



Republic of the Philippines
 Supreme Court
 Manila

CERTIFIED TRUE COPY

 WILFREDO V. LAPIDAN
 Division Clerk of Court
 Third Division
 JUL 18 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 209344

Present:

- versus -

VELASCO, JR., J., *Chairperson,*
 PERALTA,
 PEREZ,
 MENDOZA,* and
 REYES, JJ.

**JAIME BRIOSO alias TALAP-
 TALAP,**

Promulgated:

Accused-Appellant.

June 27, 2016

x----------x

DECISION

PERALTA, J.:

Before the Court is an ordinary appeal filed by accused-appellant Jaime Brioso (*Brioso*) assailing the Decision¹ of the Court of Appeals (CA), dated March 22, 2013, in CA-G.R. CR-H.C. No. 05234, which affirmed with modification the Decision² of the Regional Trial Court (RTC) of Baler, Aurora, Branch 96, in Criminal Case No. 2795, finding Brioso guilty of the crime of statutory rape, in relation to Republic Act No. 7610 (*RA 7610*), and imposing upon him the penalty of *reclusion perpetua*.

The antecedents are as follows:

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated February 14, 2016.

¹ Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Amy C. Lazaro-Javier and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 2-15.

² Penned by Judge Corazon D. Soluren, CA *rollo*, pp. 14-23.

Around 5 o'clock in the afternoon of May 31, 2001, the victim, AAA,³ who was then four (4) years old,⁴ was playing at the basketball court near their house located at Barangay Dimanayat, San Luis, Aurora. Accused-appellant then approached and asked her to go with him to a nearby mango tree where he promised to give her candies. When AAA agreed, accused-appellant took her hand and led her to the mango tree which was near his house. Upon reaching the mango tree, accused-appellant immediately removed AAA's short pants and panty then proceeded to mash her private organ and inserted his finger into her vagina. Thereafter, accused-appellant made her lie down on the ground and inserted his penis into her vagina. Accused-appellant warned AAA not to tell anybody about what he did to her, otherwise he will kill her. Stricken by fear, AAA went home without telling anybody about her ordeal. However, the next morning, AAA's mother, BBB, observed that her daughter had difficulty urinating. She examined AAA's vagina and found that it was swollen. BBB then cleaned AAA's sex organ and asked her the reason why it was swollen. AAA then told BBB that accused-appellant molested her. Upon learning about what happened to her daughter, BBB brought her child to one of their Barangay Kagawads to report the incident. The following morning, the Barangay Kagawad accompanied AAA and BBB to the Office of the Department of Social Welfare and Development in San Luis where AAA related her ordeal and again pointed to accused-appellant as the culprit. They were then brought to the local police station where a criminal complaint was filed against accused-appellant. There, the authorities gathered information regarding AAA's molestation where AAA reiterated her statements. Thereafter, AAA was examined by a medical doctor who prepared a medico-legal report.

Subsequently, the Office of the Provincial Prosecutor of Aurora filed an Information⁵ with the RTC of Baler, charging accused-appellant with the crime of statutory rape, the pertinent portions of which read as follows:

x x x x

That in, about or sometime on the last week of May, 2001, in Barangay Dimanayat, San Luis, Province of Aurora, and within the jurisdiction of this Honorable Court, said accused Jaime Brioso alyas (sic) "Talap-talap", did then and there wilfully (sic), unlawfully and feloniously with lewdness mashed and inserted a finger into the vagina of a four (4) – year-old child [AAA] and have carnal knowledge of the said minor child against her will.

x x x⁶

³ The initials AAA represent the private offended party, whose name is withheld to protect her privacy. Under Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), the name, address, and other identifying information of the victim are made confidential to protect and respect the right to privacy of the victim.

⁴ See Exhibit "C", records, p. 7.

⁵ Records, p. 1.



