



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. 224584

- versus -

Present:

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

ZZZ,
Accused-Appellant.

Promulgated:

04 SEP 2019

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DECISION

LAZARO-JAVIER, J.:

The Case

This appeal assails the Decision¹ dated October 30, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01091-MIN entitled "*People of the Philippines v. ZZZ*" affirming appellant's conviction for one (1) count of rape by sexual intercourse and one (1) count of rape by sexual assault.

¹ Penned by Associate Justice Oscar V. Badelles with the concurrence of Associate Justices Romulo V. Borja and Pablito A. Perez, all members of the Twenty-First Division, *rollo*, pp. 3-13.

Antecedents

The Charges

Appellant ZZZ was separately charged with two (2) counts of rape of his thirteen-year-old daughter AAA in Criminal Case Nos. 2999 and 3000, respectively, *viz*:

Information² dated December 17, 2007 in Criminal Case No. 2999:

That on or about 1:00 o'clock in the early morning of October 26, 2007 at [REDACTED], [REDACTED], Province of Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste designs and through force and intimidation did then and there, willfully, unlawfully and feloniously succeed in having carnal knowledge of one AAA, his thirteen (13) years old daughter against her will and consent.

CONTRARY TO LAW, particularly Article 266-A, paragraph 1(a) of the Revised Penal Code, in relation to Republic Act 7610.

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Information³ dated December 17, 2007 in Criminal Case No. 3000:

That on or about 10:00 o'clock in the evening of November 3, 2007 at [REDACTED], [REDACTED], Province of Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste designs and through force and intimidation, did then and there, willfully, unlawfully and feloniously succeed in having carnal knowledge of one AAA, his thirteen (13) years old daughter, against her will and consent.

CONTRARY TO LAW, particularly Article 266-A, paragraph 2 of the Revised Penal Code, in relation to Republic Act 7610.

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The cases were consolidated with the Regional Trial Court, Branch 20, Tacurong City. On arraignment, appellant pleaded not guilty to both charges.⁴ Trial on the merits ensued.

Proceedings before the Trial Court

The Prosecution's Evidence

² CA rollo, pp. 30-31.

³ *Id.* at 31.

⁴ *Id.* at 32.

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Complainant AAA testified: she was the eldest of the four (4) children of appellant and BBB. She was born on April 29, 1994 as evidenced by her birth certificate. As of October 26, 2007, she was just thirteen (13) years old. She was then studying at [REDACTED], [REDACTED]. To save on transportation costs and time, she moved in and stayed with her father at the bunk house he rented in the area. Appellant was working as a helper assigned to a ten-wheeler truck owned by a certain Ronnie Dayon.⁵

On October 25, 2007, about 10 o'clock in the evening, she was sleeping alone in her father's bunk house. A few hours later, she noticed that her mosquito net had been raised and appellant was removing his short pants. After taking off his short pants, he also removed her shorts and panty. He held her hands with one hand and covered her mouth with the other. Using his knee he spread her legs, spat saliva on his palm and wiped it on his penis.⁶

He inserted his penis into her vagina and mounted her for twenty (20) minutes. She did not shout out of fear. He had placed two (2) knives near her head and threatened to kill her, her siblings, and her mother if she did not submit to him. He dismounted when someone switched on the light at the back of the bunk house. She felt pain in her vagina and there was blood on the blanket. She moved to the sofa near the bed and cried herself to sleep. She woke up at 4 o'clock in the morning of October 26, 2007 and cried again. She kept the incident to herself.⁷

On November 3, 2007, around 1 o'clock in the morning, she arrived at the bunk house after spending the day with friends watching television. While she was sleeping, she felt appellant remove her blanket, put her head on his arm, and spread her legs with his leg. He inserted his finger into her vagina for five (5) minutes and she felt pain. When she asked him to stop, he heeded and went to sleep.⁸

On November 5, 2007, her mother visited her. On that day, appellant had gone to Davao City. Her mother scolded her for not staying in the bunk house during the day and coming home late at night. She then confided to her mother what appellant had done to her. Her mother cried. In the morning of November 7, 2007, she went to see her Uncle CCC, appellant's older brother, in Makilala, Cotabato. She also confided to him about the twin rape incidents with her father. On November 11, 2007, together with her mother and a certain Jane Diaz, she went to the Tacurong City Police Station, where she got investigated. After the cases were filed, appellant sent her a handwritten letter, asking for forgiveness.⁹

⁵ *Id.* at 32-33.

