



SUPREME COURT OF THE PHILIPPINES
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**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

**THE PEOPLE OF THE
PHILIPPINES,**
Plaintiff-Appellee,

G.R. NO. 235662

Present:

CARPIO, *Chairperson*
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, *JJ.*

- versus -

XXX,
Accused-Appellant.

Promulgated:

24 JUL 2019

[Signature]

X-----X

DECISION

LAZARO-JAVIER, J.:

Prefatory

This appeal assails the Decision¹ dated August 3, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08486 entitled "*People of the Philippines v. XXX,*" convicting appellant XXX of two (2) counts of qualified rape and one (1) count of lascivious conduct.

¹ Penned by Associate Justice Normandie B. Pizarro with the concurrence of Associate Justices Danton Q. Bueser and Marie Christine Azcarraga-Jacob, all members of the Eleventh Division, *CA rollo*, pp. 102-120.

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The Proceedings Before the Trial Court

The Charges

Appellant XXX was indicted for two (2) counts of rape in Criminal Case Nos. 08-0581-2013 (rape of his daughter AAA) and 08-0631-2013 (rape of his daughter BBB), viz:

Criminal Case No. 08-0581-2013

That on or about the 14th day of March, 2009 in [REDACTED], Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, through force, threat, or intimidation, being the father of AAA and who was charged for the crime of Attempted Rape docketed under Criminal Case No. 02-0127-2013, motivated by lust and lewd designs and taking advantage of the vulnerability of said AAA, a fifteen (15) year old minor, without any justifiable cause, did then and there willfully, unlawfully, and feloniously have carnal knowledge with said minor, against her will and consent, which acts debased, degraded or demeaned her intrinsic worth and dignity as a human being.

Contrary to law.²

x x x

Criminal Case No. 08-0631-2013

That sometime in 2009 at [REDACTED], Lipa City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, the biological father of BBB, without any justifiable cause with intent to abuse, arouse and gratify for sexual desire, through force, threat and intimidation or grave abuse of authority, did then and there willfully, unlawfully and feloniously have carnal knowledge of said BBB, a fourteen (14) years old minor, against her will and consent, which acts, debase, humiliate, degrade and demean the intrinsic worth and dignity of said BBB.

The aggravating/qualifying circumstance of minority, the victim being under 18 years of age, and the offender being the biological father of the victim, attended the commission of the offense.

Contrary to law.³

Additionally, in Criminal Case No. 08-0630-2013, appellant was indicted for lascivious conduct on his daughter BBB, viz:

Criminal Case No. 08-0630-2013

That sometime in 2009 at [REDACTED], Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the father of BBB, without any justifiable cause, with intent

² CA rollo, p. 47.

³ *Id.*

to abuse, arouse and gratify his sexual desire, did then and there willfully, unlawfully and feloniously commit lascivious conduct upon said BBB, a fourteen (14) year old minor, by touching her private parts, kissing her lips and breast and trying to insert his penis into her vagina, which acts debase, humiliate, degrade and demean the intrinsic worth and dignity of said BBB.

Contrary to law.⁴

The three (3) cases were consolidated before the Regional Trial Court, Branch 13, Lipa City.

On arraignment, appellant pleaded not guilty to all three (3) charges.⁵ The cases were, thereafter, jointly tried.

The Prosecution's Evidence

Complainants AAA and BBB are appellant's daughters with MMM. AAA was born on August 12, 1993,⁶ and BBB, on February 7, 1996.⁷ Appellant was a tricycle driver while their mother, MMM, was an Overseas Filipino Worker.⁸

AAA testified that on March 14, 2009, she was alone with appellant in their home. He brought her to a room, laid her down on the bed, and undressed her. Appellant took off his shorts and inserted his penis into her vagina. She felt pain and blood came out of her vagina and she could not do anything. After sexually ravishing her, appellant told her to put on her dress while he also put on his shorts. Appellant also promised to give her money.⁹

