

COMMENTS ON THE RULE ON EXAMINATION OF A CHILD WITNESS

Justice Oscar M. Herrera, Quezon City: Rex Book Store, Inc., 2008. Pp. ix, 281

APRIL A. GERERO*

By virtue of the rule-making power¹ granted to the Supreme Court emanating from the Constitution together with our country's adoption, as the 31st signatory, to the United Nations Convention on the Rights of the Child² (Convention) which embodies an all-inclusive affirmation and worldwide recognition of children's rights, our Supreme Court promulgated the Rule on Examination of A Child Witness (Rule) which acknowledges the special concerns of child witnesses that need to be addressed while testifying before criminal, civil, legislative, or administrative proceeding. In compliance with its task to promulgate special rules of procedures for the disposition of family cases with the best interest of the child and the protection of the family as primary consideration taking into account the Convention the main objectives of the said Rule are to "create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of the truth." With the adoption of said Rule, the Supreme Court effectively conceded that our regular court procedures are by and large outlined with the adults as the prime consideration, and hence to accommodate the singular needs of the child witness, without bending the judicial neutral stance, modification of the same is in order.

The author identified five important laws involving the protection of a child. These are Republic Act No.7610,³ Presidential Decree No. 603,⁴ Republic Act

* UST Law Review - Articles Editor

¹ CONST. art VIII, §5 (5). The Supreme Court shall have the following powers: xx Promulgate rules concerning the protection and enforcement of constitutional rights xxx and legal assistance to the underprivileged.

² Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

³ An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And For Other Purposes (1992).

⁴ The Child and Youth Welfare Code (1974).

No. 9262,⁵ Republic Act No. 9344⁶ and Republic Act No. 8369.⁷ He however noted that there are substantial modifications in the abovementioned laws with regard to right to appeal from pronouncement of judgment, right to bail, criminal responsibility, treatment of children below the age of criminal responsibility, the right to bail and recognizance in appropriate cases and the applicability of the Rule to particular cases.

In construing the Rule, the paramount consideration shall be the best interest of the child. This is in conformity with the mandate of the Convention and the declaration of state policies in the Family Court Law wherein the protection of the rights of the child and promotion of their welfare, taking into account their peculiar circumstances shall be the supreme concern. As pointed out by Chief Justice Puno, “the doctrine of Best Interest of the Child enshrined in the Philippine jurisprudence long before the Convention on the Rights of the Child came to pass, became the linchpin of the Philippine judicial system in its reform initiatives for children.” It is respectfully submitted that the standard of “best interest of the child” in the system of adjudication for youthful offenders can also be sustained by doctrine of *parens patriae*, or the important duty of the government to act for the State as guardian of the rights of the people. Thus the case of *Cabanas v. Pilapil*,⁸ the Supreme Court held that the judiciary, as an agency of the State acting as *parens patriae*, is called upon whenever a pending suit or litigation affects one who is a minor to accord priority to his best interest. The said prerogative is also considered as inherent in the supreme power of every State.

Under the Rule, there is a presumption of competency in favor of the child that he is qualified to be a witness. If substantial doubt exists regarding the ability of the child to perceive, remember, distinguish truth from falsehood, the court shall,

⁵ An Act Defining Violence Against Women And Their Children, Providing For The Protective Measures For Victims, Prescribing Penalties Therefore, And For Other Purposes (2004).

⁶ An Act Establishing A Comprehensive Juvenile Justice And Welfare System, Creating The Juvenile Justice And Welfare Council Under The Department of Justice, Appropriating Funds Therefore And For Other Purposes (2006).

⁷ An Act Establishing Family Courts, Granting Them Exclusive Original Jurisdiction Over The Child And Family Cases, Amending Batas Pambansa 129, As Amended (1997).

⁸ 58 SCRA 94 (1974), at 99.

upon the motion of a party, or *motu proprio*, conduct competency examination of the child. As the age of the child by itself is not a satisfactory ground for competency a test, the duty to ascertain the credibility of the child lies with the trial judge since he had the occasion to observe the behavior of the child or his perceptible intelligence or lack of it.

It can be observed that the author, Justice Herrera, took pain in discussing the Child Hearsay exception rule and videotaped and/or audiotaped in-depth disclosure interview in child abuse cases which are both admissible in evidence subject to compliance with the conditions prescribed by the Rule. Under the Child Hearsay exception rule, a statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, maybe admitted in evidence in any criminal or non-criminal proceedings subject to well-defined rules, since it was pointed out, "that in cases of child abuse, the child's out-of-court statements may be the most compelling evidence available." This provision is a divergence from the deeply entrenched exceptions under the Rules of Procedures but it must be stressed that the same has a very restricted application. In the investigative disclosure interview of the child abuse victim, the author expressed his concern on the dangers of suggestive interviews and biased interviewers which may impair the reliability and veracity of the child's disclosure as children can promptly come to make artificial narration of their harmful experiences. The author of this book review shares with the fear expressed by Justice Herrera on this point since when sexual abuse is alleged, the child may be repetitively interrogated and asked of leading questions by adults who presume that the abuse occurred and may even supply information to the child about what supposedly happened. Through this method, the interviewer may unconsciously uphold simulated abuse stories which are forcefully made part of the child's memory. According to *The Journal of Credibility Assessment and Witness Psychology* published by the Department of Psychology of Boise State University, the interviewer should ask open-ended questions and encourage the child to provide a free narrative. Details should be encouraged by responses such as "and then what happened." Pressure and coercion, leading questions and selective reinforcement of responses, and invalidated

techniques must be avoided. The child should be discouraged from trying to answer questions when the answer is not known.

In sum, the Rule on Examination of a Child Witness is a commendable boost to revolutionize the Rules of Procedure in order to protect and accommodate the weak, the vulnerable and the frail on one end, at the same time respecting the rights of the accused to confront and cross-examine his adverse witness on the other without the judicial balance of neutrality being slanted in favor of any side. It is respectfully submitted that the safeguards extended to the child witness must not come to a halt beyond the doors of the courtroom. The government's witness protection program should also have special terms to respond to the complex needs of the child witness. Worth noting is the suggestion of Commission on Human Rights Chairwoman Leila de Lima, in a hearing before the House of Representatives Justice Committee regarding a bill strengthening the witness protection program to the effect that "there must be a provision fully highlighting the needs and special concerns of child witnesses." The State's obligation to protect the defenseless does not terminate when the courtroom doors shut for the stealthy predator may just be waiting outside, standing by, and ready to attack the unwary.