

EN BANC

**G.R. No. 254878 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee,
v. BBB254878, Accused-appellant.**

Promulgated:

October 22, 2024

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CONCURRING AND DISSENTING OPINION

DIMAAMPAO, J.:

I concur with the majority's view insofar as it finds accused-appellant BBB254878 guilty beyond reasonable doubt of the crime of rape. Nonetheless, I submit that he can only be convicted of simple rape since the allegations in the Information are not specific enough to satisfy the special qualifying circumstance of relationship under Article 266-B, paragraph 1¹ of the Revised Penal Code (RPC), as amended by Republic Act No. 8353.²

The accusatory portion of the *Information* reads:

The undersigned hereby accuses BBB254878 of Bgy. [REDACTED]
[REDACTED] City, Eastern Samar of the crime of Statutory Rape, committed as follows:

That sometimes [sic] [i]n September, 2010 in the evening at Bgy. [REDACTED]
[REDACTED] City, 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 [AAA], a minor being 8 years old only and his own niece [sic], against her will and consent, to the damage and prejudice of the herein victim.

CONTRARY TO LAW.³

The *ponencia* held that the foregoing averments are sufficient to qualify the crime of rape, ratiocinating as follows:

While there is diverse jurisprudence on the matter, the use of specific familial terms, like niece or uncle, is *adequate* to inform the accused of the nature of the relationship between him and the victim, thereby meeting the requirements of the law. There is no ambiguity in the case. The Information *explicitly* stated that: (1) AAA was only 8 years old when the incident happened, and (2) AAA is accused-appellant's own niece. While the Information did not specify the degree of relationship between AAA and

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;

² Republic Act No. 8353 (1997), 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, The Anti-Rape Law of 1997.

³ *Ponencia*, p. 2.

accused-appellant, it nevertheless *directly*, and in layman's terms, conveyed the nature of the relationship. Verily, a description that *clearly* and *categorically* identified AAA as accused-appellant's niece satisfies the requirement to inform him fully and prepare a defense. By clearly defining the familial relationship, the prosecution ensures that the accused-appellant is properly *apprised* of the accusation, fulfilling the principles of fairness and due process.⁴

I respectfully dissent.

It is hornbook doctrine that the qualifying circumstance of minority of the victim and her relationship to the offender **must be specifically alleged in the Information** and proven during trial.⁵ If the offender "is merely a relation — not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim — **it must be alleged in the information that he is 'a relative by consanguinity of affinity ... within the third civil degree.'**"⁶ The failure to do so means that the Information would be considered defective, a conclusion that has been consistently affirmed by the Court.⁷ Hence, when the Information, for instance, merely states that the accused is the "uncle of the complainant," the same cannot be used to qualify the crime of rape even if it was proven during trial that he was indeed the victim's relative by affinity within the third civil degree.⁸

Applying these well-settled principles, it follows that the allegation in the Information that AAA, was BBB254878's "own niece," without particularly stating that such relationship was within the third civil degree of affinity or consanguinity, cannot qualify the crime of rape in the instant case.

The foregoing notwithstanding, the *ponencia* anchors its ruling on cases such as *People v. Abat*,⁹ the 2020 case of *People v. XXX*,¹⁰ and the 2022 case of *People v. XXX*.¹¹ The *ponencia* posits that in these cases, the respective accused were convicted of qualified rape *sans* the specific averment that their relationship with the victim was within the third civil degree.¹²

In my humble view, a close reading of these cases — at least the last two that are more recent — reveals that the respective Informations therein included additional details which actually indicated the degree of the relationship involved. For reference, they were worded as follows:

⁴ *Id.* at 9.

⁵ See *People v. Flores*, G.R. No. 188315, August 25, 2010 [Per J. Perez, First Division].

⁶ See *People v. Libo-on*, G.R. No. 136737, May 23, 2001 [Per J. Gonzaga-Reyes, *En Banc*].

⁷ *Id.*

⁸ *Id.*

⁹ 731 Phil. 304 (2014) [Per J. Leonardo De Castro, First Division].

¹⁰ 886 Phil. 155 (2020) [Per CJ Peralta, First Division].

¹¹ G.R. No. 257276, February 28, 2022 [Per J. Hernando, Second Division].

¹² *Ponencia*, pp. 8-9.

