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SECOND DIVISION

[G. R. No. 138648. October 3, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICTOR LOPEZ *y* MANING,** *accused-appellant.*

SYNOPSIS

Accused-appellant assailed the decision of the Regional Trial Court of Oriental Mindoro finding him guilty of the crime of statutory rape committed against eleven-year old Cristina Gajisan. Appellant contended that the trial court erred in convicting him of consummated rape arguing that the prosecution failed to establish successful penile penetration with apodictic certainty.

The Court held that the offense committed by appellant was not only attempted rape but consummated rape. The Court found absurd and ridiculous appellant's contention that his sex organ merely touched Cristina's private parts and that the latter could not have observed if he was able to penetrate her because she had her back towards him. Aside from being credible and truthful, Cristina's narration of the manner in which she was ravished by appellant was confirmed by the medico-legal report which found abrasions on Cristina's anus and lacerations on her hymen. The Court also held that when the victim's testimony is corroborated by the physician's findings of penetration, there is sufficient foundation to confirm the existence of the essential requisite of carnal knowledge. Hence, the two elements of the crime charged — namely, that there was carnal knowledge and the victim was below twelve (12) years old — were duly proved. Consequently, the Court affirmed the trial court's judgment of conviction. It, however, modified the award of damages.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL IN CRIMINAL CASE THROWS THE WHOLE CASE OPEN FOR REVIEW.— It must first be emphasized that although the verdict of guilt is not being questioned in this appeal, we nonetheless examined the entire records and evidence adduced

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by the parties in the proceedings below, pursuant to the fundamental rule that an appeal in a criminal case throws the whole case open for review. Unfortunately for appellant, however, there is nothing on record which would convince us that modification of the challenged decision is warranted, except for the addition of moral and exemplary damages which the trial court omitted to award the child-victim.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM MAY BE THE SOLE BASIS FOR CONVICTION, IF CREDIBLE.**—When a victim claims that she has been raped, she says all that is necessary to show that the offense has been committed. As long as her testimony passes the test of credibility, it is given full weight and credence and may be the sole basis for conviction of the appellant. In addition, the Court has held that there would be no reason for a young, innocent girl to concoct a story of defloration, allow the examination of her private parts, publicly disclose that she has been sexually abused if her motive were other than to fight for her honor and bring to justice the person who defiled her. Thus, as against the victim's testimony and her positive identification of the appellant as her abuser, the denial and alibi proffered by appellant in his defense were found weak and unworthy of credit.

3. **ID.; ID.; ID; WHEN VICTIM'S TESTIMONY IS CORROBORATED BY PHYSICIAN'S FINDINGS OF PENETRATION, THERE IS SUFFICIENT FOUNDATION TO CONFIRM THE EXISTENCE OF THE ESSENTIAL REQUISITE OF CARNAL KNOWLEDGE; CASE AT BAR.**— Cristina's birth certificate and her father's testimony in open court establish that Cristina was merely 10 years and 10 months old at the time she was sexually violated by appellant. The child-victim herself testified regarding her ordeal in a straightforward and candid manner: x x x. It is clear from Cristina's testimony that appellant successfully deflowered her by entering her from behind. Appellant's contention that his sex organ merely touched Cristina's private parts and that the latter could not have observed if he was able to penetrate her because she had her back towards him, is absurd and ridiculous. Aside from being credible and truthful, Cristina's narration of the manner in which she was ravished by appellant was confirmed by the medico-legal report of Dr. Mayflor C.

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Tirador, who found abrasions on Cristina's anus and lacerations on her hymen. When the victim's testimony is corroborated by the physician's findings of penetration, there is sufficient foundation to confirm the existence of the essential requisite of carnal knowledge. Hence, the two elements of the crime charged — namely that there was carnal knowledge and the victim was below twelve (12) years old — were duly proved.

4. **CRIMINAL LAW; STATUTORY RAPE; ELEMENTS; ABSENCE OF STRUGGLE OR OUTCRY FROM THE VICTIM OR HER PASSIVE SUBMISSION TO THE SEXUAL ACT WILL NOT MITIGATE NOR ABSOLVE ACCUSED FROM LIABILITY.**— Under Article 335, paragraph 3 of the Revised Penal Code, the only elements of statutory rape are: (1) that the offender had carnal knowledge of a woman; and (2) that the woman is under twelve (12) years of age. Mere sexual congress with a woman of such tender age consummates the crime of statutory rape regardless of her consent to the act or lack of it. In this kind of rape, the law presumes the child-victim to be lacking in discernment which would enable her to give intelligent consent to the sexual act. Consequently, the application of force and intimidation or deprivation of reason of said victim is irrelevant in a prosecution for this kind of offense. The absence of struggle or outcry from the victim or even her passive submission to the sexual act will not mitigate nor absolve the accused from liability.

