

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERNESTO FRAGANTE Y AYUDA, APPELLANT.

G.R. No. 182521. February 09, 2011

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

On appeal is the 28 September 2007 Decision[1] of the Court of Appeals in CA-G.R. CR H.C. No. 01980, affirming with modification the 4 July 2003 Decision[2] of the Regional Trial Court, Parañaque City, Branch 260, convicting appellant Ernesto Fragante y Ayuda of nine (9) counts of acts of lasciviousness and one (1) count of rape, all committed against his minor daughter, AAA.[3]

The Facts

In ten (10) Informations filed on 14 July 1998, appellant was charged with nine (9) counts of acts of lasciviousness and one (1) count of rape all committed against his own minor daughter AAA. The Informations[4] read:

CRIMINAL CASE NO. 98-651 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That in between the period of April-May 1993, in Parañaque, Metro Manila, and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then ten (10) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) the breast of [AAA].

CRIMINAL CASE NO. 98 - 652 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in May 1993, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then ten (10) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) the breasts of [AAA], touched (sic) and inserted (sic) his finger into the vagina of said minor-victim.

CRIMINAL CASE NO. 98 - 653 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in between the period commencing in June 1993 until August 1993, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then ten (10) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) the breasts of [AAA], touched (sic) and inserted (sic) his finger into the vagina of said minor-victim.

CRIMINAL CASE NO. 98 - 654 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in between the period of October to December 1993 at Shaolin Chinese Restaurant located at Sucat Road, Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then eleven (11) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) and sucked the breasts of [AAA], and thereafter touched the vagina of said minor-victim.

CRIMINAL CASE NO. 98 - 655 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in December 1993 at Shaolin Chinese Restaurant located at Sucat Road, Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then eleven (11) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) and sucked the breasts of [AAA], and thereafter touched the vagina of said minor-victim.

CRIMINAL CASE NO. 98 - 656 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in between the period commencing in January 1994 to August 1994, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then eleven (11) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously touched (sic) and sucked the breasts of [AAA], licked (sic) her vagina and inserted (sic) his finger into the private part of said minor-victim.

CRIMINAL CASE NO. 98 - 657 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in between the period commencing in August 1994 until September 1995, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then twelve (12) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously touched (sic) and sucked (sic) the breasts of [AAA], licked (sic) her vagina and inserted (sic) his finger into the private part of said minor-victim.

CRIMINAL CASE NO. 98 - 658 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in September 1997, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then fifteen (15) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously touched (sic) and sucked (sic) the breasts of [AAA], licked (sic) her vagina and inserted (sic) his finger into the private part of said minor-victim.

CRIMINAL CASE NO. 98 - 659 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in (sic) October 25, 1997, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then fifteen (15) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously touched (sic) and sucked (sic) the breasts of [AAA], licked (sic) her vagina and inserted (sic) his finger into the private part of said minor-victim.

CRIMINAL CASE NO. 98 - 660 for Violation of Article 335 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in September 1995, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above named accused, by taking advantage of his then thirteen (13) year old biological daughter [AAA], and with lewd designs, did then willfully, unlawfully and feloniously, lie and had carnal knowledge with the said minor victim, against her will.[5]

The Court of Appeals narrated the facts as follows:

Ernesto A. Fragante (Ernesto hereafter) married CCC on October 6, 1975, in Sta. Cruz Manila, and such marriage was ratified on December 7, 1995 celebrated in San Sebastian Parish Church. That union, produced three offsprings. [AAA], the victim herein, is their third child. She was born on August 23, 1982. x x x

Sometime in April 1993 to May 1993, three or four months before her eleventh (11) birthday, [AAA] woke up one early morning to prepare for the driving lessons which her father Ernesto, promised to teach them that day. [AAA] was the first to wake up. She was in her room when her father entered and lay on her bed. He then asked [AAA] to lie beside him to which [AAA] obeyed. While lying beside her, Ernesto was talking to her about a lot of things, and as he talked he started to fondle her breast and suck her nipples.

x x x x

The incident was repeated sometime between June 1993 and August 1993. Ernesto told [AAA] to get inside his room, then he would lock the door. Once inside the room, he would scold [AAA] for reasons unknown to her. When she would start to cry, her father would start to touch her breast, then he would suck her nipples while he was rubbing her vagina.

