



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 218114

Present:

CARPIO, J., Chairperson,
PERALTA,
MENDOZA,*
LEONEN, and
MARTIRES,* JJ.

- versus -

Promulgated:

SALVADOR AYCARDO,
Accused-Appellant.

05 JUN 2017

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DECISION

PERALTA, J.:

This is an appeal from the Decision¹ dated April 24, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05752, which affirmed with modification the Consolidated Judgment² dated July 16, 2012 of the Regional Trial Court (RTC) of Legazpi City, Albay, Branch 8, finding accused-appellant Salvador Aycardo guilty beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the Revised Penal Code, (RPC) as amended, in Criminal Case No. FC-08-0272, and Qualified Rape under Art. 266-A, paragraph 1(d) of the RPC, in Criminal Case No. FC-08-0273.

Accused-appellant Salvador Aycardo was initially charged in two (2) separate Informations dated July 7, 2008 with the crimes of Rape as defined under Article 266-A, par. 2 in relation to par. 1(d) of the RPC, and Rape as defined under Article 266-A, par. 1(d) thereof. Later on, the said charges

* On official leave.
¹ Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Ramon M. Bato, Jr. and Socorro B. Inting, concurring; *rollo*, pp. 2-21.
² Penned by Judge Isabelo T. Rojas; CA *rollo*, pp. 31-40.

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against Aycardo were amended. The accusatory portions of the Amended Informations dated December 2, 2008 read:

Criminal Case No. FC-08-0272

That sometime in the evening of September 2007, at Barangay Tinapian, of the Municipality of Manito, Province of Albay, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, an adult, taking advantage of his influence being the uncle and relative by affinity within the 3rd civil degree of [AAA]³ as well as the tender age of the said [AAA], with lewd and unchaste design, did then and there willfully, unlawfully and feloniously committed an act of sexual assault by inserting his finger into the genital orifice upon the person of the said minor [AAA], an eleven (11) year old girl, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.⁴

Criminal Case No. FC-08-0273

That sometime in the evening of September, 2007, at Barangay Tinapian, of the Municipality of Manito, Province of Albay, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, an adult, taking advantage of his influence being the uncle and relative by affinity within the 3rd civil degree of [AAA] as well as the tender age of the said [AAA], with lewd and unchaste design, did then and there willfully, unlawfully and feloniously have carnal knowledge upon the person of said minor [AAA], an eleven (11) year old girl, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.⁵

Upon arraignment, Aycardo, duly assisted by counsel, pleaded “not guilty” to both charges. After the pre-trial conference was terminated, a joint trial on the merits ensued.

The prosecution presented three (3) witnesses, namely: AAA, the victim; BBB, her mother; and Dr. James M. Belgira, a forensic physician and Medical Officer of the Philippine National Police Forensic Service, who conducted the medical examination on AAA. The facts established by the

³ The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; and *People v. Cabalquinto*, 533 Phil. 703, 709 (2006).

⁴ Records, p. 29. (Underscore in the original)

⁵ *Id.* at 30. (Underscore in the original)



conducted the medical examination on AAA. The facts established by the evidence of the prosecution, as summed up by the CA, are as follows:

In 2007, private complainant AAA, then 11 years old, was residing in Manito, Albay, at the house of her Tiya Tess and the latter's husband "Tiyu Buddy," herein accused-appellant, as AAA's mother, BBB, who was based in Batangas, entrusted her to Tiya Tess, BBB's sister.

Sometime in September 2007, at around one o'clock in the afternoon, AAA was in a room inside the house of accused-appellant, when the latter entered, attempted to remove her shorts and panties and tried to insert his finger into her vagina. Accused-appellant failed to undress AAA because she resisted his advances, but accused-appellant was able to touch her vagina with his finger. AAA then ran to the house of her cousin Joy. Later in the evening that same day, accused-appellant came by to fetch her, telling her she needed to prepare his and Tiya Tess' meal. AAA yielded and returned to accused-appellant's house.

Back at accused-appellant's house, AAA prepared supper as instructed and had dinner with accused-appellant and his son Bongbong, his (sic) cousin. After supper, AAA sought accused-appellant's permission to spend the night at the house of Tiya Ening (another sister of her mother) but accused-appellant denied her request. As told, AAA just went to the sala to watch TV, and thereafter, slept on a mat where Bongbong lay between her and accused-appellant. In the middle of the night, AAA was roused from her sleep when she felt somebody removing her panties and shorts, who turned out to be accused-appellant. AAA resisted but accused-appellant told her he would do it slowly. Accused-appellant then undressed and inserted his penis into her vagina. Gripped with fear, she just wept, with accused-appellant warning to kill her if she tells anyone of the incident.

On 26 March 2008, while sleeping with her mother BBB, AAA yelled in her sleep "Enough Tiyo Buddy! I do not want anymore!" Alarmed, BBB immediately asked the latter why she mentioned accused-appellant's name in her dream, but AAA did not respond. The following day, or on 27 March 2008, BBB again asked AAA why the latter uttered accused-appellant's name in her dream and this time, AAA told BBB that accused-appellant had raped her.