5. **CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES; DISTINCT FROM INDEMNITY *EX DELICTO*.**— However, consistent with current jurisprudence, we find that additional awards of ₱50,000 as moral damages and ₱25,000 as exemplary damages are in order. Such awards are distinct from the indemnity *ex delicto* awarded to complainant for the grave injury that she suffered because of the offense committed on her person. Exemplary damages are awarded by way of public example as a deterrence to crime and, in particular, child abuse. In this case, civil indemnity, moral damages, and exemplary damages are justifiably called for.

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APPEARANCES OF COUNSEL

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

D E C I S I O N

QUISUMBING, *J.*:

Before us is an appeal from the judgment of the Regional Trial Court of Oriental Mindoro, Branch 43, in Criminal Case No. R-837, finding appellant Victor Lopez *y* Maning guilty of the crime of statutory rape and sentencing him to suffer the penalty of *reclusion perpetua.*

The criminal complaint[1] against appellant reads:

> That on or about the 8th day of August, 1997, at about 6:30 in the evening, more or less, at Barangay B. del Mundo, Municipality of Mansalay, Province of Oriental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused with lewd and unchaste designs, did then and there, wilfully, unlawfully and feloniously, lay with and have carnal knowledge with one CRISTINA GAJISAN *y* FRONDA an eleven (11) year old child against her will and without her consent.
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> CONTRARY TO LAW.[2]

On September 16, 1997, appellant pleaded not guilty[3] to the charge, and thereafter pre-trial and trial ensued.

The facts of the case, as summarized by the Solicitor General, are as follows:

> Private complainant Cristina Gajisan was eleven (11) years old and a Grade 5 student residing at B. del Mundo St., Barangay San Antonio, Mansalay, Oriental Mindoro, while appellant is an

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[1] Filed on August 22, 1997.

[2] Records, p. 1.

[3] *Id.* at 16.

acquaintance who lived about two hundred (200) meters away from Cristina's house (TSN, February 4, 1998, p.3; October 21, 1997, p. 20; February 4, 1997, p. 5).

At 6:00 P.M. on August 8, 1997, appellant went to Cristina's house and requested her to buy yellow pad paper for him. Cristina agreed and walked towards a store with appellant following her. At the store, there was no yellow pad paper available, so she proceeded to another store where she was able to buy it. At that point, appellant called for her to follow him to an uninhabited house located about two hundred (200) meters from appellant's house and five (5) meters from the nearest house (*Ibid.*, February 4, 1998, pp. 6-8; August 5, 1998, p.17).

At the aforesaid house, appellant took the yellow pad paper and told her to take a seat while he was writing something. He then told her to go upstairs, which (*sic*) she obeyed. Appellant followed her and sat beside her. Immediately thereafter, appellant held her arms and thighs, kissed her on the lips and told her to remove her shorts. When she refused, she was made to stand up and appellant himself removed her shorts. All the while, appellant looked at her menacingly (*Ibid.*, February 4, 1998, pp. 9-11).

Cristina was then made to lie face down, with appellant placing himself on her back after taking off his pants and brief. Unsuccessful in penetrating her vagina in that position, appellant made her kneel with her body stooped, her arms supporting her body and her head almost touching the floor. Appellant placed himself behind her and tried to penetrate her vagina. Cristina then felt a painful sensation in her private part and a sticky substance discharged inside. She was not able to shout for help or resist since appellant held her very tightly and threatened to box and tie her. After appellant's ejaculation, appellant stood up and threatened to kill her should she report the incident to her father (*Ibid.*, pp. 11-12, 13-14, 16; March 25, 1998, pp. 3-4).

At 6:30 P.M. of the same day, Cristina's father Maximiano was at home when Cristina arrived, crying. When he asked her what was the reason (for her crying), she answered that she was abused by appellant. Maximiano brought her to Barangay Captain Ramon Galicia who advised them to consult a certain Dr. Padua so that Cristina could be examined. Since Dr. Padua was not available at that time, they went home. Maximiano and Cristina also gave separate statements

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to the Manansalay (should be "Mansalay") police authorities (*Ibid.*, October 21, 1997, pp. 18-21, 23-24; February 4, 1998, pp. 15-16).

The following day, August 9, 1997, Maximiano and Cristina went to Dr. Mayflor C. Tirador, Chief of the Medicare Hospital at Manansalay (*sic*), and to whom a request for her examination was made by the Manansalay (*sic*) Philippine National Police (PNP). Her findings showed the presence of hematoma or reddening, lacerations of the hymen caused by the forcible penetration by a hard penis, and abrasions in the anus (*Ibid.*, October 21, 1997, pp. 2-4, 7-9, 21).[4]

Appellant interposed denial and alibi as his defense. He claimed that on the day and time in question, he was in the house of one Menecia Yap together with his friends, Deolito Yap, Angel Yap and Arnulfo Pablo. He arrived in said house at 5:00 P.M. and played cards until 7:30 P.M. Afterwards, they proceeded to another house located 60 meters away from Menecia's house, where they were joined by one Raul Lardiza. They stayed in the second house until 9:30 P.M., watching a "betamax" movie.