AAA further recounted that appellant sexually abused her many times more but she could not remember the dates. In some instances, her younger sister BBB was even in the room. She kept her silence for three (3) years because her mother MMM did not believe her. Eventually, she left their house and told her aunt what appellant had done to her. Her aunt rescued her.¹⁰

While intensely crying, BBB testified that sometime in 2009, she and appellant were left alone in their house. Appellant asked her if she wanted money then suddenly pulled down her shorts and panty and raised her t-shirt, exposing her breasts. She resisted but appellant did not stop touching and kissing her private parts. He then took off his t-shirt, shorts, and brief. As he was about to insert his penis into her vagina, CCC, her younger brother arrived. Appellant hurriedly dressed and told her to do the same.¹¹

⁴ *Id.*

⁵ *Id.* at 48.

⁶ RTC Record (Folder 1), p. 10.

⁷ RTC Record (Folder 2), p. 132.

⁸ CA *rollo*, p. 48.

⁹ *Id.* at 49.

¹⁰ *Id.*

¹¹ *Id.*

BBB added that appellant would usually move from his room into theirs while they were asleep. Appellant would usually lie beside them and touch her and AAA's private parts. Eventually, he would have carnal knowledge of her even though AAA and CCC were in the same room. She knew that appellant also raped AAA. Appellant would wake her up by holding her hands while raping AAA. They could not do anything because they were so scared of appellant.¹²

The prosecution and the defense stipulated that AAA and BBB are appellant's legitimate children.¹³

The Defense's Evidence

Appellant denied the charges. He claimed he was at work during those times when he allegedly raped and sexually molested his daughters. His daughters were very mad at him because he had another woman. His wife was also mad at him so she asked their daughters to concoct the charges against him.¹⁴

The Trial Court's Ruling

By Decision¹⁵ dated June 21, 2016, the trial court found appellant guilty of two (2) counts of rape and one (1) count of lascivious conduct. The trial court gave full faith and credence to the respective testimonies of AAA and BBB on how each of them was sexually ravished by their own father. BBB was also credited for giving credible and positive testimony on how appellant performed lascivious conduct on her sometime in 2009. In light of the positive and categorical testimonies of these children, the trial court rejected appellant's unsubstantiated defense of alibi. The trial court decreed:

WHEREFORE, in view of all the foregoing and the prosecution having established to a moral certainty the guilt of the accused **XXX**, the Court hereby finds said accused **GUILTY** beyond reasonable doubt as principal, for two (2) counts of *Rape* under Article 266-A of the *Revised Penal Code* and for *Lascivious Conduct* under *Section 5 (b) of Republic Act No. 7610* otherwise known as the "*Special Protection of Children against Abuse, Exploitation, and Discrimination Act*" and hereby sentences him as follows:

1. In **Criminal Case No. 08-0581-2013** to suffer the penalty of *Reclusion Perpetua* without eligibility of parole and to pay the minor victim AAA the sum of Seventy Five Thousand Pesos (Php 75,000.00) as civil indemnity, Seventy Five Thousand Pesos (Php 75,000.00) as

¹² *Id.* at 49-50.

¹³ *Id.* at 50.

¹⁴ *Id.*

¹⁵ *Id.* at 46-56.

moral damages and Thirty Thousand Pesos (Php 30,000.00) as exemplary damages.

2. In **Criminal Case No. 08-0630-2013**, to suffer the penalty of imprisonment of Ten (10) years and One (1) day of *Prision Mayor*, as minimum, to Seventeen (17) years and Four (4) months of *Reclusion Temporal*, as maximum. Accused is likewise ordered to pay **BBB** the sum of Fifteen Thousand Pesos (Php 15,000.00) as moral damages.

