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[G.R. Nos. 150630-31. October 1, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JAIME OLAYBAR** *y* **ODTUHAN,** *appellant.*

SYNOPSIS

Appellant Jaime Olaybar was charged with two counts of rape, the first for statutory rape under the first paragraph of Article 266-A of the Revised Penal Code, and the second for rape by means of sexual assault under the second paragraph of the same article. The eight-year old victim, Rose Ann, alleged that Olaybar brought her to a parked jeepney and made her lie down while he inserted his penis into her vagina; then after a while, he made her sit on his lap and put his penis inside her anus. According to the victim, the appellant repeated the same act the following day. Olaybar had nothing to offer but alibi for his defense. Convinced of the strength of the evidence submitted by the prosecution and the utter weakness of the case for the defense, the trial court convicted appellant of the crimes for which he was indicted. He was sentenced to suffer the penalty of death on each count of rape. Therefore, with the imposition of the death penalty, the records were elevated to this Court for review.

The Court found the testimony of the child-victim to be credible. Mere denial without any strong evidence to support it can scarcely overcome the positive declaration by the child-victim of the identity and involvement of appellant in the crimes attributed to him. The defense of alibi was likewise unavailing. However, neither of the two cases could the penalty of death be aptly imposed. The Court affirmed appellant's conviction, but modified the penalties imposed. Absent any aggravating circumstance that can be considered, the penalty imposed upon appellant for the offense of statutory rape must be reduced to *reclusion perpetua*. The penalty for the offense of rape by sexual assault is *prision mayor* or one degree lower than that imposed for rape by sexual intercourse.

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SYLLABUS

1. **CRIMINAL LAW; RAPE; REPUBLIC ACT NO. 8385 (ANTI-RAPE ACT); ELEMENTS.** — Republic Act No. 8385, otherwise also known as the Anti-Rape Act of 1997, has incorporated a new chapter in the Revised Penal Code. In a new provision, designated Article 266-A, the crime of rape is committed either by *sexual intercourse or by sexual assault.* Rape by sexual intercourse, pursuant to the first paragraph of the article, is committed by a man who shall have carnal knowledge of a woman under any of the following circumstances; *viz:* (a) Through force, threat, or intimidation; (b) When the offended party is deprived of reason or otherwise unconscious; (c) By means of fraudulent machination or grave abuse of authority; and (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. The last of the enumeration, item (d) above, constitutes what is so often referred to as statutory rape. Rape by sexual assault, mentioned in the second paragraph of the same article, is committed by *any person* who, under any of the aforestated circumstances, inserts his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person.

2. **REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; UNAVAILING AS DEFENSES IN THE ABSENCE OF STRONG EVIDENCE TO SUPPORT THEM.** — Mere denial without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity and involvement of appellant in the crimes attributed to him. The defense of *alibi* is likewise unavailing. It is not enough, in order that *alibi* might prosper, to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene. In this case, appellant himself has admitted being just around the neighborhood at the time.

3. **CRIMINAL LAW; RAPE; KNOWN TO BE COMMITTED NOT ONLY IN SECLUSION BUT ALSO IN PLACES WHERE PEOPLE CONGREGATE.**— Anent the often-invoked claim that it would have been impossible for appellant to bring and molest the victim to the jeepney in a public place and in the

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presence of many people, the Court would not need to belabor further that rape has been known to be committed not only in seclusion but also in places where people congregate, such as in a park, along the roadside, within school premises, inside an occupied house or even in a room where there are other people around.

