



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

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

**G.R. No. 208009**

Present:

CARPIO, *J.*, Chairperson,  
 BRION,  
 DEL CASTILLO,  
 MENDOZA,\* and  
 LEONEN, *JJ.*

-versus-

**EDILBERTO PUSING y TAMOR,**  
 Accused-Appellant.

Promulgated:  
 11 JUL 2016

X-----

-----X

**RESOLUTION**

**LEONEN, *J.*:**

When a female minor alleges rape, “she says in effect all that is necessary to mean that she has been raped.”<sup>1</sup>

This resolves an appeal of a conviction for two (2) counts of qualified rape and one (1) count of child abuse of a minor.<sup>2</sup> AAA, a minor, is accused-appellant Edilberto Tamor Pusing’s (Pusing) foster daughter.<sup>3</sup> She, her mother (Pusing’s former live-in partner), and Pusing resided in his house.<sup>4</sup> After AAA’s mother’s death, Pusing took AAA in his custody.<sup>5</sup> Soon,

\* On official leave.

<sup>1</sup> *People v. Fernandez*, 403 Phil. 803, 816 (2001) [Per C.J. Davide, En Banc].

<sup>2</sup> *Rollo*, p. 7, Court of Appeals Decision.

<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

Pusing had AAA's aunt, CCC, as his common-law spouse.<sup>6</sup> CCC is the sister of AAA's mother.<sup>7</sup> They all lived together.<sup>8</sup>

On or about April 5, 2004, while they were at home,<sup>9</sup> Pusing allegedly went on top of AAA, put his penis in her mouth, mashed her breasts, kissed her on the lips, licked her vagina, and inserted his penis into her genital.<sup>10</sup>

The next day, AAA's cousin, BBB (CCC's son from a previous marriage), came to attend the wake of his brother (CCC's other son).<sup>11</sup> There, BBB was prodded by Pusing's neighbor<sup>12</sup> to take AAA in his custody because Pusing allegedly did something to her.<sup>13</sup> Alarmed, BBB took AAA to his house in Manila, where she revealed the rape to BBB and his wife.<sup>14</sup>

BBB assisted AAA in filing a complaint before the police.<sup>15</sup> He was referred to the Philippine National Police Crime Laboratory for AAA's medical examination.<sup>16</sup> AAA was examined on April 7, 2004.<sup>17</sup>

In four (4) separate Informations, Pusing was charged with the rape and abuse of AAA, a 12-year-old<sup>18</sup> minor with the cognitive ability of a nine-year-old.<sup>19</sup> The charging portions in the Informations are as follows:

(a) Criminal Case No. 127823-H charges rape through carnal knowledge of an offended party under 12 years of age or is demented, under Article 266-A(1)(d),<sup>20</sup> in relation to the special qualifying circumstance that the offender knew of the offended party's intellectual disability at the time of the commission of the crime, pursuant to Article 266-B(10)<sup>21</sup> of the

<sup>6</sup> Id.

<sup>7</sup> CA *rollo*, p. 104, Regional Trial Court Decision.

<sup>8</sup> *Rollo*, p. 6.

<sup>9</sup> CA *rollo*, p. 103.

<sup>10</sup> *Rollo*, p. 6.

<sup>11</sup> Id.

<sup>12</sup> CA *rollo*, p. 130, Brief for the Appellee. Prosecution identifies the neighbor as a certain Marie.

<sup>13</sup> *Rollo*, p. 6.

<sup>14</sup> Id.

<sup>15</sup> CA *rollo*, p. 37.

<sup>16</sup> Id. at 131.

<sup>17</sup> Id.

<sup>18</sup> CCC alleges that the victim was 14 years old at the time he discovered the abuse (CA *rollo*, p. 98). The same age (14 years old) shows up as the victim's estimate age based on her dental examination (CA *rollo*, p. 107). However, based on the Sexual Crime Protocol by Dr. Joseph Palermo, the victim's estimated age is 12 years old, with a cognitive capacity of a child in Grade 2 (CA *rollo*, p. 146) or nine years old (CA *rollo*, pp. 95–96). Thus, the Informations state her biological age as 12, and her mental age as 9.