3. In **Criminal Case No. 08-0631-2013**, to suffer the penalty of *Reclusion Perpetua* without eligibility of parole and to pay the minor victim **BBB** the sum of Seventy Five Thousand Pesos (Php 75,000.00) as civil indemnity, Seventy Five Thousand Pesos (Php 75,000.00) as moral damages and Thirty Thousand Pesos (Php 30,000.00) as exemplary damages.

The period which the accused has undergone preventive imprisonment during the pendency of these cases shall be credited to him provided he agreed in writing to abide by and comply strictly with the rules and regulations imposed upon committed prisoners.

The Jail Warden of the Bureau of Jail Management and Penology (BJMP), Lipa City, Batangas, is hereby directed to immediately commit herein accused to the National Penitentiary, Muntinlupa City, for him to serve his sentence.

SO ORDERED.¹⁶

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction against him despite the following alleged circumstances: a) he was not armed when the alleged incidents happened; b) mere moral ascendancy should not prevail over his presumption of innocence; and c) the comportment of AAA and BBB in resuming their usual routines and not asking for help belies the charges against him. They did not fight back, shout, or strongly resist his supposed sexual advances. It was also remarkable that AAA and BBB did not immediately report what they had experienced to their mother MMM.¹⁷

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General John Emmanuel Madamba and Associate Solicitor Dominic Victor C. De Alban, riposted that complainants' failure to immediately report the sex crimes perpetrated on them by appellant is not enough to discredit them. The truth is, they reported the same to their mother way before but the latter did not believe them. Their three (3) years of suffering in silence before they jointly mustered the courage to report

¹⁶ *Id.* at 55-56.

¹⁷ *Id.* at 27-45.

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appellant's despicable crimes is understandable. To begin with, it was unreasonable to demand a standard rational reaction to a rather irrational experience, especially from young victims of incestuous rape. Actual force or intimidation need not be employed in cases of incestuous rape of minors for moral dominion is sufficient to cow victims to submission. Young rape victims should not be expected to act like mature individuals do.¹⁸

The Court of Appeals' Ruling

By its assailed Decision¹⁹ dated August 3, 2017, the Court of Appeals found appellant guilty of two (2) counts of qualified rape. The Court of Appeals correspondingly increased the monetary awards given to the two (2) minor victims. It also noted that appellant's lascivious conduct was aggravated by the alternative circumstance of relationship, thus, making *reclusion perpetua* as the proper imposable penalty. The Court of Appeals decreed:

WHEREFORE, the appeal is DENIED. The assailed RTC Decision dated June 21, 2016 is **AFFIRMED** with **MODIFICATIONS** in that: 1) In Criminal Case Nos. 08-0581-2013 and 08-0631-2013, the award of civil indemnity is increased from Seventy-Five Thousand Pesos(Php75,000.00) to One Hundred Thousand Pesos(Php100,000.00), moral damages of Seventy-Five Thousand Pesos(Php75,000.00) is increased to One Hundred Thousand Pesos(Php100,000.00), and exemplary damages of Thirty Thousand Pesos(Php30,000.00) is increased to One Hundred Thousand(Php100,000.00); and 2) In Criminal Case No. 08-0630-2013, the Accused-Appellant is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay BBB the amounts of Fifty Thousand Pesos(Php50,000.00) as civil indemnity, Thirty Thousand Pesos(Php30,000.00) as exemplary damages, and Fifty Thousand Pesos(Php50,000.00) as moral damages.

All awards for damages shall earn legal interest at the rate of six percent(6%) per annum from the date of the finality of this decision until fully paid. Costs against the Accused-Appellant.

SO ORDERED.²⁰

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. For the purpose of this appeal, the OSG²¹ and appellant²² both manifested that in lieu of supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

¹⁸ *Id.* at 71-89.

¹⁹ *Id.* at 102-120.

²⁰ *Id.* at 119.

²¹ Rollo, pp. 28-29.

²² *Id.* at 34-36.

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction against appellant for two (2) counts of qualified rape and one (1) count of lascivious conduct?

Ruling

The appeal must fail.

