

## SECOND DIVISION

[ G.R. No. 183564, June 29, 2011 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LUCRESIO ESPINA,  
APPELLANT.**

### D E C I S I O N

**BRION, J.:**

We resolve in this Decision the appeal from the April 22, 2008 decision <sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 00345. The CA affirmed with modification the judgment <sup>[2]</sup> of the Regional Trial Court (RTC), Branch 35, Ormoc City, finding appellant Lucresio Espina guilty beyond reasonable doubt of qualified rape, and sentencing him to suffer the death penalty.

On December 7, 1997, AAA, <sup>[3]</sup> together with her stepmother BBB and stepsister CCC, went to the dance hall in *Barangay* Bantigue, Isabel, Leyte, to watch the "benefit dance." <sup>[4]</sup> At around 11:00 p.m., AAA went outside the dance hall to look for her friends. Suddenly, her father, herein appellant, called from a nearby mango tree and told her that he has an errand for her. AAA went with the appellant, as bidden. When they arrived at a "distant dark place," <sup>[5]</sup> the appellant removed his short pants and brief. The appellant then removed AAA's panty, ordered her to lie down, went on top of her, and inserted his penis in her vagina. AAA shouted for help, but the appellant covered her mouth with his hands. Thereafter, the appellant ordered AAA to put her panty back on. When the appellant asked why there was so much blood in her anus, AAA replied that it came from her vagina. The appellant then threatened to kill her if she reported the incident to anyone. The appellant brought AAA to their house and ordered her to change her clothes. The appellant took AAA's clothes and hid them. Afterwards, they returned to the dance hall. <sup>[6]</sup>

At the dance hall, BBB told AAA that she had been looking for her. AAA, BBB and CCC returned to their house at around 1:00 a.m. When AAA was already asleep, DDD, the appellant's sister, told BBB to examine AAA because she noticed that the latter had difficulty climbing the stairs. BBB examined AAA's body and saw blood in her vagina. When BBB confronted AAA, the latter stated that she had been molested by the appellant. <sup>[7]</sup> In the early morning of December 8, 1997, BBB accompanied AAA to the Municipal Health Center of Isabel, Leyte, where the latter was examined by Dr. Refelina Cerillo. <sup>[8]</sup>

The prosecution charged the appellant before the RTC with the crime of rape. <sup>[9]</sup> The appellant denied the charge against him and claimed that he had a drinking session with his friends at the house of Melanio Velasco on the day of the incident. According to him, he fell asleep on a grassy area and woke up at 8:00 a.m. of the next day. <sup>[10]</sup>

The RTC found the appellant guilty beyond reasonable doubt of qualified rape, and sentenced him to suffer the death penalty. It also ordered the appellant to pay the victim P50,000.00 as civil indemnity and P50,000.00 as moral damages. [11]

On appeal, the CA affirmed the RTC judgment, with the following modifications: (1) the penalty of death is reduced to *reclusion perpetua*; (2) the amount of civil indemnity is increased to P75,000.00; (3) the amount of moral damages is increased to P75,000.00; and (4) the appellant is further ordered to pay the victim P25,000.00 as exemplary damages. [12]

We **DENY** the appeal but modify the designation of the crime committed, the penalty imposed, and the amount of the awarded exemplary damages.

For a charge of rape to prosper under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that (1) **the offender had carnal knowledge of a woman**; and (2) he accomplished such act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or **when she was under 12 years of age** or was demented. [13]

Sexual intercourse with a girl below 12 years old is *statutory rape*. In this type of rape, force and intimidation are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. [14]

In her testimony dated May 19, 1999, AAA positively identified the appellant as the one who raped her. Her testimony was clear and straightforward; she was consistent in her recollection of the details of her sexual abuse. In addition, her testimony was corroborated by the medical findings of Dr. Cerillo.

We, likewise, find unmeritorious the appellant's twin defenses of denial and alibi. Denial could not prevail over the victim's direct, positive and categorical assertion. Significantly, the appellant admitted that he was in *Barangay Bantigue* when the incident happened. It is settled that alibi necessarily fails when there is positive evidence of the physical presence of the accused at the crime scene or its immediate vicinity. [15]

The prosecution, therefore, positively established the elements of statutory rape under Article 266-A(d) of the Revised Penal Code. *First*, the appellant succeeded in having carnal knowledge with the victim. Not only did AAA identify her father as her rapist, she also recounted the sexual abuse in detail, particularly how her father inserted his penis into her vagina. *Second*, the prosecution established that AAA was below 12 years of age at the time of the rape. During the pre-trial, the parties admitted that AAA was "only 11 years old at the time of the commission of the crime." [16] AAA herself testified that she was born on October 26, 1986, and was 11 years old when she was raped. This testimony was corroborated by her stepmother, BBB.

Under Article 266-B of the Revised Penal Code, the death penalty shall be imposed when the victim is below 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. As earlier stated, the