On two occasions, between October 1993 and December 1993, at Shaolin Chinese Restaurant located in Sucat, Parañaque, which the Fragante family owned, there was a small back room used as an office which later was converted into a room where they could rest. [AAA] was told by her father to rest in that room and once inside, while talking to her, he covered the windows with manila paper. He lay down beside her in the folding bed. He fondled her breast, squeezed them and then later inserted his hand under her shirt as he pull it up and put his mouth on her breast to suck it alternately. He started stroking her genitals with her shorts on. She did not do anything as she was in shock at that time.

In December 1993, [AAA] and her father bought food from Jollibee. She was instructed to eat it at the back room of their Shaolin Chinese Restaurant so that other employees would not see it. After eating, Ernesto asked her to lie down in the folding bed and he again lay down beside her and massaged her breast and sucked her nipples while continuously rubbing her vagina by inserting his hand inside her shorts.

Sometime in January 1994, around 10 o'clock in the evening, while [AAA] was sleeping in another room, Ernesto entered her room. He lay beside her, and started sucking her breast. He removed her shorts and then touched her vagina. He then inserted his finger inside her vagina.

In August-September 1994, she was around twelve (12) years old, Ernesto molested her again inside his room, by massaging her private parts and sucking her nipples while continuously rubbing her vagina and afterwards inserting his finger inside it.

In September 1995, at the age of thirteen (13), [AAA] was raped by her father Ernesto. She was told to get inside his room and was scolded by him before she was made to lie down in his bed. Her shirt was removed, and her breast and vagina were fondled by him. Thereafter, he sucked her nipples while continuously touching her vagina. He removed her shorts and panty, then spreaded her legs and inserted his penis in her vagina. She struggled and begged him to remove his penis. She said she could not recall the exact details of what her father was doing. He stayed on top of her despite her pleas. x x x

Ernesto was not able to find time to molest [AAA] in September 1995-1996, because he was hardly home and was busy with his bookstore business in Visayas and Mindanao.

x x x x

In the evening of October 25, 1997, Irma, together with their brother Marco accompanied their mother Gaudencia to a wake of their mother's friend. [AAA] wanted to go with them but she was left home alone with Ernesto who refused to allow [AAA] to go with them. x x x

x x x x

Her father started massaging her breast and [AAA] removed his hands and stood up but she was bitten and pushed towards the bed. Her father strangled her and asked whether she preferred to be strangled first and she answered no. He started touching her private parts again and this time she continued warding off his hands and when she heard their car entering their garage, she told her father that her mother had arrive. That was the only time she was allowed to leave but was stopped by her father and warned not tell her mother what happened.

x x x They later proceeded to the NBI, Taft Ave. Manila to report the incidents and where [AAA] executed her complaint-affidavit. Her mother and siblings also executed their affidavits.[6]

x x x x

During arraignment on April 26, 1999, the accused entered separate pleas of "Not Guilty" to all the crimes charged.

Joint trial ensued thereafter.

Prosecution presented the following witnesses: [AAA], BBB, CCC, and Dr. Bernadette Madrid. The defense presented Ernesto Fragante as the sole witness.[7]

The Ruling of the Trial Court

On 4 July 2003, the trial court rendered a Decision convicting appellant for the crimes charged. The dispositive portion of the trial court's decision reads:

WHEREFORE, after careful perusal of the evidence presented, this Court finds as follows: for (sic)

Criminal Case No. 98-651 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of reclusion temporal of FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY to FIFTEEN (15) YEARS SIX (6) MONTHS and TWENTY (20) DAYS.