4. **ID.; ID.; DEATH PENALTY MAY BE IMPOSED WHEN THE OFFENDER KNOWS THAT HE IS AFFLICTED WITH HUMAN IMMUNO-DEFICIENCY VIRUS (HIV), ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) OR ANY OTHER SEXUALLY TRANSMISSIBLE DISEASE AND THE VIRUS OR DISEASE IS TRANSMITTED TO THE VICTIM; NOT PRESENT IN CASE AT BAR.** — The trial court has decreed the penalty of death on account of circumstance numbered 6 of Article 266-A, *i.e.*, that when "the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV), Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim," the imposition of the extreme penalty of death would be warranted. While it is established that Rose Ann, indeed, has contracted a sexually transmitted disease, no evidence, however, has been adduced to show the latter's being aware of his own affliction with such a disease. In fact, that aggravating circumstance is not even alleged in the two Informations.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VITUG, *J.*:

Republic Act No. 8385, otherwise also known as the Anti-Rape Act of 1997, has incorporated a new chapter in the Revised Penal Code. In a new provision, designated Article 266-A, the crime of rape is committed either *by sexual intercourse or* by *sexual assault*. Rape by sexual intercourse, pursuant to the first paragraph of the article, is committed by a *man* who shall have

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carnal knowledge of a *woman* under any of the following circumstances; *viz*:

(a) Through force, threat, or intimidation;

(b) When the offended party is deprived of reason or otherwise unconscious;

(c) By means of fraudulent machination or grave abuse of authority; and

(d) When the offended party is under twelve (12) years of age *or is demented, even though none of the circumstances* mentioned above be present.

The last of the enumeration, item (d) above, constitutes what is so often referred to as statutory rape. Rape by sexual assault, mentioned in the second paragraph of the same article, is committed by *any person* who, under any of the aforestated circumstances, inserts his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person.

Appellant Jaime Olaybar *y* Odtuhan, *a.k.a.* Jimmy, was charged with two counts of rape, the first for statutory rape under the first paragraph of Article 266-A and the second for rape by means of sexual assault under the second paragraph of the article, in separate informations that read:

Criminal Case No. 00-1600

"That on or about the 5th day of September, 2000, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, JAIME OLAYBAR *y* ODTUHAN, by means of force and intimidation did then and there, willfully, unlawfully and feloniously have carnal knowledge of the complainant, ROSE ANN INTO *Y* AVENIDO, a minor, eight (8) years of age, against her will and consent."[1]

Criminal Case No. 00-1601

"That on or about the 6th day of September 2000, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this

[1] *Rollo*, p. 18.

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Honorable Court, the above-named accused, JAIME OLAYBAR *Y* ODTUHAN, did then and there, willfully, unlawfully and feloniously commit acts of sexual assault by inserting his penis into the anus of complainant, ROSE ANN INTO *Y* AVENIDO, a minor, eight (8) years of age, against the latter's will and by means of force and intimidation."[2]

Olaybar entered a plea of "not guilty" to both charges; the cases were consolidated and tried jointly with the prosecution and the defense, in that order, presenting their respective versions of the case.

Rose Ann Into *y* Avenido, an eight-year old child, lives with her family at 2297 F.B. Harrison Street, Pasay City, in a squatter's area close to a parking lot opposite the Meralco office. On 05 September 2000, around seven o'clock in the evening, Rose Ann was playing with her friends when Olaybar brought her to a parked jeepney in the nearby parking lot. Inside the jeepney, Olaybar made Rose Ann lie down and had his penis inserted into her vagina. After a while, Olaybar made her sit on his lap and put his penis inside her anus. That night, when brought home by Olaybar, Rose Ann told her mother, Rea, that Olaybar molested her. Rea confronted Olaybar but the latter denied having done anything to Rose Ann. Rea warned Olaybar never to come near Rose Ann again. The following evening, on 06 September 2000, between seven o'clock and seven-thirty, Olaybar called Rose Ann and, despite the warning made the previous night, he again brought her to a parked jeepney, made her sit on his lap and inserted his penis into her anus. He then escorted her home. Rose Ann, just as before, told her mother of what had transpired. Rea confronted Olaybar but the latter once more denied any wrongdoing. Rea sought the help of one Roger Siobert and, this time, Olaybar admitted to Roger what he had done. Rea went to the police to report the incident.