The Information was initially sent to the archives because the authorities were not able to arrest accused-appellant. Eventually, on October 5, 2007, accused-appellant was arrested. He was arraigned on October 25, 2007 wherein he pleaded not guilty.⁷

In his defense, accused-appellant denied the allegations of the prosecution and raised the defense of alibi.

Pre-trial was conducted on April 16, 2008.⁸ Thereafter, trial ensued.

On August 24, 2011, the RTC rendered its Decision finding accused-appellant guilty as charged, the dispositive portion of which reads as follows:

WHEREFORE, under the above premises, this Court hereby finds JAIME BRIOSO GUILTY beyond reasonable doubt of the crime of Statutory Rape under Article 266-A (1) (d) of the Revised Penal Code, in relation to R.A. 7610, and hereby sentences him to suffer the penalty of *reclusion perpetua* and to pay to [AAA] the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages.

SO ORDERED.⁹

The RTC gave full credence to the testimony of AAA holding that she testified on the rape that happened to her in a straightforward and credible manner. The RTC also cited the findings of the medico-legal which corroborated the testimony of AAA. The trial court did not give weight to accused-appellant's defense of alibi because the place where he claims to be at the time of the rape is just a few minutes walk from the scene of the crime, hence, it is not physically impossible for him to be at the said scene at the time of the commission of the rape. The RTC further held that AAA positively identified accused-appellant as the one who raped her.

Accused-appellant appealed the RTC Decision with the CA.¹⁰

On March 22, 2013, the CA promulgated its assailed Decision affirming the judgment of the RTC *in toto*.

The CA held, among others, that: it found no reason to depart from the findings of the RTC regarding the credibility of AAA; AAA's delay in

⁶ *Id.*

⁷ See RTC Order dated October 25, 2007, *id.* at 21.

⁸ See Pre-Trial Order, *id.* at 51-54.

⁹ Records, p. 265.

¹⁰ See Notice of Appeal, *id.* at 269.

reporting her rape may not be construed as indication of a false accusation; under the Rules of Court, a child of tender years may be asked leading questions; accused-appellant failed to allege and prove any improper motive on AAA's part to falsely accuse him of rape.

On April 11, 2013, accused-appellant, through counsel, filed a Notice of Appeal manifesting his intention to appeal the CA Decision to this Court.¹¹

In its Resolution dated May 3, 2013, the CA gave due course to accused-appellant's Notice of Appeal and directed its Judicial Records Division to elevate the records of the case to this Court.¹²

Hence, this appeal was instituted.

In a Resolution¹³ dated December 4, 2013, this Court, among others, notified the parties that they may file their respective supplemental briefs, if they so desire.

In its Manifestation¹⁴ dated February 17, 2014, the Office of the Solicitor General (*OSG*) informed this Court that it will no longer file a supplemental brief because it had already adequately addressed in its brief filed before the CA all the issues and arguments raised by accused-appellant in his brief.

In the same manner, accused-appellant filed a Manifestation in Lieu of Supplemental Brief¹⁵ dated March 4, 2014, indicating that he no longer intends to file a supplemental brief and is adopting his brief, which was filed with the CA, as his supplemental brief as it had adequately discussed all the matters pertinent to his defense.

Accused-appellant's basic contention is that he was wrongly convicted because the prosecution failed to prove his guilt beyond reasonable doubt. In support of his claim, he posits the following arguments: (1) AAA's unexplained delay of five (5) days in reporting her alleged rape to her mother, as well as her failure to immediately identify accused-appellant as the supposed perpetrator of the crime, greatly affects her credibility; (2) AAA's credibility is also subject to question considering her failure to clearly narrate her alleged rape during her testimony in court and that what she did was merely to confirm the leading questions propounded to her by

¹¹ CA rollo, pp. 147-149.

¹² *Id.* at 154.

¹³ *Rollo*, p. 21.

¹⁴ *Id.* at 24-27.

¹⁵ *Id.* at 28-30.

the prosecutor; (3) AAA's actuations immediately after her supposed rape, wherein she showed no outrage or fear towards accused-appellant, are not the natural reaction of the victim of a crime.

