

SECOND DIVISION

[G.R. No. 182941, July 03, 2009]

**ROBERT SIERRA Y CANEDA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

BRION, J.:

Before us is the petition of Robert Sierra y Caneda (*petitioner*) for the review on *certiorari*^[1] of the Decision^[2] and Resolution^[3] of the Court of Appeals^[4] (CA) that affirmed with modification his conviction for the crime of qualified rape rendered by the Regional Trial Court (RTC), Branch 159, Pasig City, in its decision of April 5, 2006.

THE ANTECEDENT FACTS

In August 2000, thirteen-year-old AAA^[5] was playing with her friend BBB in the second floor of her family's house in Palatiw, Pasig. The petitioner arrived holding a knife and told AAA and BBB that he wanted to play with them. The petitioner then undressed BBB and had sexual intercourse with her. Afterwards, he turned to AAA, undressed her, and also had sexual intercourse with her by inserting his male organ into hers. The petitioner warned AAA not to tell anybody of what they did.

AAA subsequently disclosed the incident to Elena Gallano (her teacher) and to Dolores Mangantula (the parent of a classmate), who both accompanied AAA to the *barangay* office. AAA was later subjected to physical examination that revealed a laceration on her hymen consistent with her claim of sexual abuse. On the basis of the complaint and the physical findings, the petitioner was charged with rape under the following Information:

On or about August 5, 2000, in Pasig City and within the jurisdiction of this Honorable Court, the accused, a minor, 15 years old, with lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his (accused) sister, AAA, thirteen years of age, against the latter's will and consent.

Contrary to law.^[6]

The petitioner pleaded not guilty to the charge and raised the defenses of denial and alibi. He claimed that he was selling cigarettes at the time of the alleged rape. He also claimed that AAA only invented her story because she bore him a grudge for the beatings he gave her. The parties' mother (CCC) supported the petitioner's story; she also stated that AAA was a troublemaker. Both CCC and son testified that the petitioner was fifteen (15) years old when the alleged incident happened.^[7]

The defense also presented BBB who denied that the petitioner raped her; she confirmed the petitioner's claim that AAA bore her brother a grudge.

On April 5, 2006, the RTC convicted the petitioner of qualified rape as follows:

WHEREFORE, in view of the foregoing, this Court finds the accused ROBERT SIERRA y CANEDA GUILTY beyond reasonable doubt of the crime of rape (Violation of R.A. 8353 in relation to SC A.M. 99-1-13) and hereby sentences the said juvenile in conflict with law to suffer the penalty of imprisonment of *reclusion perpetua*; and to indemnify the victim the amount of P75,000 as civil indemnity, P50,000 as moral damages, and P25,000 as exemplary damages.

SO ORDERED.^[8]

The petitioner elevated this RTC decision to the CA by attacking AAA's credibility. He also invoked paragraph 1, Section 6 of R.A. No. 9344 (*Juvenile Justice and Welfare Act of 2006*)^[9] to exempt him from criminal liability considering that he was only 15 years old at the time the crime was committed.

The CA nevertheless affirmed the petitioner's conviction with modification as to penalty as follows:

WHEREFORE, finding that the trial court did not err in convicting Robert Sierra, the assailed Decision is hereby **AFFIRMED** with **MODIFICATION** that Robert Sierra has to suffer the penalty of imprisonment of **RECLUSION TEMPORAL MAXIMUM**. The award of damages are likewise affirmed.

SO ORDERED.^[10]

In ruling that the petitioner was not exempt from criminal liability, the CA held:

As to the penalty, We agree with the Office of the Solicitor General that Robert is not exempt from liability. First, it was not clearly established and proved by the defense that Robert was 15 years old or below at the time of the commission of the crime. It was incumbent for the defense to present Robert's birth certificate if it was to invoke Section 64 of Republic Act No. 9344. Neither is the suspension of sentence available to Robert as the Supreme Court, in one case, clarified that:

We note that, in the meantime, Rep. Act No. 9344 took effect on May 20, 2006. Section 38 of the law reads:

SEC. 38. *Automatic Suspension of Sentence*. - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided*,

however, That suspension of sentence shall still be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court on Juveniles in Conflict with the Law.

The law merely amended Article 192 of P.D. No. 603, as amended by A.M. No. 02-1-18-SC, in that the suspension of sentence shall be enjoyed by the juvenile even if he is already 18 years of age or more at the time of the pronouncement of his/her guilt. The other disqualifications in Article 192 of P.D. No. 603, as amended, and Section 32 of A.M. No. 02-1-18-SC have not been deleted from Section 38 of Republic Act No. 9344. Evidently, the intention of Congress was to maintain the other disqualifications as provided in Article 192 of P.D. No. 603, as amended, and Section 32 of A.M. No. 02-1-18-SC. Hence, juveniles who have been convicted of a crime the imposable penalty for which is *reclusion perpetua*, life imprisonment or *reclusion perpetua* to death or death, are disqualified from having their sentences suspended.^[11]

The CA denied the petitioner's subsequent motion for reconsideration; hence, the present petition.

THE ISSUES

The petitioner no longer assails the prosecution's evidence on his guilt of the crime charged; what he now assails is the failure of the CA to apply paragraph 1, Section 6^[12] of R.A. No. 9344 under the following issues:

- (1) Whether or not the CA erred in not applying the provisions of R.A. No. 9344 on the petitioner's exemption from criminal liability;
- (2) Whether or not the CA erred in ruling that it was incumbent for the defense to present the petitioner's birth certificate to invoke Section 64 of R.A. No. 9344 when the burden of proving his age lies with the prosecution by express provisions of R.A. No. 9344; and
- (3) Whether or not the CA erred in applying the ruling in *Declarador v. Hon. Gubaton*^[13] thereby denying the petitioner the benefit of exemption from criminal liability under R.A. No. 9344.