<sup>19</sup> Id. at 95–96.

<sup>20</sup> REV. PEN. CODE, art. 266-A provides:

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:

....

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.

<sup>21</sup> REV. PEN. CODE, art. 266-B provides:

## Revised Penal Code:

That, on or about the 5<sup>th</sup> day of April, 2004, in the Municipality of (PPP), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, *taking advantage of his moral authority and influence being the common law husband of the offended party's aunt* who acts as the offended party's guardian, and by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously *have sexual intercourse* with one (AAA), a 12 year old minor, against the latter's will and consent, the said crime having been attended by the qualifying circumstance that the *offender knew of the mental disability, emotional disorder and/or physical handicap* of the offended party at the time of the commission of the crime, the offended party being a *special child with a mental capacity of a 9 year old person*, aggravated by the circumstances of abuse of superior strength, dwelling and the act having been committed with insult or in disregard of the respect due the offended party on account of her minority, to the damage and prejudice of said victim (AAA).<sup>22</sup> (Emphasis supplied)

(b) Criminal Case No. 127824-H charges rape through sexual assault by inserting the offender's penis into the offended party's mouth, under Article 266-A(2),<sup>23</sup> and the offended party being under 12 years old or demented, under Article 266-A(1)(d), in relation to the special qualifying circumstance that the offender knew of the offended party's intellectual disability at the time of the commission of the crime, pursuant to Article 266-B(10) and (12)<sup>24</sup> of the Revised Penal Code:

That, on or about the 5<sup>th</sup> day of April, 2004, in the Municipality of (PPP), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral authority and

---

Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

.....

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

.....

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

<sup>22</sup> *Rollo*, pp. 3-4.

<sup>23</sup> Article 266-A. *Rape: When And How Committed*. - Rape is committed:

.....

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.

<sup>24</sup> Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

.....

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

.....

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

.....

*Reclusion temporal* shall be imposed if the rape is committed by any of the ten aggravating/ qualifying circumstances mentioned in this article.

influence being the common law husband of the offended party's aunt who acts as the offended party's guardian, and by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously *commit an act of sexual assault by means of inserting his penis into the mouth* of one (AAA), a 12 year old minor, against the latter's will and consent, the said crime having been attended by the qualifying circumstance that the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime, the offended party being a special child with a mental capacity of a 9 year old person, aggravated by the circumstances of abuse of superior strength, dwelling and the act having been committed with insult or in disregard of the respect due the offended party on account of her minority, to the damage and prejudice of said victim (AAA).<sup>25</sup> (Emphasis supplied)

(c) Criminal Case No. 127825-H charges committing lascivious conduct on a victim under 12 years old, pursuant to Section 5(b)<sup>26</sup> of Republic Act No. 7610:

That, on or about the 5<sup>th</sup> day of April, 2004, in the Municipality of (PPP), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, did, then and there willfully, unlawfully and knowing[ly] commit lascivious act [sic] upon the person of one (AAA), a 12 year old minor with the mental age of a 9 year old child, by causing (AAA) *to masturbate the penis of the accused*, against the will and consent of (AAA), thus constituting child abuse which is an act that is prejudicial to the normal development of said (AAA).<sup>27</sup> (Emphasis supplied)

(d) Criminal Case No. 127826-H charges committing lascivious conduct on a victim under 12 years old, pursuant to Section 5(b) of Republic Act No. 7610:

That, on or about the 5<sup>th</sup> day of April, 2004, in the Municipality of (PPP), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, did, then and there willfully, unlawfully and knowing[ly] commit lascivious act [sic] upon the person of

<sup>25</sup> *Rollo*, p. 4.

<sup>26</sup> Rep. Act No. 7610 (1992), Special Protection of Children Against Abuse, Exploitation and Discrimination Act, sec. 5 provides:

Section 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:

....

(b) Those who commit the act of sexual intercourse of 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[.]

