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[G.R. No. 137283. February 17, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODERICK LEGASPI,** *accused-appellant.*

SYNOPSIS

Appellant was convicted for the crime of qualified rape committed against a 6-year-old child. He was sentenced to suffer the penalty of death and, hence, this automatic review.

While appellant alleged that the trial judge was biased because he allowed leading questions and promulgated his judgment the day following the testimony of the victim as rebuttal witness, the Court ruled them not sufficient to prove alleged partiality. On the main issue, the Court affirmed the presence of rape as evidence showed that although there was no penetration, the penis was put in the *labia minora* of the young victim's vagina. And although no documentary evidence was presented to prove the age of the victim, the testimony of her aunt suffices to prove that the victim was below 12 years old at the time of rape. Thus, appellant was found guilty of statutory rape with the penalty of *reclusion perpetua*, civil indemnity of ₱50,000 and moral damages of additional ₱50,000.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; PARTIALITY; NOT ESTABLISHED BY MERE PROMULGATION OF JUDGMENT THE DAY FOLLOWING REBUTTAL TESTIMONY OF THE VICTIM.** – A judge has in his favor the presumption of regularity in the performance of his official duty. Mere suspicion or bare allegation that the judge is biased or partial to a party is not enough; there should be adequate evidence to prove the charge. That the judgment was promulgated on the day following the testimony of Cristina as rebuttal witness cannot be considered as adequate evidence sufficient to overcome the presumption, especially given the fact that her testimony was simple – that accused-appellant removed her clothes, boxed her, kissed her, went

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on top of her, touched her private part and held his penis and put it inside her sex organ although it did not enter the "hole."

2. **ID.; ID.; ID.; ID.; NOT ESTABLISHED BY PROPOUNDING QUESTIONS FOR CLARIFICATION.** — It is, often expedient or even necessary in the due and faithful administration of justice for the judge, in the exercise of sound discretion, to question a witness in order that his judgment may rest upon a full and clear understanding of the facts, even if the testimony drawn out tends to support or rebut the position taken by one or the other party. In the case at bar, the questions of the trial judge, as shown in the above-quoted testimony of Cristina, were evidently clarificatory. Propounded when the responses she gave were vague and imprecise, they cannot be considered proof of pre-judgment or bias.

3. **REMEDIAL LAW; EVIDENCE; LEADING QUESTIONS ALLOWED WHEN WITNESS IS CHILD OF TENDER YEARS.** — As for the trial court's allowing the prosecution to ask Cristina leading questions, no prior proof of difficulty in eliciting intelligible answers from the child witness is required in order to allow leading questions. It is sufficient that the witness is shown to be a child of tender years as in Cristina's case.

4. **CRIMINAL LAW; STATUTORY RAPE; APPLICABLE LAW IN CASE AT BAR.** — The alleged rape having been committed on July 3, 1997, the applicable law is Article 335 of the Revised Penal Code, as amended by Republic Act 7659, the pertinent provision of which, in light of the allegations in the information, reads: Article 335. *When and how rape is committed. - Rape is committed by having carnal knowledge of a woman* under any of the following circumstances: x x x. *3. When the woman is under twelve years of age* or is demented. The Crime of rape shall be punished by *reclusion perpetua.* x x x *The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances*: 4. *when the victim is* a religious or *a child below seven (7) years old. x x x.*

5. **ID.; ID.; ELEMENTS; AGE; HOW ESTABLISHED IN THE ABSENCE OF DOCUMENTARY EVIDENCE.** — In *People v. Pruna*, this Court set the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance: x x x If the certificate

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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. x x x* The unavailability of the birth certificate of Cristina notwithstanding, the testimony of her aunt Brigida suffices to prove that she was below 12 years old at the time of the commission of the offense.

