



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 232500

Present:

PERALTA, C.J., Chairperson,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

- versus -

ZZZ,¹

Accused-Appellant.

Promulgated:

JUL 28 2020

X-----X

DECISION

PERALTA, C.J.:

Before this Court is an appeal from the November 28, 2016 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06755 which affirmed the October 29, 2013 Joint Decision³ of the Regional Trial Court (RTC) of Calapan, Oriental Mindoro, Branch 39, finding accused-appellant ZZZ guilty beyond reasonable doubt of violations of Section 5 (a) and (i), in relation to Section 6 (a) and (f), of Republic Act (R.A.) No. 9262, otherwise known as the “Anti-Violence Against Women and Their Children Act of 2004”; of Rape; and of three (3) counts of Acts of Lasciviousness, in relation to R.A. No. 7610.⁴

¹ The real name of the accused-appellant is withheld pursuant to Amended Administrative Circular No. 83-15 dated September 5, 2017.

² *Rollo*, pp. 2-20; penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justices Noel G. Tijam (now a retired Associate Justice of the Supreme Court) and Francisco P. Acosta.

³ *CA rollo*, pp. 43-61; penned by Judge Manuel C. Luna, Jr.

⁴ An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes.

The antecedent facts are as follows.

In six (6) separate Informations, accused-appellant was charged with violations of Section 5 (i), in relation to Section 6 (f), and Section 5 (a), in relation to Section 6 (a), of R.A. No. 9262; with Rape; and with three (3) counts of Acts of Lasciviousness, in relation to R.A. No. 7610, the accusatory portions of which read:

Criminal Case No. CR-08-9135

That sometime prior thereto and continuously up to April 19, 2008, in the City of Calapan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the legitimate father of complainant [AAA],⁵ 12-year-old minor, in utter disregard of the respect owing to his said son, did then and there, willfully, unlawfully and feloniously inflict emotional, mental, and psychological violence upon the said [AAA] by causing him psychological, mental and emotional sufferings and anguish, public ridicule and humiliation, specially through repeated verbal and emotional abuse, threatening complainant of physical harm and other forms of intimidation and harassment, acts which debase, degrade, and demean the intrinsic worth and dignity of the said [AAA] as a human being, to his damage and prejudice.

Contrary to law.⁶

Criminal Case No. CR-08-9136

That on or about April 19, 2008, at around 8:00 o'clock (*sic*) in the evening, more or less, at [REDACTED], City of Calapan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the legitimate father of complainant [AAA], 12 years old, in utter disregard of the respect owing to his said son, did then and there, willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of [AAA], inflicting upon the latter hematoma, 1 cm, right upper lip, which injury necessitates medical attendance for less than nine days, acts which debase, degrade, and demean the intrinsic worth and dignity of the said [AAA] as a human being, to his damage and prejudice.

Contrary to law.⁷

⁵ 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; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

⁶ Records (Crim. Case No. CR-08-9135), p. 1.

⁷ Records (Crim. Case No. CR-08-9136), p. 1.

Criminal Case No. CR-08-9180

That sometime in the month of May 2003, in [REDACTED], City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously [have] carnal knowledge of [BBB], his sixteen (16) year old daughter and therefore a relative within 1st civil degree by consanguinity and living with him in the same house, against her will and without her consent, acts which debase, degrade and demean the intrinsic worth and dignity of the said [BBB], as a human being, to her damage and prejudice.

Contrary to law.⁸

Criminal Case No. CR-08-9183

That on or about the 18th day of March, 2008, in [REDACTED], City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust and lewd desire, taking advantage of his moral ascendancy over [CCC], by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness against the person of [CCC], his fourteen (14) year old daughter, and therefore a relative within the 1st civil degree by consanguinity, and living with him in the same house, by embracing her, mashing her breast and touching her sexual organ, against complainant's will and without her consent, acts which debase, degrade and demean the intrinsic worth [and] dignity of the said complainant as a child, to the damage and prejudice of the said [CCC].

Contrary to law.⁹

Criminal Case No. CR-08-9184

That on or about the 19th day of March, 2008, in [REDACTED], City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust and lewd desire, taking advantage of his moral ascendancy over [CCC], by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness against the person of [CCC], his fourteen (14) year old daughter, and therefore a relative within the 1st civil degree by consanguinity, and living with him in the same house, by embracing her, mashing her breast and touching her sexual organ, against complainant's will and without her consent, acts which debase, degrade and demean the intrinsic worth [and] dignity of the said complainant as a child, to the damage and prejudice of the said [CCC].

Contrary to law.¹⁰

⁸ Records (Crim. Case No. CR-08-9180), p. 1.
⁹ Records (Crim. Case No. CR-08-9183), p. 1.
¹⁰ Records (Crim. Case No. CR-08-9184), p. 1.