The appeal lacks merit.

The pertinent provisions of Articles 266-A of the Revised Penal Code, as amended, provide:

Art. 266-A Rape; When And How Rape is Committed. -

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x

Statutory rape is committed when: (1) the offended party is under twelve (12) years of age; and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation, whether the victim was deprived of reason or consciousness, or whether it was done through fraud or grave abuse of authority.¹⁶ It is enough that the age of the victim is proven and that there was sexual intercourse.¹⁷

This Court has consistently held that “rape under Article 266-A(1)(d) of the Revised Penal Code, as amended, is termed statutory rape as it departs from the usual modes of committing rape.”¹⁸ What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old.¹⁹ Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place.²⁰ The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child’s consent is immaterial because of her presumed incapacity to discern good from evil.²¹

¹⁶ *People v. Gutierrez*, G.R. No. 208007, April 2, 2014, 720 SCRA 607, 613.

¹⁷ *Id.*

¹⁸ *Id.*, *People v. Vergara*, 724 Phil. 702, 708 (2014); *People v. Teodoro*, 622 Phil. 328, 327 (2009).

¹⁹ *People v. Gutierrez*, *supra* note 16.

²⁰ *Id.*

²¹ *Id.*

Moreover, under Article 266-B, the penalty for statutory rape is death if, among others, the victim is below seven (7) years old, thus:

ART. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x

5. When the victim is a child below seven (7) years old.

x x x x

In the present case, both the RTC and the CA found that the prosecution was able to prove beyond reasonable doubt all the elements of statutory rape and this Court finds no cogent reason to depart from these findings, as will be discussed below.

Accused-appellant's arguments in the instant appeal basically harp on the alleged loopholes, inconsistencies and improbabilities in the testimonies of the victim and her mother which supposedly cast doubt on their credibility as witnesses.

Settled is the rule that testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has, in fact, been committed.²² When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true.²³ Youth and immaturity are generally badges of truth and sincerity.²⁴ Considering that AAA was only four (4) years old when she was raped and was only eleven (11) years old when she took the witness stand, she could not have invented a horrible story.

Besides, the testimony of AAA is corroborated by the findings of the physician who examined her indicating “swelling and tenderness of the *labia majora*,” “swelling, redness and tenderness of the *labia minora*,” “whitish discharge from the vaginal os,” “multiple erosions at the perineum and *labia minora*,” “broken hymen at the 4 & 5 o'clock positions.”²⁵ When asked about her findings, the physician concluded “that there was a penetration of the

²² *People v. Piosang*, 710 Phil. 519, 526 (2013).

²³ *Id.*

²⁴ *Id.*

²⁵ See Medico-Legal Report, Exhibit “B,” records, p. 6.

area causing all these erosions, all these wounds [and] lacerations and there was a penetration of something that was hard breaking into the hymen.”²⁶ Thus, the RTC and the CA are correct in concluding that both the victim’s positive testimony and the findings of the medico-legal officer complemented each other in the conclusion that accused-appellant had sexual intercourse with the victim.

The Court is neither persuaded by accused-appellant’s argument that AAA’s unexplained delay of five (5) days in reporting the rape to her mother greatly affects her credibility. This Court has repeatedly held that delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim.²⁷ AAA’s delay in reporting the incidents to her mother or the proper authorities is insignificant and does not affect the veracity of her charges. It should be remembered that accused-appellant threatened to kill her if she told anyone of the incident. This Court has explained why a rape victim’s deferral in reporting the crime does not equate to falsification of the accusation, to wit:

The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain rather than reveal their shame to the world or risk the offenders’ making good their threats to kill or hurt their victims.²⁸

Further, it has been written that a rape victim’s actions are oftentimes overwhelmed by fear rather than by reason.²⁹ It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness.³⁰ Moreover, delay in reporting an incident of rape is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant.³¹ It is likewise settled in jurisprudence that human reactions vary and are unpredictable when facing a shocking and horrifying experience such as sexual assault, thus, not all rape victims can be expected to act conformably to the usual expectations of everyone.³² In the instant case, AAA, being only four (4) years old at the time that she was violated and threatened with death if she reports the incident, would naturally be cowed into silence because of fear for her life.