6. **ID.; AGGRAVATING CIRCUMSTANCES; ALTHOUGH NOT APPRECIATED BY THE NEW RULE, STILL MATERIAL IN DETERMINATION OF DAMAGES ALREADY VESTED PRIOR TO EFFECTIVITY OF THE LAW.** — Aggravating circumstances may not be appreciated to modify the penalty for the rape committed – *reclusion perpetua* – in light of Article 63 of the Revised Penal Code which provides for Rules for the application of indivisible penalty. But even assuming that the penalty is not single indivisible, such circumstances still can not be appreciated in the determination of the proper penalty since the Information failed to allege them as required by the 2000 Revised Rules on Criminal Procedure which is given retroactive effect. The failure to allege the aggravating circumstances notwithstanding, the proven presence thereof is still material in the determination of exemplary damages to be awarded to private complainant under Article 2230 of the Civil Code. As held in *People v. Catubig,* the retroactive application of procedural rules cannot adversely affect the rights of the private offended party that have become vested prior to the effectivity thereof.

7. **ID.; RAPE; PROPER CIVIL PENALTIES.** — Instead of specifying the amount for each kind of damage due Cristina, the trial court awarded the lump sum amount of ₱150,000.00 "as consequential, exemplary and moral damages." The award of "consequential damages" is more precisely termed as civil indemnity. The penalty to be imposed on accused-appellant

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being *reclusion perpetua,* in conformity with prevailing jurisprudence, the civil indemnity due should be ₱50,000.00, and moral damages should be ₱50,000.00.

APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Gonzales & Associates for accused-appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

Before this Court for automatic review is the Decision[1] of the Regional Trial Court of Tarlac, Branch 65, in Criminal Case No. 9643 convicting accused-appellant Roderick Legaspi of rape.

The Information dated August 18, 1997 charged accused-appellant as follows:

xxx xxx xxx

That on or about the July 3, 1997 at around 8:00 o'clock in the evening, in the Municipality of Tarlac, Province of Tarlac and within the jurisdiction of this Honorable Court, the above-named accused by means of force and violence did then and there willfully, unlawfully and feloniously *have carnal knowledge* of complainant Cristina Castaneda, *a child below seven (7) years old.*

CONTRARY TO LAW.

xxx xxx xxx[2] (Italics supplied.)

Accused-appellant was arraigned on October 28, 1997. Duly assisted by his counsel *de oficio*, he entered a plea of not guilty.[3]

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[1] Penned by Acting Presiding Judge Victor T. Llamas, Jr.; *Rollo* at 9–11.

[2] *Rollo* at 4.

[3] Records at 12.

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The following facts are not disputed.

On July 3, 1997, at around 6:00 p.m., accused-appellant, together with his father Rogelio and two others, had a drinking spree at their family house in Panumpunan, Tarlac, Tarlac. At around 8:00 p.m., he asked the more than 6-year old Cristina Castaneda, the niece of his father's common law wife Brigida Pagsibagan, to go out with him for a few minutes. Cristina, who was wearing a pair of short pants and a shirt, obliged and the two left the house.[4]

As two hours had elapsed and accused-appellant and Cristina had not yet returned, Brigida started looking for them. She later went to the *barangay* hall to report the matter.[5]

About past 11:00 p.m. also of July 3, 1997, accused-appellant and Cristina returned home.[6] Cristina, who was silent, with her arms placed "across her breast,"[7] was already garbed in accused-appellant's t-shirt, without panty and slippers, and with her head and back full of sand.[8] Accused-appellant on the other hand was only wearing a pair of wet pants.[9] When Brigida asked them where they came from, Cristina replied that they came from the river,[10] about a kilometer away from their house. And when she was asked what accused-appellant did to her, Cristina said that he kissed her, boxed the left portion of her stomach, and let her drink dirty water.[11] While Cristina did not say that she was sexually abused, given her appearance, Brigida brought her and accused-appellant, who tried to flee but was overtaken, to the *barangay* hall.[12]

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[4] TSN, November 20, 1997 at 13–14.