Criminal Case No. CR-08-9185

That on or about the 20th day of March, 2008, in ██████████, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust and lewd desire, taking advantage of his moral ascendancy over [CCC], by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness against the person of [CCC], his fourteen (14) year old daughter, and therefore a relative within the 1st civil degree by consanguinity, and living with him in the same house, by embracing her, massaging her breast and touching her sexual organ, against complainant's will and without her consent, acts which debase, degrade and demean the intrinsic worth [and] dignity of the said complainant as a child, to the damage and prejudice of the said [CCC].

Contrary to law.¹¹

When arraigned, accused-appellant pleaded not guilty to all the charges. After termination of the pre-trial, trial on the merits ensued.

Around 8:00 p.m. on April 19, 2008, accused-appellant's twelve (12)-year-old son AAA was at home with his mother DDD and his four (4) siblings. AAA and his sister EEE were playing a game of "dama" when the heavily drunk accused-appellant arrived from a wedding celebration. He hurled words at EEE, such as "*Putang-ina mo, putang-ina n'yo isama n'yo na ang inyong ina sa Maynila at gawin n'yo ng pagerper.*"¹² To avoid scolding, EEE and AAA ignored their father's rants. However, accused-appellant approached AAA, berated him, and boxed him which caused his mouth to bleed and loosened his teeth.¹³ DDD, who was doing laundry at that time, heard the commotion and rushed to the scene to pacify accused-appellant. EEE then instructed AAA to go to their other brother and report the incident to the police.¹⁴

Prior to the incident, or around lunchtime in May 2003, accused-appellant asked his then ten (10)-year-old daughter BBB to accompany him to get firewood near the irrigation canal. On their way home, he ordered BBB to lie down on the banana leaf. Terrified, BBB obeyed him. He then took off his pants and removed BBB's lower garments. He went on top of her, told her to remain silent, and forcibly inserted his penis into her vagina. Afterwards, he instructed her to dress, and warned her not to tell anybody about the incident.¹⁵

In the evening of March 18, 2008, fourteen (14)-year-old CCC was sleeping with her three (3)-year-old nephew when her drunk father entered the

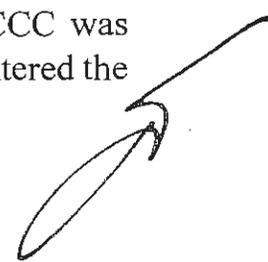
¹¹ Records (Crim. Case No. CR-08-9185), p. 1.

¹² TSN, March 24, 2009. p. 21.

¹³ *Rollo*, p. 4.

¹⁴ *CA rollo*, p. 49.

¹⁵ *Id.* at 50.



room. He lay beside her and touched her vagina. Overcome with fear, she was unable to shout for help from her brothers who were sleeping in another room. The following night, March 19, 2008, she asked her brother FFF to sleep with her and their nephew. However, accused-appellant was undeterred and repeated his reprehensible acts, and was even smiling. FFF witnessed the incident but was also helpless. The following morning, or on March 20, 2008, CCC went to the house of a barangay councilor to report her father. Unfortunately, the said councilor failed to help her. She also called her mother DDD, urging her to return home, but the latter was unable to return since her brother was still under treatment at a mental hospital. That night, accused-appellant lay beside her and fondled her breasts and vagina. He also embraced her and placed his legs between her legs. He only left when she started to cry.¹⁶

On the other hand, accused-appellant admitted that he and DDD have fourteen (14) children, including AAA, BBB, CCC, EEE and FFF. However, he fervently denied the accusations of his children. Unlike the portrayal of the prosecution, he was close to AAA, and took care of BBB and CCC when they were studying. It was only when CCC returned after five (5) years in Manila with her sister that she started the allegations against him. He claimed that it was EEE who filed the cases against him.¹⁷

On October 29, 2013, the RTC found accused-appellant guilty on all the charges against him, the *fallo* of the Joint Decision reads:

ACCORDINGLY, judgment is hereby rendered as follows:

1. In Criminal Case No. CR-08-9135, this Court finds the accused [ZZZ] ***GUILTY*** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and in default of any mitigating or aggravating circumstances, hereby sentences him to suffer an indeterminate sentence of imprisonment ranging from ***SIX (6) MONTHS AND ONE (1) DAY OF PRISION CORRECCIONAL AS MINIMUM TO SIX (6) YEARS AND ONE (1) DAY OF PRISION MAYOR AS MAXIMUM*** and to pay the ***FINE*** of ***ONE HUNDRED THOUSAND PESOS ([P]100,000.00)***;
2. In Criminal Case No. CR-08-9136, this Court finds the accused [ZZZ] ***GUILTY*** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and in default of any mitigating or aggravating circumstances, hereby sentences him to suffer the straight penalty of imprisonment for ***THREE (3) MONTHS OF ARRESTO MAYOR IN ITS MEDIUM PERIOD*** and to pay the ***FINE*** of ***ONE HUNDRED THOUSAND PESOS ([P]100,000.00)***;

¹⁶ *Id.* at 49-50.