<sup>27</sup> *Rollo*, p. 4.

one (AAA), a 12 year old minor with the mental age of a 9 year old child, by *mashing the breast[s] and licking the vagina* of the latter against her will and consent, thus constituting child abuse which is an act that is prejudicial to the normal development of said (AAA).<sup>28</sup> (Emphasis supplied)

Five (5) witnesses were presented for the prosecution: AAA,<sup>29</sup> her cousin BBB,<sup>30</sup> PCI Joseph Palermo, M.D.,<sup>31</sup> Dr. Elma Tolentino,<sup>32</sup> and Police Officer III Dennis B. Salopaguio.<sup>33</sup>

AAA testified that on the day of the incident, she and Pusing were home when he consummated the act.<sup>34</sup> AAA detailed what happened:<sup>35</sup> Pusing went on top of AAA, inserted his penis into her mouth, mashed her breasts, kissed her on the lips, licked her vagina, and penetrated her.<sup>36</sup>

BBB testified that he and his wife found out about what Pusing did after BBB rescued the victim.<sup>37</sup> BBB confirmed that AAA has been intellectually challenged even before the incident.<sup>38</sup> He added that Pusing was aware of this.<sup>39</sup> According to BBB, AAA was only 14 years old at the time he discovered the abuse.<sup>40</sup>

Dr. Elma Tolentino testified that based on AAA's October 18, 2006 dental examination, AAA was about 14 years old at the time of rape.<sup>41</sup>

On April 16, 2004, Dr. Joseph Palermo issued a Medico-Legal Report finding that AAA had a deep healed laceration, with "clear evidence of blunt force trauma or penetrating trauma."<sup>42</sup> The Sexual Crime Protocol also concluded that AAA, being 12 years old but still in Grade 2, is mentally deficient.<sup>43</sup>

Two (2) witnesses testified for the defense: Pusing and CCC.<sup>44</sup>

---

<sup>28</sup> CA rollo, p. 97.

<sup>29</sup> Id. at 98.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id. at 107.

<sup>33</sup> Id. at 98.

<sup>34</sup> Id. at 103.

<sup>35</sup> Id. at 101-105.

<sup>36</sup> Id. at 99.

<sup>37</sup> Id. at 130.

<sup>38</sup> Id. at 146.

<sup>39</sup> Rollo, p. 14.

<sup>40</sup> CA rollo, p. 98.

<sup>41</sup> Id. at 107.

<sup>42</sup> Rollo, p. 12.

<sup>43</sup> CA rollo, p. 146.

<sup>44</sup> Rollo, pp. 6-7.

Pusing testified that when AAA lived with him, he treated her as his adopted daughter; he could not have committed rape against her.<sup>45</sup> He did not know that she was suffering from any intellectual disability.<sup>46</sup> He claimed that the filing of the case was instigated by BBB, who had ill feelings towards his mother, CCC, and was interested in Pusing's house and lot.<sup>47</sup> Finally, Pusing alleged that BBB hoped to take over the property, which, by his own admission, was not titled under his name.<sup>48</sup>

CCC testified that at the time of the alleged incidents, she and Pusing were busy attending to the wake of her deceased son, BBB's sibling.<sup>49</sup> She claimed that BBB and Pusing were not in good terms, and BBB caused Pusing's arrest because of interest over Pusing's house.<sup>50</sup> On cross-examination, she admitted that she was not aware how BBB would benefit in filing the case.<sup>51</sup>

In the Decision<sup>52</sup> dated March 16, 2009, the Regional Trial Court found Pusing guilty beyond reasonable doubt of two (2) counts of rape and one (1) count of child abuse. The dispositive portion reads:

WHEREFORE, finding accused EDILBERTO PUSING y TAMOR @ EDWIN guilty beyond reasonable doubt, the Court hereby sentences him as follows:

IN CRIM. CASE NO. 127823 for QUALIFIED RAPE – the penalty of Reclusion Perpetua without eligibility for parole; and to pay AAA the amount of Php50,000.00 as civil indemnity; Php50,000.00 for moral damages and Php25,000.00 for exemplary damages;

IN CRIM. CASE NO. 127824 for QUALIFIED RAPE (of the second kind) – the indeterminate penalty of Six (6) years and 1 day of Prision Mayor as minimum, to Seventeen (17) years and Ten (10) months of Reclusion Temporal, as maximum and to pay the amount of Php50,000.00 as civil indemnity; Php50,000.00 for moral damages and Php25,000.00 for exemplary damages;

IN CRIM. CASE NO. 127826 for CHILD ABUSE – the indeterminate penalty of Fourteen (14) years and Eight (8) Months of Reclusion Temporal as minimum to Twenty (20) years of Reclusion Temporal, as maximum and to pay the amount of Php50,000.00 as civil indemnity; Php50,000.00

---

<sup>45</sup> CA *rollo*, p. 99.

