB's testimony, there is sufficient evidence showing that **accused-appellant had carnal knowledge of AAA while he was seated on**

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[5] TSN, January 27, 2006, p. 4.
[6] TSN, January 6, 2006, pp. 3-5.
[7] *Id.*
[8] *Id.*

the sidecar embracing the girl with his right arm and holding his right knee with his left, obviously to control his sexual rhythm and motion.

Accused-appellant, nevertheless, attempted to discredit BBB because the latter allegedly did not actually see him raping AAA. To put things in perspective, We quote BBB's relevant testimony on cross-examination, thus:

> Atty. Sadural:
>
> x x x x
>
> Q: Will you please tell us, how "Itoy" [held] [AAA] while [AAA] was seating(sic) on his lap as [you] saw them?
>
> Court Interpreter:
>
> -Witness demonstrating that [she] was [embraced] with [his] arms.
>
> Court:
>
> **The [mechanical] doll was placed on the lap of the witness and witness' right arm [is] cradling the body while the left arm [is] across the right knee.**
>
> Atty. Sadural:
>
> Q: **You saw them on that position?**
> A: **Yes sir.**[9]

BBB invariably testified that she saw where both hands of accused-appellant were placed while he was sexually molesting AAA. While in a sitting position, if accused-appellant's right hand was embracing AAA and his left hand was holding his right knee, what else could have been inserted inside AAA's vagina to make it bleed and cause fresh laceration? **Surely, it was accused-appellant's penis, and no other, which accused-appellant inserted in AAA's vagina**.

At any rate, it is settled that direct evidence is not the only means of proving rape beyond reasonable doubt.[10] Even without direct evidence, the accused may be convicted on the basis of circumstantial evidence, provided the proven circumstances constitute an unbroken chain leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.[11]

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[9] TSN, January 27, 2006, p 4
[10] *People v. Gerandoy*, 743 Phil. 396, 411 (2014).
[11] *Id.*

In ***People v. Lupac***,[12] the Court affirmed Lupac's conviction for Rape albeit no direct evidence was presented to prove the accused's penile penetration into the vagina of the ten (10)-year old victim, thus:

> The position of Lupac is bereft of merit, however, **because his conviction should still stand even if direct evidence to prove penile penetration of AAA was not adduced. Direct evidence was not the only means of proving rape beyond reasonable doubt. Circumstantial evidence would also be the reliable means to do so**, provided that *(a)* there was more than one circumstance; *(b)* the facts from which the inferences were derived were proved; and *(c)* the combination of all the circumstances was such as to produce a conviction beyond reasonable doubt. **What was essential was that the unbroken chain of the established circumstanees led to no other logical conclusion except the appellant's guilt.**
>
> The following circumstances combined to establish that Lupac consummated the rape of AAA, namely: *(a)* when AAA went to take her afternoon nap, the only person inside the house with her was Lupac; *(b)* about an hour into her sleep, she woke up to find herself already stripped naked as to expose her private parts; *(c)* she immediately felt her body aching and her vaginal region hurting upon her regaining consciousness; *(d)* all doors and windows were locked from within the house, with only her and the brief-clad Lupac inside the house; *(e)* he exhibited a remorseful demeanor in unilaterally seeking her forgiveness *(Pasensiya ka na AAA)*, even spontaneously explaining that he did not really intend to do *"that"* to her, showing his realization of the gravity of the crime he had just committed against her; *(f)* her spontaneous, unhesitating and immediate denunciation of the rape to Tita Terry and her mother (*hindot* being the term she used); and *(g)* the medico-legal findings about her congested vestibule within the *labia minora*, deep fresh bleeding laceration at 9 o'clock position in the hymen, and abraded and U-shaped posterior fourchette proved the recency of infliction of her vaginal injuries. (emphases supplied)

Here, the following chain of circumstances shows that accused-appellant had carnal knowledge of AAA, *viz.*: (1) BBB saw accused-appellant sitting on the sidecar of a bicycle while cradling AAA on his lap; (2) accused-appellant's left hand was on his right knee while his right arm was embracing AAA; (3) BBB saw AAA slapping accused-appellant's face and wriggling herself from his embrace; (4) when AAA broke free from accused-appellant's embrace, she immediately went to her grandmother crying; (5) when BBB asked AAA what happened, AAA pointed to the lower part of her body, mentioned accused-appellant's name, and motioned being seated on accused-appellant's lap; (6) when BBB removed AAA's panty, BBB saw blood on it; and (7) AAA's immediate medical examination show that she **sustained minimal bleeding and scanty whitish discharge**; **erythematous (redness) at the 10 o'clock and 12 o'clock positions**; and **incomplete fresh laceration at 3 o'clock position in the labia minora.**[13]

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[12] 695 Phil. 505, 515-516 (2012).

[13] Medico-Legal Findings dated March 1, 2005, record, p. 18; *See* also Formal Offer of Evidence dated May 16, 2011, record, p. 180.