¹⁷ *Rollo*, p. 6.



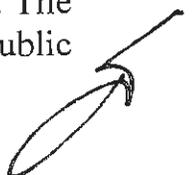
3. In Criminal Case No. C[R]-08-9180, this Court finds the accused [ZZZ] ***GUILTY*** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and appreciating his relationship with the private complainant as an aggravating circumstance and in default of any mitigating circumstances, hereby sentences him to suffer the penalty of ***RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE***, and to **PAY** the private complainant the amount of [P]20,000.00 as civil indemnity, [P]15,000.00 as moral damages, [P]15,000.00 as exemplary damages, [P]15,000.00 as fine, and to pay the costs;
4. In Criminal Case No. C[R]-08-9183, this Court finds the accused [ZZZ] ***GUILTY*** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and appreciating his relationship with the private complainant as an aggravating circumstance and in default of any mitigating circumstances, hereby sentences him to suffer the penalty of ***RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE***, and to **PAY** the private complainant the amount of [P]20,000.00 as civil indemnity, [P]15,000.00 as moral damages, [P]15,000.00 as exemplary damages, [P]15,000.00 as fine, and to pay the costs;
5. In Criminal Case No. C[R]-08-9184, this Court finds the accused [ZZZ] ***GUILTY*** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and appreciating his relationship with the private complainant as an aggravating circumstance and in default of any mitigating circumstances, hereby sentences him to suffer the penalty of ***RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE***, and to **PAY** the private complainant the amount of [P]20,000.00 as civil indemnity, [P]15,000.00 as moral damages, [P]15,000.00 as exemplary damages, [P]15,000.00 as fine, and to pay the costs;
6. In Criminal Case No. CR-08-9185, this Court finds the accused [ZZZ] ***GUILTY*** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and appreciating his relationship with the private complainant as an aggravating circumstance and in default of any mitigating circumstances, hereby sentences him to suffer the penalty of ***RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE***, and to **PAY** the private complainant the amount of [P]75,000.00 as civil indemnity, [P]75,000.00 as moral damages, [P]25,000.00 as exemplary damages, and to pay the costs;

The aforementioned penalties shall be served by the accused **SUCCESSIVELY**.

SO ORDERED.¹⁸ (Emphases, italics and underscores in the original)

The RTC held in Criminal Case Nos. CR-08-9135 and CR-08-9136 that AAA positively identified accused-appellant as the one who berated and boxed him on the face. His mother and his sister corroborated the same. The incident caused physical injury, as well as mental or emotional anguish, public

¹⁸ CA rollo, pp. 59-61.



ridicule or humiliation, on AAA's person.¹⁹ In Criminal Case No. CR-08-9180, BBB's categorical identification of the perpetrator and straightforward narration established that accused-appellant, through force, threat or intimidation, had carnal knowledge of his minor daughter. It is unthinkable for a daughter to accuse her own father, submit herself for examination of her most intimate parts, put her life to public scrutiny and expose herself, along with her family, to shame, pity or ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life, had she really not been aggrieved.²⁰ It did not fault BBB for her failure to recall the exact date of the commission of the crime since the precise time is not an essential element of the crime. The relationship and the victim's minority were considered in the imposition of the penalty.²¹ As to Criminal Case Nos. CR-08-9183, CR-08-9184 and CR-08-9185, the prosecution proved all the elements of the offense. *First*, the touching of the breasts and vagina, and embracing while placing his legs between CCC's legs to sexually arouse himself are lascivious conducts which accused-appellant committed against his daughter. *Second*, he coerced his daughter to engage in the lascivious conduct. *Third*, the Certificate of Live Birth clearly established that CCC was only fourteen (14) years old²² at the time of the offense. There was no proof that she was motivated to fabricate a story of sexual abuse against her own father. The RTC considered their relationship in imposing the maximum penalty provided. For his part, accused-appellant only offered denial without presenting any other evidence.