<sup>46</sup> Id. at 69, Brief for the Accused-Appellant.

<sup>47</sup> Id. at 99.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id. at 95–110. The case is docketed as Criminal Case Nos. 127823-26-H. The Decision was penned by Judge Lorifel L. Pahimna of Branch 69 of the Regional Trial Court, Pasig City, Stationed in Taguig City.

for moral damages and Php25,000.00 for exemplary damages.

Meanwhile, accused is ACQUITTED of the crime charged in Crim. Case No. 127825-H for insufficiency of evidence.

SO ORDERED.<sup>53</sup> (Emphasis in the original)

In the Decision<sup>54</sup> dated August 24, 2012, the Court of Appeals affirmed in toto the Regional Trial Court Decision:

**WHEREFORE**, premises considered, the appeal is hereby **DENIED** and the challenged Decision dated 16 March 2009, *supra*, is hereby **AFFIRMED in toto**.

SO ORDERED.<sup>55</sup> (Emphasis in the original)

Pusing filed his Notice of Appeal.<sup>56</sup> The Office of the Solicitor General<sup>57</sup> and Pusing<sup>58</sup> filed their respective Manifestations before this Court, noting that they would no longer file supplemental briefs and, instead, adopt their respective Appellant's and Appellee's Briefs.

For resolution is whether accused-appellant Edilberto Tamor Pusing is guilty beyond reasonable doubt of two (2) counts of qualified rape and one (1) count of child abuse.

Both the Regional Trial Court and the Court of Appeals correctly found accused-appellant guilty beyond reasonable doubt of:

- (a) qualified rape through carnal knowledge under Article 266-A(1)(d) in relation to Article 266-B(6)(10) of the Revised Penal Code;
- (b) qualified rape through sexual assault under Article 266-A(2), in relation to Article 266-A(1)(d) and Article 266-B(6)(10) and (12) of the Revised Penal Code; and
- (c) sexual violence against a minor through the lascivious conduct of mashing her breasts and licking her vagina under the second

---

<sup>53</sup> Id. at 110.

<sup>54</sup> *Rollo*, pp. 2–20. The Decision was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Ramon M. Bato, Jr. and Eduardo B. Peralta, Jr. of the Special Twelfth Division, Court of Appeals, Manila.

<sup>55</sup> Id. at 19.

<sup>56</sup> Id. at 21.

<sup>57</sup> Id. at 35–37.

<sup>58</sup> Id. at 31–34.

and third phrases of Section 5(b) of Republic Act No. 7610, in relation to Article 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610.

Both the Regional Trial Court and the Court of Appeals likewise correctly dismissed the charge of sexual violence against a minor by causing the child to masturbate accused-appellant's penis, as this was never proven in trial.<sup>59</sup>

For the first charge (rape through carnal knowledge), under the Revised Penal Code, as amended, the first type of rape is committed as follows:

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:

....

- 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. (Emphasis supplied)

In *People v. Quintos*,<sup>60</sup> we have defined “‘twelve (12) years of age’ under Article 266-A(1)(d) . . . [as] either the chronological age of the child if he or she is not suffering from intellectual disability, or the mental age if intellectual disability is established.”<sup>61</sup>

Rape is qualified for the first charge as accused-appellant committed it with any of the following aggravating/qualifying circumstances under Article 266-B(6)(1) and (10):<sup>62</sup>

- 1) When the victim is under eighteen (18) years of age and the offender is a . . . guardian . . . or the common law spouse of the parent of the victim;

....

- 10) When the offender knew of the mental disability . . . of the offended party at the time of the commission of the crime.

<sup>59</sup> CA *rollo*, p. 110.

<sup>60</sup> G.R. No. 199402, November 12, 2014, 740 SCRA 179 [Per J. Leonen, Second Division].