⁶ *Id.* at 34.

⁷ *Id.* at 35-36.

⁸ *Id.* at 36-37.

⁹ *Id.* at 37-38.

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BBB, appellant's wife and complainant's mother, testified: on November 6, 2007, she went to the bunk house to visit her daughter, AAA. The latter confided to her what appellant did to her. When she asked her daughter why she (AAA) did not tell her right away, her daughter said appellant threatened to kill her (BBB), her daughter (herself), and her three (3) other children. On November 9, 2007, she and her brother-in-law MMM reported the incident to the Tacurong City Police Station.¹⁰

Dr. Efraim Collado, Assistant City Health Officer confirmed that he examined complainant on November 12, 2007. He found healed lacerations at 3 o'clock and 10 o'clock positions in complainant's vagina. He issued the corresponding medical certificate.¹¹

The Defense's Evidence

Invoking alibi and denial, appellant testified: complainant is his daughter. By 1 o'clock in the morning of October 26, 2007, he was in Davao City. As a helper, he was on board a ten-wheeler truck to deliver sacks of rice to Davao City. On November 3, 2007, he was also on board the same truck to deliver rice bran to William Enterprises in General Santos City. He stayed in General Santos City until the evening of the same day.¹² He could not have sexually ravished complainant on those dates precisely because he was far away and was not then in the *locus criminis* on those days. Besides, he would not molest complainant because she is his daughter. On cross, he admitted to have sent complainant a handwritten letter.¹³

The Trial Court's Ruling

As stated, by its Joint Judgment¹⁴ dated January 14, 2009, the trial court convicted appellant of one (1) count of rape by sexual intercourse (Criminal Case No. 2999) and one (1) count of rape by sexual assault (Criminal Case No. 3000), thus:

WHEREFORE, upon all the foregoing considerations, the court finds the guilt of ZZZ to the crimes of rape by sexual intercourse qualified by the minority of the victim and her relationship with the perpetrator thereof and rape by sexual assault qualified by the just cited circumstances beyond reasonable doubt and hereby sentences him as follows:

In Criminal Case No. 2999

To suffer the penalty of reclusion perpetua and to pay AAA the following:

¹⁰ *Id.* at 38-39.

¹¹ *Id.* at 40.

¹² *Id.* at 40-41.

¹³ *Id.* at 41.

¹⁴ *Id.* at 30-51.

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- a. The amount of P75,000.00 as Civil Indemnity;
- b. The amount of P75,000.00 as Moral Damages; and
- c. The amount of P25,000.00 as Exemplary Damages.

To pay the costs.

For being a detention prisoner, his preventive imprisonment shall be credited in the service of sentence imposed upon him provided that he will abide in writing with the same disciplinary rules imposed upon convicted prisoners, otherwise, with only four-fifths (4/5) thereof.

Pursuant to applicable circulars of the Supreme Court, the accused shall immediately be transferred to the National Bilibid Prisons in Muntinlupa City.

Given in open court this 14th day of January 2009, at Tacurong City, Sultan Kudarat, Philippines.

In Criminal Case No. 3000

To suffer the indeterminate penalty of imprisonment ranging from twelve (12) years of prison mayor, as minimum, to eighteen (18) years of reclusion temporal as maximum and to pay AAA the following:

- a. The amount of P50,000.00 as Civil Indemnity;
- b. The amount of P50,000.00 as Moral Damages; and
- c. The amount of P25,000.00 as Exemplary Damages.