On appeal, the CA affirmed with modification the Joint Decision of the RTC. The decretal portion of the Decision reads:

WHEREFORE, premises considered, the Joint Decision of the RTC in Criminal [Case Nos.] CR-08-9135, CR-08-9136, CR-08-9180, CR-08-9183, CR-08-9184 and CR-08-9185 are hereby **AFFIRMED** with **MODIFICATION**. Consistent with *People v. J[u]gueta*, where the penalty imposed is *reclusion perpetua*, civil indemnity, moral damages and exemplary damages should be [P]75,000.00 for each item and all monetary awards shall earn interest at the rate of 6% per annum from the date of finality of this judgment.

SO ORDERED.²³ (Emphases in the original; citation omitted)

The CA agreed with the RTC that BBB's narration of her ordeal in the hands of accused-appellant was straightforward and unequivocal. All the elements of rape under Article 266-A of the Revised Penal Code (*RPC*) were established. Actual force or intimidation need not be employed in incestuous rape of a minor, as in this case, because the moral and physical dominion of

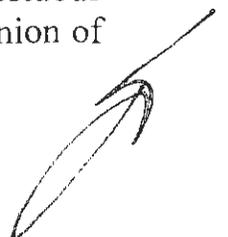
¹⁹ *Id.* at 52-53.

²⁰ *Id.* at 56.

²¹ *Id.* at 57.

²² The RTC Joint Decision indicated that CCC was sixteen (16) years old.

²³ *Rollo*, pp. 19-20.



the father is sufficient to cow the victim to submit to his nefarious desires.²⁴ The CA also agreed with the RTC that all the elements of sexual abuse were present. On three occasions, accused-appellant touched CCC's breasts and vagina. As her father, he exercised moral ascendancy over CCC to engage in his lewdness. CCC's testimony and her Birth Certificate established that she was below eighteen (18) years old at that time. The prosecution also proved, through the clear and convincing testimonies of AAA, his mother and his sister, that AAA suffered since childhood repeated verbal and physical abuse from accused-appellant, and that he dreaded being near his father. AAA suffered injury in the April 19, 2008 incident, as supported by their testimonies and a medical certificate.

The Court gave due course to accused-appellant's appeal from the November 28, 2016 Decision of the CA. It required the parties to submit their respective supplemental briefs, if they so desired. In its Manifestation and Motion²⁵ dated November 6, 2017, the Office of the Solicitor General informed the Court that it adopts its Brief for the Plaintiff-Appellee dated April 6, 2015 for purpose of the appeal. Similarly, accused-appellant indicated that he adopts his Brief²⁶ dated November 28, 2014 for the same adequately discussed all matters pertinent to his defense.²⁷

Accused-appellant claims that the absence of physical proof that he actually mauled AAA casts serious doubt to the prosecution's version of events. He insists that the testimonies of the prosecution witnesses should not be considered due to their ill will against him. The Court should consider that BBB did not deny that she never repelled his supposed nefarious advances. The trial court relied heavily on the weakness of his defense and not on the strength of the prosecution's evidence.

The appeal is devoid of merit.

It is settled that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite and appreciate errors in the appealed judgment, whether they are assigned or unassigned.²⁸

Guided by the foregoing, the Court deems it proper to modify accused-appellant's conviction of Rape, three (3) counts of Acts of Lasciviousness, in relation to R.A. No. 7610, to Qualified Rape, and three (3) counts of Lascivious Conduct under Section 5 (b) of R.A. No. 7610, as will be explained hereunder.

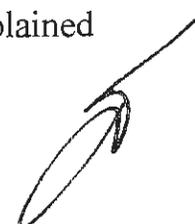
²⁴ *Id.* at 11.

²⁵ *Id.* at 28-30.

²⁶ *CA rollo*, pp. 25-41.

²⁷ *Rollo*, pp. 32-34.

²⁸ *People v. Dahil, et al.*, 750 Phil. 212, 225 (2015).



Article 266-A (1) (a), in relation to Article 266-B (1), of the RPC 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:
 - a) Through force, threat, or intimidation;

X X X X

Article 266-B. *Penalty.* — 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 of the victim[.] (Emphasis supplied)

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; and (5) the offender is a parent (whether legitimate, illegitimate or adopted)²⁹ or is an ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or is the common-law spouse of the parent of the victim. The gravamen of the crime of rape is carnal knowledge of a woman against her will.³⁰

In testifying before the trial court, BBB narrated in detail the crime committed, thus:

- Q: What happened when you were there at the irrigation?
 A: My father instructed me to lie down on the irrigation and he just laid a banana leaf for me to lie down on.
- Q: Did you follow his instruction?
 A: Yes[,] Ma'am.
- Q: Why did you follow his order to lie on the irrigation?
 A: Because he is my father.
- Q: After you laid down on that banana leaf in the grassy portion of the irrigation what did you do?
 A: He took off my pants.

²⁹ *People v. Colentava*, 753 Phil. 361, 372-373 (2015).