<sup>61</sup> Id. at 202.

<sup>62</sup> See REV. PEN. CODE, art. 266-B(6), which provides: “The death penalty shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances[.]”

For the second charge (rape through sexual assault), under Article 266-A(2), the second type of rape is committed as follows:

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. (Emphasis supplied)

As accused-appellant committed the act with the qualifying circumstances under Article 266-B(6)(1) and (10), rape is qualified for the second charge.

For the third charge (sexual violence against a minor through acts of lasciviousness), Republic Act No. 7610 provides the following elements:

Section 5. *Child Prostitution and Other Sexual Abuse.*

.....

- (b) Those who commit the act of . . . *lascivious conduct* with a child . . . or subject 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[.]<sup>63</sup> (Emphasis supplied)

Article 2(h) of the Implementing Rules and Regulations of Republic Act 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[.]<sup>64</sup>

A careful examination of the records shows that there is nothing that

<sup>63</sup> Article 335(3), was repealed by Rep. Act No. 8353 (1997), Anti-Rape Law of 1997. It is now Article 266-A(1)(d). See REV. PEN. CODE, art. 336, which provides:

Art. 336. Acts of lasciviousness.- Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.  
<sup>64</sup> See *Garingarao v. People*, 669 Phil. 512, 523 (2011) [Per J. Carpio, Second Division]; See also *People v. Chingh*, 661 Phil. 208, 222 (2011) [Per J. Peralta, Second Division].

would warrant a reversal of the Decisions of the Regional Trial Court and the Court of Appeals. When a woman, especially a minor,<sup>65</sup> alleges rape, “she says in effect all that is necessary to mean that she has been raped.”<sup>66</sup>

It is settled that “factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance.”<sup>67</sup>

The prosecution satisfactorily established the elements to prove that accused-appellant raped and sexually abused AAA, a 12-year-old minor with the cognitive ability of a nine-year-old. In *People v. Dalipe*:<sup>68</sup>

[A] young girl’s revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.<sup>69</sup>

As pointed out by the Court of Appeals, several circumstances, which have been duly established from the evidence, point to the conclusion that accused-appellant is responsible for the crimes charged against him.

On the two (2) charges of rape and one (1) charge of child abuse, AAA clearly and consistently communicated how accused-appellant forced or intimidated her into having sexual congress with him.<sup>70</sup> He put his penis in her mouth (rape through sexual assault) and inserted his penis into her vagina (rape through carnal knowledge).<sup>71</sup> He mashed her breasts and kissed her on the lips and on her vagina (child abuse through acts of lasciviousness).<sup>72</sup>

The lacerations sustained by AAA in her vagina, which, as Dr. Joseph Palermo testified, could have been caused by a penetration, show that carnal knowledge happened.<sup>73</sup> Lacerations, whether fresh or healed, are the best physical evidence of rape.<sup>74</sup>

As to the circumstances qualifying rape, the prosecution established

---

<sup>65</sup> *People v. Fernandez*, 403 Phil. 803, 816–817 (2001) [Per C.J. Davide, En Banc].

<sup>66</sup> *Id.* at 816.

<sup>67</sup> *People v. De Jesus*, 695 Phil. 114, 122 (2012) [Per J. Brion, Second Division].

<sup>68</sup> 633 Phil. 428 (2010) [Per J. Mendoza, Third Division].

<sup>69</sup> *Id.* at 448.

<sup>70</sup> *Rollo*, p. 9.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 12.

<sup>74</sup> *People v. Brondial*, 397 Phil. 663, 688 (2000) [Per Curiam, En Banc].

that the victim is under 18 years old and that the offender is her guardian.<sup>75</sup> Dr. Elma Tolentino's testimony and AAA's dental record prove AAA's minority.<sup>76</sup> AAA's cousin, BBB, also confirmed this on the basis of the birth certificate that BBB obtained from their grandmother,<sup>77</sup> which the defense never refuted.<sup>78</sup> AAA is accused-appellant's foster daughter. She, her mother (accused-appellant's former live-in partner), and accused-appellant resided in his house. After AAA's mother passed away, accused-appellant took AAA in his custody. Soon, accused-appellant took AAA's aunt, CCC, as his common-law spouse. They all lived together.