To pay the costs.

For being a detention prisoner, his entire preventive imprisonment shall be credited in the service of sentence imposed on him provided that he shall abide in writing with the same disciplinary rules imposed upon convicted prisoners, otherwise, only four-fifths (4/5) thereof.

IT IS SO ORDERED.¹⁵

Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction. He argued that complainant was an unreliable witness because of the inconsistencies in her testimony pertaining to what time exactly she arrived at the bunk house and the exact time she went to sleep on October 26, 2007 and November 3, 2007, respectively. There was no showing that he employed force, threat, or intimidation when he allegedly sexually ravished complainant on two (2) separate occasions. Also, since complainant herself claimed not to have felt anything when he allegedly inserted his penis into her vagina, the fact of penile penetration became doubtful.¹⁶

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Anna Esperanza Solomon and Senior State

¹⁵ *Id.* at 49-51.

¹⁶ *Id.* at 22-27.

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Solicitor Arleen Reyes, submitted that complainant's testimony was corroborated by medical findings that she sustained lacerations in her vagina. The alleged inconsistencies in complainant's testimonies pertaining to the exact time she got home and slept on the dates she was sexually ravished --- refer to minor matters and do not detract from her credibility. Lastly, appellant's moral ascendancy or influence, as complainant's father, substituted the element of force, threat, or intimidation.¹⁷

The Ruling of the Court of Appeals

By its assailed Decision¹⁸ dated October 30, 2015, the Court of Appeals affirmed, *viz*:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The January 14, 2009 Joint Judgment of the Regional Trial Court, Branch 20, Tacurong City, in Criminal Cases (sic) No. 2999 and 3000, finding accused-appellant guilty beyond reasonable doubt of violation of Article 266-A, paragraph 1(a) of the Revised Penal Code, in relation to Republic Act 7610 and Article 266-A, paragraph 2 of the Revised Penal Code is hereby **AFFIRMED**.

SO ORDERED.¹⁹

The Present Appeal

Appellant now seeks a verdict of acquittal from the Court. Both appellant²⁰ and the OSG²¹ manifested that, in lieu of their supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

Issues

- 1) Is appellant guilty of qualified rape by sexual intercourse in Criminal Case No. 2999?
- 2) Is appellant guilty of qualified rape by sexual assault in Criminal Case No. 3000?

Ruling

Criminal Case No. 2999

¹⁷ *Id.* at 93-109.

¹⁸ *Rollo*, pp. 3-13.

¹⁹ *Id.* at 12.

²⁰ *Id.* at 32-33.

²¹ *Id.* at 22-23.

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In Criminal Case No. 2999, complainant testified on how appellant sexually ravished her on October 26, 2007, thus:

PROSECUTOR:

Q: While you were sleeping that evening of October 25, 2007, what happened?

A: Nothing happened that night, sir.

Q: How about the early morning?

A: I noticed that the mosquito net was raised and I saw my father was removing his shorts sir.

Q: How did you know that it was your father whom you saw removing his short pants?

A: I saw my father removed his short pants and he went near me and removed my short pants, sir.

Q: Of course, it was still dark at that time?

A: Yes, sir.

Q: How did you recognize the person to be your father?

A: Because there was a light at the other house that illuminated the bunk house and if my father is standing I could actually see his face, sir.

Q: So what did he do after you saw him remove his short pants?

A: My father took hold of my two hands with his one hand and he placed his hand to cover my mouth and he spread my legs with his knee and removed his hand covering my mouth, sir.

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Q: Did you not shout when your father removed your shortpants and panty?

A: I did not shout because at that time I was afraid because there were two knives placed on my head and he threatened me that he will kill my mother and my siblings (if) I will not give in, sir.

Q: After your father wiped his penis with saliva, what happened next?