[5] *Id.* at 12.

[6] *Id.* at 13–14.

[7] *Id.* at 15.

[8] *Id.* at 14.

[9] *Id.* at 15.

[10] *Id.* at 16.

[11] *Id.* at 17.

[12] *Id.* at 12–13.

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At the *barangay* hall, Kagawad Edilberto Villanueva asked Cristina what happened, to which she replied that accused-appellant brought her to the river and "went on top of her."[13] Villanueva, Brigida, Cristina and accused-appellant thereupon proceeded to the municipal hall to report the matter to the police who directed that Cristina be brought to the provincial hospital for examination.[14] Cristina was thus immediately brought to the Tarlac Provincial Hospital[15] where she was examined by Dr. Susan Rhea Maniquis.

From Dr. Maniquis' examination of Cristina, the following findings[16] were noted:

> EXT. GENITALIA: absent pubic hair, labia majora completely hiding labia minora, vestibule is erythematous; *(+) complete laceration 6'oclock position, (+) incomplete laceration, 2'oclock position, (+) abrasion 9-10 o'clock positions*; post-fourchette V-shaped, (-) bleeding, (-) hematomas. (Italics supplied)

Hence, the filing of a complaint for rape against accused-appellant at the Tarlac, Tarlac Municipal Trial Court which conducted a preliminary investigation at which accused-appellant failed to file a Counter-Affidavit.[17] The Provincial Prosecutor accordingly filed the Information against accused-appellant.

Villanueva declared that accused-appellant "admitted that he was raping Cristina but he was not able to insert his penis."[18]

When Dr. Maniquis was interrogated on her findings, she gave the following testimony, quoted *verbatim*:[19]

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[13] TSN, February 26, 1998 at 9.

[14] TSN, December 4, 1997 at 16.

[15] TSN, January 8, 1998 at 6–7.

[16] Exhibit "A", Records at 74.

[17] Records at 5.

[18] TSN, February 26, 1998 at 12.

[19] TSN, January 8, 1998 at 11–20.

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Q: By this finding of yours "vestibule is erythematous," what do you mean by this?

A: The *vestibule I am referring to is that diamond shape area of the perineum where the urine comes out,* and "*erythematous" I mean the reddish color in the vestibule.*

Q: *And what could have caused that reddish color in the vestibule?*

A: *It could have been caused by an object that could have insinuated into that opening.*

Q: And by your finding "complete laceration 6:00 o'clock position," what do you mean, doctor?

A: By that, I mean that supposed to be the hymen is intact and there are no lacerations. There are *angulations along the hymenal wall.* And by *complete,* I mean that the *laceration reaches from the surface of the hymen up to the base of the hymen.* That is complete. And by incomplete, I mean that it did not reach one-half of the hymen. The depth of the laceration did not reach up to the base of the hymen.

Q: About the "*abrasion,* 9-10 o'clock position," what do you mean by that?

A: *By that I mean that I saw linear abrasion, it was just a scratch mark.*

Q: And what could have caused those complete laceration 6:00 o'clock position, incomplete laceration, 2:00 o'clock position and abrasion 9-10 o'clock positions"?

A: Those could have been caused by *trauma,* sir.

Q: Would a sexual intercourse cause these injuries or lacerations?

A: Possibly, sir.

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Q: And in this case you did not find any sperm cells in the genitalia area. If there was alleged sexual abuse on the patient and found that there were no sperm cells in the said genitalia

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road, then it may rule out the possibility that the lacerations that you found in the hymen were not made by male organ?

A: It is *possible that the victim or patient was raped even if there were no sperm cells found in the genitalia area.*

Q: But the finding that there were no sperm cells found in the genitalia area is a deep indication that the lacerations were made or could have been made by blunt instrument?

A: It's possible.

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COURT:

Q: What could have caused the abrasion, doctor?

A: That abrasion that I saw on the vestibule could have been caused by a fingernail or any sharp object.

