THIRD DIVISION

G.R. No. 220145 — PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,* ***versus*** **XXX,**[1] *accused-appellant.*

Promulgated:

August 30, 2023

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CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

I concur in the result, but express my disagreement with some pronouncements in the *ponencia*. In particular, while I agree to affirm accused-appellant XXX's (XXX) conviction, the *ponencia*'s discussions pertaining to the insanity defense in criminal cases are inappropriate and unwarranted.

This case involves the rape of a mental retardate where the alleged perpetrator, XXX, is the brother-in-law of the victim, AAA[2] (the victim). XXX's wife, the sister of the victim, is an eyewitness and the principal witness for the prosecution. The prosecution also presented proof that the victim sustained "complete transection and partial laceration on [the victim's] hymenal area and fresh abrasions on her lower extremities which indicate that there was a 'definitive penetrating injury' in [the victim's] genitalia."[3]

As regards the victim's mental disability, the Information[4] only alleged that the victim had mental retardation, without alleging that her mental age was below the age of sexual consent. There was also no evidence presented

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1 Initials were used to identify accused-appellant pursuant to Supreme Court Amended Administrative Circular No. 83-2015 dated September 5, 2017 titled "Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances".

2 The identity of the victim or any information which could establish or compromise his or her identity, as well as those of his or her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, entitled "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes," approved on June 17, 1992; RA 9262, entitled "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children," effective November 15, 2004. *See* footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 (2014), *citing People v. Lomaque,* 710 Phil. 338, 342 (2013). *See also* Amended Administrative Circular No. 83-2015, entitled "Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances," dated September 5, 2017.

3 *Ponencia*, p. 3.

4 "That on or about July 1, 2008, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, willfully, unlawfully, and feloniously had carnal knowledge of his sister-in-law, private complainant [AAA] who is a mental retardate and therefore deprived of reason, to the latter's damage and prejudice." *Id.* at 2.

during trial which proves the exact mental age of the victim. During trial, the doctor only testified that the victim had "moderate retardation" and that she could not be understood when interviewed because her line of thinking was not straight.[5]

For his part, XXX denied the accusation against him and averred that the victim was like a sister to him. XXX narrated that in the morning of the day of the incident, he was at a farm. At around 7:00 a.m., he returned home and had just prepared corn at the stove when the victim suddenly embraced him. He elbowed her causing the victim to fall down and cry. It was at this point when his wife appeared with a stick, hit him on his head, and accused him of raping the victim.[6] Apart from his denial, XXX also argued that even assuming that he committed the crime, he should nevertheless be exempted from criminal liability as he himself is suffering from mild mental retardation with a mental age of a nine (9)-year-old.[7]

After trial, the trial court convicted XXX for rape, which the Court of Appeals affirmed on appeal. Thus, this case.

The *ponencia* affirms the conviction for rape as defined in Article 266-A, paragraph 1(b) of the Revised Penal Code (RPC), as amended, which provides that carnal knowledge of a woman who is deprived of reason constitutes rape. The *ponencia* explains that since there is no allegation and proof of the victim's mental age, then the conviction could not be had under paragraph 1(d) of the same article, which defines what constitutes *statutory rape*. Simply put, the absence of allegation and proof as to the victim's mental age led to XXX's conviction being one for having carnal knowledge of a woman who was "deprived of reason."[8]

I agree with the affirmance of XXX's conviction. Indeed, all the elements of the crime were established beyond reasonable doubt by the evidence presented by the prosecution. The sexual intercourse between XXX and the victim was proved not just by the positive testimony of the eyewitness, but also by the medical evidence showing that the victim sustained "fresh abrasions in her lower extremities and that there was 'definitive penetrating injury' in her genitals."[9]

I also agree that the conviction should be under Article 266-A, paragraph 1(b) of the RPC. The Court *en banc*'s ruling in *People v. Castillo*[10] (*Castillo*)—that rapes committed against victims who happen to have mental retardation should be considered statutory rape—is limited only to instances where there is a **concurrence of both allegation and proof** of the mental age

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5 *See ponencia*, pp. 8–9.
6 *Id.* at 3.
7 *Id.* at 16.
8 *See id.* at 14–15.
9 *Id.* at 7.
10 G.R. No. 242276, February 18, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66332>.

of the victim. Hence, following *Castillo*, if the victim's mental age is below the age of sexual consent, then the conviction would be for statutory rape regardless of her chronological age. However, considering that this case involves a victim whose mental age is unknown but is nevertheless proven to have mental retardation, then the conviction could not be for statutory rape but rather under the category of rapes committed against those "deprived of reason."

While I agree with the *ponencia*'s disquisitions regarding the categorization of the rape committed, I disagree with the portions of the *ponencia* discussing XXX's defense.

To recall, XXX claimed that he was "suffering from mild mental retardation with a mental age of a nine-year-old."[11] Due to this, the *ponencia* discussed at length[12] why XXX could not avail himself of the exempting circumstance of insanity.