A: He inserted his penis inside my vagina, sir.

Q: What did you feel?

A: I did not feel anything, I do not know that I felt, I could not do anything because he was so strong and I could not believe that he could do that to me, sir.

Q: After inserting his penis into your vagina, what did he do next?

A: He stayed on top of me for 20 minutes and after that he removed his body because he felt that the light at the back of the bunk house was switched on, sir.²²

²² *Id.* at 9-11.

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The spontaneity and consistency by which complainant had detailed out the incident dispel any insinuation of a rehearsed testimony. Her eloquent testimony should be enough to confirm the veracity of the charge.²³ After all, the nature of the crime of rape entails reliance on the lone, yet clear, convincing and consistent testimony²⁴ of the victim herself.

Appellant primarily assails complainant's credibility because of the alleged discrepancies in her testimony pertaining to the exact time she got back to the bunk house and went to sleep in the early morning of October 26, 2007 and November 3, 2007, respectively. Surely, these are very trivial matters which do not affect complainant's testimony on the existence of the material elements of rape. If at all, these inconsistencies even indicate that the witness was not rehearsed.²⁵ Besides, the essence of rape is carnal knowledge of a female through force or intimidation against her will. Precision as to the time when the rape is committed has no bearing on its commission.²⁶

We find no reason to doubt complainant's credibility and hold that her testimony is sufficient to convict appellant of the crime charged and proved here.

First. Complainant was only thirteen (13) years old when appellant, her own father, sexually ravished her. 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. Youth and immaturity are generally badges of truth and sincerity.²⁷ Errorless recollection of a harrowing incident cannot be expected of a witness, especially when she is recounting details of an experience so humiliating and so painful as rape. What is important is that the victim's declarations are consistent on basic matters constituting the elements of rape and her positive identification of the person who did it to her.²⁸

Second. Appellant has not even alluded to any ulterior motive which could have impelled his daughter, herein complainant, to falsely charge him with such serious crime of rape. Where there is no evidence and nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that she was not so actuated and her testimony is entitled to full faith and credit.²⁹ Further, a daughter would not accuse her own father of a serious offense like rape, had she really not been aggrieved. Her testimony against him is entitled to greater weight, since

²³ *People v. Padilla*, 666 Phil. 565, 588-589 (2011).

²⁴ See *People v. Ronquillo*, G.R. No. 214762, September 20, 2017, 840 SCRA 405, 414.

²⁵ *People v. Gonzales, Jr.*, 781 Phil. 149, 156 (2016).

²⁶ *People v. Nuyok*, 759 Phil. 437, 448 (2015).

²⁷ *People v. Araojo*, 616 Phil. 275, 287 (2009), citing *Llave v. People*, 522 Phil. 340 (2006) and *People v. Guambor*, 465 Phil. 671, 678 (2004).

²⁸ *People v. Daco*, 589 Phil. 335, 348 (2008).

²⁹ *People v. Delfin*, 749 Phil. 732, 744 (2014).

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reverence and respect for elders is too deeply ingrained in Filipino children and is even recognized by law.³⁰

Third. Dr. Efraim Collado confirmed that private complainant had healed vaginal lacerations at 3:00 o'clock and 10:00 o'clock positions in her vagina. He also issued a medical certificate containing his findings. Where the victim's testimony is corroborated by physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.³¹

Fourth. The trial court's assessment of the credibility of the witnesses, the probative weight of their testimonies and the conclusions drawn from these factual findings are accorded the highest respect by the appellate court, whose review power is limited to the records of the case. This explains why this Court, which is not a trial court, is loathe to re-examine and re-evaluate the evidence that had been analyzed and dissected by the trial court, and sustained and affirmed by the appellate court.³²

Against such damning evidence, appellant merely interposed alibi and denial. Denial is the weakest of all defenses. It easily crumbles in the face of positive identification by accused as the perpetrator of the crime.³³ More, for alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed as he must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.³⁴ As it was, appellant here failed to substantiate his alibi.