³⁰ *People v. Orilla*, 467 Phil. 253, 274 (2004); citation omitted.

Q: When you said, "hinubuan niya po ako" what clothes are you referring to, upper or the lower garment?

A: The lower garment.

Q: Did he completely undress you including your underwear?

A: Yes[,] Ma'am.

Q: So what was your reaction when your father was undressing you[,] considering that he is your father?

A: I was a (*sic*) starting to feel a bit afraid at that time.

Q: Did you resist?

A: Not anymore[,] Ma'am.

Q: At that time again Miss Witness[,] how old were you?

A: Ten (10) years old[,] Ma'am.

Q: Why did you follow your father considering that you were ten (10) years old and you knew that that was bad?

A: Because he is my father and he is cruel.

x x x x

Q: So you said that after your father removed your lower garments and your father likewise removed his pants and briefs and after that what happened?

A: He already went on top of me.

Q: And when he went on top of you what did he do to you?

A: He told me to be quiet.

Q: And did you follow him?

A: Yes[,] Ma'am.

Q: Why did you follow him?

A: Because he is my father.

Q: Miss Witness when he was on top of you what did he do to you?

A: He inserted his penis in my vagina.

Q: What did you feel when your father was inserting his penis in your vagina?

A: At first it was really very painful.

Q: Did you tell your father to stop what he was doing because you were feeling pain?

A: No[,] Ma'am.

Q: Why did you not tell that to your father?

A: Because I was afraid of him.

Q: Why are you afraid of your very own father?

A: Because I was afraid that he would hit me or hurt me.

PROS. JOYA:

Witness is crying while giving the answer.



- Q: For how long[,] if you could estimate[,] was your father on top of you?
- A: It was quite long[,] Ma'am.
- Q: **Was your father by the way successful in inserting his penis in your vagina?**
- A: **Yes[,] Ma'am.**
- Q: While he was inside you what were you doing?
- A: I was just lying down[,] Ma'am.
- Q: Why did you not resist?
- A: Because I was afraid that he might beat or hurt me.
- Q: You said that you felt pain because of what your father did, that is physical pain, inside you Miss Witness what did you feel considering that it was your very own father who was deflowering you?
- A: Anger[,] Ma'am.
- Q: Now how did that incident stop Miss Witness?
- A: After he was successful in what he did[,] he voluntarily stopped and ordered me to dress up.

x x x x

- Q: So what did your father tell you as regards that incident when he had sexual intercourse with you[,] if any?
- A: **He told me not to tell this to anybody.**³¹ (Emphases supplied)

After a judicious review of the records of this case, the Court finds no cogent reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. Settled is the rule that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial courts stand in a much better position to decide the question of credibility. Indeed, trial court judges are in the best position to assess whether the witness is telling a truth or a lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.³²

The Court disagrees with accused-appellant's claim that the testimonies of the witnesses should be discarded because of harbored ill feelings. Family

³¹ TSN, October 25, 2011, pp. 5-8.

³² *People of the Philippines v. Jelmer Matutina y Maylas, et al.*, G.R. No. 227311, September 26, 2018.

resentment, revenge or feuds have never swayed us from giving full credence to the testimony of a complainant for rape, especially a minor who remained steadfast and unyielding throughout the direct and cross-examination that she was sexually abused.³³ No daughter, especially a minor like BBB in this case, would impute a serious crime of rape against her own biological father, unless she was impelled by a desire to vindicate her honor, aware as she is that her action or decision must necessarily subject herself and her family to the burden of trial and public humiliation, if the same were untrue.³⁴ An incestuous sexual assault is a psycho-social deviance that inflicts a stigma, not only on the victim but also on the whole family.³⁵

We note that based on her testimony and her birth certificate³⁶ presented, BBB was only ten (10) years old when the rape was committed against her in May 2003, since she was born on [REDACTED]. However, it appears that the allegation in the Information and the decision of the trial court mentioned that she was sixteen (16) years old at that time. Accused-appellant cannot be convicted of statutory rape since BBB's correct age was not properly alleged in the Information. Otherwise, he would be deprived of his right to be informed of the charge lodged against him.³⁷ Nevertheless, the prosecution still established beyond doubt that she was under eighteen (18) years old at the commission of the crime. From the foregoing, as well as the fact that BBB's minority and her relationship with accused-appellant were not only alleged in the Information but also proven during the trial, this Court finds it proper to upgrade his conviction in Criminal Case No. CR-08-9180 to Qualified Rape.