²⁶ TSN, September 11, 2008, p. 8.

²⁷ *People v. Buclao*, G.R. No. 208173, June 11, 2014, 726 SCRA 365, 378.

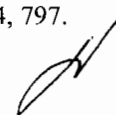
²⁸ *People v. Pareja*, G.R. No. 202122, January 15, 2014, 714 SCRA 131, 154; *People v. Ogarte*, 664 Phil. 642, 661 (2011).

²⁹ *People v. Buclao*, *supra* note 27, at 378-379.

³⁰ *Id.*

³¹ *People v. Velasco*, G.R. No. 190318, November 27, 2013, 710 SCRA 784, 797.

³² *Id.*



Accused-appellant also contends that AAA's credibility is again put into question because she failed to clearly narrate her alleged rape during her testimony in court and that what she did was merely to confirm the leading questions propounded to her by the prosecutor.

The Court does not agree. The Court quotes with approval the CA's ruling, thus:

Also, that AAA was unable to narrate the rape with ease without the leading questions propounded by the prosecutor and the trial court is not unnatural. To be sure, a court cannot expect a rape victim to remember every ugly detail of the appalling outrage, especially so since she might in fact have been trying not to remember them. Thus, it is palpable that AAA remembered the painful sexual intercourse forced upon her by the accused-appellant. She just did not want to replay the whole rape in her mind and simply gave her terse but sufficient answers to the questions posed by the prosecution and the trial judge during her direct examination.³³

Rape is a painful experience which is oftentimes not remembered in detail.³⁴ For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget.³⁵ Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.³⁶

As to the leading questions asked by the prosecutor during AAA's direct examination, it is too late in the day for accused-appellant to object to the manner of questioning adopted by the public prosecutor. Accused-appellant should have interposed his objections in the course of the oral examination of AAA, as soon as the grounds therefor became reasonably apparent.³⁷ As it were, he raised not a whimper of protest as the public prosecutor recited his offer or propounded questions to AAA. Worse, accused-appellant subjected AAA to cross-examination on the very matters covered by the questions being objected to;³⁸ therefore, he is barred from arguing that the victim was "only made to confirm the leading questions propounded to her which are all in line with the theory of the prosecution."

Moreover, it is true that, as a rule, leading questions are not allowed in direct examination. However, Section 10 (c) of Rule 132 allows leading questions to be asked of a witness who is a child of tender years, especially

³³ *Rollo*, p. 12.

³⁴ *People v. Pareja*, *supra* note 28, at 148.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *People v. Santos*, 590 Phil. 564, 582 (2008).

³⁸ TSN, August 7, 2008, pp. 12-18.

when said witness has difficulty giving an intelligible answer, as when the latter has not reached that level of education necessary to grasp the simple meaning of a question, moreso, its underlying gravity. This exception is now embodied in Section 20³⁹ of the Rule on Examination of a Child Witness, which took effect on December 15, 2000. Under Section 4 thereof, a child witness is any person who at the time of giving testimony is below the age of eighteen (18) years. In the instant case, AAA was only eleven (11) years old when she took the witness stand. Thus, the decision of the RTC to allow the prosecution to ask AAA leading questions is justified.

Accused-appellant likewise posits that AAA's actuations immediately after her supposed rape, wherein she showed no outrage or fear towards accused-appellant, and that her belated display of fear when she took the witness stand seven years after the crime was supposedly committed are not the natural reaction of the victim of a crime.