BBB and AAA reported the incident to the barangay then to the police station, after which she was medically examined by forensic physician Dr. James M. Belgira. Dr. Belgira's examination (Medico-Legal Report No. MLB-34-08) revealed the following:

GENITAL:

There is absence of growth of pubic hair. The labia majora are full, convex and coaptated with the dark brown labia minor presenting in between. On separating the same disclosed a **markedly dilated** and redundant fleshy type **hymen**. The posterior fourchette is sharp. The external vaginal orifice offers strong resistance to the introduction



of the examining index finger. The vaginal canal is narrow with prominent rugosities. The cervix is firm and closed.

CONCLUSION:

Findings show clear sign of blunt vaginal penetrating trauma.

There are no extra genital signs of application of any form of physical trauma.⁶

To substantiate its claims of denial and *alibi*, on the other hand, the defense presented as witnesses Aycardo himself and Odilon Trilles, the barangay captain of Tinapian, Manito, Albay. The facts established by the evidence of the defense, as stated by the CA, are as follows:

Accused-appellant is engaged in handicrafts and farming. He works at the farm owned by his wife in Tinapian, Manito, Albay. He knows AAA to be the daughter of his wife's sister who is also from Tinapian, Manito, Albay. AAA lives with her mother at a place which is 100 meters away from his house. In September 2007, he accompanied his wife on three occasions to his sister's house to treat AAA. He denied AAA to have worked in his house as a helper in September 2007 and further denied to have raped her during at the (sic) time. Accused-appellant testified that he only learned of the case when he was arrested at the police station to inquire about the charges.⁷

After trial, the RTC convicted appellant of the crimes of Acts of Lasciviousness and Qualified Rape. The dispositive portion of the RTC Consolidated Judgment dated July 16, 2012 states:

WHEREFORE, in Criminal Case No. FC-08-0272, this Court finds accused Salvador Aycardo **GUILTY** beyond reasonable doubt of the crime of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code, and there being no aggravating or mitigating circumstance alleged and proved, applying the Indeterminate Sentence Law, this Court imposes upon him a penalty of six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum.

Likewise, in Criminal Case No. FC-08-0273, this Court finds accused Salvador Aycardo **GUILTY** beyond reasonable doubt of the crime of Rape as defined under Article 266-A 1(d) and penalized under Article 266-B thereof. The qualifying circumstances of the victim's minority and her relationship with the accused as the latter's relative by affinity within the 3rd degree being properly alleged in the information and proven during the trial, this Court, in view of Republic Act No. 9346 which prohibits the imposition of the death penalty, hereby sentences him to suffer the penalty of *reclusion perpetua* without eligibility for parole.

⁶ Rollo, pp. 5-7. (Citations omitted and emphasis in the original)

⁷ *Id.* at 7-8. (Citations omitted)



Accused is likewise ordered to pay the victim [AAA] the amount of Php75,000.00 as civil indemnity, Php50,000.00 as moral damages and to pay the further sum of Php25,000.00 as exemplary damages plus costs.

SO ORDERED.⁸

With respect to the first charge, the RTC held that since Aycardo was not actually able to insert his finger inside AAA's vagina, he cannot be convicted of the crime of rape by sexual assault. Still, he can be convicted of acts of lasciviousness, because it is necessarily included in the offense charged in the first Information, and it was proved in court. The RTC noted that, while appellant failed to insert his finger inside AAA's vagina, he was nonetheless able to touch the same, thereby consummating the crime of acts of lasciviousness.

As to the second charge, the RTC found that the prosecution successfully proved the elements of statutory rape, qualified by the circumstances of relationship and minority under Article 266-B of the RPC, namely: that Aycardo, a relative by affinity within the 3rd civil degree, had carnal knowledge of his niece, AAA, a child below 12 years of age. The RTC also ruled that Aycardo's self-serving denial cannot prevail over AAA's positive, straightforward, and credible testimony, which was supported by the medico-legal findings of markedly dilated hymen and blunt vaginal penetrating trauma.

Aggrieved by the RTC decision, Aycardo filed an appeal before the CA, arguing that the RTC gravely erred in convicting him of the crimes of Acts of Lasciviousness and Rape, despite the prosecution's failure to prove his guilt beyond reasonable doubt.⁹

In a Decision dated April 24, 2014, the CA affirmed with modification the Consolidated Judgment of the RTC, thus:

WHEREFORE, the assailed Consolidated Judgment dated 16 July 2012 of Branch 8, Regional Trial Court of Legazpi City, Albay, is **AFFIRMED** but with **MODIFICATION** to read as follows:

WHEREFORE, in Criminal Case No. FC-08-0272, this Court finds the accused Salvador Aycardo **GUILTY** beyond reasonable doubt of the crime of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code, and there being no aggravating or mitigating circumstance alleged and proved, applying the Indeterminate Sentence Law, this Court imposes upon him a penalty of six months of *arresto mayor*, as minimum, to

⁸ CA rollo, pp. 39-40.