When brought to the hospital on 07 September 2000, Rose Ann was examined by Dr. Merle P. Tan of the Child Protection Unit of the UP-PGH. The genital and anal examination disclosed the following findings:

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[2] *Rollo*, p. 20.

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"GENERAL PHYSICAL EXAMINATION

HEIGHT 112 cm	WEIGHT 17.5 kg TANNER STAGE 2
GENERAL SURVEY	No stunting, No wasting, Ambulant, Not In Respiratory Distress
MENTAL STATUS	Oriented to place and person Conscious
PERTINENT PHYSICAL FINDINGS/PHYSICAL INJURIES	Breast Tanner Stage: 2 (R)->LOWER EXTREMITIES-> Gluteals-> Abrasion — 4 abrasions about 1-1.5 cm; (L)->LOWER EXTREMITIES-> Gluteals-> Abrasion — 4 abrasions about 1-1.5 cm

ANO-GENITAL EXAMINATION

EXTERNAL GENITALIA	Tanner Stage 2, Labia Minora: swelling, Labia Majora: swelling, Clitoris: swelling,Vestibule: swelling
URETHRA AND PERIURETHRAL AREA	Swelling, swelling
PERIHYMENAL ARES AND FOSSA NAVICULARIS	swelling
HYMEN	Tanner Stage 2, swelling of whole hymen, Type of Hymen: Annular
PERINEUM	Perineal Body: swelling
DISCHARGE	profuse whitish yellowish
IE AND SPECULUM EXAM	Not indicated
ANAL EXAMINATION	Buttocks: abrasions, Perianal Skin: swelling, Anal Verge, Folds, Rugae: swelling, laceration of anal folds and rugae at 5 and 7 o'clock

REMARKS

FORENSIC EVIDENCE COLLECTED	None
LABORATORY EXAMINATION (EXAM AND RESULT)	Trichomonas (Wet Prep) (Laboratory examination results pending.), Monilia (KOH Prep) (Laboratory examination

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results pending.), Gram Stain (Positive)(gram (-) intracellular diplococci = + 1), Gonorrhea Culture of Vaginal Swab (Positive)(for Neisseria gonorrhoeaae;), Gonorrhea Culture of Rectal Swab

IMPRESSIONS

Disclosure of sexual abuse

Genital findings show clear evidence of blunt force or penetrating trauma."[3]

Olaybar had nothing to offer but *alibi* for his defense. He claimed that on the evening of 05 September 2000, around seven o'clock, he was at home, and the following night, on 06 September 2000, at or about the time the second incident was said to have taken place, he was outside the parking lot ("*nasa labasan*"). The complaint, according to him, was filed against him only because Rose Ann's family disliked the idea of people parking their vehicles in the vicinity.

Convinced of the strength of the evidence submitted by the prosecution and the utter weakness of the case for the defense, the trial court convicted appellant Olaybar of the crimes for which he was indicted; the court *a quo* adjudged:

"WHEREFORE in Criminal Case No. 00-1600, accused Jaime Olaybar *y* Odtuhan is hereby sentenced to suffer the penalty of Death and to pay the victim civil indemnity of ₱75,000,00 and ₱50,000.00 moral damages.

"Likewise, in Criminal Case No. 00-1601, accused Jaime Olaybar *y* Odtuhan is hereby sentence to suffer the penalty of Death and to pay the victim civil indemnity of ₱75,000.00 and ₱50,000.00 moral damages.

"'It would appear from the testimony of the complainant, Rose Ann Into that on September 5, 2000, aside from having carnal knowledge of the victim, accused Jaime Olaybar also inserted his finger in her vagina and also inserted his penis into her anus. In view

[3] Final Medico-Legal Report, Records, p. 171.