More, appellant had fallen on his own sword when he admitted to have written to complainant, asking for forgiveness. Evidently, no one would ask for forgiveness unless he had committed some wrong and a plea for forgiveness may be considered as analogous to an attempt to compromise. Appellant's plea of forgiveness should be received as an implied admission of guilt.³⁵ On this score, the trial court keenly noted:

Actually, the accused admitted to have committed the crimes of rape when he wrote AAA a letter, Exhibit "E" and asked her to forgive her and to withdraw the cases she filed against him. He promised her of a cell phone should she accede thereto. Evidently, no one would ask for forgiveness unless he committed and, a plea for forgiveness may be considered as analogous to an attempt to compromise.³⁶ x x x

³⁰ *People v. Briones*, 439 Phil. 675, 685 (2002).

³¹ *People v. Lumaho*, 744 Phil. 233, 243 (2002).

³² *People v. Soriano*, 810 Phil. 239, 251 (2017).

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

³⁴ *People v. Apattad*, 671 Phil. 95, 108 (2011).

³⁵ *People v. Abadies*, 433 Phil. 814, 821 (2002).

³⁶ CA rollo, pp. 46-47.

So must it be.

The crime of rape is defined and penalized under Article 266-A of the Revised Penal Code (RPC), *viz*:

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.

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For purposes of imposing the death penalty in cases of qualified rape, Article 266-B of the RPC provides:

Article 266-B Penalty – x x x

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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;

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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.

Based on complainant's testimony about her sexual ravishment in the morning of October 26, 2007, the prosecution has established all the elements of qualified rape in this case. Appellant had sexual congress with his daughter

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who was thirteen (13) years old at the time, as proved by her certificate of live birth. And contrary to his claim, he did employ force and threats so that she would submit to his bestial lust. He held private complainant's hands, thus, ensuring that she could not fight back or fend him off. He later on moved her hands to her mouth so that he could prevent her from making a sound and at the same time render her immobile. More, he threatened to kill her, her siblings, and her mother if she even told anyone what he had done to her. He also intimidated her when he placed two (2) knives near her head. Intimidation consists in causing or creating fear in the mind of a person or in bringing in a sense of mental distress in view of a risk or evil that may be impending, real or imagined.³⁷

In any event, even assuming there was no actual threat, violence or intimidation, the same can be substituted by appellant's moral ascendancy and influence. In incestuous rape cases, the father's abuse of the moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants. Otherwise stated, the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.³⁸

Criminal Case No. 3000

In Criminal Case No. 3000, complainant testified on how appellant sexually ravished her on November 3, 2007, viz:

Q: On November 3, 2007, do you remember where you slept?

A: In the bunk house, sir.

Q: What time [did] you go to sleep?

A: 1:00 o'clock in the morning sir.

Q: Why was it already 1:00 o'clock in the morning that you went to sleep at that time?

A: Because I just came [home] from watching t.v., sir.

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Q: After sleeping, what happened after that?

A: When I went home, I noticed my father holding my blanket and he placed my head on his arm and he spread my legs with his leg, sir.

Q: After spreading your legs with his leg, what happened next?

A: My other foot he placed his foot there and my other foot on top leg and he inserted his finger, sir.

Q: Where did he insert his finger?

A: Inside my vagina, sir.

³⁷ *Sazon v. Sandiganbayan*, 598 Phil. 35, 47 (2009).

³⁸ *People v. Dominguez, Jr.*, 650 Phil. 492, 519 (2010).

Q: And what did you feel?

A: Painful, sir.

Q: For how long did he insert his finger to your vagina?