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<i>People v. XXX</i> ¹³ (2020 case)	<i>People v. XXX</i> ¹⁴ (2022 case)
That sometime during the month of April 2000 at _____, Philippines, the above named accused, by means of force and intimidation, and exercising moral ascendancy over one [AAA] <u>since he is her maternal uncle</u> , did then and there willfully, unlawfully and feloniously have carnal knowledge of the said [AAA], his very own niece and a minor seven (7) years of age at the time (born May 19, 1993), against the will of the offended party, to her damage and prejudice.	That on or about the 8th day of August 2009 in the _____, 4 and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], 5 a minor 7 years old (sic) aggravated by relationship, the accused being the uncle of the victim <u>because accused is the brother of the victim's father</u> .
CONTRARY TO LAW. (Underscoring supplied.)	CONTRARY TO LAW. (Underscoring supplied.)

In addition to the fact that the Informations provided that both accused were the uncles of their respective victims, it is crystal clear that the express mention of additional factors, *i.e.*, the term “maternal” and the qualifier that the “accused is the brother of the victim’s father,” highlighted the relationship of the accused with one of the victim’s parents. In contrast, the Information herein simply mentioned that AAA was BBB254878’s own niece, absent any elucidation on the latter’s relationship with the former’s father or mother.

Appositely, the present disposition **completely overlooks the Court’s recognition of the importance of including additional elements in the Information.** To my mind, this is precisely the import of the Court’s disquisition in the 2022 case of *People v. XXX*,¹⁵ which did not deviate from the general rule that the relationship must be averred with specificity, *viz.*:

However, contrary to the finding of the CA, We hold that the special qualifying circumstance of relationship was sufficiently alleged in the Information. Indeed, the minority of the victim and his or her relationship with the offender should both be alleged in the Information and proven beyond reasonable doubt during trial in order to qualify the rape charge as these circumstances have the effect of altering the nature of the rape and its corresponding penalty. If the offender is merely a relation — not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim — it must be alleged in the information that he is “a relative by consanguinity or affinity (as the case may be) within the third civil degree.” The allegation that accused-appellant is the uncle of AAA, and a brother of AAA’s father, without specifically alleging that such relationship was within the third civil degree, is specific enough to satisfy the special qualifying circumstance of relationship. In *People v. XXX*, the Court considered the qualifying circumstance of relationship even without the specific allegation that the same was within the third civil degree of consanguinity or affinity,

¹³ 886 Phil. 155 (2020) [Per CJ Peralta, First Division].

¹⁴ G.R. No. 257276, February 28, 2022 [Per J. Hernando, Second Division].

¹⁵ *Id.*

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since the information therein already described the offender as the “maternal uncle” of the victim. In the same manner, the Information in the instant case contained a statement that “the accused being the uncle of victim because accused is the brother of the victim’s father.” Hence, accused-appellant can be properly convicted of Qualified Rape.¹⁶ (Underscoring supplied. Citations omitted.)

Likewise, I am mindful that the Court has previously defined the term “niece” as the “female child of a brother or sister, or the daughter of one’s brother or sister, or of one’s brother-in-law or sister-in-law” in the case of *People v. Gonzales*.¹⁷ Nonetheless, a reading of the relevant cases decided since its promulgation suggests that the Court has adopted and applied the stringent rule earlier discussed.

For instance, in the *en banc* case of *People v. Ugang*,¹⁸ the Court convicted the accused-appellant of simple rape despite the allegation in the Information that the victim was “his 18 years old mentally ill niece.”¹⁹ The Court declared that the Information merely stated that the victim was the accused-appellant’s niece and did “not state the specific degree of their relationship.”²⁰ Likewise, in *People v. Talan*,²¹ accused was found guilty of simple rape since the Information only provided that the person he abducted and raped was his “niece” without specifying that they were relatives within the third degree of consanguinity.²²

In *People v. Esperanza*,²³ the Court sitting *en banc* illuminated why the use of the term “niece,” by itself, is not enough to qualify the crime of rape—

The twin circumstances of minority and relationship under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, are in the nature of qualifying circumstances because they alter the nature of the crime of rape and increase the penalty. As special qualifying circumstances they must be specifically pleaded or alleged with certainty in the information; otherwise, the death penalty cannot be imposed. In these cases, the allegation that Irma is Nelson’s niece is not specific enough to satisfy the special qualifying circumstance of relationship. If the offender is merely a relation — not a parent, ascendant, step-parent, guardian, or common law spouse of the mother of the victim — the specific relationship must be alleged in the information, i.e., that he is “a relative by consanguinity or affinity [as the case may be] within the third civil degree.” The informations in these cases merely allege that Irma is the “niece” of Nelson. She could be a niece beyond the third civil degree either of consanguinity or affinity.