Anent the penalty imposed, the RTC is correct in imposing the penalty of *reclusion perpetua* without eligibility for parole. The penalty for qualified rape, if at all, the qualification of "without eligibility for parole," may be applied to qualify *reclusion perpetua* in order to *emphasize* that accused-appellant should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.³⁸ In view of prevailing jurisprudence, the civil indemnity, moral damages and exemplary damages awarded to BBB should be increased to ₱100,000.00 each, with legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full payment.³⁹

Similarly, in Criminal Case Nos. CR-08-9183, CR-08-9184 and CR-08-9185, the Court does not find any reason to reverse the factual findings of the RTC, as affirmed by the CA. As the trial court observed, CCC was able to narrate in detail the lascivious acts done to her by her father, to wit:

³³ *People v. Santos*, 532 Phil. 752, 767 (2006).

³⁴ *People v. Mendoza*, 441 Phil. 193, 206 (2002).

³⁵ *People v. Orilla*, 467 Phil. 253, 272 (2004); citation omitted.

³⁶ Records (Crim. Case No. CR-08-9180), p. 13.

³⁷ *People v. Arcillas*, 692 Phil. 40, 153 (2012); citation omitted.

³⁸ Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, A.M. No. 15-08-02-SC, August 4, 2015.

³⁹ *People v. Jugueta*, 783 Phil. 806, 848 and 854 (2016).

Q: Miss Witness how old were you in March 2008?
A: Fourteen (14), Ma'am.

x x x x

Q: Now during that evening of **March 18, 2008** you said you were sleeping. Was your nephew with you during that time?
A: Yes[,] Ma'am.

Q: What happened while you were sleeping?
A: My father [lay] beside me.

x x x x

Q: So you were sleeping in the evening of March 18, 2008 with your nephew when you felt that your father [was lying] beside you. So after he [lay] beside you[,] what happened?
A: **He touched my vagina.**

Q: Now what was your initial reaction when your father touched your vagina?
A: **I cried, Ma'am.**

Q: Your brothers were just in the other room. Why did you not shout for help?
A: **I was afraid, Ma'am.**

Q: Afraid of whom?
A: **Of my father.**

x x x x

Q: After you felt that your father touched your vagina, what did your father do after?
A: Nothing more. He was just lying there.

Q: For how long did your father touch your vagina?
A: Only a few moments.

Q: When he touched your vagina[,] was it under your clothes or was it over your clothes?
A: When I was still wearing clothes.

Q: While your father's hand was on your vagina[,] what was his other hand doing?
A: Nothing, Ma'am[.]

Q: So you said that you cried. How did your father react to your crying?
A: He just left after that.

x x x x

Q: Why were you afraid of your father?
A: **Matapang po siya.**

Q: **What kind of father is [ZZZ]?**
A: **[Every time] that he would have no money he would get angry, Ma'am.**

X X X X

Q: What happened that evening of **March 19, 2008**?
A: **I was then lying down on the bed and my father suddenly [lay] beside me and touched my breasts.**

X X X X

Q: Your brother [FFF] was on your right side. What did you do Miss Witness when your father [lay] beside you?
A: **I cried, Ma'am and I could not sleep that night.**

Q: And was your brother awakened with your crying?
A: Yes[,] Ma'am.

Q: What happened when he was awakened?
A: Nothing. He was just staring at me.

X X X X

Q: For how long did your father touch your breasts?
A: Only for a few moments, Ma'am.

Q: **Which part of your breast did your father touch?**
A: **The right part, Ma'am.**

Q: What did you notice of him when he was touching your breasts?
A: **He was smiling.**

X X X X

Q: Where did you spend the night in the evening of **March 20, 2008**?
A: Also in our house, Ma'am.

Q: What happened when you and [FFF] were sleeping in the evening of March 20, 2008?

X X X X

A: On that evening again my father [lay] beside me.

Q: By the way, were you sleeping side by side with [FFF] during that time?

A: Yes[,] Ma'am.

Q: When your father [lay] beside you[,] what happened?
A: **He touched my breasts and vagina, Ma'am.**

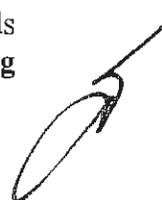
X X X X

Q: **Which of your breasts was mashed or fondled by the accused?**
A: **The left breast.**

X X X X

Q: Miss Witness you said that both breasts were fondled by the hands of the accused. **What did you feel while your father was fondling or mashing your breasts?**

A: **I became more afraid, Ma'am.**



x x x x

Q: What did your father do when you turned your back against him?

A: Again he [lay] beside me.

Q: And what did he do to you?

A: **He embraced me and placed my legs between his two (2) legs.**⁴⁰

The case of *People v. Caoili*⁴¹ is instructive on the proper designation of the offense in case lascivious conduct is committed, thus:

Accordingly, for the guidance of public prosecutors and the courts, the Court takes this opportunity to prescribe the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty:

1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.