However, this Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped.⁴⁰ AAA's conduct, *i.e.*, nonchalance or indifference in the presence of the accused-appellant immediately after the latter supposedly raped her, is also not enough to discredit her. As earlier stated, victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations.⁴¹ It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim.⁴² One cannot be expected to act as usual in an unfamiliar situation as it is impossible to predict the workings of a human mind placed under emotional stress.⁴³ Moreover, it is wrong to say that there is a standard reaction or behavior among victims of the crime of rape since each of them had to cope with different circumstances.⁴⁴

Anent accused-appellant's defense of alibi, the Court, likewise, quotes the findings and conclusions of the CA with approval, to wit:

x x x [A]ccused-appellant's defense of alibi deserves scant consideration.

For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. Physical impossibility refers not only to the geographical distance between the place where the accused was and the place where the crime was committed when the crime transpired, but more

³⁹ Sec. 20. *Leading questions.* – The court may allow leading questions in all stages of examination of a child if the same will further the interests of justice.

⁴⁰ *People v. Pareja, supra* note 28, at 153.

⁴¹ *Id.*

⁴² *Id.* at 153-154.

⁴³ *Id.* at 154.

⁴⁴ *Id.*



importantly, the facility of access between the two places. Due to its doubtful nature, alibi must be supported by clear and convincing proof.

In the instant case, the accused-appellant failed to demonstrate that it was physically impossible for him to be at the mango tree where the rape of AAA took place. It would indeed be too fragile an *alibi* for an accused to establish such impossibility where the *locus delicti* and the house of Pedro Esplana – the place where he was supposedly having a drinking spree with friends – are **located in the same barangay**.

x x x⁴⁵

At this juncture, it bears to reiterate the rule that in criminal cases, an examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion, as an appeal in criminal cases throws the whole case open for review, it being the duty of the court to correct such error as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not.⁴⁶ Consistent with this rule, the Court digresses from the rulings of the RTC and the CA finding accused-appellant guilty only of the crime of statutory rape, as the Court finds that accused-appellant was, in fact, charged and proven guilty of two counts of rape.

A perusal of the Information filed against accused-appellant would show that he was charged with two offenses, the first of which is rape under paragraph 1 (d), Article 266-A of the RPC, as amended, and the second is rape as an act of sexual assault under paragraph 2, Article 266-A of the same law. Accused-appellant was charged of having carnal knowledge of AAA, who was under twelve years of age at the time, under paragraph 1 (d) of Article 266-A, and he was also charged of committing rape through sexual assault by inserting his finger into the genital of AAA under the second paragraph of Article 266-A, pertinent portions of which provide as follows:

Art. 266-A Rape; When And How Rape is Committed. –

x x x x

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person

x x x x

⁴⁵ *Rollo*, p. 14.

⁴⁶ *People v. Bonaagua*, 665 Phil. 750, 766 (2011); *People v. Lindo*, 641 Phil. 635, 647 (2010).

Indeed, two instances of rape were proven at the trial. *First*, it was established that accused-appellant inserted his penis into the private part of his victim, AAA. *Second*, through the testimony of AAA, it was proven that accused-appellant also inserted his finger in AAA's private part. Pertinent portions of the said testimony read as follows:

x x x x

PROS. Casar

You said that you are afraid of Talaptalap. Why are you afraid of him?

A (No answer from the witness)

THE COURT:

Put it on record that the child is crying.

PROS. Casar

Please tell us why are you afraid of Talaptalap? Is it because he did something to you?

A Yes, sir.

PROS. Casar

What did he do to you?

THE COURT:

Put it on record that the child is still crying.

PROS. Casar

What did he do to you?

A (No answer from the witness)

THE COURT:

You ask her direct questions, fiscal.

PROS. Casar

Did he "hipo" your "pekpek"?

A Yes, sir.

PROS. Casar

Will you please demonstrate to us how did he make "hipo" with your "pekpek"?

A (No answer from the witness).

PROS. Casar

Did Talaptalap lower your panty and short before he made "hipo" you?

A Yes, sir.

PROS. Casar

And after lowering your lower garments you said he made "hipo" you, how did he "hipo" you?