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Q: What is the significance of the 6:00 o'clock position . . .

A: I just want to impart that there was trauma to that area.

Q: Has there been penetration?

A: Not necessarily.

Q: When you say "trauma", *what could have caused this trauma*?

A: It may have been caused by any object *or human finger or penis of a male organ.*

xxx xxx xxx (Italics and underscoring supplied).

Accused-appellant insisted that he and Cristina just took a bath in the river.

Cristina, who refused to testify during the presentation by the prosecution of its evidence in chief, finally took the witness stand on rebuttal. Through her following testimony,[20] the prosecution sought to further prove that she was raped.

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[20] TSN, December 14, 1998 at 2–7.

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FISCAL:

Q: Cristina do you know the accused in this case Roderick Legaspi?

A: Yes sir.

Q: And could you tell us if he is inside the court now?

A: Yes sir.

Q: Will you please point at him if he is inside the courtroom?

INTERPRETER:

Witness is pointing to a person or man inside the courtroom wearing a stripe blue and green T-shirt.

Q: Cristina on July 3, 1997 you were at home is that correct?

A: Yes sir.

Q: And Roderick Legaspi was drinking with somebody on that date is that correct?

ATTY. MARCOS:

Objection your Honor, leading.

COURT:

Witness may answer considering the age of the witness . .

A: Yes sir.

Q: On July 3, 1997, Roderick Legaspi asked you to go with him is that correct?

A: Yes sir.

Q: Could you tell us where did Roderick bring you?

A: At the river sir.

Q: Were you able to reach the river?

A: Yes sir.

Q: And what did you do at the river, did you take a bath?

A: No sir.

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Q: Did Roderick Legaspi do anything to you when you reached the river?

A: Yes sir.

Q: What did Roderick Legaspi do to you?

A: He removed my clothes sir.

Q: How about your panty did he also remove it?

A: Yes sir.

Q: How about Roderick Legaspi did he also remove his pants?

A: Yes sir.

Q: After Roderick Legaspi removed your panty and also after he removed his pants what did he do?

A: He kissed me sir.

Q: Aside from kissing you, what else did he do, did he touch your private part?

A: Yes sir.

Q: Aside from touching your private part did he do anything else to you?

A: *Yes sir he boxed me.*

Q: On what part of your body did he boxed [*sic*] you?

INTERPRETER:

Witness pointing on her left breast.

Q: And he went on top of you?

A: Yes sir.

Q: When he was on top of you what was he doing then, did he do the push and pull motion?

A: Yes sir.

Q: While he was doing the push and pull motion were you hurt then?

A: Yes sir.

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Q: And after that you already went home together with Roderick?

A: Yes sir.

Q: Did you not tell or reported [*sic*] to your sister about what Roderick did to you?

A: No sir.

Q: Did you report it to your Auntie Bidang?

A: No sir.

Q: *Why did you not report this incident to your auntie Bidang are you afraid?*

A: *Yes sir.*

FISCAL:

That will be all your Honor.

COURT:

Any cross-examination counsel?

ATTY. MARCOS:

Yes your Honor. With the kind permission of this Hon. Court.

COURT:

Proceed.

CROSS EXAMINATION BY ATTY. MARCOS:

xxx *xxx* *xxx*

Q: Do you still remember that you testify (sic) a while ago that Roderick Legaspi made a push and pull motion, can you identify to this court push and pull motion?

A: No reaction.

Q: Does this means [sic] that you do not know that push and pull motion?

A: No answer.

Q: So you are not telling the truth when you said that Roderick Legaspi made that push and pull motion?

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A: No answer.

COURT:

Q: Have you ever seen a penis?

A: No sir.

Q: Have you seen the penis of Roderick Legaspi?

A: No sir.

Q: When he went on top of you did you see his penis? Did he put it inside your private part?

A: Yes sir.

