



Republic of the Philippines  
**Supreme Court**  
 Manila

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**WILFREDO V. LAPITAN**  
 Division Clerk of Court  
 Third Division  
 SEP 23 2016

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff-Appellee,

**G.R. No. 200157**

Present:

VELASCO, JR., J.,  
*Chairperson,*  
 PERALTA,  
 PEREZ,  
 REYES, and  
 CAGUIOA,\* JJ.

- versus -

**JOERY DELIOLA Y BARRIDO,**  
**A.K.A. "JAKE DELIOLA,"**  
 Accused-Appellant.

Promulgated:

**August 31, 2016**

X ----- X

**DECISION**

**PEREZ, J.:**

On appeal is the 29 June 2011 Decision<sup>1</sup> of the Court of Appeals in CA-G.R. CEB CR-HC NO. 00435, affirming the 22 December 2005 Decision<sup>2</sup> of the Regional Trial Court, Branch 69, Silay City, Negros Occidental, in Criminal Case Nos. 5214-69 and 5215-69, which found accused-appellant Joery Deliola y Barrido guilty beyond reasonable doubt of two (2) counts of Statutory Rape, and sentencing him to suffer the penalty of *reclusion perpetua* in both cases.

Accused-appellant was charged with two (2) counts of Statutory Rape. The accusatory portions of the Informations narrate:

\* Additional Member per Raffle dated 15 August 2016.

<sup>1</sup> *Rollo*, pp. 2-20; Penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Portia Aliño-Hormachuelos and Nina G. Antonio-Valenzuela concurring.

<sup>2</sup> Records, pp. 116-124; Penned by Presiding Judge Felipe G. Banzon.

### Criminal Case No. 5214-69

That sometime in the month of June, 2002, in the Municipality of Manapla, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, 15 years old, with the use of a bladed weapon, through force, threat and intimidation, with the attendant qualifying aggravating circumstances of relationship and minority, the accused being the uncle of herein victim who was less than eighteen (18) years of age, did then and there, willfully, unlawfully and feloniously have carnal knowledge of one [MMM],<sup>3</sup> a minor, 11 years old, against her will, to the damage and prejudice.<sup>4</sup>

### Criminal Case No. 5215-69

That on or about the 1<sup>st</sup> day of July, 2002, in the Municipality of Manapla, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, 15 years old, with the use of a bladed weapon, through force, threat and intimidation, with the attendant qualifying aggravating circumstances of relationship and minority, the accused being the uncle of herein victim who was less than eighteen (18) years of age, did then and there, willfully, unlawfully and feloniously have carnal knowledge of one [MMM], a minor, 11 years old, against her will, to the damage and prejudice.<sup>5</sup>

On arraignment, accused-appellant entered a plea of NOT GUILTY.<sup>6</sup> At the joint pre-trial<sup>7</sup> of the cases, the following stipulation of facts were admitted: (1) that the court has jurisdiction over the case (2) the identity of accused-appellant as the accused in the two criminal cases; (3) that accused-appellant is the uncle of MMM; (4) that MMM, was 11 years old when the incidents giving rise to the present criminal actions were allegedly committed; (5) that at the time of the incidents on June and 1 July 2002, accused-appellant and MMM were neighbors; (6) that MMM was then a grade school pupil; and (7) that accused-appellant was not attending school at the time of the submitted incidents giving rise to these criminal actions. Trial on the merits ensued afterwards.

### *The Facts*

The facts culled from the records and as summarized by the Court of Appeals, are as follows:

<sup>3</sup> The real name of the victim is withheld to protect her privacy. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

<sup>4</sup> Records, p. 21.

<sup>5</sup> Id. at 22.

<sup>6</sup> Id. at 41.

<sup>7</sup> Id. at 46.