I find these discussions unwarranted because, in my view, the appropriate discussion regarding XXX's defense should revolve around the exempting circumstance of immaturity, not insanity. Insanity as a defense is defined under Article 12, paragraph 1 of the RPC, while immaturity is defined under Article 12, paragraphs 2 and 3 of the RPC, as amended by the Juvenile Justice and Welfare Act,[13] which respectively provide:

Insanity	Immaturity
ARTICLE 12. *Circumstances Which Exempt from Criminal Liability.* — The following are exempt from criminal liability: 1. An imbecile or an insane person, **unless the latter has acted during a lucid interval**. When the imbecile or an insane person has committed an act which the law defines as a felony (*delito*), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first	ARTICLE 12. *Circumstances Which Exempt from Criminal Liability.* — The following are exempt from criminal liability: . . . . 2. A person under nine years of age. 3. A person over nine years of age and under fifteen, **unless he has acted with discernment**, in which case, such minor shall be proceeded against in accordance with the provisions of Article 80 of this Code. (Emphasis supplied)

[11] *Ponencia*, p. 16.

[12] *See id.* at 25–31.

[13] RA 9344, entitled "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," otherwise known as the "Juvenile Justice and Welfare Act of 2006," April 28, 2006.

obtaining the permission of the same court. (Emphasis supplied)	JUVENILE JUSTICE AND WELFARE ACT (REPUBLIC ACT NO. (RA) 9344, as amended by RA 10630[14]) "SEC. 6. *Minimum Age of Criminal Responsibility.* — A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act. "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." (Emphasis supplied)

While both insanity and immaturity defenses in criminal proceedings are anchored on defects in the *mens rea*, these defenses remain separate in that insanity is rooted in either the absence of freedom of action or absence of intelligence, while immaturity is always connected with the absence of intelligence. As *People v. Renegado*[15] succinctly summarized, "[i]n the eyes of the law, **insanity exists** when there is a complete deprivation of intelligence in committing the act, that is, the accused is **deprived of reason, he acts without the least discernment** because there is a complete absence of the power to discern, **or** that there is a total **deprivation of freedom of the will**."[16] In contrast, the defense of immaturity is always dependent on the presence of discernment, *i.e.*, the mental capacity of the accused to understand the difference between right and wrong.[17]

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14 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, October 3, 2013.

15 156 Phil. 260 (1974).

16 Id. at 272–273. Emphasis supplied.

17 *See Guevarra v. Almodovar*, 251 Phil. 427, 432 (1989), *citing People v. Doqueña,* 68 Phil. 580, 583 (1939).

Stated differently, the tenability of the immaturity defense revolves around the ability of the actor to exercise discernment while doing the act in question. In contrast, insanity defenses do not simply involve an analysis of the actor's intelligence; at times, it is necessary to delve into the willfulness of the person's actions. This is the reason why "insane persons" may still be criminally liable when they did the acts in question during a lucid interval.

Despite sharing certain similarities, insanity and immaturity remain to be different concepts in criminal law. This difference is the reason why the Court laid down the distinctions in *Castillo*—insanity (of the victim) is the *animus* behind paragraph 1(b) of Article 266-A of the RPC while immaturity (of the victim) is the reason for having paragraph 1(d) of the said article. To further drive home this point, the following discussions of the Court made in the case of *People v. Quintos*[18] (*Quintos*), which are likewise quoted by the Court *en banc* in *Castillo* and by the *ponencia* in this case, provide:

> **The term, "deprived of reason," is associated with insanity or madness.** A person deprived of reason has mental abnormalities that affect his or her reasoning and perception of reality and, therefore, his or her capacity to resist, make decisions, and give consent.
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> The term, "demented," refers to a person who suffers from a mental condition called dementia. Dementia refers to the deterioration or loss of mental functions such as memory, learning, speaking, and social condition, which impairs one's independence in everyday activities.
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> We are aware that the terms, "mental retardation" or "intellectual disability," had been classified under "deprived of reason." **The terms, "deprived of reason" and "demented", however, should be differentiated from the term, "mentally retarded" or "intellectually disabled."** An intellectually disabled person is not necessarily deprived of reason or demented. This court had even ruled that they may be credible witnesses. **However, his or her <u>maturity</u> is not there despite the physical age. He or she is deficient in general mental abilities and has an impaired conceptual, social, and practical functioning relative to his or her age, gender, and peers.** Because of such impairment, he or she does not meet the "socio-cultural standards of personal independence and social responsibility."
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> Thus, a person with a chronological age of 7 years and a normal mental age is as capable of making decisions and giving consent as a person with a chronological age of 35 and a mental age of 7. **Both are considered incapable of giving rational consent because both <u>are not yet considered to have reached the level of maturity</u> that gives them the capability to make rational decisions, especially on matters involving sexuality.** Decision-making is a function of the mind. Hence, a person's capacity to decide whether to give consent or to express resistance to an adult activity is determined not by his or her chronological age but by his or her mental age. Therefore, in determining whether a person is "twelve (12) years of age" under Article 266-A(1)(d), the interpretation should be in accordance

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[18] 746 Phil. 809 (2014).