2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.

3. If the **victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age**, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "**Lascivious Conduct under Section 5(b) of R.A. No. 7610**," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.⁴² (Emphases supplied)

The evidence confirms that CCC was fourteen (14) years old at the commission of the offense. The acts of touching and fondling of CCC's breasts and touching of her vagina undeniably amounted to "lascivious conducts." Thus, there is a need to modify the nomenclature of the crime charged to "Lascivious Conduct under Section 5 (b) of R.A. No. 7610."

Since the perpetrator is CCC's father, and such alternative circumstance of relationship was alleged in the Information, and proven and even admitted by accused-appellant during trial, the same should be considered as an aggravating circumstance for the purpose of increasing the period of the imposable penalty. There being no mitigating circumstance to offset the said alternative aggravating circumstance, the penalty provided shall be imposed

⁴⁰ TSN, September 15, 2009, pp. 4-13.

⁴¹ 815 Phil. 839 (2017).

⁴² *Id.* at 893-894.

in its maximum period, *i.e.*, *reclusion perpetua*.⁴³ 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.⁴⁴

There is no need to qualify the sentence of *reclusion perpetua* with the phrase "without eligibility for parole," as held by the RTC and affirmed by the CA. This is pursuant to A.M. No. 15-08-02-SC⁴⁵ in cases where the death penalty is not warranted, such as in the instant case, it being understood that convicted persons penalized with an indivisible penalty are not eligible for parole. Thus, accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* for each count of Lascivious Conduct under Section 5 (b) of R.A. No. 7610. The award of civil indemnity, moral damages and exemplary damages when the penalty of *reclusion perpetua* is imposed is ₱75,000.00 each.⁴⁶ Therefore, the amount of damages awarded in Criminal Case Nos. CR-08-9183 and CR-08-9184 should be increased to ₱75,000.00 each, and the exemplary damages in Criminal Case No. CR-08-9185 to ₱75,000.00. Accused-appellant is ordered to pay a fine in the amount of ₱15,000.00, pursuant to Section 31 (f), Article XII of R.A. No. 7610. Also, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until said amounts are fully paid.

Lastly, this Court, likewise, sustains the ruling in Criminal Case Nos. CR-08-9135 and CR-08-9136 finding accused-appellant guilty of violations of Section 5 (a) and (i) of R.A. No. 9262. The trial court observed that the berating and mauling incident not only caused physical injury to AAA but also mental anguish and humiliation. By his own account, he was distressed and hurt by accused-appellant's acts, which started when he was young. Contrary to accused-appellant's claim, the prosecution presented AAA's medical certificate showing that he suffered hematoma on his right upper lip. This corroborated with the testimonies of the witnesses that AAA sustained physical injury from the incident. It has long been established that this Court is not a trier of facts.⁴⁷ As discussed, factual findings of the RTC are conclusive and binding on this Court when affirmed by the CA.

As to the appropriate penalties, Section 6 of R.A. No. 9262 provides:

SECTION 6. *Penalties.* — The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

⁴³ *Manuel Barallas Ramilo v. People of the Philippines*, G.R. No. 234841, June 3, 2019.

⁴⁴ *People v. Caoili*, 815 Phil. 839 (2017).

⁴⁵ Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, August 4, 2015.

⁴⁶ *People of the Philippines v. Salvador Tulagan*, G.R. No. 227363, March 12, 2019.

⁴⁷ *Co v. Vargas*, 676 Phil. 463, 470 (2011).

- (a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code.

If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of *prision mayor*; those constituting less serious physical injuries shall be punished by *prision correccional*; and those constituting slight physical injuries shall be punished by *arresto mayor*.

x x x x

- (f) Acts falling under Section 5(h) and Section 5(i) shall be punished by *prision mayor*.

x x x x

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than [T]hree hundred thousand pesos ([P]300,000.00); (b) undergo **mandatory psychological counseling or psychiatric treatment** and shall **report compliance to the court**. (Emphases supplied)

The Court affirms the penalty imposed in Criminal Case No. CR-08-9136. However, the Court deems it proper to modify the penalty imposed in Criminal Case No. CR-08-9135. As aforementioned, R.A. No. 9262 imposes the penalty of *prision mayor* for violation of Section 5 (i) thereof. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, *i.e.*, *prision correccional*, or anywhere from six (6) months and one (1) day to six (6) years. There being no aggravating or mitigating circumstances attending the commission of the crime, the maximum term shall be the medium period of the penalty provided by the law, which is eight (8) years and one (1) day to ten (10) years of *prision mayor*.⁴⁸ Therefore, accused-appellant should suffer the indeterminate penalty of six (6) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

This Court also notes that both the RTC and the CA failed to require accused-appellant to undergo psychological counseling or treatment. This is a penalty set by Section 6 of R.A. No. 9262 *in addition* to imprisonment and fine. Thus, accused-appellant is required to submit himself to a mandatory

⁴⁸

Article 64 of the RPC provides:

ARTICLE 64. Rules for the Application of Penalties Which Contain Three Periods. — In cases in which the penalties prescribed by law contain three periods, x x x, the courts shall observe for the application of the penalty the following rules, according to whether there are or are [no] mitigating or aggravating circumstances:

1 When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

psychological counselling or psychiatric treatment, and to report his compliance therewith to the court of origin.