Later, on his way home together with his neighbors Teddy and Anthony Silverio, appellant met Barangay Captain Ramon Galicia who invited him for questioning. Appellant was informed of the rape charge, and he was subsequently arrested and confined at the Mansalay Provincial Jail.[5] Appellant admitted that Menecia's house is located only 50 meters away from the uninhabited house where Cristina was raped[6] and that there was no enmity between him and the Gajisans.[7]

No other defense witness was presented to corroborate appellant's testimony.

On April 19, 1999, the trial court rendered the assailed judgment, the dispositive part of which reads:

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[4] *Rollo*, pp. 67-70.

[5] TSN, August 5, 1998, pp. 3-8.

[6] *Id.* at 17.

[7] *Id.* at 12.

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WHEREFORE, in view of the foregoing considerations, the court finds the accused, Victor Lopez *y* Maning GUILTY beyond reasonable doubt of the crime of rape punishable by Article 335 of the Revised Penal Code as amended by R.A. 7659 and he is hereby sentenced to suffer imprisonment of *reclusion perpetua* and to pay the victim, Cristina Gajisan, civil indemnity of ₱50,000.00 and the costs.

SO ORDERED.[8]

Hence, this appeal.

Appellant urges the Court to modify the lower court's judgment and to convict him only for the lesser offense of attempted rape, on the singular ground that:

THE UNCORROBORATED AND PERFORATED TESTIMONY OF THE VICTIM CANNOT SUSTAIN A CONVICTION OF CONSUMMATED RAPE CONSIDERING THAT IT FAILED TO ESTABLISH *SUCCESSFUL PENILE PENETRATION* WITH APODICTIC CERTAINTY.[9]

Simply stated, the issue to be resolved is whether or not the trial court correctly found appellant guilty of consummated rape.

It must first be emphasized that although the verdict of guilt is not being questioned in this appeal, we nonetheless examined the entire records and evidence adduced by the parties in the proceedings below, pursuant to the fundamental rule that an appeal in a criminal case throws the whole case open for review.[10] Unfortunately for appellant, however, there is nothing on record which would convince us that modification of the challenged decision is warranted, except for the addition of moral and exemplary damages which the trial court omitted to award the child-victim.

Under Article 335, paragraph 3 of the Revised Penal Code, the only elements of statutory rape are: (1) that the offender

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[8] *Rollo*, p. 19.

[9] *Id.* at 40.

[10] *Remedial Law Compendium*, 2001 Ed., J. F.D. Regalado, p. 505, citing *Quemuel vs. CA*, 22 SCRA 44, 46 (1968).

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had carnal knowledge of a woman; and (2) that the woman is under twelve (12) years of age.[11] Mere sexual congress with a woman of such tender age consummates the crime of statutory rape regardless of her consent to the act or lack of it. In this kind of rape, the law presumes the child-victim to be lacking in discernment which would enable her to give intelligent consent to the sexual act. Consequently, the application of force and intimidation or deprivation of reason of said victim is irrelevant in a prosecution for this kind of offense. The absence of struggle or outcry from the victim or even her passive submission to the sexual act will not mitigate nor absolve the accused from liability.[12]

The long-settled rule is that when a victim claims that she has been raped, she says all that is necessary to show that the offense has been committed. As long as her testimony passes the test of credibility, it is given full weight and credence and may be the sole basis for conviction of the appellant.[13] In addition, the Court has held that there would be no reason for a young, innocent girl to concoct a story of defloration, allow the examination of her private parts, publicly disclose that she has been sexually abused if her motive were other than to fight for her honor and bring to justice the person who defiled her.[14] Thus, as against the victim's testimony and her positive identification of the appellant as her abuser, the denial and alibi proffered by appellant in his defense were found weak and unworthy of credit.[15]

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[11] *People vs. Apostol*, 320 SCRA 327, 339 (1999), citing *People vs. Alegado*, 201 SCRA 37, 48 (1991).

[12] *People vs. Quinagoran*, 315 SCRA 508, 517 (1999), citing *People vs. Oarga*, 259 SCRA 90, 95 (1996); See also *People vs. Henson*, 270 SCRA 634 (1997) and *People vs. Conchada*, 88 SCRA 683, 693 (1979).

[13] *People vs. Gabayron*, 278 SCRA 78, 96 (1997).