> with either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established.[19] (Emphasis and underscoring supplied; citations omitted)

The very spirit that animates *Quintos* and *Castillo*—which, to stress, are themselves relied upon by the *ponencia*—should be applied here. A determination (or at least an allegation) pertaining to a person's mental age transforms the discussion from one of insanity to one of immaturity. To illustrate, when the victim's mental age is brought up, and especially when it is proven, the Court no longer inquires as to the severity of the victim's mental retardation to determine whether such retardation reaches the threshold of being "deprived of reason" under Article 266-A, paragraph 1(b) of the RPC. The entire case is then viewed from the lens of a statutory rape charge, with the mental age of the victim equated as the victim's chronological age.

It is thus incongruent for courts to follow the foregoing framework when mental age is raised on the part of the victim, and then discard it when the same thing is raised by the accused. There is simply no reason why a medical condition (*i.e.*, mental age) should all of a sudden change its nature and be treated differently simply because the one who raised it is the accused. Mental age, as *Quintos* clearly discusses above, should uniformly be treated as a matter of maturity, not sanity.

I am not unaware of *People v. Roxas*[20] (*Roxas*), where the accused therein alleged as his defense that he had a mental age of a nine (9)-year-old even while he was eighteen (18) years old at the time of the commission of the crime. There, the Court rejected his defense and held:

> Accused-appellant Roxas claims that since he has a mental age of nine years old, he should also be "exempt from criminal liability although his chronological age at the time of the commission of the crime was already eighteen years old."
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> In the matter of assigning criminal responsibility, Section 6 of Republic Act No. 9344 is explicit in providing that:
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> > SEC. 6. *Minimum Age of Criminal Responsibility.* — A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.
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> > **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

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19 *Id.* at 829–831.

20 735 Phil. 366 (2014).

> 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.
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> In determining age for purposes of exemption from criminal liability, Section 6 clearly refers to the age as determined by the anniversary of one's birth date, and not the mental age as argued by accused-appellant Roxas. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent.[21] (Emphasis in the original; citations omitted)

Roxas thus construed the amendment of RA 10630 to Section 6 of RA 9344 (the Juvenile Justice and Welfare Act) to include the text that "[a] child is deemed to be fifteen (15) years of age on the day of the fifteenth anniversary of his/her birthdate" as a categorical rejection by the courts of an accused's defense regarding his or her mental age as an exempting circumstance by reason of immaturity.

It is my considered view that the Court's reasoning in *Roxas* is flawed and does not support the conclusion that the consideration of mental age is not material to paragraphs 2 and 3 of Article 12 of the RPC, insofar as mental age pertains to a total deprivation of intelligence (*i.e.*, the ability of the accused to distinguish right and wrong). The amendments under RA 10630 merely raised the age of criminal responsibility and burden to prove discernment to fifteen (15) years old, but the reason behind the exemption of criminal liability for persons under fifteen (15) years of age remained—that they are conclusively presumed to be unable to distinguish between right and wrong.

Accordingly, had XXX been diagnosed with a mental age of an eight (8)-year-old, which is considerably advanced to be identified as an imbecile, but too juvenile to have the capacity to discern, will the *ponencia* carry on with its decision to convict XXX? To my mind, it should not. In such a case, XXX should be exempt from criminal liability because, as indicated under paragraph 2 of Article 12 of the RPC, a person under nine (9) years of age is conclusively presumed incapable of discernment. Clearly, the exempting circumstance of immaturity under paragraphs 2 and 3 of Article 12 of the RPC should be interpreted to mean either the chronological age of the accused if he or she is not suffering from intellectual disability, **or the mental age if intellectual disability is established**.

In XXX's case, the portions of the testimony quoted in the *ponencia* about the doctor's findings on XXX's mental age, as well as his determination

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[21] *Id.* at 377–378.

of whether XXX is able to discern between right and wrong[22] precisely pertain to the elements of a defense based on immaturity. The analysis determinative of XXX's guilt, therefore, is about his ability to exercise discernment, not whether he was acting during a lucid interval. To rule that XXX's defense falls under paragraph 1 of Article 12 of the RPC and yet the discussion on the merits thereof pertains to elements of paragraph 3 is to muddle and confuse the application of the law.

In light of the foregoing, it is thus my considered view that the discussion of the *ponencia* rebutting XXX's defense should revolve around immaturity, not insanity.

Based on these premises, I vote to **DISMISS** the instant appeal and **AFFIRM** XXX's conviction **with MODIFICATION** as to the amount of damages to be in line with *People v. Jugueta*.[23]

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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22 *See ponencia*, pp. 28–31.
23 783 Phil. 806 (2016).