¹⁶ *Id.*

¹⁷ G.R. No. 133859, August 24, 2000 [*Per Curiam, En Banc*].

¹⁸ G.R. No. 144036, May 7, 2002 [*Per CJ Davide Jr., En Banc*].

¹⁹ *Id.*

²⁰ *Id.*

²¹ G.R. No. 177354, November 14, 2008 [*Per J. Carpio, First Division*].

²² *Id.*

²³ G.R. Nos. 139217-24, June 27, 2003 [*Per CJ Davide Jr., En Banc*].

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Hence, the informations are fatally defective in this respect.²⁴ (Underscoring supplied. Citation omitted.)

Notably, the aforementioned explanation disproves the claim that the term “niece” is a simple and concise term that no longer requires any specificity.

Finally, in the recent case of *People v. XXX265439*,²⁵ the Court, in no uncertain terms, decreed that that the Court of Appeals erred in qualifying the crime of rape since the “qualifying circumstance of relationship, however, was not sufficiently alleged in the Informations.” The Court observed that it merely averred that accused the had carnal knowledge of his niece; it did not specifically state that the accused was a relative of the victim by consanguinity or affinity within the third civil degree. For reference, one of the Informations therein was worded in the following prose:

Criminal Case No. 11082-G

That on February 19, 2010 at on or about 4:00 in the afternoon in _____, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a seventeen years (*sic*) old who acted with discernment, with lewd design, did then and there willfully, knowingly and feloniously have carnal knowledge to (*sic*) his niece [AAA265439] a nine (9) years (*sic*) old female child by inserting his penis inside her vagina, against her will and to her damage and prejudice.

Contrary to law.²⁶ (Underscoring supplied)

Significantly, the Court reverberated its pronouncement in *People v. Estrada*,²⁷ where the term “uncle of the offended party” was likewise deemed insufficient to qualify the crime of rape.

Given the foregoing disquisitions, I submit that the special qualifying circumstance of relationship cannot be used to qualify the crime of rape in this instance by virtue of the lack of specificity of the contents of the present Information. Accordingly, I agree with the Court of Appeals that BBB254878 can only be convicted of statutory rape.²⁸

A final cadence. Considering that the present case was resolved through an unsigned resolution, the doctrine espoused in the aforementioned cases of *People v. Ugang*,²⁹ *People v. Talan*,³⁰ *People v. Esperanza*,³¹ and *People v.*

²⁴ *Id.*

²⁵ G.R. No. 265439, November 13, 2023 [Per J. Lazaro-Javier, Second Division].

²⁶ *Id.*

²⁷ G.R. No. 178318, January 15, 2010 [Per J. Del Castillo, Second Division].

²⁸ *Ponencia*, pp. 4-5.

²⁹ G.R. No. 144036, May 7, 2002 [Per CJ Davide Jr., *En Banc*].

³⁰ G.R. No. 177354, November 14, 2008 [Per J. Carpio, First Division].

³¹ G.R. Nos. 139217-24, June 27, 2003 [Per CJ Davide Jr., *En Banc*].

XXX265439,³² — all full blown Decisions of the Court — appears to remain as the prevailing rule. Fortunately, this view helps avoid the absurd situation where the Court's resolution on whether the crime of rape should be qualified is dependent on whether the Information used the term "niece" or "uncle" to describe the relationship. To reiterate, prevailing case law still does not consider the term "uncle," *sans* additional details, specific enough to satisfy the special qualifying circumstance of relationship.

All told, I vote to **DISMISS** the instant appeal. The Decision dated July 7, 2020 of the Court of Appeals in CA-G.R. CEB CR-HC No. 03014 should be affirmed *in toto*.


JAPAR B. DIMAAMPAO
Associate Justice

³² G.R. No. 265439, November 13, 2023 [Per J. Lazaro-Javier, Second Division].