When the crime was committed, MMM was 11 years old,<sup>8</sup> while the accused-appellant, MMM's uncle,<sup>9</sup> was 15 years old.<sup>10</sup> The prosecution submits that sometime in the first week of June 2002, at about three o'clock in the afternoon, MMM went to the nipa plantation to defecate but before she was able to do so, accused-appellant, armed with a knife, suddenly appeared. He approached MMM, poked a knife at her neck, ordered her to bend over, and took off her shorts and underwear. Fearing for her life, MMM obeyed the orders of accused-appellant. MMM tried to resist but accused-appellant was still able to force his penis inside MMM's vagina. MMM felt pain and cried. After satisfying his lust, accused-appellant put on his briefs and shorts then left. When she got home, MMM immediately took a bath and noticed bloodstain on her underwear. Afraid of accused-appellant's threats of killing her, MMM kept mum and did not disclose to anyone the tragedy that happened to her that day.<sup>11</sup>

On or about the 1<sup>st</sup> day of July 2002, MMM was at the nipa plantation again when accused-appellant suddenly arrived. He poked MMM's back with a knife and threatened to stab her unless she followed accused-appellant's orders. MMM was fearful and was left with no choice but to submit to accused-appellant's commands. She was directed to bend over and to lower down her shorts and underwear. While MMM was bending over and half naked, accused-appellant held the victim's waist and inserted his penis into MMM's private part. MMM could not do anything but cry. Before leaving, he again threatened to kill MMM if she would reveal what happened between them.<sup>12</sup>

MMM still remained silent about her ordeal. However, about two weeks after the second rape, MMM's grandmother noticed that there was something unusual in the way MMM was walking. This prompted her to confront MMM.<sup>13</sup> Upon learning of what happened to MMM, the victim's aunt, brought the former to the Municipal Health Office of Manapla, Negros Occidental for examination,<sup>14</sup> and thereafter to the police authorities, before whom the victim executed her sworn statement.<sup>15</sup>

Dr. Edbert Jayme (Dr. Jayme), the Municipal Health Officer who conducted a physical and internal examination upon MMM, testified as an

<sup>8</sup> TSN, 14 October 2004, p. 3.

<sup>9</sup> TSN, 12 August 2005, p. 3.

<sup>10</sup> Id. at 2.

<sup>11</sup> TSN, 14 October 2004, pp. 5-10.

<sup>12</sup> Id. at 10-13.

<sup>13</sup> Id. at 13-14.

<sup>14</sup> Id. at 15.

<sup>15</sup> Records, pp. 2-3.

expert witness for the prosecution. Dr. Jayme's internal findings showed that the victim had positive hyperemia of the vulva or congestion, redness, and swelling around the area, which may have been caused by a blunt object such as the finger of the human being or an erect penis. The victim was also found to have a positive incomplete hymenal laceration at 3:00 and 7:00 positions, which was similarly caused by a blunt object such as the finger of the human being or an erect penis.<sup>16</sup> According to Dr. Jayme, the lacerations may have been inflicted within two weeks prior to the examination since the lacerations were fresh.<sup>17</sup> Dr. Jayme also found that the victim's vagina could admit two (2) fingers with ease, which is unusual for an 11-year old.<sup>18</sup> A Medical Certificate<sup>19</sup> dated 12 July 2002 was issued by the Municipal Health Center of Manapla.

As lone witness for the defense, accused-appellant denied raping the victim and claimed that he was fishing with his grandfather during the times MMM was raped.<sup>20</sup> He testified that he is MMM's uncle and that he was only fifteen years old when the alleged crime occurred.

### ***Ruling of the Regional Trial Court***

On 22 December 2005, the RTC rendered a Decision finding accused-appellant guilty of two counts of Statutory Rape. The dispositive portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, in Criminal Cases Nos. 5214-69 and 5215-69, this Court finds accused, JOERY DELIOLA Y BARRIDO, A.K.A. "JAKE DELIOLA", Guilty of the crimes of Rape, as defined in Article 266-A in relation to Article 266-B, paragraph 5, subparagraph 1, of Republic Act No. 8353, as his guilts had been established by the prosecution beyond any reasonable doubt.