Q: Where did he put it inside your sex organ?

A: Yes sir.

Q: Did you feel it if it is hard or soft?

A: No sir.

Q: It was soft?

A: No sir.

Q: Did he hold it and put it inside your sex organ?

A: Yes sir.

Q: What did you feel?

A: No answer.

Q: What did you feel, was it painful?

A: Yes sir.

ATTY. MARCOS:

Q: You said that you have not seen the penis of Roderick, how come or how do you know that what was put inside your organ was the penis of Roderick Legaspi [sic]?

A: No answer.

Q: Does this mean you are not sure whether Roderick inside his penis inside your sex organ?

A: No answer.

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COURT:

Q: *You felt that the penis of Roderick did not enter the hole but you feel that it was in your sex organ?*

A: *Yes sir.*

ATTY. MARCOS:

Q: But you did not see the penis of Roderick?

A: No mam.

Q: What you feel that was inserted in your sex organ but you are not sure that that was the penis of Roderick or other object?

A: No answer.

xxx xxx xxx. (Italics and underscoring supplied.)

Finding for the prosecution, the trial court convicted accused-appellant by the assailed decision, the dispositive portion[21] of which reads:

"Now therefore, this court finds you, Roderick Legaspi, guilty beyond reasonable doubt of the heinous crime of rape pursuant to Article 335 in relation to RA 7610 and RA 7659 in relation to Article 14, Pars. 3, 6, 14 & 15 of the Revised Penal Code and therefore sentences you to die by lethal injection and to indemnify the offended party in the amount of ₱150,000.00 as consequential, exemplary and moral damages.

MAY GOD HAVE MERCY ON YOUR SOUL.

SO ORDERED.

Tarlac City, Dec. 15, 1998."

In his Brief, accused-appellant assigns to the trial court the following errors, quoted *verbatim*:

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[21] *Rollo* at 11.

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I.

THE TRIAL COURT DENIED TO ACCUSED-APPELLANT HIS FUNDAMENTAL RIGHT TO A FAIR AND IMPARTIAL TRIAL BY THE BIAS IT HAD SHOWN AGAINST HIM AND IN ITS UNDUE HASTE IN CONVICTING HIM OF THE OFFENSE CHARGED IN THE INFORMATION.

II.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF QUALIFIED RAPE NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III.

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY ON ACCUSED-APPELLANT NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PRESENT INDEPENDENT PROOF OF THE ACTUAL AGE OF THE PRIVATE COMPLAINANT TO PROVE HER AGE.[22]

Accused-appellant cites the promulgation of the judgment on the day following the testimony of Cristina as indicative of bias. For, so accused-appellant submits, it is doubtful if the trial court meticulously considered all the evidence presented.[23]

Accused-appellant's submission does not convince. A judge has in his favor the presumption of regularity in the performance of his official duty.[24] Mere suspicion or bare allegation that the judge is biased or partial to a party is not enough; there should be adequate evidence to prove the charge.[25] That the judgment was promulgated on the day following the testimony of Cristina as rebuttal witness cannot be considered as adequate evidence sufficient to overcome the presumption, especially given the fact that her testimony was simple — that accused-appellant removed her clothes, boxed her, kissed her, went on top of

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[22] *Rollo* at 35.

[23] *Rollo* at 43.

[24] Rule 131, Sec. 5(m), Rules of Court.

[25] *Lu v. Siapno*, 335 SCRA 181 (2000).

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her, touched her private part and held his penis and put it inside her sex organ although it did not enter the "hole."

Accused-appellant adds that the predisposition of the trial court to convict him was shown by the fact that it asked and allowed the prosecution to ask the victim leading questions without first showing that there was difficulty in getting direct and intelligible answers from her because of tender age.[26]

It is, however, often expedient or even necessary in the due and faithful administration of justice for the judge, in the exercise of sound discretion, to question a witness in order that his judgment may rest upon a full and clear understanding of the facts, even if the testimony drawn out tends to support or rebut the position taken by one or the other party.[27]

In the case at bar, the questions of the trial judge, as shown in the above-quoted testimony of Cristina, were evidently clarificatory. Propounded when the responses she gave were vague and imprecise, they cannot be considered proof of pre-judgment or bias.