⁹ *Id.* at 17.



four years and two months of *prision correccional*, as maximum. **Accused is also ordered to pay the victim (AAA) the amount of Php20,000.00, as civil indemnity and Php15,000.00 as moral damages.**

Likewise, in Criminal Case No. FC-08-0273, this Court finds accused Salvador Aycardo GUILTY beyond reasonable doubt of the crime of Rape as defined under Article 266-A par. 1(d) of the Revised Penal Code and penalized under Article 266-B thereof. The qualifying circumstances of the victim's minority and her relationship with the accused as the latter's relative by affinity within the 3rd degree being properly alleged in the Information and proven during the trial, this Court, in view of Republic Act No. 9346 which prohibits the imposition of the death penalty, hereby sentences him to suffer the penalty of *reclusion perpetua* without eligibility for parole. Accused is likewise ordered to pay the victim (AAA) the amount of seventy-five thousand (Php75,000.00) pesos as civil indemnity, **seventy-five thousand (Php75,000.00) pesos** as moral damages and to pay the further sum of **thirty thousand (Php30,000.00) pesos** as exemplary damages plus costs. **The victim is also entitled to an interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this judgment.**

SO ORDERED.

SO ORDERED.¹⁰

Citing Section 4,¹¹ Rule 120 of the Rules on Criminal Procedure, the CA agreed with the RTC that while Aycardo may not be convicted of the charge of rape by sexual assault, he may still be held liable for acts of lasciviousness, because such crime is necessarily included in the said rape charge which was duly proved in court. The CA gave credence to the testimony of AAA that Aycardo failed in his attempt to remove her shorts and underwear, but was still able to touch her vagina with his finger. Contrary to Aycardo's contention, the CA ruled that AAA's belated disclosure of sexual abuse, as well as her act of returning to his house, do not weaken or discredit her straightforward testimony. The CA stressed that the delay in reporting of such abuse does not imply that the charge is untrue, because the victim may prefer to bear the ignominy of pain in silence rather than reveal her harrowing experience to the shame of the world. Besides, AAA did not have much choice but to return to Aycardo's house, since she was then residing therein and was dependent on him for support.

¹⁰ *Rollo*, pp. 20-21. (Emphasis in the original)

¹¹ SEC. 4. *Judgment in case of variance between allegation and proof.* – When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Dissatisfied with the CA Decision, Aycardo filed a notice of appeal. In compliance with the Court's Resolution dated June 22, 2015, notifying the parties to file their respective supplemental briefs, both Aycardo¹² and the Office of the Solicitor General¹³ (OSG) manifested that they will no longer file such briefs, considering that they have argued exhaustively all the relevant issues in their respective appeal briefs.

In the Appellant's Brief, Aycardo argued that AAA's behavior after the alleged first sexual assault in September 2007 was inconsistent with the crime of acts of lasciviousness. He pointed out that AAA testified clearly that his finger was never inserted into her vagina, and that he only tried or attempted to remove her shorts and panties, but was unable to do so because she resisted his indecent act. He claimed that AAA's conduct after the alleged first act of sexual abuse negates the possibility that he committed the second rape charge against him. He noted that despite AAA's claim that she ran to the house of her cousin, Joy, to seek refuge, she failed to tell anybody what he supposedly did to her. He found it perplexing that she still went with him when he fetched her from Joy's house in the evening of the same day when he allegedly abused her. He also observed that AAA was too nonchalant about her first harrowing experience, considering that when they arrived home, she immediately prepared food, ate dinner with him and his son, Bongbong, prepared the bed, watched television and slept with Bongbong beside her.

Aycardo further contended that he cannot be convicted of rape because AAA's testimony shows that his private part touched her vagina slightly only; thus, it did not enter the *labia* of the *pudendum* of the female organ. He also noted that the forensic physician who examined AAA did not clearly say that it was his penis, which caused the findings in the medico-legal report that showed that there is a markedly dilated and redundant flesh-type hymen and a sign of blunt vaginal penetrating trauma. He then stressed that no laceration was found on AAA's vagina, and that her medical examination was conducted six (6) months after the alleged sexual abuse, hence, the possibility that she had sexual experience with someone else cannot be discounted. Finally, he posited that it is incredible that the alleged rape incident would go unnoticed by Bongbong, considering the close proximity between them while they were sleeping, which would have easily roused the latter from his sleep.

In the Appellee's Brief, the OSG argued that Aycardo's guilt for the crimes of Qualified Rape and Acts of Lasciviousness were proved beyond reasonable doubt. It also rejected as inherently weak his defenses of denial and *alibi* that he was staying in Batangas in September 2007.

¹² Rollo, p. 37.

¹³ *Id.* at 31.



The appeal lacks merit, but a modification of the penalty imposed and the damages awarded, is in order.

It is well settled that in criminal cases, an examination of the entire records of a case may be explored for the purpose of arriving at a correct conclusion, as an appeal in criminal cases throws the whole case open for review, it being the duty of the appellate court to correct such error as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not.¹⁴ After a careful review of the records, the Court finds no cogent reason to depart from the findings of both the RTC and the CA that the prosecution was able to prove beyond reasonable doubt all the elements of the crimes of Acts of Lasciviousness and Qualified Rape.