A (No answer from the witness)

PROS. Casar

After lowering your shorts and your panty did he use his hands in making "hipo" with your "pekpek?"

A Yes, sir.

PROS. Casar

Did he insert his fingers into your "pekpek?"

A Yes sir.

PROS. Casar

You said he inserted his fingers into your vagina. How about his penis, did he also insert his penis inside your vagina or to your "pekpek?"

A (No answer from the witness)

PROS. Casar

Did he insert his penis inside your vagina?

A Yes, sir.

PROS. Casar

After inserting his penis into your vagina what else did he do to you?

A (No answer from the witness)

PROS. Casar

Were you hurt because he inserted his finger into your vagina?

A Yes, sir.

PROS. Casar

Did you cry because you got hurt?

A Yes, sir.

PROS. Casar

What did he tell you? Did he tell you not to tell anybody what he has done to you?

A Yes, sir.

PROS. Casar

That is the reason why it take you (sic) hard time in telling us what you have told us?

A Yes, sir.⁴⁷

The Information has sufficiently informed accused-appellant that he is being charged with two counts of rape. It is true that Section 13, Rule 110 of the Revised Rules of Criminal Procedure requires that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." However, Section 3, Rule 120 of the same Rules, as well as settled jurisprudence, also states that "[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each

⁴⁷ TSN, August 7, 2008, pp. 7-9.

offense."⁴⁸ Consequently, since accused-appellant failed to file a motion to quash the Information, he can be convicted with two counts of rape.

As to the penalty for the rape committed by accused-appellant under paragraph 1 (d), Article 266-A of the RPC, as amended, Article 266-B of the same Code provides that the death penalty shall be imposed if the victim is a child below seven years old. However, following Republic Act No. 9346 (RA 9346),⁴⁹ the RTC, as affirmed by the CA, correctly imposed upon accused-appellant the penalty of *reclusion perpetua* in lieu of death, but it should be specified that it is without eligibility for parole,⁵⁰ as the RTC did not state it in the dispositive portion of its Decision.

With respect to the penalty for rape through sexual assault under paragraph 2, Article 266-A of the RPC, it is undisputed that at the time of the commission of the sexual abuse, AAA was four (4) years old. This calls for the application of Republic Act No. 7610 (R.A. 7610), or *The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*, which defines sexual abuse of children and prescribes the penalty therefor in Section 5 (b), Article III, to wit:

SEC. 5. *Child Prostitution and Other Sexual Abuse.* – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That **the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.**⁵¹

The abovequoted paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also

⁴⁸ *People, et. al. v. Court of Appeals, 21st Division, Mindanao Station, et. al.*, G.R. No. 183652, February 25, 2015, 751 SCRA 675, 714-715; *People v. Ching*, 661 Phil. 208, 220 (2011).

⁴⁹ *An Act Prohibiting the Imposition of Death Penalty in the Philippines.*

⁵⁰ Pursuant to the Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties (A.M. No. 15-08-02-SC, dated August 4, 2015).

⁵¹ Emphasis supplied.

with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one – through coercion, intimidation or influence – engages in sexual intercourse or lascivious conduct with a child.

In connection with the above provision of law, Section 2 (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases,⁵² which was promulgated pursuant to Section 32 of R.A. No. 7610, defines "Lascivious conduct" as:

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.

In the present case, AAA was four years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, accused-appellant was aptly prosecuted under paragraph 2, Article 266-A of the RPC, as amended, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is *prision mayor*, considering that AAA was below twelve (12) years of age at the time of the commission of the offense, and considering further that accused-appellant's act of inserting his finger in AAA's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period.

Thus, as held in *People v. Ching*:⁵³

The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article [336 of the Revised Penal Code, as amended by R.A. No. 8353], in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."

⁵² Adopted on October 11, 1993.

⁵³ *Supra* note 48.

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.⁵⁴

Hence, accused-appellant should be meted the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.