Criminal Case No. 98-652 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of reclusion temporal of FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY to FIFTEEN (15) YEARS SIX (6) MONTHS and TWENTY (20) DAYS.

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Criminal Case No. 98-655 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art.

III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of reclusion temporal of FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY to FIFTEEN (15) YEARS SIX (6) MONTHS and TWENTY (20) DAYS.

Criminal Case No. 98-656 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of reclusion temporal of FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY to FIFTEEN (15) YEARS SIX (6) MONTHS and TWENTY (20) DAYS.

Criminal Case No. 98-657 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of reclusion temporal of FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY to FIFTEEN (15) YEARS SIX (6) MONTHS and TWENTY (20) DAYS.

Criminal Case No. 98-658 for Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of SIX (6) MONTHS and ONE (1) DAY to SIX (6) YEARS.

Criminal Case No. 98-659 for Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of SIX (6) MONTHS and ONE (1) DAY to SIX (6) YEARS.

Criminal Case No. 98-660 for RAPE this court finds the accused ERNESTO AYUDA FRAGANTE GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to DEATH. He is ordered to pay the complainant P50,000.00 as civil liability and P50,000.00 as moral damages.

SO ORDERED.[8]

The Ruling of the Court of Appeals

The Court of Appeals found appellant guilty beyond reasonable doubt for the crimes charged. In upholding appellant's conviction, the Court of Appeals gave credence to AAA's testimony narrating how appellant sexually abused her repeatedly. The Court of Appeals junked appellant's contentions that (1) AAA's testimony lacked specific details such as the actual date of commission of the acts of lasciviousness, and was inconsistent with respect to the charge of rape; (2) AAA was ill motivated in filing the criminal complaints; (3) the charge of rape was unsubstantiated by medical findings; and (4) the delay in reporting the incidents to the proper authorities renders the charges dubious.

On 28 September 2007, the Court of Appeals rendered a Decision the dispositive portion of which reads:

WHEREFORE, the decision of the Regional Trial Court, of Parañaque City, Branch 260, dated July 4, 2003 is AFFIRMED with MODIFICATION as follows:

- In Criminal Cases Nos. 98-651, 98-652, 98-653, 98-654, 98-655, 98-656, 98-657, accused-appellant Ernesto A. Fragante is hereby sentenced to suffer Indeterminate Penalty, the minimum of which is fourteen (14) years and eight (8) months of reclusion temporal minimum and the maximum of which is seventeen (17) years and four (4) months of reclusion temporal medium, for acts of lasciviousness under Article III, Section 5 (b) of Republic Act No. 7610, and is also ordered to pay [AAA] the amount of P50,000.00 as moral damages for each count of acts of lasciviousness;
- In pursuant with Section 31(f), Article XII, of Republic Act No. 7610, a FINE in the amount of Thirty Thousand (Php30,000.00) Pesos for each count of the nine (9) counts of lascivious conduct is hereby imposed;
- The penalty imposed in Criminal Case No. 98-658 and Criminal Case No. 98-659 by the trial court is hereby

AFFIRMED without modification;

- In Criminal Case No. 98-660, the penalty imposed is hereby reduced to reclusion perpetua by virtue of R.A. No. 9346, which prohibits the imposition of death penalty.

- In view of the jurisprudential trend, the amount of moral damages for Criminal Case No. 98-660 is hereby INCREASED to Seventy Five Thousand (Php 75,000.00) Pesos and the civil indemnity is likewise increased to Seventy Five Thousand (Php 75,000.00) and an additional amount of Twenty Five Thousand (Php 25,000.00) as exemplary damages.

SO ORDERED.[9]

The Issue

The sole issue in this case is whether the Court of Appeals erred in affirming appellant's conviction for nine (9) counts of acts of lasciviousness and one (1) count of rape.