The threshold issue in this case is the determination of who bears the burden of proof for purposes of determining exemption from criminal liability based on the age of the petitioner at the time the crime was committed.

The petitioner posits that the burden of proof should be on the prosecution as the

party who stands to lose the case if no evidence is presented to show that the petitioner was not a 15-year old minor entitled to the exempting benefit provided under Section 6 of R.A. No. 9344.^[14] He additionally claims that Sections 3,^[15] 7,^[16] and 68^[17] of the law also provide a presumption of minority in favor of a child in conflict with the law, so that any doubt regarding his age should be resolved in his favor.

The petitioner further submits that the undisputed facts and evidence on record - specifically: the allegation of the Information, the testimonies of the petitioner and CCC that the prosecution never objected to, and the findings of the RTC - established that he was not more than 15 years old at the time of the commission of the crime.

The People's *Comment*, through the Office of the Solicitor General (OSG), counters that the burden belongs to the petitioner who should have presented his birth certificate or other documentary evidence proving that his age was 15 years or below. The OSG also stressed that while petitioner is presumed to be a minor, he is disqualified to have his sentence suspended following the ruling in *Declarador v. Hon. Gubaton*.^[18]

THE COURT'S RULING

We grant the petition.

We examine at the outset the prosecution's evidence and the findings of the lower courts on the petitioner's guilt, since the petition opens the whole case for review and the issues before us are predicated on the petitioner's guilt of the crime charged. A determination of guilt is likewise relevant under the terms of R.A. No. 9344 since its exempting effect is only on the criminal, not on the civil, liability.

We see no compelling reason, after examination of the CA decision and the records of the case, to deviate from the lower courts' findings of guilt. The records show that the prosecution established all the elements of the crime charged through the credible testimony of AAA and the other corroborating evidence; sexual intercourse did indeed take place as the information charged.^[19] As against AAA's testimony, the petitioner could only raise the defenses of denial and alibi - defenses that, in a long line of cases, we have held to be inherently weak unless supported by clear and convincing evidence; the petitioner failed to present this required evidentiary support.^[20] We have held, too, that as negative defenses, denial and alibi cannot prevail over the credible and positive testimony of the complainant.^[21] We sustain the lower courts on the issue of credibility, as we see no compelling reason to doubt the validity of their conclusions in this regard.

While the defense, on appeal, raises a new ground - *i.e.*, exemption from criminal liability under R.A. No. 9344 - that implies an admission of guilt, this consideration in no way swayed the conclusion we made above, as the defense is entitled to present all alternative defenses available to it, even inconsistent ones. We note, too, that the defense's claim of exemption from liability was made for the first time in its appeal to the CA. While this may initially imply an essential change of theory that is usually disallowed on appeal for reasons of fairness, ^[22] no essential change is

really involved as the claim for exemption from liability is not incompatible with the evidence submitted below and with the lower courts' conclusion that the petitioner is guilty of the crime charged. An exempting circumstance, by its nature, admits that criminal and civil liabilities exist, but the accused is freed from criminal liability; in other words, the accused committed a crime, but he cannot be held criminally liable therefor because of an exemption granted by law. In admitting this type of defense on appeal, we are not unmindful, too, that the appeal of a criminal case (even one made under Rule 45) opens the whole case for review, even on questions that the parties did not raise.^[23] By mandate of the Constitution, no less, we are bound to look into every circumstance and resolve every doubt in favor of the accused.^[24] It is with these considerations in mind and in obedience to the direct and more specific commands of R.A. No. 9344 on how the cases of children in conflict with the law should be handled that we rule in this Rule 45 petition.

We find a review of the facts of the present case and of the applicable law on exemption from liability compelling because of the patent errors the CA committed in these regards. Specifically, the CA's findings of fact on the issues of age and minority, premised on the supposed absence of evidence, are contradicted by the evidence on record; it also manifestly overlooked certain relevant facts not disputed by the parties that, if properly considered, would justify a different conclusion.^[25]

In tackling the issues of age and minority, we stress at the outset that the ages of both the petitioner and the complaining victim are material and are at issue. The age of the petitioner is critical for purposes of his entitlement to exemption from criminal liability under R.A. No. 9344, while the age of the latter is material in characterizing the crime committed and in considering the resulting civil liability that R.A. No. 9344 does not remove.

Minority as an Exempting Circumstance

R.A. No. 9344 was enacted into law on April 28, 2006 and took effect on May 20, 2006. Its intent is to promote and protect the rights of a child in conflict with the law or a child at risk by providing a system that would ensure *that children are dealt with in a manner appropriate to their well-being through a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care.*^[26] More importantly in the context of this case, this law modifies as well the minimum age limit of criminal irresponsibility for minor offenders; it changed what paragraphs 2 and 3 of Article 12 of the Revised Penal Code (*RPC*), as amended, previously provided - *i.e.*, from "under nine years of age" and "above nine years of age and under fifteen" (who acted without discernment) - to "fifteen years old or under" and "above fifteen but below 18" (who acted without discernment) in determining exemption from criminal liability. In providing exemption, the new law - as the old paragraphs 2 and 3, Article 12 of the *RPC* did - presumes that the minor offenders completely lack the intelligence to distinguish right from wrong, so that their acts are deemed involuntary ones for which they cannot be held accountable.^[27] The current law also drew its changes from the principle of restorative justice that it espouses; it considers the ages 9 to 15 years as formative years and gives minors of these ages a chance to right their wrong through diversion and intervention measures.^[28]