Appellant essentially assails the credibility of AAA and BBB for not acting in accordance with his personal standard of behavior for victims of incestuous rape, i.e. 1) their behavior after their alleged rape or sexual molestation was not the behavior of victims who had experienced trauma; 2) they did not exert any effort to defend their honor; and 3) they waited three (3) years before they finally reported on what they had allegedly suffered in his hands.

The Court is not convinced.

AAA and BBB are credible witnesses

First. The fact that AAA and BBB still went on with their respective daily routines should not dent their credibility. *People v. Prodeciado*²³ is apropos:

This hardly convinces. It has been held that "different people react differently to different situations and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience," such as rape. Verily, some victims choose to suffer in silence; while others may be moved to action out of a need to seek justice for what was done to them. Then there are those who opt not to dwell on their experience and try to live as though it never happened. To the Court's mind, this is how "AAA" tried to cope with the harrowing experience that befell her. Moreover, since she was just a young girl when all these rapes were committed against her, "AAA" simply knew no other way of life than what she was accustomed to.

Second. Rape victims react differently. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault. The workings of the human mind placed under emotional stress are unpredictable. People react differently --- some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. But any of these

²³ 749 Phil. 746, 763 (2014).

reactions does not impair the credibility of a rape victim. Additionally, failure to physically resist the attack does not detract from the established fact that a reprehensible act was done to a child-woman by her own biological father. Lastly, failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused.²⁴

Indeed, just because AAA or BBB did not offer tenacious resistance nor even shout whenever their father sexually ravished them did not make them less credible as witnesses.

Third. It is not true that AAA and BBB took three (3) years before they reported the sex crimes appellant perpetrated on them. As aptly observed by the trial court, AAA confided in their mother their sexual ravishment in appellant's hands but their mother did not believe her. They were young and helpless victims of their own father's bestiality. He treated them like sex slaves in never ending horrendous ways. The person they thought would protect them did not even care to believe them. Where else would they go? Who else could help them? They were obviously driven into helplessness and cowed silence.

But things did change. Young girls also grow up. So did AAA and BBB. After going through innumerable counts of sexual violence through all the three (3) traumatic years of their lives, the grown-up girls can take no more. AAA left their home and went to her aunt who rescued her. Then she was vindicated; so was her sister, BBB. On this score, *People v. Lantano*²⁵ instructs:

To begin with, the prosecution is under no burden to establish acceptable reasons or satisfactory explanation for the delay in reporting a rape. Settled is the rule that delay or hesitation in reporting a case of rape due to threats of the assailant is justified and must not be taken against the victim. Neither does such delay indicate deceit or a fabricated insinuation inasmuch as it is common that a rape victim prefers silence because of fear of her aggressor and the lack of courage to face the public stigma stemming from the abuse. With particular regard to incestuous rapes, since the perpetrator in these cases is a parent of the victim, he is able to pervert whatever moral ascendancy and influence he has over the victim in order to intimidate the latter. Hence, even in the absence of verbal threats against the victim's life, the parent molester's moral ascendancy and influence take the place of intimidation, especially so when they are living under the same roof.

So must it be.

***Appellant is guilty of
two (2) counts of qualified rape in***

²⁴ See *People v. Palanay*, 805 Phil. 116, 124 (2017).

²⁵ 566 Phil. 628, 638-639 (2008).

**Criminal Case Nos. 08-0581-2013
and 08-0631-2013**

On qualified rape, Article 266-A and 266-B of the Revised Penal Code ordain:

Article 266-A. Rape: When And How Committed. - 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

Article 266-B Penalty – x x 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:

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;

x x x

The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen [18] years of age at the time of the rape; (5) 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.

At the outset, AAA and BBB were young girls under the age of eighteen (18) when they were sexually ravished by appellant in 2009. All three (3) Informations bore the twin circumstances of minority and relationship. As proven by the prosecution’s documentary evidence.²⁶ AAA was born on August 12, 1993 and BBB, on February 7, 1996. In 2009, AAA was fifteen

²⁶ Exhibits “D” and “G.”