The Ruling of this Court

We sustain appellant's conviction for seven (7) counts of acts of lasciviousness and one (1) count of rape. We acquit appellant for two (2) counts of acts of lasciviousness on the ground of reasonable doubt.

Criminal Case No. 98-660 for Rape

Appellant contends that the Court of Appeals erred in convicting him for the crime of rape since the prosecution failed to overthrow the presumption of innocence. Appellant alleges that (1) AAA's testimony was full of inconsistencies and improbabilities which cast serious doubts on the truthfulness of her account; (2) the medical findings do not support the charge of rape; (3) AAA's delayed reporting of the incident renders the charges dubious; and (4) AAA and her mother harbored a grudge against appellant.[10]

We are not persuaded. The prosecution sufficiently established appellant's guilt beyond reasonable doubt for the crime of rape.

Article 335 of the Revised Penal Code[11] provides:

Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

As correctly found by the Court of Appeals, all the essential elements of rape are present in this case. The evidence on record clearly proves that appellant had carnal knowledge of his own minor daughter AAA.

We reject appellant's contention that AAA's testimony was full of inconsistencies. On the contrary, AAA's testimony that she was raped by appellant was very consistent and straightforward. Notably, appellant did not point out the supposed inconsistencies, and proceeded in arguing that his moral ascendancy over his daughter was insufficient to intimidate AAA.

It must be stressed that the gravamen of rape is sexual congress with a woman by force and without consent.[12] In *People v. Orillosa*,[13] we held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father is sufficient to cow the victim into submission to his

bestly desires.[14] When a father commits the odious crime of rape against his own daughter, his moral ascendancy or influence over the latter substitutes for violence and intimidation.[15] The absence of violence or offer of resistance would not affect the outcome of the case because the overpowering and overbearing moral influence of the father over his daughter takes the place of violence and offer of resistance required in rape cases committed by an accused who did not have blood relationship with the victim.[16]

In this case, AAA's testimony clearly showed how appellant took advantage of his relationship with and his moral ascendancy over his minor daughter when he had carnal knowledge of her. As found by the Court of Appeals, appellant instilled fear on AAA's mind every time he sexually molested her, thus:

[AAA] also admitted that after accused-appellant has started sexually molesting her until she was raped, she was so frightened of him. In fact she could not tell her mother of her ordeal, mindful of the serious threats on her life and of the chaos it would cause their family.[17]

We likewise find appellant's claim that the medical findings do not support the charge of rape untenable. Aside from AAA's positive, straightforward, and credible testimony, the prosecution presented the medical certificate issued by Dr. Bernadette Madrid[18] and the latter's testimony which corroborate AAA's claim that appellant raped her.

The Court is not impressed with appellant's claim that AAA's failure to immediately report the incidents to the proper authorities affected her credibility.[19] Delay could be attributed to the victim's tender age and the appellant's threats.[20] A rape victim's actions are oftentimes influenced by fear, rather than reason.[21] In incestuous rape, this fear is magnified because the victim usually lives under the same roof as the perpetrator or is at any rate subject to his dominance because of their blood relationship.[22]

We also find appellant's imputation of ill-motive on the part of the victim, including his wife and AAA's sister, in filing the criminal charges devoid of merit. Suffice it to state that the resentment angle, even if true, does not prove any ill motive on AAA's part to falsely accuse appellant of rape or necessarily detract from her credibility as witness.[23] Motives, such as those arising from family feuds, resentment, or revenge, have not prevented the Court from giving, if proper, full credence to the testimony of minor complainants who remained consistent throughout their direct and cross-examinations.[24]

For appellant's guilt for the crime of rape committed against his own minor daughter AAA, we sustain the penalty of reclusion perpetua imposed on appellant. While the Court of Appeals correctly reduced the penalty of death[25] to reclusion perpetua, the Court of Appeals failed to indicate that the reduction of the penalty to reclusion perpetua is without eligibility for parole in accordance with Sections 2 and 3 of Republic Act No. 9346.[26]