As for the trial court's allowing the prosecution to ask Cristina leading questions, no prior proof of difficulty in eliciting intelligible answers from the child witness is required in order to allow leading questions. It is sufficient that the witness is shown to be a child of tender years[28] as in Cristina's case.

On the main issue of whether the prosecution had proven his guilt beyond reasonable doubt, accused-appellant contends that it had not as Cristina never categorically stated that her private part was penetrated by his.[29]

The alleged rape having been committed on July 3, 1997, the applicable law is Article 335 of the Revised Penal Code, as amended by Republic Act 7659, the pertinent provision of which, in light of the allegations in the information, reads:

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[26] *Rollo* at 43–47.

[27] *People v. Vaynaco*, 305 SCRA 93 (1999).

[28] *People v. Gonzales*, 311 SCRA 547 (1999).

[29] *Rollo* at 54.

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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 and intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. *When the woman is under twelve years of age* or is demented.

The crime of rape shall be punished by *reclusion perpetua.*

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The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

xxx xxx xxx

4. *when the victim is* a religious or *a child below seven (7) years old.* (Italics supplied).

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Accused-appellant argues that with Cristina's admission that she had not seen a penis, much less that of accused-appellant,[30] it is *not certain* that what was put in her vagina was accused-appellant's penis. The argument fails. Even if Cristina did not see what object was actually placed on her vagina, given (1) her testimony that accused-appellant went on top of her, held what she felt to be his penis. and put it in her vagina although it did not enter the "hole"; and (2) Dr. Maniquis' finding of lacerations and abrasions in Cristina's vagina and her testimony quoted earlier, it is improbable that it was not accused-appellant's penis that he held and put in her vagina. With the luxury of time afforded him, not to mention the venue of the incident where being seen and heard by anyone was remote, why would accused-appellant introduce anything but his penis to her vagina?

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[30] TSN, December 14, 1998, at 6.

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Villanueva's testimony that accused-appellant "admitted that he was raping Cristina *but he was not able to insert his penis*" thus assumes importance.

The penis may not have been inserted in Cristina's vagina but it was held, then put in, and therefore it penetrated, the *labia minora* of Cristina's vagina. Cristina's following testimony bears reiterating, quoted *verbatim:*

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COURT

Q: You *felt* that the penis of [accused-appellant] *did not enter the hole but you feel that it was in your sex organ?*

A: Yes sir.

Q: Did [accused-appellant] *hold his [penis] and put it inside your sex organ?*

A: Yes sir."[31]

xxx xxx xxx (Italics supplied.)

There is then no doubt that accused-appellant had carnal knowledge of Cristina. A determination of the circumstances under which the crime was committed is thus in order to arrive at the proper penalty to be imposed on him.

The information alleges that Cristina was 6 years old when the crime was committed. No birth certificate or any other authentic document was presented, however, to show when she was born in order to determine her age at the time. While Brigida declared that she was born on October 22, 1990 and undertook to submit a copy of her birth certificate, no such certificate was presented.[32]

In *People v. Pruna*,[33] this Court set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance:

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[31] TSN, December 14, 1998 at 6.

[32] TSN, November 20, 1997 at 6–7.

[33] G.R. No. 138471, October 10, 2002.

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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 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 that 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 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. (Italics and underscoring supplied.)

Based on the foregoing guidelines, the unavailability of the birth certificate of Cristina notwithstanding, the testimony of

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her aunt Brigida suffices to prove that she was below 12 years old at the time of the commission of the offense.