The prosecution also established that accused-appellant knew that AAA was intellectually challenged at the time of the offense. BBB testified that accused-appellant knew that AAA was intellectually challenged "even before the incident."<sup>79</sup> Accused-appellant himself admitted that he considered AAA his "adopted daughter."<sup>80</sup> Thus, he would have known of her condition.

In addition, the Sexual Crime Protocol and Dr. Joseph Palermo's testimony show AAA's mental age to be nine (9) years old. This makes the victim less than 12 years old, in light of our ruling in *Quintos*. The act is, therefore, classified as statutory rape under Article 266-A(1)(d) of the Revised Penal Code.

The Regional Trial Court and the Court of Appeals correctly found that the victim's testimony is credible. Given her cognitive "immaturity and lowly intelligence," she "could not have concocted a tale of pure fantasy out of a mere imagination."<sup>81</sup> AAA likewise spontaneously cried during direct examination, a tell-tale sign of her credibility.<sup>82</sup>

As against these details and testimonies, all that accused-appellant offered in defense were denials and alibis, defenses which jurisprudence has long considered weak and unreliable.<sup>83</sup>

The Regional Trial Court properly found, as affirmed by the Court of Appeals,<sup>84</sup> that the testimonies of AAA, BBB, and the medico-legal officer of the Philippine National Police, among others, were consistent with each other and with the physical evidence.<sup>85</sup> There was no showing that the

---

<sup>75</sup> *Rollo*, pp. 10–12.

<sup>76</sup> *Id.* at 15.

<sup>77</sup> *CA rollo*, p. 145.

<sup>78</sup> *Rollo*, p. 16.

<sup>79</sup> *Id.* at 14.

<sup>80</sup> *Id.* at 6.

<sup>81</sup> *People v. Ittang*, 397 Phil. 692-706, 701 (2000) [Per J. Melo, Third Division].

<sup>82</sup> *People v. Mitra*, 385 Phil. 515, 533 (2000) [Per J. Puno, First Division].

<sup>83</sup> *People v. Liwanag, et al.*, 415 Phil. 271, 295 (2001) [Per J. Ynares-Santiago, First Division].

<sup>84</sup> *Rollo*, pp. 7–19.

<sup>85</sup> *CA rollo*, pp. 107–109.

witnesses for the prosecution had ill motives to testify against accused-appellant. Their testimonies are, therefore, accorded full faith and credence.<sup>86</sup>

In sum, the Regional Trial Court and the Court of Appeals did not err in finding accused-appellant guilty beyond reasonable doubt of two (2) counts of qualified rape and one (1) count of child abuse.

The Regional Trial Court,<sup>87</sup> as affirmed by the Court of Appeals,<sup>88</sup> imposed an indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum to 17 years and 10 months of *reclusion temporal*.<sup>89</sup> We modify this penalty for the second charge (rape through sexual assault) under Article 266-A(2) of the Revised Penal Code.

Article 266-B(10) of the Revised Penal Code states that the penalty of *reclusion temporal* shall be imposed if the rape through sexual assault is committed with *any of the 10 aggravating/qualifying circumstances* listed in paragraph 6.

In this case, the aggravating/qualifying circumstances of relationship and minority (Article 266-B(6)(1)) and the offender's knowledge of the victim's intellectual disability (Article 266-B(6)(10)) are present. The rape was committed by a guardian or the common-law spouse of AAA's mother against the offended party's foster child, whom he knew had the cognitive ability of a nine-year-old.

In view of the aggravating circumstances present, the penalty prescribed by the Revised Penal Code (i.e. *reclusion temporal*) under Article 266-B(10) shall be in its maximum period.<sup>90</sup> Therefore, we impose the indeterminate sentence of 12 years of *prision mayor* as minimum and 20 years of *reclusion temporal* as maximum.

Between rape of a minor under the Revised Penal Code and that under Republic Act No. 7610, the higher penalty must be applied for the minor victim's benefit. This Court has held that imposing a lower penalty for the offender "is undeniably unfair to the child victim."<sup>91</sup> Thus, in *People v.*

---

<sup>86</sup> *People v. Guzman*, 107 Phil. 1122, 1125–1126 (1960) [Per J. Gutierrez David, En Banc].