A: He placed his finger for five minutes, and I was crying I said "Pa, please stop" and he stopped and my father went to sleep.³⁹

As stated, complainant's testimony on her sexual ravishment is spontaneous and consistent, dispelling any notion that her testimony was rehearsed. Her tale of sexual ravishment was corroborated by medical findings that she sustained lacerations inside her vagina. She was not shown to have been impelled by ill-motive in pointing to her father as her ravisher. More, the trial court, as well as the Court of Appeals, had found her testimony credible, thus, such assessment is binding on this Court. Lastly, appellant had sought her forgiveness for what he had done to her, in effect admitting that he indeed sexually molested her.

Based on complainant's testimony on her sexual molestation in the morning of November 3, 2007, appellant had raped her by sexual assault, i.e. appellant inserted his finger into her vagina and she was unable to resist by reason of his moral ascendancy as her biological father and because she was only thirteen (13) years old at the time.

The problem, however, is that the Information dated December 17, 2007 in Criminal Case No. 3000 did not charge appellant with rape by sexual assault but with rape by sexual intercourse. We refer back to the original Information, *viz*:

That on or about 10:00 o'clock in the evening of November 3, 2007 at [REDACTED], [REDACTED], Province of Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste designs and through force and intimidation, did then and there, willfully, unlawfully, and feloniously succeed in having carnal knowledge of one AAA, his thirteen (13) years old daughter, against her will and consent.

CONTRARY TO LAW, particularly Article 266-A, paragraph 2 of the Revised Penal Code, in relation to Republic Act 7610.

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*People v. Caoili*⁴⁰ ordains that an accused charged in the Information with rape by sexual intercourse cannot be found guilty of rape by sexual assault, even though the latter crime was proven during trial, thus:

By jurisprudence, however, an accused charged in the Information with rape by sexual intercourse cannot be found guilty of rape by sexual

³⁹ *Rollo*, pp. 11-12.

⁴⁰ G.R. No. 196342, August 08, 2017, 835 SCRA 107, 141-142.

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assault, even though the latter crime was proven during trial. This is due to the substantial distinctions between these two modes of rape.

The elements of rape through sexual intercourse are: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force or intimidation. Rape by sexual intercourse is a crime committed by a man against a woman, and the central element is carnal knowledge.

On the other hand, the elements of rape by sexual assault are: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others.

In the first mode (rape by sexual intercourse): (1) the offender is always a man; (2) the offended party is always a woman; (3) rape is committed through penile penetration of the vagina; and (4) the penalty is *reclusion perpetua*.

In the second mode (rape by sexual assault): (1) the offender may be a man or a woman; (2) the offended party may be a man or a woman; (3) rape is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person; and (4) the penalty is *prision mayor*.^[55]

The Court en banc's categorical pronouncement in *People v. Abulon*, thus, finds application:

In view of the material differences between the two modes of rape, the first mode is not necessarily included in the second, and vice-versa. Thus, since the charge in the Information in Criminal Case No. SC-7424 is rape through carnal knowledge, appellant cannot be found guilty of rape by sexual assault although it was proven, without violating his constitutional right to be informed of the nature and cause of the accusation against him.

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In fine, given the material distinctions between the two modes of rape introduced in R.A. No. 8353, the variance doctrine cannot be applied to convict an accused of rape by sexual assault if the crime charged is rape through sexual intercourse, since the former offense cannot be considered subsumed in the latter.

Applying *Caoili* here, although appellant cannot be convicted of rape by sexual assault in this case, he can still be convicted of lascivious conduct under Section 5(b)⁴¹ of Republic Act No. 7610 (RA 7610). The elements of

⁴¹ ARTICLE III Child Prostitution and Other Sexual Abuse

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.