The trial court, in imposing the penalty, appreciated the presence of aggravating circumstances that fall under the following paragraphs of Article 14 of the Revised Penal Code, to wit:

xxx xxx xxx

4. That the act be committed with insult or in disregard of the respect due to the offended party on account of his rank, age, or sex, or that it be committed in the dwelling of the offended party, if the latter has not given provocation.

xxx xxx xxx

6. That the crime be committed in the nighttime, or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense.

xxx xxx xxx

14. craft, fraud, or disguise be employed.

15. advantage be taken of superior strength, or means be employed to weaken the defense.

xxx xxx xxx

These circumstances, however, may not be appreciated to modify the penalty for the rape committed — *reclusion perpetua* — in light of Article 63 of the Revised Penal Code which provides:

ART. 63. *Rules for the application of indivisible penalties.* — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts *regardless of any mitigating or aggravating circumstances* that may have attended the commission of the deed.

xxx xxx xxx (Italics supplied.)

But even assuming that the penalty is not single indivisible, such circumstances still can not be appreciated in the determination of the proper penalty since the Information dated August 18, 1997, failed to allege them as required by the 2000

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Revised Rules on Criminal Procedure which is given retroactive effect.[34]

The failure to allege the aggravating circumstances notwithstanding, the proven presence thereof is still material in the determination of exemplary damages to be awarded to private complainant under Article 2230 of the Civil Code which provides:

> Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

As held in *People v. Catubig*,[35] the retroactive application of procedural rules cannot adversely affect the rights of the private offended party that have become vested prior to the effectivity thereof.

This Court, however, finds that, contrary to the finding of the trial court, not one of above-mentioned aggravating circumstances can be appreciated for the purpose of awarding Cristina exemplary damages. It bears recalling that two hours after accused-appellant started drinking liquor at 6:00 p. m. together with his father and the latter's two *compadres*, or at 8:00 p. m., he asked Cristina to go out. There is no showing that the circumstances of nighttime and uninhabited place were deliberately sought by accused-appellant to ensure the commission of rape. As to the circumstance of age, the same was already considered to qualify it to statutory rape. Neither can craft or fraud be appreciated, there being nothing deceitful with the way accused-appellant asked Cristina to go out with him, to wit: "Ty,[36] we will go out for a few minutes."[37] As

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[34] In *People v. Arrojado*, 350 SCRA 679 (2001), this Court held that the Rules may be given retroactive effect in the light of the well settled rule that "statutes regulating the procedure of the court will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense and to that extent."

[35] 363 SCRA 621 (2001).

[36] Cristina's nickname, TSN November 20, 1997 at 10.

[37] *Id.*

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to the circumstance of abuse of superior strength, the same can be considered inherent in the crime of statutory rape, taking into account the disparity of age and size between accused-appellant and Cristina.

A word on the civil liability of accused-appellant.

Instead of specifying the amount for each kind of damage due Cristina, the trial court awarded the lump sum amount of ₱150,000.00 "as consequential, exemplary and moral damages." The award of "consequential damages" is more precisely termed as civil indemnity.[38]

The penalty to be imposed on accused-appellant being *reclusion perpetua*, in conformity with prevailing jurisprudence, the civil indemnity due should be ₱50,000.00,[39] and moral damages should be ₱50,000.00.[40]

WHEREFORE, the judgment on review is hereby *AFFIRMED with MODIFICATION*. As modified, accused-appellant *RODERICK LEGASPI* is found guilty beyond reasonable doubt of rape and is sentenced to suffer *reclusion perpetua* and to pay private complainant Cristina Castaneda civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00.

Costs *de officio*.

SO ORDERED.

Davide, Jr., C. J. (Chairman), Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Callejo, Sr., and *Azcuna, JJ.*, concur.

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[38] *People v. Perez*, 353 SCRA 609, 619 (2001).

[39] *People v. Rafales*, 323 SCRA 13 (2000).

[40] *People v. Usab*, G. R. No. 133227, October 10, 2002.