As it was, BBB's testimony that accused-appellant had carnal knowledge of AAA was bolstered by the medical evidence on record. Dr. Rachell P. Gutierrez' (Dr. Gutierrez) physical examination on AAA was conducted **immediately** after the incident of rape on March 1, 2005.[14] AAA's sustained injuries – minimal bleeding in the vagina, erythematous (redness) at the 10 o'clock and 12 o'clock positions, and incomplete fresh laceration at 3 o'clock position in the labia minora – were confined to the posterior region area of AAA's genitalia, **signifying a forceful penetration into her of a blunt instrument *i.e.*, an erect penis.**[15]

Further, AAA's spontaneous reactions and responses to the query of her grandmother came immediately after her harrowing experience with accused-appellant. AAA was barely three (3) years old at the time of rape. Obviously, she would not have had the opportunity, let alone the capability, to concoct a story had she not experienced it. As correctly found by both courts below, these spontaneous reactions and remarks were part of the *res gestae* under Section 42, Rule 130[16] of the Revised Rules on Evidence. *Res gestae* refers to circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character. They are so *spontaneous and contemporaneous* with the main fact as to exclude the idea of deliberation and fabrication.[17] *Res gestae* declarations are exceptions to the hearsay rule. To be admissible, the statement must be spontaneous, made during a startling occurrence or immediately prior or subsequent thereto, and must relate to the circumstance of such occurrence.[18]

In ***People v. Villarama,***[19] the victim's mother testified on her four (4)-year old child's reaction and statement immediately after she was raped by Villarama. Her child could not stop crying and would not answer when she was asked what happened to her. When the child finally managed to speak, she told her mother that her uncle removed her panty, made her lie down, and inserted his penis inside her vagina. The Court, in convicting Villarama of rape, ruled that the child-victim's spontaneous reaction and remarks formed part of *res gestae*. The same holds true here.

Indeed, the unbroken chain of circumstances here sufficiently established that accused-appellant succeeded in having sexual congress with the innocent child AAA. There is no other logical conclusion, therefore, except accused-appellant's guilt beyond reasonable doubt.[20]

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[14] *Id.*

[15] Supra note 12.

[16] Section 42. *Part of the res gestae.* — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae. (Revised Rules on Evidence (Rules 128-134), Bar Matter No. 411, July 1, 1989.*

[17] *People v. Palanas,* 760 Phil. 964, 974 (2015).

[18] *People v. Villarama,* 445 Phil. 323, 335 (2003).

[19] *Id.*

[20] See *People v. Ronquillo,* 818 Phil. 641 (2017).

Going now to the victim's age at the time of rape, the trial court and the Court of Appeals found that the prosecution failed to prove AAA's exact age or the fact that she was below seven (7) years old when accused-appellant raped her since AAA's original birth certificate was not presented at all. Both courts found, though, that AAA was below twelve (12) years old when she got raped, thus still satisfying the element in statutory rape that the victim was "**below twelve (12) years of age.**"

We resolve.

AAA was below seven (7) years old when accused-appellant raped her

True, the Court laid down the controlling guidelines in ***People v. Pruna***[21] in appreciating age, either as an element of the crime or as a qualifying circumstance,[22] *viz.*:

> In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.
>
> 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
>
> 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
>
> 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
>
> a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
>
> b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
>
> c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
>
> 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's

[21] *People v. Pruna*, 439 Phil. 440, 470-471 (2002).
[22] See *People v. Bolo*, 792 Phil. 905, 922-923 (2016).

> age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
>
> 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.
>
> 6. The trial court should always make a categorical finding as to the age of the victim.

But after fourteen (14) years, the Court in ***People v. Bolo***[23] pronounced that despite our standing ruling in ***Pruna*** and in the interest of justice and fairness, other pieces of evidence and circumstances which have been established by the prosecution may be appreciated in determining the age of the victim, *i.e.,* documents or testimonies indicating the victim's tender age.[24]

Here, the prosecution presented a photocopy of AAA's birth certificate[25] to prove her age. Accused-appellant objected to its admissibility on ground that it was not the original copy.[26] By Order[27] dated March 7, 2012, the trial court admitted in evidence the photocopy of the birth certificate. Too, the Information itself alleged that when the incident happened on March 1, 2005, AAA was only **2 years, 11 months and 25 days old,** which allegation materially conformed with the entry in the photocopy of her birth certificate indicating she was born on March 4, 2002.

There are other sufficient evidence on record proving that AAA was below seven (7) years old when accused-appellant raped her.

One. In her medico-legal report[28] dated March 1, 2005, Dr. Gutierrez stated AAA was only **two (2) years old** when she physically examined the child.