(15) and BBB, fourteen (14). As for the element of relationship, the prosecution and the defense stipulated that AAA and BBB were appellant's legitimate children.

Regarding the elements of carnal knowledge and force or intimidation, or exertion of moral ascendancy, the trial court aptly summarized AAA's testimony on how she was sexually ravished by appellant on March 14, 2009, thus:

There is adequate and satisfactory evidence that on March 14, 2009, at around 1:00 o'clock in the afternoon, AAA was resting on the *sofa* after washing clothes, when her father ordered her to go to the room. While inside the room, accused lied (sic) down on the bed beside her and undressed her. Accused then took off his shorts and inserted his penis into her vagina. AAA felt pain and blood came out of her private part but she could not do anything other than cry. After the sexual act, accused told AAA to put on her dress. (*TSN, February 26, 2014, pp. 5-10*)²⁷

AAA narrated in detail that appellant ordered her to go inside a room, lay on the bed beside her, and inserted his penis in her vagina. Although appellant did not threaten or force AAA to engage in sexual congress with him, it is settled that where the rape is committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.²⁸

Too, the trial court summed up BBB's vivid testimony on how appellant had carnal knowledge of her against her will sometime in 2009 and on so many more occasions she already lost count of, thus:

There is likewise sufficient evidence that sometime in the year 2009, herein accused would transfer from his room to the room where BBB was sleeping. Initially, said accused would lie down beside BBB and would touch her private parts. Eventually, he will have carnal knowledge of her, even at (sic) the presence of his other daughter AAA and son CCC. BBB cannot do anything out of fear of his (sic) father-accused. (*TSN, March 26, 2014, pp. 9-10*)²⁹

The trial court keenly noted that BBB was intensely crying while she narrated the sordid details of her sexual devastation in the hands of her own father. She described how appellant shamelessly satiated his lust, sexually ravishing her even in the presence of his other children, AAA and CCC. BBB also recalled that she could not do anything whenever appellant had his way with her because she was so scared of him. To repeat, although there is no showing of force, threat or intimidation, appellant's moral ascendancy over BBB took the place of violence or intimidation.

²⁷ CA rollo, p. 51.

²⁸ *People v. Padua*, 661 Phil. 366, 370 (2011).

²⁹ CA rollo, p. 52.

Appellant was only charged with a single count of rape in each of the twin cases below. This is because both AAA and BBB could no longer recall the dates and the details of the so many rape incidents they experienced in the hands of their own father. AAA could only vividly recall the rape incident on March 14, 2009, and BBB, only the rape incident which happened sometime in 2009.

Even then, the testimonies of AAA and BBB pertaining to the twin rape incidents are clear, categorical, and consistently convincing. They are credible witnesses. These two (2) minor girls would not have publicly accused their father of the despicable act of incestuous rape if it were not true. On this score, *People v. Marmol*³⁰ enunciated:

More importantly, it is highly inconceivable for a daughter like AAA to impute against her own father a crime as serious and despicable as incest rape, unless the imputation was the plain truth. In fact, it takes a certain amount of psychological depravity for a young woman to concoct a story that would put her own father to jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame. Filipino children have great respect and reverence for their elders. For this reason, great weight is given to an accusation a child directs against a close relative, especially the father. A rape victim's testimony against her father goes against the grain of Filipino culture as it yields unspeakable trauma and social stigma on the child and the entire family.