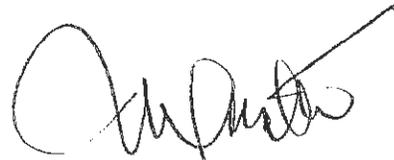
WHEREFORE, premises considered, the appeal is **DENIED**. The November 28, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06755 is hereby **AFFIRMED** with **MODIFICATIONS**. The Court finds accused-appellant ZZZ guilty beyond reasonable doubt:

1. In Criminal Case No. CR-08-9135, of **Violation of Section 5 (i)**, in relation to **Section 6 (f), of Republic Act No. 9262**, and is sentenced to suffer an indeterminate penalty of six (6) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. He is also ordered to (a) pay a fine in the amount of One Hundred Thousand Pesos (₱100,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment; and (c) report to the Court his compliance with counseling or treatment;
2. In Criminal Case No. CR-08-9136, of **Violation of Section 5 (a)**, in relation to **Section 6 (a), of Republic Act No. 9262**, and is sentenced to suffer a straight penalty of imprisonment for three (3) months of *arresto mayor* in its medium period. He is also ordered to (a) pay a fine in the amount of One Hundred Thousand Pesos (₱100,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment; and (c) report to the Court his compliance with counseling or treatment;
3. In Criminal Case No. CR-08-9180, of **Qualified Rape**, and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is ordered to pay BBB civil indemnity, moral damages and exemplary damages in the amount of One Hundred Thousand Pesos (₱100,000.00) each;
4. In Criminal Case No. CR-08-9183, of **Lascivious Conduct under Section 5 (b) of Republic Act No. 7610**, and is sentenced to suffer the penalty of *reclusion perpetua* and to **PAY** a fine of Fifteen Thousand Pesos (₱15,000.00). He is further ordered to pay CCC civil indemnity, moral damages, and exemplary damages, each in the amount of Seventy-Five Thousand Pesos (₱75,000.00);
5. In Criminal Case No. CR-08-9184, of **Lascivious Conduct under Section 5 (b) of Republic Act No. 7610**, and is sentenced to suffer the penalty of *reclusion perpetua* and to **PAY** a fine of Fifteen Thousand Pesos (₱15,000.00). He is further ordered to pay CCC civil indemnity, moral damages and exemplary damages, each in the amount of Seventy-Five Thousand Pesos (₱75,000.00); and

6. In Criminal Case No. CR-08-9185, of **Lascivious Conduct under Section 5 (b) of Republic Act No. 7610**, and is sentenced to suffer the penalty of *reclusion perpetua* and to **PAY** a fine of Fifteen Thousand Pesos (₱15,000.00). He is further ordered to pay CCC civil indemnity, moral damages and exemplary damages, each in the amount of Seventy-Five Thousand Pesos (₱75,000.00).

Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid.

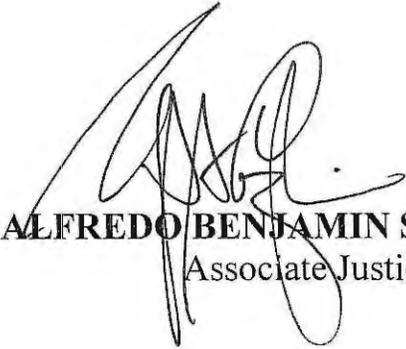
SO ORDERED.



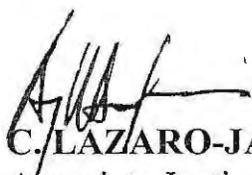
DIOSDADO M. PERALTA
Chief Justice

WE CONCUR:

*See Concurring
+ Dissenting
Opinion*


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

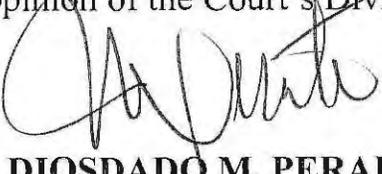

JOSE C. REYES, JR.
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


MARIONA LOPEZ
Associate Justice

CERTIFICATION

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


DIOSDADO M. PERALTA
Chief Justice