As to accused-appellant's civil liabilities, it is settled that an award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering.⁵⁵ Exemplary damages are also called for, by way of public example, and to protect the young from sexual abuse.⁵⁶

The RTC and the CA awarded in AAA's favor the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages for the rape committed under paragraph 1 (d) of Article 266-A. In recent rulings of this Court,⁵⁷ the amounts of civil indemnity, moral damages and exemplary damages have been increased in cases where the penalty for the crime committed is death which, however, cannot be imposed because of RA 9346. In the most recent case of *People v. Ireneo Jugueta*,⁵⁸ the increase in the amounts of civil indemnity, moral damages and exemplary damages has been explained in detail. As it now stands, in cases of simple or qualified rape, among others, where the imposable penalty is death but the same is reduced to *reclusion perpetua* because of RA 9346, the amounts of civil indemnity, moral damages and exemplary damages are pegged uniformly at ₱100,000.00. Thus, the awards of civil indemnity, moral damages and exemplary damages, given to AAA, should be increased to ₱100,000.00 each.

With respect to the rape through sexual assault under paragraph 2, Article 266-A, accused should pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, in accordance with prevailing jurisprudence.⁵⁹

⁵⁴ *Id.* at 222-223.

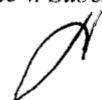
⁵⁵ *People v. Piosang*, *supra* note 22, at 530.

⁵⁶ *Id.*

⁵⁷ *People v. Nilo Colentava*, G.R. No. 190348, February 9, 2015, 750 SCRA 165, 186; *People v. Gambao, et al.*, 718 Phil. 507, 531 (2013).

⁵⁸ G.R. No. 202124, April 5, 2016.

⁵⁹ *People v. Ricalde*, G.R. No. 211002, January 21, 2015, 747 SCRA 542, 568; *People v. Subesa*, 676 Phil. 403, 418 (2011); *People v. Bonaagua*, *supra* note 46, at 772.



The Court additionally orders accused-appellant to pay interest of six percent (6%) *per annum* from the finality of this judgment until all the monetary awards for damages are fully paid, in accordance with prevailing jurisprudence.⁶⁰

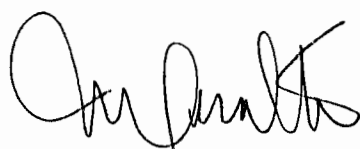
WHEREFORE, the instant appeal is **DISMISSED** and the Decision dated March 22, 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 05234 is hereby **AFFIRMED** with the following **MODIFICATIONS**:

1. Accused-appellant JAIME BRIOSO, alias Talap-Talap, is found guilty of Statutory Rape under paragraph 1 (d), Article 266-A of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is **ORDERED** to **PAY** the victim, AAA, the increased amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.


2. Accused-appellant is also found guilty of Rape Through Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code, in relation to Republic Act No. 7610, and is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. He is **ORDERED** to **PAY** AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

3. Accused-appellant is additionally **ORDERED** to **PAY** the victim interest of six percent (6%) *per annum* on all damages awarded from the date of finality of this Decision until fully paid.

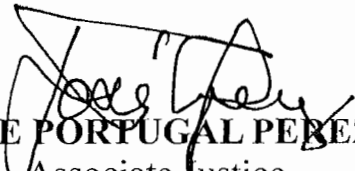
SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice


WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

⁶⁰ *People v. Obaldo Bandril y Tabling*, G.R. No. 212205, July 6, 2015.

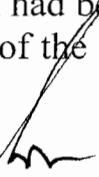

JOSE PORTUGAL PEREZ
 Associate Justice


JOSE CATRAL MENDOZA
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice

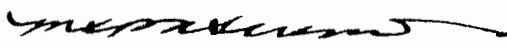
ATTESTATION

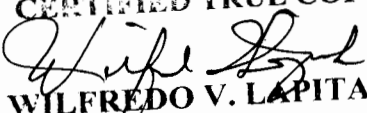
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
 Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

JUL 18 2016