<sup>87</sup> *Rollo*, p. 49

<sup>88</sup> *Id.*, at 19.

<sup>89</sup> *Id.*

<sup>90</sup> REV. PEN. CODE, art. 64(6) provides:

Article 64. *Rules for the application of penalties which contain three periods.* –

.....

6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.

<sup>91</sup> *People v. Chingh*, 661 Phil. 208, 222 (2011) [Per J. Peralta, Second Division].

*Chingh*<sup>92</sup> and *People v. Ricalde*,<sup>93</sup> this Court meted the higher penalty stated in Republic Act No. 7610<sup>94</sup> (i.e. *reclusion temporal* in its medium period) instead of the lower penalty stated in the Revised Penal Code (i.e. *prision mayor*).

In this case, there is no need to apply the penalty under Republic Act No. 7610. The penalty for the crime of rape, being qualified pursuant to Article 266-B(6)(1) and (10) of the Revised Penal Code, is already for the minor victim's benefit.

Unlike in *Chingh* and *Ricalde*, this case has aggravating circumstances. Applying these aggravating circumstances qualifies the rape and allows for a higher penalty of *reclusion temporal* in its maximum period, instead of simply *reclusion temporal* in the medium period under Republic Act No. 7610.

In *People v. Bonaagua*:<sup>95</sup>

It must be clarified . . . that the reasoning expounded by the Court in the recent case of *People v. Armando Chingh y Parcia*, for imposing upon the accused the higher penalty provided in Section 5 (b), Article III of R.A. No. 7610, has no application in the case at bar.

.....

In the present case, the factual milieu was different since the offender, Ireneo [Bonaagua], is the father of the minor victim. Hence, the offenses were committed with the aggravating/qualifying circumstances of *minority and relationship*, attendant circumstances which were not present in the *Chingh* case, which in turn, warrants the imposition of the higher penalty of *reclusion temporal* prescribed by Article 266-B of the R[evised] P[enal] C[ode]. Considering that the R[evised] P[enal] C[ode] already prescribes such penalty, the rationale of unfairness to the child victim that *Chingh* wanted to correct is absent. Hence, there is no more need to apply the penalty prescribed by R.A. No. 7610.<sup>96</sup> (Emphasis supplied, citations omitted)

We also modify the penalty for the third charge (sexual violence against a minor through acts of lasciviousness) under Republic Act 7610. The Court of Appeals imposed the indeterminate penalty of 14 years and eight (8) months of *reclusion temporal* as minimum to 20 years of *reclusion temporal*.

---

<sup>92</sup> 661 Phil. 208 (2011) [Per J. Peralta, Second Division].

<sup>93</sup> G.R. No. 211002, January 21, 2015, 747 SCRA 542 [Per J. Leonen, Second Division].

<sup>94</sup> Rep. Act No. 7610, art. 3, sec. 5(b).

<sup>95</sup> 665 Phil. 750 (2011) [Per J. Peralta, Second Division].

<sup>96</sup> Id. at 770–772.

Article III, Section 5(b) of Republic Act No. 7610 provides that “the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.” The penalty of *reclusion temporal* in its medium period is 14 years, eight (8) months, and one (1) day to 17 years and four (4) months.

Thus, we impose the indeterminate penalty of 14 years, eight (8) months, and one (1) day of *reclusion temporal* as minimum, to 17 years and four (4) months of *reclusion temporal* as maximum.