With respect to Criminal Case No. FC-08-0272, both the RTC and the CA ruled correctly that Aycardo cannot be convicted of the charge of rape by sexual assault, as he was unable to insert his finger inside AAA's vagina, but he can still be convicted of acts of lasciviousness because its elements are necessarily included in the offense charged, and were proved in court. The rulings of the RTC and the CA are consistent with Section 4, in relation to Section 5, of Rule 120 of the Rules on Criminal Procedure which provide for the "variance doctrine," viz.:

SEC. 4. *Judgment in case of variance between allegation and proof.* – When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SEC. 5. *When an offense includes or is included in another.* – An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former continue or form part of those constituting the latter.

In *Navarrete v. People*,¹⁵ the Court noted that, under Section 5(b), Article III of Republic Act (R.A.) No. 7610,¹⁶ when the victim is under 12 years old, the accused shall be prosecuted under either Article 335 (for rape) or Article 336 (for acts of lasciviousness) of the RPC. Accordingly, although an accused is charged in the information with the crime of statutory rape (*i.e.*, carnal knowledge of a woman under twelve years of age), the offender can be convicted of the lesser crime of acts of lasciviousness, which is included in rape.

¹⁴ *People of the Philippines v. Jaime Brioso alias Talap-talap*, G.R. No. 209344, June 27, 2016, citing *People v. Bonaagua*, 665 Phil. 750, 766 (2011); *People v. Lindo*, 641 Phil. 635, 647 (2010).

¹⁵ 542 Phil. 496, 506 (2007).

¹⁶ Special Protection of Children Against Abuse, Exploitation, and Discrimination Act



In *People v. Bon*,¹⁷ the Court ruled that even if the statutory rape charge against the accused was not proved beyond reasonable doubt, he can still be held liable for the crime of acts of lasciviousness, as defined and penalized under Article 336 of the RPC, in relation to R.A. No. 7610, since all the elements of this offense were established. It cannot, therefore, be successfully argued that the accused's constitutionally-protected right to be informed of the nature and cause of the accusation against him was violated when he was found guilty under Section 5 of R.A. No. 7610.¹⁸

Applying the variance doctrine to this case, Aycardo, who was charged with one (1) count of rape by sexual assault, can still be convicted of acts of lasciviousness under Section 5(b), Article III of R.A. No. 7610 even though he was unable to insert his finger into the victim's vagina, because the prosecution has proved that he intentionally touched the same – an act which is deemed a lascivious conduct.

Acts of lasciviousness committed against a child¹⁹ is defined and penalized under Section 5 (b), Article III of R.A. No. 7610, as follows:²⁰

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.

x 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. (Emphasis ours)

Section 5 (b), Article III of R.A. No. 7610 punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also

¹⁷ 444 Phil. 571, 584 (2003).

¹⁸ *Navarrete v. People*, *supra* note 15, at 505-506.

¹⁹ Section 3. *Definition of Terms*.-

(a) "Children" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

²⁰ *People v. Bonaagua*, *supra* note 14.

with a child subjected to other sexual abuses.²¹ It covers not only a situation where a child is abused for profit, but also where one – through coercion, intimidation or influence – engages in sexual intercourse or lascivious conduct with a child. Thus, a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult.²²

In *Quimvel vs. People of the Philippines*²³ (*Quimvel*), the Court held that it is immaterial whether or not the accused himself employed the coercion or influence to subdue the will of the child for the latter to submit to his sexual advances for him to be convicted under Section 5(b) of R.A. No. 7610. The first paragraph of Section 5 thereof even provides that the offense can be committed by “any adult, syndicate or group,” without qualification. The clear language of the law does not preclude the prosecution of lascivious conduct performed by the same person who subdued the child through coercion or influence.²⁴

Moreover, it is inconsequential that the sexual abuse occurred only once. As stressed in *Quimvel*, the very definition of “child abuse” under Section 3(b) of R.A. No. 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of, for it refers to the maltreatment, whether habitual or not, of the child. Thus, a violation of Section 5(b) of the same law occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.²⁵

To be sure, Article III of R.A. No. 7610 is captioned as “Child Prostitution and Other Sexual Abuse” because Congress really intended to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit, hence, the law covers not only child prostitution but also other forms of sexual abuse.²⁶

However, before an accused can be convicted of child abuse through lascivious conduct committed against a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of R.A. No. 7610.²⁷ Acts of Lasciviousness, as defined in Article 336 of the RPC, has the following elements:

²¹ *Id.*

²² *Dimakuta v. People*, G.R. No. 206513, October 20, 2015, 773 SCRA 228. *Olivarez v. People*, 503 Phil. 421, 432 (2005).

²³ G.R. No. 214497, April 18, 2017.

²⁴ *Quimvel v. People*, *supra*.

²⁵ *Id.*

²⁶ *Olivarez v. People*, *supra* note 22, at 433.

²⁷ *Quimvel v. People*, *supra* note 23.