[14] *People vs. Rosales*, 313 SCRA 757, 764 (1999), citing *People vs. Buyok*, 235 SCRA 622, 628 (1994); *People vs. San Juan*, 270 SCRA 693, 705 (1997); *People vs. Escober*, 281 SCRA 498, 507 (1997).

[15] *People vs. Montefalcon*, 305 SCRA 169, 175-176 (1999).

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After a thorough review of the record, we find no reason to disturb the lower court's judgment that appellant is indeed guilty beyond reasonable doubt of sexually abusing Cristina Gajisan. The offense committed is not only attempted but consummated rape.

Cristina's birth certificate[16] and her father's testimony in open court[17] establish that Cristina was merely 10 years and 10 months old at the time she was sexually violated by appellant. The child-victim herself testified regarding her ordeal in the following straightforward and candid manner:

Q: You said that you were made to lie face down and then the accused laid on top of your back, what happened next?
A: When he was not able to enter or penetrate me in that position then he told me to kneel with my legs apart and with my hands supporting my body. (As demonstrated).

Q: Will you please demonstrate to us the position when according to you the accused made you to (*sic*) kneel?
A: *Pinadapa* (Witness demonstrating by kneeling down with her body stooped and both her arms supporting her body. The head almost touching the floor).

Q: What happened when you were in this position?
A: He went (*sic*) to my private part by means of saliva and then *he penetrated me.*

Q: *Why did you say that he penetrate (sic) you?*
A: *Because I felt pain.*[18]

x x x x x x x x x

Q: Where did you feel pain?
A: I felt that something was discharged. Something sticky was discharged.

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[16] Records, p. 10.

[17] TSN, October 21, 1997, p. 17.

[18] TSN, February 4, 1998, p. 12.

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Q: *Where did you feel pain, in what part of your body did you feel the pain?*
A: *On my private part.*[19]

It is clear from the testimony quoted above that appellant successfully deflowered Cristina by entering her from behind. Appellant's contention that his sex organ merely touched Cristina's private parts and that the latter could not have observed if he was able to penetrate her because she had her back towards him,[20] is absurd and ridiculous. Aside from being credible and truthful, Cristina's narration of the manner in which she was ravished by appellant was confirmed by the medico-legal report[21] of Dr. Mayflor C. Tirador, who found abrasions on Cristina's anus and lacerations on her hymen. When the victim's testimony is corroborated by the physician's findings of penetration, there is sufficient foundation to confirm the existence of the essential requisite of carnal knowledge.[22] Hence, the two elements of the crime charged — namely that there was carnal knowledge and the victim was below twelve (12) years old — were duly proved. Appellant was correctly found guilty of consummated statutory rape by the trial court.

However, consistent with current jurisprudence, we find that additional awards of ₱50,000 as moral damages and ₱25,000 as exemplary damages are in order. Such awards are distinct from the indemnity *ex delicto* awarded to complainant for the grave injury that she suffered because of the offense committed on her person. Exemplary damages are awarded by way of public example as a deterrence to crime and, in particular, child abuse. In this case, civil indemnity, moral damages, and exemplary damages are justifiably called for.[23]

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[19] *Id.* at 14.

[20] *Rollo*, pp. 46-47.

[21] Records, p. 9.

[22] *People vs. Rosales, supra*, note 14 at 763, citing *People vs. Castillo*, 197 SCRA 657, 662 (1991).

[23] *People vs. Sagun*, 303 SCRA 382, 398 (1999).

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WHEREFORE, the decision of the Regional Trial Court of Oriental Mindoro, Branch 43, in Criminal Case No. R-837 finding appellant VICTOR LOPEZ *Y* MANING guilty of statutory rape and sentencing him to *reclusion perpetua* is *AFFIRMED* with the *MODIFICATION* that appellant is also ordered to pay to the offended party Cristina Gajisan ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages in addition to the civil indemnity of ₱50,000.00 awarded below along with the costs.

SO ORDERED.

Bellosillo, Acting C.J., (Chairman), Austria-Martinez, and *Callejo, Sr., JJ.,* concur.

Mendoza, J., on official leave.

EN BANC

[G.R. Nos. 139788 & 139827. October 3, 2002]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROGELIO DEL AYRE** *y* **LITRAN,** *appellant.*

SYNOPSIS

For sexually violating his minor daughter Zaira M. del Ayre on February 16, 1993 and September 26, 1994, the Regional Trial Court convicted accused-appellant of two counts of rape and sentenced him to *reclusion perpetua* for one count and to death for the other. In rendering judgment against appellant, the trial court gave credence to the complainant's categorical and coherent declarations and rejected his defense of alibi.

Hence, this automatic review.

Accused-appellant questioned the sufficiency of the prosecution's evidence and the imposition of the death penalty.