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thereof, the City Prosecutor is hereby ordered to conduct an investigation on the liability of the accused for Sec. 10 (a), Art. VI of RA 7610 and Rape, in so far as the above revelation of the complainant which were not alleged in Criminal Case No. 00-1600."[4]

With the imposition below of the penalty of death, the records were elevated to this Court for review. Challenging the decision of the trial court, appellant would aver that —

"I. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

"II. THE LOWER COURT ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE ABSENCE OF ANY QUALIFYING CIRCUMSTANCE IN THE INFORMATIONS."[5]

While the Office of the Solicitor General argues that no cogent reasons exist to overturn the conviction of appellant, it does agree with the latter, however, that in neither of the two cases, could the penalty of death be aptly imposed.

Like the trial court, which has had an opportunity to observe closely the witnesses in giving their testimony before it, this Court, in its own assessment, also finds the child-victim to be credible; her testimony is sufficiently clear, quite categorical and definitely straightforward. Recalling her ordeal before the trial court, Rose Ann has testified:

"FISCAL BARRERA:

"Q Now, on September 5, 2000 at around 7:00 p.m. where were you?

"A I was home at that time.

"Q While you were in your house fronting Meralco office, Pasay City while in your house, do you recall of any unusual incident that transpired to you?

"A Yes, there was.

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[4] *Rollo*, p. 37.

[5] *Rollo*, p. 54.

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"Q What was that unusual incident that happened to you at around 7:00 p.m.?

"A I was called.

"Q Who called you?

"A Jimmy, sir.

"Q This Jimmy who called you, is he inside the courtroom?

"A Yes, sir.

"Q Will you kindly point to Jimmy who called you inside your house?

"A Yes, sir.

"Court Interpreter:

Witness pointing to a person who answered by the name of Jaime Olaybar.

"Fiscal Barrera:

"Q What happened when he called for you whom you identified in open court as Jaime Olaybar?

"A I came near him.

"Q Where did you proceed when you came near him?

"A He brought me to a jeep.

"Q Is that near your house?

"A It is far.

"Q But it is near Meralco?

"A The jeep was beside Meralco.

"Q What happened when Jaime Olaybar brought you to a jeep?

"A He made me to lay down.

"Q And did you lay [*sic*] down?

"A Yes, sir.

"Q What happened after you were being made by accused Jaime Olaybar to lay down?

"A Then he put his penis inside my vagina (*pinasok ang titi niya sa pepe ko.*)

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"Q What happened after he placed his penis inside your vagina?
"A He also inserted his finger inside my vagina.
"Q What else did Jaime Olaybar do to you?
"A *'Kinalong po niya ako.''*
"Q What else happened?
"A He inserted his penis inside my anus.
"Q What else happened after he placed his penis inside your anus?
"A After that nothing else happened.
"Q You mean to say, after that you went home?
"A He brought me home.
"Q On the following day, September 6, 2000 between 7:00 to 7:30 p.m., do you know of any unusual incident that happened to you on the night of September 6, 2000?
"A Yes, there was.
"Q What was that unusual incident that happened to you?
"A Jimmy put a saliva on his finger.
"Q With that what did Jimmy do?
"A Then he again put me on his lap.
"Q After he placed you on his lap, what happened next?
"A Then he put his penis inside my anus.
"Q After accused Jaime Olaybar placed his penis in your anus, what happened next?
"A After that nothing else happened.
"Q What did you do next?
"A He brought me home."[6]

The testimony of Rose Ann was corroborated by the medical findings of Dr. Merle P. Tan, who found that there was swelling of the victim's *labia majoris* and *minoris clitoris*, the urethra and periurethral area, the perihymenal area, the whole hymen

[6] TSN, 16 January 2001, pp. 3-6.

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and the perineal area. The second assault was likewise confirmed by the anal examination which showed swelling perianal skin and laceration of anal folds and rugae at "5 and 7 o'clock positions."[7] Dr. Tan, confirming her findings in open court, declared:

"Q: So, after the said mother Rea Into as well as the patient gave their consent for medico genital examination and anal examination, what step did you take?

"A: We interviewed the mother regarding their complaint. After which we talked with the patient.

"Q: What did you gather from your interview?