- (1) That the offender commits any act of lasciviousness or lewdness;
- (2) That it is done under any of the following circumstances:
 - a. By using force or intimidation; or
 - b. When the offended party is deprived of reason or otherwise unconscious; or
 - c. When the offended party is under 12 years of age; and
- (3) That the offended party is another person of either sex.

On the other hand, the following elements of sexual abuse under Section 5, Article III of R.A. No. 7610 must be established:

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.
3. The child, whether male or female, is below 18 years of age.

As correctly found by the CA, all the elements of acts of lasciviousness under Article 336 of the RPC, as amended, in relation to Section 5(b), Article III of R.A. No. 7610, are present in Criminal Case No. 08-0272 because the evidence of the prosecution showed that Aycardo, an adult, took advantage of his influence as the uncle and a relative by affinity within the 3rd civil degree of AAA, and was able to touch her vagina, while he forcibly removed her shorts and panties, *viz.*:

PROS. SARMIENTO:

x x x x

- q – You have stated awhile ago that your Tiyu Buddy got inside the room while you were inside because you were getting the clothes that you are going to wash, kindly repeat what did Tiyu Buddy do while you were inside the room?
- a – **While I was inside the room and Tiyu Buddy on September 2007 at around 1:00 o'clock in the afternoon Tiyu Buddy forcibly removed my short and pant[ies] and tried to insert his finger inside my vagina.**
- q – Was he able to insert his finger inside your vagina?
- a – Not that time, but late in the evening.
- q – **But the finger, as you have demonstrated, did it touch the vagina?**
- a – **Yes.** But later in the evening, his finger inserted (sic) inside my vagina and tried to rotate the same inside.

x x x²⁸

Intentional touching, either directly or through clothing, of the genitalia of any person, with intent to abuse or gratify sexual desire falls under the definition of “lascivious conduct”²⁹ under Section 2 (h) of the rules and regulations of R.A. No. 7610. As such, Aycardo’s act of touching AAA’s vagina after forcibly removing her shorts and panties, and trying to insert his finger into it, satisfies the first element of acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of R.A. No. 7610.

Anent the second and the third elements thereof, Aycardo, admitted that he is the uncle of AAA, who is the daughter of his wife’s sister, BBB.³⁰ AAA³¹ and BBB³² confirmed such relationship when they both testified that BBB and Aycardo’s wife are sisters. That AAA was an 11-year-old female at the time of the commission of the offense in September 2007 is evidenced by her birth certificate.³³ Besides, AAA is deemed a child subjected to other sexual abuse, because she indulged in lascivious conduct under the influence of Aycardo who is an adult.³⁴

With regard to Criminal Case No. FC-08-0272, the Court finds no compelling reason to disturb the factual findings of both the RTC and the CA that Aycardo is guilty of Qualified Rape.

Article 266-A of the RPC, as amended by R.A. No. 8353, defines statutory rape, and Article 266-B thereof imposes the death penalty if, among others, the victim is under eighteen (18) years of age and the offender is a relative by affinity within the third (3rd) civil degree, to wit:

Article 266-A. Rape, When and How Committed. – Rape is committed –

1) By a man who shall have carnal knowledge of a woman . . . :

x x x x

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 x

²⁹ [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.

³⁰ TSN, February 21, 2011, p. 4.

³¹ TSN, February 19, 2009, p. 10.

³² *Id.*, at 43.

³³ Records, p. 17. Date of birth is October 22, 1995.

³⁴ TSN dated February 21, 2011, p. 2. Seventy (73) years old as of the date of his testimony.

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

x x x x

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

- 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 victim;

x x x x

Two elements must be established to hold the accused guilty of statutory rape, namely: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below twelve years of age or demented. Proof of force, intimidation and consent is unnecessary, since none of these is an element of statutory rape as the only subject of inquiry is the age of the woman and whether carnal knowledge took place.³⁵ Here, the prosecution has proved beyond reasonable doubt the said two elements, as well as the victim's relationship with the offender. *First*, the prosecution has presented in evidence the birth certificate³⁶ of AAA showing that she was only 11 years old when Aycardo had carnal knowledge of her sometime in September 2007, as she was born on October 22, 1995. *Second*, the prosecution has established through the "positive, straightforward and credible"³⁷ testimony of AAA that Aycardo, her uncle – a relative by affinity within the 3rd civil degree – had carnal knowledge of her:

x x x x

PROS. SARMIENTO:

q – After the said incident when your Tiyu Buddy tried to insert his finger into your vagina and able to touch it, what happened next?

a – I ran towards the house of Joy but later in the evening Tiyu Buddy [fetched] me.

x x x x

q – When he [fetched] you, did you go with him?

WITNESS:

a – Yes, ma'am.

³⁵ *People of the Philippines vs. Jaime Brioso alias Talap-talap*, supra note 14.

³⁶ Records, p. 17.

³⁷ CA rollo, p. 38.

PROS. SARMIENTO:

q – Why did you join despite the fact that he already did a bad thing to you?

a – Because he told me that my Tiya Tess is already coming and I have to prepare the meal.

q – And so when you arrived in the house of Tiyu Buddy, what did you do?

a – I immediately [prepared] the food.

q – What time did you eat your dinner?

a – After cooking the rice.

q – Who joined you in eating?

a – Tiyu Buddy, Bongbong and myself.

x x x x

q – After you had eaten your dinner, what did you do next?

a – I asked permission from Tiyu Buddy to stay for a night at Tiya Ening.