Taking into consideration the privilege mitigating circumstance of minority, this Court, in Criminal Case No. 5214-69, sentences accused, Joery Deliola y Barrido, a.k.a. Jake Deliola, to suffer the penalty of Reclusion Perpetua, the same to be served by him at the National Penitentiary, Muntinlupa City, Province of Rizal, Philippines. Accused, Joery Deliola y Barrido, a.k.a. Jake Deliola, is, further, ordered by this Court to pay minor, [MMM], the sum of FIFTY THOUSAND PESOS (P50,000.00) as Moral Damages, and the sum of FIFTY THOUSAND PESOS (P50,000.00), all in Philippine Currency, as Exemplary Damages.

<sup>16</sup> TSN, 30 October 2003, pp. 3-7.

<sup>17</sup> Id. at 9.

<sup>18</sup> Id. at 8.

<sup>19</sup> Records, p. 5.

<sup>20</sup> TSN, 12 August 2005, pp. 2-4.

In Criminal Case No. 5215-69, this Court likewise sentences accused, Joery Deliola y Barrido, a.k.a. Jake Deliola, to suffer the penalty of Reclusion Perpetua, the same to be served by him at the National Penitentiary, Muntinlupa City, Province of Rizal, Philippines. Accused, Joery Deliola y Barrido, a.k.a. Jake Deliola, is, likewise, ordered by this Court to pay minor, [MMM], the sum of FIFTY THOUSAND PESOS (P50,000.00) as Moral Damages, and the sum of FIFTY THOUSAND PESOS (P50,000.00), all in Philippine Currency, as Exemplary Damages.

Accused, Joery Deliola y Barrido, a.k.a. Jake Deliola, is remanded to the custody of the Jail Warden of the Provincial Jail of Negros Occidental, until he is finally committed to the National Penitentiary at Muntinlupa City, Rizal.

In the service of the sentences imposed on him by this Court, accused named shall be given full credit for the entire period of his detention pending trial.<sup>21</sup>

### ***Ruling of the Court of Appeals***

The Court of Appeals, in its assailed Decision dated 29 June 2011, affirmed the judgment of conviction of the RTC. The dispositive portion of the decision reads:

WHEREFORE, the appealed decision insofar as the finding of guilt beyond reasonable doubt of accused-appellant Joery B. Deliola of the two crimes of rape in Criminal Cases No. 5214-69 and 5215-69 is AFFIRMED. However, as accused-appellant Joery Deliola y Barrido is a child in conflict with the law, the pronouncement of his sentence is hereby SUSPENDED and the case is REMANDED to the Regional Trial Court, 6<sup>th</sup> Judicial Region, Branch 69, Silay City, Negros Occidental, for appropriate disposition in accordance with Section 38 of Republic Act No. 9344. Accused-appellant is CONDEMNED to pay the victim MMM: 1) In Criminal Case No. 5214-69, the amounts of P75,000.00 as civil indemnity, P75,000.00 for moral damages, and P30,000.00 for exemplary damages; and 2) In Criminal Case No. 5215-69, the amounts of P75,000.00 as civil indemnity, P75,000 for moral damages and P30,000.00 for exemplary damages.<sup>22</sup>

Accused-appellant timely filed a Notice of Appeal. In a Resolution<sup>23</sup> dated 27 February 2012, we required the parties to submit their respective supplemental briefs. However, both parties manifested<sup>24</sup> that they are dispensing with the filing of supplemental briefs and, instead, adopting their

<sup>21</sup> Records, pp. 123-124.

<sup>22</sup> *Rollo*, p. 19.

<sup>23</sup> Id. at 24.

<sup>24</sup> Id. at 25-27 and 30-31.



respective briefs as supplemental briefs in this case.

### ***Our Ruling***

We find no reason to deviate from the findings and conclusions of the trial court, as affirmed by the Court of Appeals. His defenses of denial and alibi are bereft of merit.

### ***Statutory Rape***

Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353,<sup>25</sup> define and punish Statutory Rape as follows:

Art. 266-A. *Rape, When and How Committed.*- Rape is committed-

1) by a man who shall have carnal knowledge of a woman x x x:

x x x x

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.