As regards appellant's civil liability, we affirm the award of moral damages and civil indemnity, which are automatically granted without need of proof or pleading,[27] each in the sum of P75,000. However, we increase the award of exemplary damages from P25,000 to P30,000 consistent with prevailing jurisprudence.[28]

Criminal Case Nos. 98-651, 98-652, 98-653, 98-654,
98-655, 98-656, 98-657, 98-658,
and 98-659 for Acts of Lasciviousness

Appellant argues that the Court of Appeals erred in convicting him for nine counts of acts of lasciviousness since the prosecution failed to establish with particularity the date of the commission of the offense. Appellant contends that AAA's testimony was a "sweeping generalization of the crimes committed." [29] According to appellant, AAA's statement "that the said acts were allegedly committed so many times on certain occasions is clearly

inadequate and grossly insufficient" to sustain a conviction.[30]

We are not convinced.

Appellant was charged with violation of Article 336 of the Revised Penal Code, as amended, in relation to Section 5(b), Article III of Republic Act No. 7610. These provisions state:

Art. 336. Acts of lasciviousness. -- Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prision correccional.

Section 5. Child Prostitution and Other Sexual Abuse. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

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

x x x x

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; x x x

The elements of sexual abuse under Section 5, Article III of Republic Act No. 7610 are as follows:

- The accused commits the act of sexual intercourse or lascivious conduct.
- The said act is performed with a child exploited in prostitution or subjected to sexual abuse.
- The child, whether male or female, is below 18 years of age.[31]

As correctly found by the Court of Appeals, all the elements of sexual abuse under Section 5, Article III of RA 7610 are present here.

First, appellant's repeated touching, fondling, and sucking of AAA's breasts and inserting his finger into AAA's vagina with lewd designs undoubtedly constitute lascivious conduct under Section 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610, to wit:

(h) "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or public area of a person.

Second, appellant, as a father having moral ascendancy over his daughter, coerced AAA to engage in lascivious conduct, which is within the purview of sexual abuse. In *People v. Larin*,[32] we held:

A child is deemed exploited in prostitution or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.

Third, AAA is below 18 years old at the time of the commission of the offense, based on her testimony which was corroborated by her Birth Certificate[33] presented during the trial. Section 3(a), Article I of Republic Act No. 7610 provides:

SECTION 3. Definition of Terms. -

(a) "Children" refers [to] persons 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;

Since all three elements of the crime were present, the conviction of appellant for acts of lasciviousness was proper.

As to the alleged failure of the prosecution to establish with particularity the date of the commission of the acts of lasciviousness, suffice it to state that the date and time of the commission of the offense are not material ingredients of such crime. Section 11, Rule 110 of the Rules of Court provides:

Sec. 11. Time of the commission of the offense. -- It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as to the actual date at which the offense was committed as the information or complaint will permit.

In *People v. Losano*,[34] the Court held:

Thus, as early as 1903, this Court has ruled that while the complaint must allege a specific time and place when and where the offense was committed, the proof need not correspond to this allegation, unless the time and place is material and of the essence of the offense as necessary ingredient in its description. Evidence so presented is admissible and sufficient if it shows 1) that the crime was committed at any time within the period of the statute of limitations; and 2) before or after the time stated in the complaint or indictment and before the action is commenced.

We agree with the Court of Appeals in debunking appellant's claim that AAA's testimony was overly generalized and lacked specific details on when appellant sexually abused the victim. The records are replete with details on when and how appellant sexually abused her. AAA testified that appellant habitually molested her whenever he had the opportunity to do so, to wit:

Atty. Rosanna Elepaño-Balauag:

How many times[,] because the witness answered that his father was sexually abusing her.

Court:

Witness may answer.

Atty. Rosanna Elepaño-Balauag:

How many times if you remember?