PROS. SARMIENTO:

q – Who is this Tiya Ening?

a – Another sister of my mother.

x x x x

q – When you had asked your Tiyu Buddy to permit (sic) you to stay at Tiya Ening, did he permit (sic) you to sleep there?

a – No, he did not permit me.

q – So, after that, what did you do next?

a – I went to the kitchen to try to open the door.

q – And after that, what happened next?

a – Tiyu Buddy tried to struggle and told me to go to the sala and sleep.

x x x x

q – And after following his request, what did you do next?

a – I lay the mat on the floor and watched TV for a while.

q – And during that time, where was Tiyu Buddy?

a – He was already lying down.

PROS. SARMIENTO:

q – How about Bongbong, where was he at that time?

a – Bongbong was also in the sala watching TV.

q – And what time did you sleep?

a – After watching Going Bulilit.



q – How about Tiyu Buddy and Bongbong, what time did they sleep?
a – I do not know, ma'am.

q – So, while you were sleeping who was beside you?
a – Bongbong was beside me.

q – How about Tiyu Buddy where did he sleep, if you know?
a – He slept beside Bongbong.

x x x x

q – [AAA], if you can recall, what time did you wake up?
a – Midnight. I cannot exactly recall. Middle of the night.

q – Why was it that you were able to wake up in the middle of the night.

a – I was awakened because I felt somebody removing my panty and shorts.

x x x x

q – And who was that person?

a – It's Tiyu Buddy.

q – Why were you able to say that it was your Tiyu Buddy who removed your shorts and panty?

a – Because I saw him.

q – After Tiyu Buddy removed your shorts and panty, what happened next?

a – I offered some resistance but he told me that he will do it slowly.

q – So, what did he exactly do?

a – After that he removed his brief and he tried to insert his penis into my vagina.

q – Did the private part of Tiyu Buddy get inside your vagina?

a – It touched my vagina slightly only.

PROS. SARMIENTO:

q – While all these things were done to you by Tiyu Buddy, what was your reaction?

a – I was afraid.

q – Why did you not shout or kick Tiyu Buddy?

a – Because of fear I just cried.

q – Aside from that, what did Tiyu Buddy do to you?

a – He showed me the white substance coming out from his penis.

q – Why were you able to say that it was nighttime?

a – Because I was able to see its color because at that time the TV is open (sic).

- q – During this incident that happened where was Bongbong?
a – Bongbong was just beside me.
- q – Why did you not ask help from Bongbong?
a – Because Bongbong at that time he was covered with blanket.
- q – After the incident in question, after the things done to you by your Tiyu Buddy, what did he tell you, if any?
a – He told me not to narrate the incident to anybody because if I will do it he will kill me.

PROS. SARMIENTO

- q – Why was it that you were staying in the house of Tiyu Buddy?
a – Because my mother left me to them.

- q – Where was your mother on that September 2007?
a – She is (sic) in Batangas.

PROS. SARMIENTO:

I just want to make of record that the witness is crying while testifying.

x x x³⁸

The fact that AAA stated that Aycardo's private part touched her vagina "slightly only" hardly means that there was no penetration at all, since her testimony was corroborated by the findings of the examining physician, showing a "clear sign of blunt vaginal penetrating trauma."³⁹ Further, as aptly noted by the CA, Dr. Belgira testified that he found AAA's hymen to be dilated or "very wide" which was abnormal, considering that a normal hymen opening for a young girl her age should be very small, and that such condition could have been caused by the protrusion into her vagina of a blunt hard object such as a finger or penis.⁴⁰ In *People of the Philippines v. Padit*,⁴¹ the Court explained why the slightest penetration of the female genitalia consummates the rape. Carnal knowledge is defined as the act of a man having sexual bodily connections with a woman; as such, a mere touching of the external genitalia by the penis capable of consummating the sexual act already constitutes consummated rape.⁴²

In seeking his acquittal of the crimes charged, Aycardo raised the defenses of denial and *alibi*. AAA's positive and credible testimony, coupled with the medical findings, deserves more persuasive weight than Aycardo's bare denial and *alibi*, which are self-serving defenses that cannot be given greater weight than the declaration of a credible witness who

³⁸ TSN, February 19, 2009, pp. 13-19. (Emphasis added.)

³⁹ Records, p. 16.

⁴⁰ TSN, November 28, 2011, pp. 5-6.

⁴¹ G.R. No. 202978, February 1, 2016.

⁴² *People v. Padit, supra; People v. Butiong*, 675 Phil. 621, 630 (2011).

testified on affirmative matters⁴³ and positively identified him as the perpetrator of the crimes. Anent AAA's credibility and indifferent behavior shortly after her sexual abuse in the hands of Aycardo, the Court finds that the CA has exhaustively addressed such issues, as follows:

It is not disputed that accused-appellant failed to completely undress AAA on that occasion since she was unable to fend off his advances. This, however, does not necessarily negate accused-appellant's act of having successfully touched AAA's vagina with his finger in his struggle to remove her clothes.