The absence of medical certificates indicating the extent of the injury sustained by AAA and BBB as a result of their father's wicked bestiality does not diminish their worth as witnesses. A medical certificate is merely corroborative and not indispensable to the prosecution of rape cases.³¹ Where the testimony of a rape victim is credible, natural, convincing and otherwise consistent with human nature, it is sufficient to support a verdict of conviction.³²

Appellant's defense of denial is the weakest of all defenses. It easily crumbles in the face of complainant's positive identification of the accused as the perpetrator of the crime.³³

All told, the Court of Appeals correctly convicted appellant of two (2) counts of qualified rape. Under Article 266-B of the Revised Penal Code, the imposable penalty is death where the victim is below eighteen (18) years of age and the violator is the victim's own biological father, thus:

Article 266-B. Penalty. - x x x

x x x

³⁰ 800 Phil. 813, 827 (2016).

³¹ *People v. Tuboro*, 792 Phil. 580, 592 (2016).

³² See *People v. Pascual*, 428 Phil. 1038, 1046 (2002).

³³ *People v. Glino*, 564 Phil. 396, 419-420 (2007).

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

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;

By virtue of RA 9346, however, the death penalty is reduced to *reclusion perpetua*.

Appellant is liable for ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for each count of qualified rape in conformity with prevailing jurisprudence.³⁴

***Appellant is guilty of
lascivious conduct in
Criminal Case No. 08-0630-2013***

The elements of sexual abuse under Section 5(b) of RA No. 7610 are as follows: 1) the accused commits the act of sexual intercourse or lascivious conduct; 2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and 3) the child, whether male or female, is below 18 years of age.³⁵

“Lascivious conduct” means the 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.³⁶ Meanwhile, “Sexual abuse” includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.³⁷

³⁴ *People v. Jugueta*, 783 Phil. 806, 848 (2016):

x x x

II. For Simple Rape/Qualified Rape:

I.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346:
Private parts

Civil indemnity-P100,000.00
Moral damages - P100,000.00
Exemplary damages - P100,000.

³⁵ *Roallos v. People*, 723 Phil. 655, 667-668 (2013).

³⁶ Pursuant to Sec. 32 of RA No. 7610, Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

³⁷ *Id.*

BBB recalled an instance in 2009 when appellant commenced to sexually ravish her and was about to penetrate her vagina but was abruptly interrupted when CCC arrived home. The trial court accurately synthesized BBB's testimony, in this wise:

It is evident from the testimony of herein private complainant **BBB** that all the above-mentioned elements and requirements of the law for the crime of *Lascivious Conduct* under *Section 5(b) of Republic Act No. 7610* have been fully established by the prosecution. BBB maintained that sometime in the year 2009, while at home for being sick, accused suddenly put down her shorts and underwear to her knee and raised her t-shirt up to her breast. Accused then proceeded to touch and kiss her on her private parts despite her resistance. Not satisfied, accused took off his t-shirt, shorts and brief and was about to insert his penis into her vagina, when her younger brother CCC arrived and abruptly stopped the advances of the accused. (TSN, March 26, 2014, pp. 7-9)³⁸

Indubitably, appellant committed lascivious conduct when he performed acts of lasciviousness by pulling down AAA's shorts and underwear, touching and kissing her private parts, and attempting to insert his penis into her vagina. Notably, BBB was a minor, being only fourteen (14) years old at that time.

We reiterate that appellant's denial and alibi cannot prevail over the positive and categorical testimony of BBB. Bare assertion of alibi and denial cannot prevail over the categorical testimony of a victim.³⁹ Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law, as in this case. Likewise, alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut.⁴⁰

Since appellant is BBB's father, the alternative circumstance of relationship should be credited against him in Criminal Case No. 08-0630-2013. Consequently, appellant should suffer *reclusion perpetua* and fine of ₱15,000.00. Section 5(b) and Section 31 (f) of RA 7610 provide:

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

³⁸ CA rollo, p. 53.

³⁹ See *People v. Gaduyon*, 720 Phil. 750, 779 (2013).

⁴⁰ *People v. Molejon*, G.R. No. 208091, April 23, 2018.

(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.

x x x

Sec. 31. Common Penal Provisions. –

x x x

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

People v. Caoili⁴¹ applied the foregoing provisions in this wise:

Considering that AAA was over 12 but under 18 years of age at the time of the commission of the lascivious act, the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.