A:

Many times.

x x x x

Q:

When was (sic) [did] the incident happened?

A:

Sa bahay po namin at madaling araw po iyon dahil nagpapaturo kami ng driving at ako po iyong unang nagising at sabi ko nga po magdriving na turuan niya akong magmaneho at tapos po pinahiga niya ako sa tabi nya at tapos po kinausap po niya ako at habang kinakausap niya ako, he started touching my private parts and later on he sucked my nipple, mam.

Q:

What else did he do?

A:

That's all mam.

Q:

And what happened after that?

A:

He did you (sic) it again, mam.

x x x x

Q:

What she did you to? [sic]

A:

Ganoon pa rin po, he sucked my breast at tapos po niyon, papasukin niya ako sa kanyang room at ila-lock niya iyong pinto; minsan po naman, pagagalitan niya ako na walang kabagay bagay at hindi ko naman po alam kung ano iyon; ganoon po lagi, hinawakan niya iyong breast, papagalitan ako, iyon paulit ulit na lang po, mam.

Q:

After he scolded you what happened next?

A:

Iyon pag umiiyak na po ako, uumpisahan po niyang hawakan muli iyong mga private parts.

x x x x

Q:

And after that incident what transpired next?

A:

Paulit ulit po niyang ginagawa, lagi po niya akong hinahawakan ang breast ko at vagina and then nira-rub po nang kamay niya.[35]

However, in Criminal Case Nos. 98-652 and 98-658, we agree with the Office of the Solicitor General, representing the People, that the prosecution failed to prove appellant's guilt for acts of lasciviousness beyond reasonable doubt. While AAA testified that appellant habitually molested her, there was no specific evidence

supporting the charge that appellant committed acts of lasciviousness in May 1993 and September 1997, or on or about those dates. Hence, we find appellant not guilty for two counts of acts of lasciviousness (Criminal Case Nos. 98-652 and 98-658) on the ground of reasonable doubt.

As regards the other criminal cases for acts of lasciviousness, where appellant's guilt was proved beyond reasonable doubt, we affirm appellant's conviction. In these cases, the alternative circumstance of relationship under Article 15 of the Revised Penal Code should be considered against appellant.[36] In *People v. Fetalino*,[37] the Court held that, "in crimes against chastity, like acts of lasciviousness, relationship is considered aggravating." In that case, the Court considered relationship as an aggravating circumstance since the informations mentioned, and the accused admitted, that the complainant is his daughter.

In the instant case, the informations expressly state that AAA is appellant's daughter, and appellant openly admitted this fact.[38] Accordingly, we modify the penalty imposed in Criminal Case Nos. 98-657 and 98-659. Section 5, Article III of Republic Act No. 7610 prescribes the penalty of reclusion temporal in its medium period to reclusion perpetua.[39] Since there is an aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period - reclusion perpetua.[40] Besides, Section 31 of Republic Act No. 7610 expressly provides that "The penalty provided herein shall be imposed in its maximum period when the perpetrator is [a] x x x parent, x x x. In *People v. Montinola*[41] and *People v. Sumingwa*,[42] where the accused is the biological father of the minor victim,[43] the Court appreciated the presence of the aggravating circumstance of relationship and accordingly imposed the penalty of reclusion perpetua. Thus, appellant herein is sentenced to suffer the penalty of reclusion perpetua in Criminal Case Nos. 98-657 and 98-659.

In Criminal Case Nos. 98-651,[44] 98-653,[45] 98-654,[46] 98-655,[47] and 98-656,[48] where AAA was still below 12 years old at the time of the commission of the acts of lasciviousness, the imposable penalty is reclusion temporal in its medium period in accordance with Section 5(b), Article III of Republic Act No. 7610. This provision specifically states "[t]hat the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period." [49] Considering the presence of the aggravating circumstance of relationship, as explained, the penalty shall be imposed in its maximum period. In *People v. Velasquez*,[50] which involved a two year old child sexually abused by her grandfather, the Court imposed the indeterminate sentence of 12 years and 1 day of reclusion temporal as minimum to 17 years of reclusion temporal as maximum. Accordingly, appellant herein is sentenced to suffer the indeterminate penalty of 12 years and 1 day of reclusion temporal as minimum to 17 years of reclusion temporal as maximum.