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

x x x x

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

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x x

Statutory rape is committed when the prosecution proves that: (1) the offended party is under 12 years of age and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat or

<sup>25</sup> An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, Amending for the Purpose Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes; effective on October 22, 1997.



intimidation; whether the offended party was deprived of reason or consciousness; or whether it was done through fraudulent machination or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.<sup>26</sup>

The two elements were proven in the present case. The age of MMM was uncontested. In her Birth Certificate,<sup>27</sup> presented and admitted in open court,<sup>28</sup> it was indicated that she was born on 5 March 1991 and, thus, only eleven years old when the crime was committed. The only controversy left before us is whether or not accused-appellant had carnal knowledge of the victim.

### *Credibility of Witness*

Accused-appellant tried to dispute MMM's credibility by pointing out several inconsistencies in her testimony. He argued that the victim testified that on the alleged second incident of rape, on 1 July 2002, she felt no pain and her vagina did not bleed. Accused-appellant maintains that such statement is inconsistent with MMM's grandmother's claim that MMM was walking with great difficulty and pain. Accused-appellant likewise argues that given the tender age of the victim, she could have felt pain, if not suffered bleeding, even on the second incident of rape.

We disagree. It is carnal knowledge, not pain nor bleeding, which is essential to consummate rape.<sup>29</sup> It is also possible for physiological manifestations of rape, such as pain, to appear only after the incident. More importantly, the testimony of MMM's grandmother was just an observation on the victim's manner of walking. It is baseless and unreasonable to put the victim's and the grandmother's testimonies side by side and claim them to be inconsistent. Moreover, as consistently held by this Court, discrepancies and inconsistencies in the testimony of a witness referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair her credibility. If at all, they serve as proof that the witness is not coached or rehearsed.<sup>30</sup>

Accused-appellant also points out that Dr. Jayme's findings are not conclusive and that the non-intact hymen of the victim could be congenital.

<sup>26</sup> *People v. Gutierrez*, G.R. No. 208007, April 02, 2014, 720 SCRA 607, 613.

<sup>27</sup> Records, p. 4.

<sup>28</sup> TSN, 30 October 2003, p. 2.

<sup>29</sup> *People v. Quarre*, 427 Phil. 422, 434 (2002) as cited in *People v. Briosio*, 600 Phil. 530, 542 (2009).

<sup>30</sup> *People v. Gersamio*, G.R. No. 207098, 8 July 2015, 762 SCRA 390, 403.

This argument is bereft of merit. The prime consideration in the prosecution of rape is the victim's testimony, not necessarily the medical findings. Assuming *arguendo* that the non-intact hymen of the victim is congenital, this Court has consistently held that the absence of laceration in the hymen does not negate rape.<sup>31</sup> Apart from the findings of Dr. Jayme, MMM was steadfast in testifying that accused-appellant raped her twice. When a rape victim's testimony is straightforward and consistent despite grueling examination, it deserves full faith and confidence.<sup>32</sup> The victim's testimony alone, if credible, is sufficient to convict.<sup>33</sup>

Accused-appellant likewise argues that the victim's claim that she was penetrated from behind is contrary to human experience. We are not persuaded. As correctly cited by the Court of Appeals, the animal in man may come out when he commits rape such that it is not unlikely that in the process of his immersion and transformation into another character, he would prefer to mate in the way lower creatures do.<sup>34</sup>

Accused-appellant further questions the fact that the victim did not attempt to escape from her captor or even shout or call for help, and that she did not report the alleged rape to anyone after its occurrence. However, as held in the case of *People v. Rosales*:<sup>35</sup>

At any rate, it is an oft-repeated principle that not every witness to or victim of a crime can be expected to act reasonably and conformably to the usual expectations of everyone. People may react differently to the same situation. One person's spontaneous, or unthinking or even instinctive, response to a horrible and repulsive stimulus may be aggression, while another's may be cold indifference. Yet, it can never be successfully argued that the latter are any less sexual victims than the former.<sup>36</sup>

Given the nature of the crime of rape, the credible, natural, and convincing testimony of the victim alone may be sufficient to convict the accused, more so, when the testimony is supported by the medico-legal findings of the examining physician.<sup>37</sup>

MMM's testimony, positively identifying accused-appellant as the

<sup>31</sup> *People v. Tabayan*, G.R. No. 190620, 18 June 2014, 726 SCRA 587, 602.