"A: During the interview she said, '*Si Jimmy pinasok ang titi sa puwet ko.*' Then I asked her how many times, she paid in her finger '*dalawa.*'

"Q: After the said interview, what did you do?

"A: After that we subjected the patient to medico genital and anal examinations.

"Q: What was the result of your medico genital examination?

"A: The patient has labia majora and labia minora. Clitoris; swelling urethra and periurethral area, including the hymen was swollen it was annular type.

"Q: What else did you find?

"A: Profuse white yellowish discharge. I also found that the perineum was swollen, the same with the anus.

"Q: What did you find when you examined the anus?

"A: The anus is also swollen with laceration at 5 and 7 o'clock laceration.

"Q: So, what else happened after conducting medico genital and anal examination and come out with your finding as you earlier stated?

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[7] Final Medido-Legal Report, Records, p. 171.

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"A: I did some laboratory examination such as vaginal swab culture and gram staining. I did also anus swab culture and urinalysis of the patient.

"Q: And Dr. Tan, what did the said vaginal swab culture and gram staining reveal?

"A: The result of gram stain 'positive for intracellular diplococci.'

"Q: What do you mean by that in your finding?

"A: That there is a bacteria inside that stain.

"Q: What would be the cause of bacteria?

"A: The bacteria is caused through the vaginal discharge from the patient. Regarding the culture vaginal swab also positive for neisseria gonorrhea.

"Q: And this gonorrhea you referred to sexually transmitted disease?

"A: Yes, sir.

"Q: What about the anal examination as you mentioned you perform[ed] anal swab culture and urinalysis, what was this urinalysis?

"A: Urinalysis shows while blood cells.

"Q: Is that all that you [found] during laboratory examination?

"A: The anal swab showed negative for gonorrhea.

"Q: The result of your vaginal as well as anal examination are all contained in these four document[s] previously marked as Exhs. E to E-3?

"A: Yes, sir.

"Q: Were you also furnished copy of the Salaysay of the patient regarding her complaint?

"A: We were not furnished by said statement.

"Q: Doctor, a perusal of the complaint of Rose Ann Into, would reveal that she was complaining she was sexually abused by

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the herein accused Jaime Olaybar by [inserting] his penis [into] her vagina and inserted his finger insider her vagina also and inserted his penis inside the anus, would your finding regarding the said medico genital examination as well as the anal examination as contained in Exhs. C and D would be compatible in your finding?

"Atty. Casas:

We object to the question because as the summary of the interview as stated in the medical certificate.

"Court:

Forget the interview she was testifying in her finding. Overruled, answer.

"A: Yes, sir, there is a penetration done with the child.

"Fiscal Barrera:

"Q: I'm confronting you with your finding, there was an examination on the hymen as well as the anus?

"A: Yes, sir. There was penetration that has been done to the child, specifically the child acquired sexually transmitted disease that can be gathered such as an act.

"Q: What an act, is it compatible with the complaint of the child?

"A: There is a penetration done and according to the laboratory examination the patient has acquired sexually transmitted disease. This can be done by sexual act.

"Q: By sexual act, you mean by insertion of the penis inside the vagina?

"A: Yes, sir.

"Q: When you stated you found that the patient contracted gonorrhea?

"A: The time that I examined the patient, the patient has already vaginal discharge.

"Q: And with that medico genital examination as well as anal examination, am I correct to say, you now gave your impression disclosure of sexual abuse?

"A: Yes, sir.

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"Q: And that there was a clear evidence of penetration?

"A: Yes, sir.

"Q: And you stated the swelling of the hymen could have been caused by the penetration of a male penis?

"A: The swelling of the hymen due to any penetration.

"Q: When you say swelling of the hymen could it be caused by *any penetration and it is possible at any cause by insertion* of the finger?

"A: Yes, it can be possible.

"Q: Regarding your finding as to the anal examination, you said you found swelling perianal skin with laceration of anal folds and rugae at 5 and 7 o'clock, what would have been the cause of the swelling of the anus as well as the 5 and 7 o'clock position?