Two. When the prosecution presented AAA on the stand, AAA herself stated she was only **three (3) years old,** *viz.*:

> Pros. Dayaon
> Your Honor, we are calling on to the witness stand our witness in the person of [AAA], **a three[-]year old witness**, Your Honor.
>
> Court
> Qualify the witness.
>
> Court Interpreter

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[23] *Id.*
[24] *Id.*
[25] Exhibit "E", record, p. 16.
[26] *Id.* at 292.
[27] *Id.* at 307.
[28] Exhibit "C"; *id.* at 297.

> Witness for the prosecution. [The witness takes the witness stand]. Please stand up and raise your right hand. Do you swear to tell the truth the whole truth and nothing but the truth in this proceedings?
>
> Witness
> Yes, ma'am.
>
> Court Interpreter
> Please state your name, age and other personal circumstances.
>
> Witness
> I am [AAA], **three years old** x x x.[29]

Three. AAA's grandmother BBB also testified on her granddaughter's age, *viz.*:

> Q: Madam witness, do you [know] [AAA] the victim in this case?
> A: Yes, ma'am.
>
> Q: How are you related to her?
> A: She is my granddaughter, ma'am.
>
> Q: How old is [AAA]?
> A: **More than 3 years old**, ma'am.[30]

Four. Accused-appellant himself testified that he knew AAA was below seven (7) years old in 2005, thus:

> Q: In 2005, this [AAA] was two years old then?
> A: **4 years old, sir.**
>
> Q: You were working with [CCC] for how long Mr. witness?
> A: For 8 months and three (3) weeks, sir.[31]

True, the medico-legal report, the testimonies of AAA, BBB, and accused-appellant's testimonies were only estimates of AAA's age. But they do not substantially differ from AAA's real age as indicated in the photocopy of her birth certificate. These pieces of evidence are consistent about one material fact: she was below seven (7) years old when she got raped.

More, ***People v. Tipay***[32] decreed that the minority of a rape victim of tender age below ten (10) years old is quite manifest and the court can take judicial notice of it, thus:

> This does not mean, however, that the presentation of the certificate of birth is at all times necessary to prove minority. **The minority of a victim**

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[29] TSN, November 11, 2005, pp. 2-3.
[30] TSN, January 6, 2006, pp. 3-5.
[31] TSN, August 14, 2013, p. 3.
[32] 385 Phil. 689, 718-719 (2000).

> **of tender age who may be below the age of ten is quite manifest and the court can take judicial notice thereof. The crucial years pertain to the ages of fifteen to seventeen where minority may seem to be dubitable due to one's physical appearance.** In this situation, the prosecution has the burden of proving with certainty the fact that the victim was under 18 years of age when the rape was committed in order to justify the imposition of the death penalty under the above-cited provision. (emphasis supplied)

Here, the trial court had the opportunity to closely observe and assess AAA's physical appearance and demeanor when she took the witness stand on November 11, 2005. The evidence on record collectively indicated she was only three (3) years and eight (8) months old at that time. In fact, the trial court itself took notice of her tender age and consequently excused her as a witness and dispensed with her testimony. It was not quite accurate, therefore, for the trial court to have concluded that AAA's age was below twelve (12) years; but that in fact she was below seven (7) years old when she got raped.

Verily, the qualifying circumstance in statutory rape that *"when the victim is a child below seven (7) years old"* under Article 266-B of RA 8353[33] is present here.

As against the prosecution's evidence, accused-appellant only interposes denial - the weakest of all defenses. It easily crumbles in the face of positive identification of the accused as the perpetrator of the crime.[34] Accused-appellant's conviction, therefore, stands.

Imposable Penalty and Damages

Since it has been established that AAA was below seven (7) years old at the time of rape, accused-appellant is guilty of **"Qualified Statutory Rape"** instead of "Statutory Rape" only.

People v. Tulagan[35] 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***,[36] 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,[37] Bay-od's sentence was reduced to ***reclusion perpetua without eligibility for parole***.[38]

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[33] CA *rollo*, p. 69.
[34] *People v.* [redacted], G.R. No. 229836, July 17, 2019.
[35] G.R. No. 227363, March 12, 2019.
[36] G.R. No. 238176, January 14, 2019
[37] RA 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines."
[38] G.R. No. 238176, January 14, 2019.

So must it be in the present case.

As for damages, pursuant to ***People v. Jugueta,***[39] the awards of civil indemnity and moral and exemplary damages here shall be One Hundred Thousand Pesos (₱100,000.00) each. These monetary awards shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

ACCORDINGLY, the appeal is **DISMISSED**, and the Decision dated November 10, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07639, **AFFIRMED with MODIFICATION.**

Accused-appellant **MARGARITO PABLO *y* CASTAÑEDA** is found **GUILTY** of **QUALIFIED STATUTORY RAPE** and sentenced to ***reclusion perpetua without eligibility for parole***. He is further 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.

SO ORDERED." (Rosario, *J.*, designated additional member per Special Order No. 2797 dated November 5, 2020, on official leave)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
11 FEB 2021

[39] 783 Phil. 806, 849 (2016).

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*with copy of CA Decision dated 10 November 2017
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