<sup>32</sup> *People v. Suarez*, G.R. No. 201151, 14 January 2015, 746 SCRA 202, 208.

<sup>33</sup> *People v. Perez*, G.R. No. 191265, 14 September 2011, 657 SCRA 734, 743.

<sup>34</sup> *People v. Digma*, G.R. Nos. 127750-52, 20 November 2000, 345 SCRA 185, 201.

<sup>35</sup> 715 Phil. 285 (2013).

<sup>36</sup> *Id.* at 291-292.

<sup>37</sup> *People v. Jacinto*, 661 Phil. 224, 241 (2011).



person who raped her is believable. We uphold the ruling of the trial court on the credibility of MMM and the truthfulness of her testimonies, to wit:

[MMM], though a minor, thirteen (13) years old at the time she took the stand, demonstrated to this Court her capacity of observation, recollection, and communication. She showed that she can perceive, and perceiving, can make known her perception to this Court as she clearly and capably related the details of her sad and horrible experiences at the hands of the accused. She withstood a thorough and exhaustive examination. There is no doubt that she is a competent witness. (Republic vs. Court of Appeals, 349 SCRA 451, G.R. No. 116372 January 18, 2001; People vs. Rama, 350 SCRA 266, G.R. No. 136304, January 25, 2001). [MMM] gave a clear, straightforward, spontaneous, frank and consistent narrative. It was a positive and credible account she presented before this Court. There was not a motive ascribed or, in the very least, suggested by the defense that might have raised doubt on her credibility and on the credibility of the statements she made before this Court.<sup>38</sup>

We find no reason to disturb the trial court's appreciation of MMM's testimony. Deeply entrenched in our jurisprudence is the rule that the assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand, a vantage point denied appellate courts; and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court.<sup>39</sup>

Furthermore, testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity.<sup>40</sup> No young woman would admit that she was raped, make public the offense and allow the examination of her private parts, undergo the troubles and humiliation of a public trial and endure the ordeal of testifying to all the gory details, if she had not in fact been raped.<sup>41</sup>

***Denial and Alibi  
as Inherently Weak Defenses***

In contrast to MMM's direct, positive and categorical testimony and identification of her assailant, accused-appellant's bare denial and alibi could not prevail. This Court has consistently held that: "denial is an

<sup>38</sup> Records, p. 122.

<sup>39</sup> *Vidar v. People*, 625 Phil. 57, 71-72 (2010).

<sup>40</sup> *People v. Suarez*, G.R. No. 201151, 14 January 2015, 746 SCRA 202, 213.

<sup>41</sup> *People v. Nical*, G.R. No. 210430, 18 February 2015, 751 SCRA 218, 227.

intrinsically weak defense which must be supported by strong evidence of non-culpability to merit credibility. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove and for which reason it is generally rejected. For the alibi to prosper, it is imperative that the accused establishes two elements: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.<sup>42</sup> Accused-appellant failed to establish these elements. His claim that at the time of the alleged crime, he was at sea fishing with his grandfather was uncorroborated. For some reason, he did not even present his grandfather Clemente Gabayeron to testify in court. As opposed to MMM's convincing recital of facts, accused-appellant's denial and alibi will not stand.

***Time of commission  
not an essential element  
to establish rape***

Lastly, accused-appellant argues that the Information<sup>43</sup> stating that the first crime of rape was committed "sometime in the month of June 2002" is not sufficiently explicit and certain as to inform him of the date on which the criminal act was alleged to have been committed.