Neither can her belated disclosure of the sexual abuse nor her act of returning to accused-appellant's house weaken her testimony and render the same unworthy of credence. AAA could not be blamed for not immediately reporting the incident to her cousin Joy whose house she ran to after the first incident of molestation since she distrusted Joy, [for] being a "gossiper." It has been held that delay in the reporting of sexual abuse does not imply that the charge was not true, as the victim may prefer to bear the ignominy of pain in silence rather than reveal her harrowing experience and expose her shame to the world. Such delay is not unusual, especially when the victim is a minor.

If AAA eventually chose to return to accused-appellant's house despite the first incident, it was not because she welcomed his overtures but more in deference to accused-appellant's moral ascendancy as her uncle. In her direct testimony, she said that despite the first incident, AAA still returned to accused-appellant's house in obedience to his order for AAA to prepare dinner since according to accused-appellant, her Tiya Tess, accused-appellant's wife, was coming home that evening. AAA did not have much of a choice but to return to accused-appellant's house since she was, at that time, dependent on accused-appellant in whose house she resided.⁴⁴

As regards the claim that Dr. Belgira's medico-legal report is unreliable because he did not clearly attribute that AAA's markedly dilated hymen and blunt vaginal penetrating trauma was caused by Aycardo's penis, and the fact that AAA was medically examined only six (6) months after the sexual abuse incident, the Court upholds the CA's correct ruling, to wit:

Accused-appellant has not adduced any evidence showing Dr. Belgira's lack of qualification as to render his testimony unworthy of belief. Neither did he present any evidence showing any ill motive on the part of Dr. Belgira to testify falsely against him. More[over], it has been held that expert testimony is merely corroborative in nature and not essential to conviction. Hence, an accused can still be convicted of rape on the basis of the sole testimony of the private complainant. Hence, even if We were to disregard Dr. Belgira's medico-legal report and testimony, accused-appellant's conviction may still be sustained on the basis of AAA's testimony who categorically testified that accused-appellant

⁴³ *People of the Philippines v. Felipe Bugho y Rompal*, G.R. No. 208360, April 6, 2016.

⁴⁴ *Rollo*, pp.11-12.

inserted his penis into her vagina and even subsequently showed her his semen spurting out of his organ after satiating his lust. Meanwhile, accused-appellant's claim that the belated medical examination of AAA raised the possibility that she may have had sexual intercourse with some other person is purely speculative and cannot be given credence. We, in fact, do not find any reason to disbelieve the account of AAA, a girl who had been sexually molested at the tender age of eleven, who spontaneously shed tears while narrating her sordid experience with accused-appellant. It has been held that the crying of the victim lends credence to her charge of rape for the display of such emotion indicates the pain she feels when asked to recall her harrowing experience.⁴⁵

There is also no merit in Aycardo's claim that the absence of laceration on AAA's vagina belies the rape charge against him. As held in *People v. Pangilinan*⁴⁶ "[p]roof of hymenal laceration is not an element of rape. An intact hymen does not negate a finding that the victim was raped. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape." In this case, Dr. Belgira's finding of "a clear sign of blunt vaginal penetrating trauma,"⁴⁷ bolstered AAA's credible testimony that Aycardo raped her.

Regarding the claim that the rape incident would not go unnoticed by Bongbong, who was just sleeping between Aycardo and AAA, the CA aptly stressed that rapists are not deterred by the presence of people nearby, such as members of their own family, inside the same room, considering that lust respects no time, place or circumstance.⁴⁸ Neither the smallness of the room, nor the presence of other people therein, nor the high risk of being caught, has been held efficient to deter the commission of rape.⁴⁹

The imposable penalty for acts of lasciviousness under Article 336 under the RPC, in relation to Section 5(b), Article III of R.A. No. 7610, when the victim is under twelve (12) years of age, shall be *reclusion temporal* in its medium period, the range of which is from Fourteen (14) years, Eight (8) months and One (1) day to Seventeen (17) years and Four (4) months. Applying the Indeterminate Sentence Law, and with the presence of the aggravating circumstance of relationship, the maximum term of the sentence to be imposed shall be taken from the maximum of the imposable penalty, which is *reclusion temporal* medium in its maximum period, the range of which is from Sixteen (16) years, Five (5) months and Ten (10) days to Seventeen (17) years and Four (4) months, while the minimum term shall be taken from the penalty next lower in degree, which is *reclusion temporal* minimum, the range of which is from twelve (12)

⁴⁵ *Id.* at 16-17.

⁴⁶ 676 Phil. 16, 32 (2011).

⁴⁷ Records, p. 16.

⁴⁸ *Id.* at 17.

⁴⁹ *People v. Rellota*, 640 Phil. 471, 483 (2010)



years and one (1) day to fourteen (14) years and eight (8) months.⁵⁰ Accordingly, Aycardo is sentenced to suffer the indeterminate penalty of Twelve (12) years and One (1) day of *reclusion temporal* minimum, as minimum, to Sixteen (16) years, Five (5) months and Ten (10) days of *reclusion temporal* medium in its maximum period, as maximum.