"A: The cause can be anything from insertion to the anus be caused laceration.

"Q: Both swelling and laceration is caused by insertion and continued insertion of a male penis?

"A: It can be.

"Q: And your finding are all contained in Exhs. C and D, Provisional Medico-Legal Report and Final Medico Legal Report?

"A: Yes, sir."[8]

Mere denial without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity and involvement of appellant in the crimes attributed to him. The defense of *alibi* is likewise unavailing. It is not enough, in order that *alibi* might prosper, to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[9]

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[8] TSN, 07 December 2000, pp. 6-10.

[9] *People v. Cana*, G.R. No. 139229, 22 April 2002.

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In this case, appellant himself has admitted being just around the neighborhood at the time.

Anent the often-invoked claim that that it would have been impossible for appellant to bring and molest the victim to the jeepney in a public place and in the presence of many people, the Court would not need to belabor further that rape has been known to be committed not only in seclusion but also in places where people congregate, such as in a park, along the roadside, within school premises, inside an occupied house or even in a room where there are other people around.[10]

Finally, the Court finds it much too flimsy and scarcely with any sense for appellant to contend that the charges against him have been filed on account simply of Rose Ann's family being resentful of vehicles being allowed to park nearby their area.

The trial court has decreed the penalty of death on account of circumstance numbered 6 of Article 266-A, *i.e.,* that when "the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV), Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim," the imposition of the extreme penalty of death would be warranted. While it is established that Rose Ann, indeed, has contracted a sexually transmitted disease, no evidence, however, has been adduced to show the latter's being aware of his own affliction with such a disease. In fact, that aggravating circumstance is not even alleged in the two Informations.

In Criminal Case No. 00-1600, the penalty imposed upon appellant for the offense of statutory rape, absent any aggravating circumstance that can be considered, must, accordingly, be reduced to *reclusion perpetua.* In Criminal Case No. 00-1601, the penalty for the offense of rape by sexual assault, conformably with Article 266-B of the Code, is *prision mayor* or one degree lower than that imposed for rape by sexual intercourse. Applying the Indeterminate Sentence Law, and absent any modifying

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[10] *People v. Escaño*, G.R. Nos. 140218-23, 13 February 2002.

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circumstance, the imposable penalty should then be anywhere from eight (8) years and one (1) day to ten (10) years of *prision mayor* medium, as maximum penalty, and anywhere within the range of from six (6) months and one (1) day to six (6) years of *prision correccional*, as minimum penalty, for the offense.

In line with prevailing jurisprudence, the victim, in a case for simple statutory rape by sexual intercourse, is entitled to ₱50,000.00 civil indemnity and ₱50,000.00 moral damages. For being likewise the victim of rape by sexual assault, she is additionally entitled to an award of ₱30,000.00 civil indemnity and ₱30,000.00 moral damages.

WHEREFORE, this Court, finding appellant Jaime Olaybar *y* Odtuhan guilty, on two counts, of rape, hereby sentences him to suffer, in Criminal Case No. 00-1600, the penalty of *reclusion perpetua* for rape by sexual intercourse and, in Criminal Case No. 00-1601, the penalty of imprisonment from four (4) years and two (2) months of *prision correccional*, as minimum penalty, to nine (9) years and one (1) day of *prision mayor*, as maximum penalty, for rape by sexual assault. Appellant is likewise ordered to pay Rose Ann Into *y* Avenido civil indemnity of Fifty Thousand (₱50,000.00) Pesos and moral damages of Fifty Thousand (₱50,000.00) Pesos for the offense of statutory rape by sexual intercourse and another civil indemnity of Thirty Thousand (₱30,000.00) Pesos and moral damages of Thirty Thousand (₱30,000.00) Pesos for the crime of rape by sexual assault. Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Morales, Callejo, Sr., Azcuna and *Tinga, JJ.*, concur.

Corona, J., is on leave.