Accused-appellant is mistaken. This Court has repeatedly held that it is not incumbent upon the victim to establish the date when she was raped for purposes of convicting the perpetrator.<sup>44</sup> The date of commission is not an essential element of the crime of rape; what is material is its occurrence. Thus, there is no need to prove the exact date of commission; an approximation thereof will suffice.<sup>45</sup>

Moreover, the Court of Appeals correctly ruled that accused-appellant's belated objection to the Information cannot prosper, to wit:

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<sup>42</sup> *People v. Manalili*, 716 Phil. 762, 774-775 (2013).

<sup>43</sup> Records, p. 21

<sup>44</sup> *People v. Prodeciado*, G.R. No. 192232, 10 December 2014, 744 SCRA 429, 442.

<sup>45</sup> Section 6, Rule 110 of the 1997 Rules of Court:

Sec. 6. *Sufficiency of complaint or information.* — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

Moreover, accused-appellant's counsel took active part in the trial by cross-examining the prosecution witnesses on the particular dates and circumstances of the two offenses of rape as alleged in the informations without prior objection to the validity or propriety of the informations. It is now too late in the day for the accused-appellant to claim that any of the Informations was defective. Objections relating to the form of the complaint or information cannot be made for the first time on appeal. If the appellant had found the Information insufficient, he should have moved before arraignment either for a bill of particulars, for him to be properly informed of the exact date of the alleged rape, or for the quashal of the Information, on the ground that it did not conform with the prescribed form.<sup>46</sup>

### ***Penalty and Damages***

To determine the appropriate penalty, we refer to the pertinent law on the matter. According to R.A. No. 9344,<sup>47</sup> as amended:<sup>48</sup>

SEC. 6. *Minimum Age of Criminal Responsibility.* – x x x

A child is deemed to be fifteen (15) years of age on the day of the fifteenth anniversary of his/her birthdate.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

To reiterate, the law says that a minor is fifteen (15) years of age on the day of the fifteenth anniversary of his/her birth date. In A.M. No. 02-1-18-SC<sup>49</sup> dated November 24, 2009, the Supreme Court likewise defined the age of criminal responsibility as the age when a child, fifteen (15) years and one (1) day old or above but below eighteen (18) years of age, commits an offense with discernment.

<sup>46</sup> *Rollo*, p. 9.

<sup>47</sup> An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor and for Other Purposes.

<sup>48</sup> R.A. No. 10630, An Act Strengthening the Juvenile Justice System in the Philippines, Amending for the Purpose Republic Act No. 9344, Otherwise Known as the "Juvenile Justice and Welfare Act of 2006" and Appropriating Funds Therefor.

<sup>49</sup> Revised Rule on Children in Conflict with the Law, 24 November 2009.

Accused-appellant testified that he was born on 14 April 1987,<sup>50</sup> making him 15 years and 2 months old when the crime was committed. We are now left with the question of whether or not accused-appellant acted with discernment. In *People v. Jacinto*,<sup>51</sup> we explained that discernment is the mental capacity of a minor to fully grasp the consequences of his act, known and determined by taking into account all the facts and circumstances presented by the records in each case.

That the accused-appellant acted with discernment when he raped the victim is demonstrated by the following surrounding circumstances: (1) the victim was a helpless minor; (2) accused-appellant secured the consummation of the offense with a weapon; (3) he satisfied his lust by penetrating the victim from behind; and (4) he threatened the victim not to report what happened. Taking all these facts into consideration, accused-appellant clearly knew that what he did was wrong.

Considering that the qualifying circumstances of minority and relationship were alleged and proven during trial,<sup>52</sup> accused-appellant shall be criminally liable for the crime of Qualified Statutory Rape. However, given that accused-appellant was only 15 years old and 2 months when the crime was committed, the privileged mitigating circumstance of minority should be appreciated; thus, the penalty next lower in degree than that prescribed by law shall be imposed.<sup>53</sup> In accordance with the controlling jurisprudence on the matter,<sup>54</sup> for purposes of determining the proper penalty because of the privileged mitigating circumstance of minority, the penalty of death is still the penalty to be reckoned with. Thus, we affirm the ruling of the lower courts and impose upon accused-appellant the penalty of *reclusion perpetua*.