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sexual abuse under Section 5(b) of RA 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.⁴²

“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.⁴³ 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.⁴⁴

Here, appellant committed lascivious conduct on his thirteen-year-old daughter by inserting his finger into her vagina for five (5) minutes. Appellant used his moral influence and ascendancy as a father to perpetrate lascivious conduct on his daughter, who was only a minor. Though there is no showing that he employed persuasion, inducement, enticement or coercion to make complainant engage in lascivious conduct, his moral influence or ascendancy as her biological father takes the place of violence or intimidation.⁴⁵

Imposable Penalties and Damages

In Criminal Case No. 2999 for qualified rape, appellant was correctly sentenced to *reclusion perpetua*. Under Article 266-B of the Revised Penal Code (RPC), 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. By virtue of Republic Act No. 9346 (RA 9346), however, the death penalty is reduced to *reclusion perpetua* but without eligibility for parole. Section 3 of RA 9346 states:

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

x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims 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; and

x x x

⁴² *Roallos v. People*, 723 Phil. 655, 667-668 (2013).

⁴³ Section 2(h), RA 7610.

⁴⁴ Section 2(g), RA 7610.

⁴⁵ *People v. Padua*, 661 Phil. 366 (2011).

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SEC. 3. Person convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

Additionally, 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.⁴⁶ Correspondingly, the monetary awards granted by the trial court and affirmed by the Court of Appeals should be modified.

In Criminal Case No. 3000 for lascivious conduct, the alternative circumstance of relationship should be appreciated against appellant since he is complainant's biological father, per complainant's birth certificate and his very own admission on the witness stand that complainant is his daughter. 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

(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. –

⁴⁶ *People v. Jugueta*, 783 Phil. 806, 848 (2016):

x x x

II. For Simple Rape/Qualified Rape:

1.1 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 - P100,000.00.

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.

Caoili⁴⁷ applies these 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 Php15,000.00.

As for the appropriate monetary awards, **Caoili**⁴⁸ decrees:

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.

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, appellant should be ordered to pay private complainant ₱75,000.00 as civil indemnity, ₱75,000.00 as exemplary damages, and ₱75,000.00 as moral damages.

⁴⁷ Supra note 40.

⁴⁸ *Id.*

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ACCORDINGLY, the appeal is **DENIED**. The assailed Decision dated October 30, 2015 of the Court of Appeals in CA-G.R. CR HC No. 01091-MIN is **AFFIRMED** with **MODIFICATION**.

In Criminal Case No. 2999, appellant ZZZ is found **GUILTY** of **QUALIFIED RAPE** and sentenced to **RECLUSION PERPETUA** without eligibility of parole. He is directed to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

In Criminal Case No. 3000, appellant ZZZ is found **GUILTY** of **LASCIVIOUS CONDUCT** and sentenced to **RECLUSION PERPETUA** and to pay a **FINE** of ₱15,000.00. He is directed to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as exemplary damages, and ₱75,000.00 as moral damages.

All monetary awards are subject to six percent (6%) interest *per annum* from finality of this decision until fully paid.

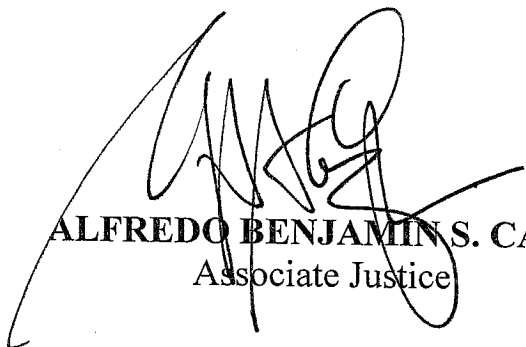
SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

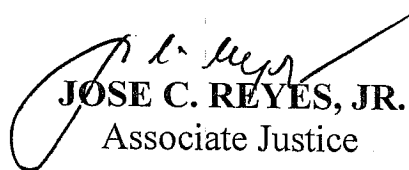
WE CONCUR:



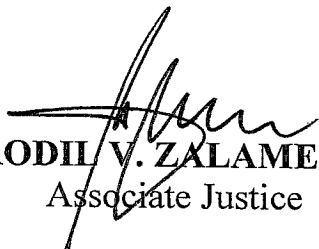
ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



RODIL V. ZALAMEDA
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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