Further, in view of the depravity of the acts committed by accused-appellant against his nine-year-old foster daughter, we increase the amounts awarded to AAA, in accordance with jurisprudence:

For qualified rape through carnal knowledge, we modify the award of civil indemnity from ₱50,000.00 to ₱100,000.00; moral damages from ₱50,000.00 to ₱100,000.00; and exemplary damages from ₱25,000.00 to ₱100,000.00.<sup>97</sup>

For qualified rape through sexual assault, we modify the award of civil indemnity from ₱50,000.00 to ₱100,000.00; moral damages from ₱50,000.00 to ₱100,000.00; and exemplary damages from ₱25,000.00 to ₱100,000.00.<sup>98</sup>

For acts of lasciviousness against AAA, we retain the award of civil indemnity and moral damages of ₱50,000.00, but increase the exemplary damages from ₱25,000.00 to ₱30,000.00.<sup>99</sup>

In addition, interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid.<sup>100</sup>

**WHEREFORE**, this Court **ADOPTS** the findings of fact and conclusions of law of the Court of Appeals Decision dated August 24, 2012 in CA-G.R. CR.-H.C. No. 04052, with **MODIFICATION** as follows:

WHEREFORE, finding accused EDILBERTO PUSING y TAMOR  
@ EDWIN guilty beyond reasonable doubt, the Court hereby sentences

<sup>97</sup> *People v. Jugueta*, G.R. No. 202124, April 5, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf>> 29–30 [Per J. Peralta, En Banc].

<sup>98</sup> *People v. Quintos*, G.R. No. 199402, November 12, 2014, 740 SCRA 179, 207 [Per J. Leonen, Second Division].

<sup>99</sup> *People v. Padigos*, 700 Phil. 368, 381 (2012) [Per J. Leonardo-De Castro, First Division].

<sup>100</sup> *People v. Buclao*, G.R. No. 208173, June 11, 2014, 726 SCRA 365, 382 [Per J. Leonen, Third Division].

him as follows:

IN CRIM. CASE NO. 127823 for QUALIFIED RAPE (through carnal knowledge) – the penalty of Reclusion Perpetua without eligibility for parole; and to pay AAA the amount of **₱100,000.00** as civil indemnity; **₱100,000.00** for moral damages, and **₱100,000.00** for exemplary damages;

IN CRIM. CASE NO. 127824 for QUALIFIED RAPE (through sexual assault) – the indeterminate penalty of *twelve (12) years* of Prision Mayor as minimum, to *twenty (20) years* of Reclusion Temporal, as maximum, and to pay the amount of **₱100,000.00** as civil indemnity; **₱100,000.00** for moral damages and **₱100,000.00** for exemplary damages;

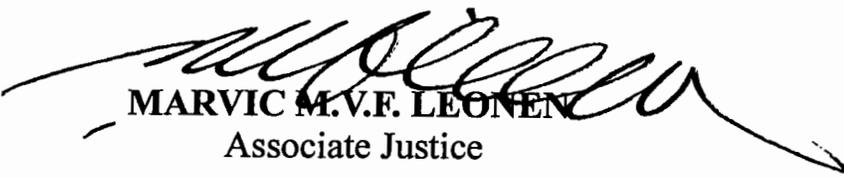
IN CRIM. CASE NO. 127826 for CHILD ABUSE – the indeterminate penalty of Fourteen (14) years, Eight (8) months and *one (1) day* of Reclusion Temporal as minimum, to *Seventeen (17) years and Four (4) months* of Reclusion Temporal as maximum, and to pay the amount of **₱50,000.00** as civil indemnity; **₱50,000.00** for moral damages, and **₱30,000.00** for exemplary damages.

*All awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.*<sup>101</sup>

Meanwhile, accused is ACQUITTED of the crime charged in Crim. Case No. 127825-H for insufficiency of evidence.

SO ORDERED.

SO ORDERED.

  
MARVIC M.V.F. LEONEN  
Associate Justice

WE CONCUR:

  
ANTONIO T. CARPIO  
Associate Justice  
Chairperson

<sup>101</sup> See *Ricalde v. People*, G.R. No. 211002, January 21, 2015, 747 SCRA 542, 551 [Per J. Leonen, Second Division].



**ARTURO D. BRION**  
Associate Justice

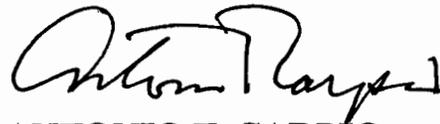


**MARIANO C. DEL CASTILLO**  
Associate Justice

On official leave  
**JOSE CATRAL MENDOZA**  
Associate Justice

**ATTESTATION**

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



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second 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 Resolution 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