Although it is acknowledged that accused-appellant was qualified for suspension of sentence when he committed the crime, Section 40 of R.A.

<sup>50</sup> TSN, 12 August 2005, p. 9.

<sup>51</sup> *People v. Jacinto*, supra note 37 at 249.

<sup>52</sup> TSN, August 12, 2005 p. 3.

<sup>53</sup> Article 68, Revised Penal Code. *Penalty to be imposed upon a person under eighteen years of age.* - When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraphs next to the last of Article 80 of this Code, the following rules shall be observed:

1. Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.

2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

<sup>54</sup> *People v. Sarcia*, 615 Phil. 97, 120-121 (2009).

9344<sup>55</sup> provides that the same extends only until the child in conflict with the law reaches the maximum age of twenty-one (21) years old. Nevertheless, in extending the application of RA No. 9344 to give meaning to the legislative intent of the said law, we ruled in *People v. Jacinto*,<sup>56</sup> as cited in *People v. Ancajas*,<sup>57</sup> that the promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in order that he/she may be given the chance to live a normal life and become a productive member of the community.<sup>58</sup> Thus, accused-appellant is ordered to serve his sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities, in accordance with Section 51<sup>59</sup> of R.A. 9344.

Pursuant to prevailing jurisprudence,<sup>60</sup> we modify the award of damages of the lower courts. Accused-appellant is hereby ordered to indemnify MMM, the amounts of ₱75,000.00 as civil indemnity for each count of rape, ₱75,000.00 as moral damages for each count of rape, and ₱75,000.00 as exemplary damages for each count of rape. The damages awarded shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.<sup>61</sup>

**WHEREFORE**, the 29 June 2011 Decision of the Court of Appeals in CA-G.R. CEB CR-HC NO. 00435 is **AFFIRMED with MODIFICATION**. Appellant JOERY DELIOLA Y BARRIDO, A.K.A. "JAKE DELIOLA," is found **GUILTY** beyond reasonable doubt of two (2) counts of Qualified Statutory Rape and is sentenced to suffer the penalty of *reclusion perpetua* for each count of rape. Appellant is **ORDERED** to indemnify MMM the amounts of ₱75,000.00 as civil indemnity for each count of rape, ₱75,000.00 as moral damages for each count of rape, and ₱75,000.00 as exemplary

<sup>55</sup> SEC. 40. Return of the Child in Conflict with the Law to Court. - x x x

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

<sup>56</sup> Supra note 37 at 256-257.

<sup>57</sup> *People v. Ancajas*, G.R. No. 199270, 21 October 2015.

<sup>58</sup> *People v. Jacinto*, supra note 37 at 257.

<sup>59</sup> Sec. 51. *Confinement of Convicted Children in Agricultural Camps and other Training Facilities*. - A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

<sup>60</sup> *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

<sup>61</sup> *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).


damages for each count of rape. All monetary awards for damages shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

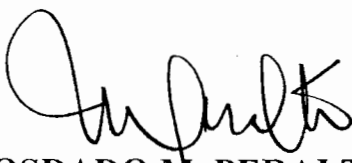
The case is hereby **REMANDED** to the Regional Trial Court, Silay City, Branch 69 for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

**SO ORDERED.**


  
**JOSE PORTUGAL PEREZ**  
Associate Justice

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

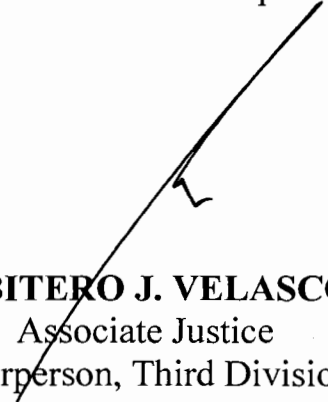
  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice


**ATTESTATION**

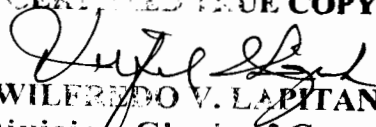
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division  
SEP 23 2016