Since the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as acts of lasciviousness, relationship is always aggravating. With the presence of this aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period, i.e., *reclusion perpetua*, without eligibility of parole. This is in consonance with Section 31(c) of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the parent of the victim.

Likewise, Section 31(f) of R.A. No. 7610 imposes a fine upon the perpetrator, which jurisprudence pegs in the amount of Php 15,000.

As for the appropriate monetary awards, ***Caoili*** decreed:

Parenthetically, considering the gravity and seriousness of the offense, taken together with the evidence presented against ***Caoili***, this Court finds it proper to award damages.

In light of recent jurisprudential rules, when the circumstances surrounding the crime call for the imposition of *reclusion perpetua*, the victim is entitled to civil indemnity, moral damages and exemplary damages each in the amount of Php 75,000.00, regardless of the number of qualifying aggravating circumstances present.

⁴¹ 815 Phil. 839, 896-897 (2017).

The fine, civil indemnity and all damages thus imposed shall be subject to interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

All told, the Court of Appeals correctly sentenced appellant to *reclusion perpetua*. Appellant should be ordered to pay BBB ₱75,000.00 as civil indemnity, ₱75,000.00 as as exemplary damages, and ₱75,000.00 as moral damages.

ACCORDINGLY, the appeal is **DISMISSED**. The Decision dated August 3, 2017 is **AFFIRMED** with **MODIFICATION**.

In Criminal Case Nos. 08-0581-2013 and 08-0631-2013, appellant XXX is found **GUILTY** of **QUALIFIED RAPE** and sentenced to **RECLUSION PERPETUA** without eligibility of parole for each count.

He is further required **TO SEPARATELY PAY** AAA and BBB each ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

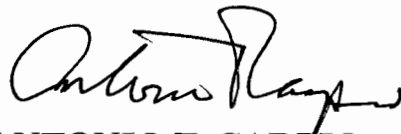
In Criminal Case No. 08-0630-2013, appellant XXX is found **GUILTY** of **LASCIVIOUS CONDUCT** and sentenced to **RECLUSION PERPETUA** and to pay a **FINE** of ₱15,000.00. He is required **TO PAY** BBB ₱75,000.00 as civil indemnity, ₱75,000.00 as exemplary damages, and ₱75,000.00 as moral damages.

All monetary awards in Criminal Case Nos. 08-0581-2013, 08-0631-2013, and 08-0630-2013 are subject to six percent (6%) interest from finality of this decision until fully paid.

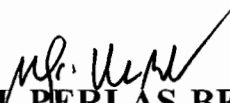
SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

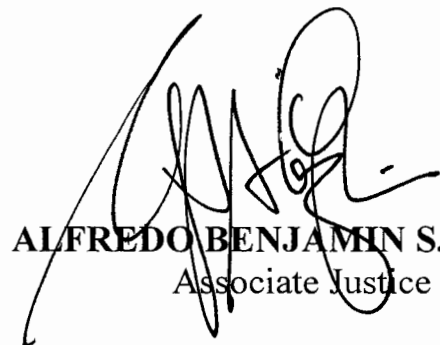
WE CONCUR:



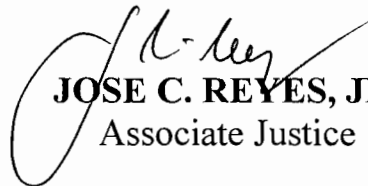
ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice

ATTESTATION

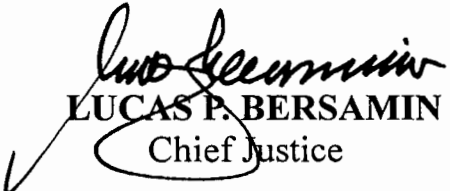
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the above 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.


LUCAS P. BERSAMIN
Chief Justice

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