It is not amiss to stress that the alleged and proved modifying circumstances that the victim is under 12 years old and the offender is a relative by affinity within the third (3rd) civil degree, are insufficient in order for the maximum period to be imposed against the perpetrator pursuant to Section 31,⁵¹ Article XII of R.A. No. 7610, because the same provision requires that such collateral relative must be within the second (2nd) civil degree. At any rate, the said relationship of the offender with the child victim can be considered as an aggravating circumstance for purposes of increasing the period of imposable penalty for acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610. As one of the elements of the same crime, however, the minority of the victim cannot be cited again as an aggravating circumstance in order to increase the period of the imposable penalty.

On the matter of Aycardo's civil liabilities for acts of lasciviousness, the CA properly awarded AAA civil indemnity in the amount of ₱20,000.00 and moral damages in the amount of ₱15,000.00, but exemplary damages in the amount of ₱15,000.00 should also be awarded, in line with current jurisprudence.⁵² A fine in the amount of ₱15,000.00⁵³ is likewise imposed against Aycardo in accordance with Section 31(f),⁵⁴ Article XII of R.A. No. 7610.

On the other hand, the imposable penalty for Qualified Rape under Article 266-A(1)(d), in relation to Article 266-B(1) of the RPC, is death. In view of R.A. No. 9346⁵⁵ and A.M. No. 15-08-02-SC,⁵⁶ the CA properly

⁵⁰ *People v. Santos*, G.R. No. 205308, February 11, 2015, 750 SCRA 471.

⁵¹ Section 31. *Common Penal Provisions*. –

x x x x

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked.

⁵² *Quimvel v. People*, *supra* note 23.

⁵³ *People v. Garingarao*, 669 Phil. 512, 525 (2011).

⁵⁴ Section. 31. *Common Penal Provisions*. –

x x x x

(f) A fine to be imposed 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.

⁵⁵ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

Enacted on 24 June 2006. Section 3 of R.A. No. 9346 states:

SEC. 3. Persons 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. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

sustained the RTC in imposing the penalty of *reclusion perpetua* without eligibility for parole, *in lieu* of death. On Aycardo's civil liabilities for Qualified Rape, the awards of ₱75,000.00 each as civil indemnity and moral damages, and ₱30,000.00 as exemplary damages, should all be increased pursuant to *People v. Jugueta*,⁵⁷ where it was held that where the penalty imposed is death but reduced to *reclusion perpetua* because of R.A. No. 9346, the civil indemnity *ex delicto*, moral damages, and exemplary damages shall be in the amount of ₱100,000.00 each. Finally, the six percent (6%) legal interest *per annum* imposed on all the amounts awarded reckoned from the date of finality of the judgment until the damages are fully paid, is likewise upheld for being consistent with current jurisprudence.⁵⁸

WHEREFORE, the appeal is **DISMISSED**, and the Decision dated April 24, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05752 is **AFFIRMED with MODIFICATION**, thus:

1. In Criminal Case No. FC-08-0272, accused-appellant Salvador Aycardo is found guilty beyond reasonable doubt of the crime of Acts of Lasciviousness as defined under Article 336 of the Revised Penal Code and penalized under Section 5(b), Article III of R.A. No. 7610. There being an aggravating circumstance of relationship that was alleged and proved, Aycardo is sentenced to suffer the indeterminate penalty of Twelve (12) years and One (1) day of *reclusion temporal* minimum, as minimum, to Sixteen (16) years, Five (5) months and Ten (10) days of *reclusion temporal* medium in its maximum period, as maximum. He is also ordered to pay AAA the amount of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages, as well as the fine of ₱15,000.00.
2. In Criminal Case No. FC-08-0273, accused-appellant Salvador Aycardo is found guilty beyond reasonable doubt of the crime of Rape as defined under Article 266-A (1)(d) and penalized under Article 266-B of the Revised Penal Code. In view of the presence of the qualifying circumstances of the victim's minority and her relationship with the appellant as the latter's relative by affinity within the 3rd degree, Aycardo is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, in accordance

⁵⁶ Guidelines For the Proper Use of the Phrase "Without Eligibility For Parole" in Indivisible Penalties dated August 4, 2015; II (2) When the circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification "*without eligibility for parole*" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

⁵⁷ G.R. No. 202124, April 5, 2016.

⁵⁸ *People of the Philippines v. Roger Galgati y Gardoce*, G.R. No. 207231, June 29, 2016.



with Section 3 of Republic Act No. 9346.⁵⁹ He is, likewise, ordered to pay AAA the amount of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

All damages awarded shall incur legal interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid. Costs of suit against accused-appellant Aycardo.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

On official leave
JOSE CATRAL MENDOZA
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

On official leave
SAMUEL R. MARTIRES
Associate Justice

⁵⁹ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Enacted on 24 June 2006. Section 3 of RA 9346 states:

SEC. 3. Persons 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. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

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



MARIA LOURDES P. A. SERENO
Chief Justice