



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **14 June 2021** which reads as follows:*

“G.R. No. 254929 (People of the Philippines v. Vivencio Remulta y Rosaroso). - The Court NOTES:

1. the letter¹ dated March 29, 2021 of CTSSupt. Albert C. Manalo, LLB, Officer-in-Charge, Inmate Document and Processing Division, Bureau of Corrections, Muntinlupa City, confirming the confinement of accused-appellant Vivencio Remulta y Rosaroso (accused-appellant) at the said institution since December 7, 2018;

2. the manifestation² dated May 18, 2021 of the Office of the Solicitor General (OSG), stating that pursuant to OSG Office Order Nos. C-919-21 and C-920-21, C-921-21 and C-941-21, the OSG implemented a work-from-home arrangement for all its employees from March 12, 2021 to May 14, 2021; that on March 28, 2021, Metro Manila was placed on Enhanced Community Quarantine from March 29, 2021 to April 11, 2021 and on Modified Enhanced Community Quarantine from April 12, 2021 to April 30, 2021, which was then extended from May 1, 2021 to May 14, 2021; and that due to the foregoing, the OSG was constrained to file and serve its manifestation and motion in lieu of supplemental brief via electronic mail; with attached printed copy thereof;

3. the aforesaid manifestation³ (in lieu of supplemental brief) dated April 23, 2021 of the OSG, dispensing with the filing of supplemental brief as the facts, issues, and pertinent arguments involved in the present appeal had been succinctly discussed in its brief filed before the Court of Appeals; and

4. the manifestation⁴ (in lieu of supplemental brief) dated March 24, 2021 of the Public Attorney’s Office, adopting their brief filed before the Court of Appeals as accused-appellant’s supplemental brief since the same had adequately discussed all the matters pertinent to the defense.

¹ *Rollo*, p. 24.

² *Id.* at 31-33.

³ *Id.* at 34-35.

⁴ *Id.* at 44-45.

A/IV

After a judicious study of the case, the Court resolves to **DISMISS** the appeal⁵ for failure to sufficiently show that the Court of Appeals committed any reversible error in affirming the conviction of accused-appellant of the crime of Simple Rape, as defined and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code (RPC).

‘For a charge of Rape by sexual intercourse under Article 266-A (1) of the RPC, as amended by RA 8353,⁶ to prosper, the prosecution must prove that: (a) the offender had carnal knowledge of a woman; and (b) he accomplished this act under the circumstances mentioned in the provision, *e.g.*, through force, threat or intimidation. The gravamen of Rape is sexual intercourse with a woman against her will.’⁷

In this case, the Court agrees with the findings of the courts *a quo* that the prosecution was able to prove beyond reasonable doubt that accused-appellant had carnal knowledge of AAA,⁸ then a 14-year-old minor, through force and intimidation. It is settled that a young girl would not concoct a sordid tale of a crime as serious as rape, allow the examination of her private part, and subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice. Here, there is no plausible reason why AAA would testify against accused-appellant, who is her mother’s long-time live-in partner, imputing to him the grave crime of Rape, if this crime did not happen.⁹

On a related matter, Article 266-B of the RPC provides that rape becomes qualified if, *inter alia*, ‘the victim is below 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.’ On this note, case law instructs that in order to appreciate the qualifying circumstance of minority and relationship in the crime of Rape, the same must be

⁵ Id. at 19-20.

⁶ Entitled, ‘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,’ as approved on September 30, 1997.

⁷ *People v. Ejercito*, 834 Phil. 837, 844, citing *People v. Bagamano*, 793 Phil. 602, 608 (2016).

⁸ The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled ‘AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, 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 THEREFORE, 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’ (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.) To note, the unmodified CA Decision was not attached to the records to verify the real name of the victim.

⁹ See *People v. De Guzman*, G.R. No. 234190, October 1, 2018, citing *People v. Comboy*, 782 Phil. 189, 198 (2016).

alleged in the information and proven during trial.¹⁰ In *People v. Lapore*,¹¹ the Court reiterated the importance of alleging the presence of qualifying and aggravating circumstances in the complaint or information against an accused, and discussed the effect of the failure to do so, to wit:

Sections 8 and 9 of Rule 110 of the [Revised] Rules on Criminal Procedure provide that for qualifying and aggravating circumstances to be appreciated, it must be alleged in the complaint or information. This is in line with the constitutional right of an accused to be informed of the nature and cause of the accusation against him. Even if the prosecution has duly proven the presence of the circumstances, the Court cannot appreciate the same if they were not alleged in the Information. Hence, although the prosecution has duly established the presence of the aforesaid circumstances, which, however, were not alleged in the Information, this Court cannot appreciate the same.¹² (Emphasis and underscoring supplied)

In this case, while it was proven during trial that accused-appellant was the live-in partner of AAA's mother, such relationship, however, was not alleged in the Information. To be sure, the accusatory portion of the information readily shows that it was only able to allege the fact of minority, and glaringly omitted the relationship between accused-appellant and the victim:

That on March 6, 2018, at [REDACTED], Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA, 14 years old, minor, without the latter's consent, to the damage and prejudice of said AAA.¹³

In view of the foregoing, accused-appellant can only be convicted of Simple Rape, and be penalized accordingly.

WHEREFORE, the Court **ADOPTS** the findings of fact and conclusions of law in the Decision¹⁴ dated July 3, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 12249 and **AFFIRMS** said Decision finding accused-appellant Vivencio Remulta y Rosaroso **GUILTY** beyond reasonable doubt of the crime of Simple Rape, as defined and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code. Accordingly, he is sentenced to suffer the penalty of

¹⁰ 'Rape is qualified and punished with death when committed by the victim's parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or by the common-law spouse of the victim's parent. However, an accused cannot be found guilty of qualified rape unless the information alleges the circumstances of the victim's over 12 years but under 18 years of age and her relationship with him. The reason is that such circumstances alter the nature of the crime of rape and increase the penalty; hence, they are special qualifying circumstances. As such, both the age of the victim and her relationship with the offender must be specifically alleged in the information and proven beyond reasonable doubt during the trial; otherwise, the death penalty cannot be imposed.' (*People v. Arcillas*, 692 Phil. 40, 52 [2012]; citations omitted)

¹¹ 761 Phil. 196, 203 (2015).

¹² Id; citations omitted.

¹³ *Rollo*, pp. 4-5.

¹⁴ Id. at 4-18. Penned by Associate Justice Jhosep Y. Lopez (now a member of the Court) with Associate Justices Ricardo R. Rosario (now a member of the Court) and Bonifacio S. Pascua, concurring.

June 14, 2021

reclusion perpetua and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. In addition, all monetary awards shall earn a legal interest at the rate of six percent (6%) per annum from the date of finality of this Resolution until full payment.

SO ORDERED.” (Rosario and Lopez, J. Y., *JJ.* no part due to their prior actions in the Court of Appeals; Inting and Gaerlan, *JJ.* designated additional members per Raffle dated February 1, 2021 and Special Order. No. 2823-X dated May 28, 2021, respectively.)

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court
 13 JUL 2021 7/12

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THE DIRECTOR (reg)

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*CTSSUPT. ALBERT C. MANALO (reg)

Officer-in-Charge
 Inmate Document and
 Processing Division
 Bureau of Corrections
 Muntinlupa City

HON. PRESIDING JUDGE (reg)

Regional Trial Court, Branch 96
 Catanauan, Quezon
 (Crim. Case No. 18-0023-CAT)

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*For this resolution only

Please notify the Court of any change in your address.
 GR254929. 6/14/2021(191)URES