Also, we modify the amount of moral damages and fine awarded by the Court of Appeals. We reduce the amount of moral damages from P50,000 to P15,000 and the amount of fine from P30,000 to P15,000 for each of the seven (7) counts of acts of lasciviousness.[51] In addition, we award civil indemnity in the amount of P20,000, and exemplary damages in the sum of P15,000, in view of the presence of the aggravating circumstance of relationship,[52] for each of the seven (7) counts of acts of lasciviousness.

WHEREFORE, we AFFIRM the 28 September 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01980 with MODIFICATIONS. We find appellant Ernesto Fragante y Ayuda:

- GUILTY of RAPE in Criminal Case No. 98-660. He is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and ordered to pay AAA P75,000 as civil indemnity, P75,000 as moral damages, and P30,000 as exemplary damages.

- GUILTY of ACTS OF LASCIVIOUSNESS in Criminal Case Nos. 98-657 and 98-659, with relationship as an aggravating circumstance. He is sentenced to suffer the penalty of reclusion perpetua and ordered to pay AAA (1) moral damages of P15,000; (2) a fine of P15,000; (3) civil indemnity of P20,000; and (4) exemplary damages of

P15,000 for each count.

- GUILTY of ACTS OF LASCIVIOUSNESS in Criminal Case Nos. 98-651, 98-653, 98-654, 98-655, and 98-656, with relationship as an aggravating circumstance. He is sentenced to suffer the indeterminate penalty of 12 years and 1 day of reclusion temporal as minimum to 17 years of reclusion temporal as maximum and ordered to pay AAA (1) moral damages of P15,000; (2) a fine of P15,000; (3) civil indemnity of P20,000; and (4) exemplary damages of P15,000 for each count.

- NOT GUILTY of ACTS OF LASCIVIOUSNESS in Criminal Case Nos. 98-652 and 98-658 on the ground of reasonable doubt.

SO ORDERED.

Peralta, Abad, Perez,[*] and Mendoza, JJ., concur.

[*] Designated additional member per Raffle dated 9 February 2011.

[1] Rollo, pp. 2-39. Penned by Associate Justice Enrico A. Lanzas with Associate Justices Remedios Salazar-Fernando and Rosalinda Asuncion-Vicente concurring.

[2] CA rollo, pp. 47-66. Penned by Judge Helen Bautista-Ricafort.

[3] The real name of the private complainant is withheld per Republic Act (R.A.) No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act); R.A. 9262 (Anti-Violence Against Women and Their Children Act of 2004); and A.M. No. 04-10-11-SC effective 15 November 2004 (Rule on Violence Against Women and Their Children). See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 421-423.

[4] Records, pp. 5-6, 13-14, 19-20, 29-30, 39-40, 47-48, 57-58, 67-68, 75-76, 84-85.

[5] Rollo, pp. 2-7.

[6] CA rollo, pp. 218-223.

[7] *Id.* at 214.

[8] *Id.* at 62-64.

[9] *Id.* at 244-245.

[10] CA rollo, pp. 119, 121, 122, 124.

[11] As amended by Republic Act No. 7659 (AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AND FOR OTHER PURPOSES).

[12] *People v. Lolos*, G.R. No. 189092, 19 August 2010.

[13] G.R. Nos. 148716-18, 7 July 2004, 433 SCRA 689, 698.

[14] *Id.*

[15] *People v. Maglente*, G.R. No. 179712, 27 June 2008, 556 SCRA 447, 461-462.

[16] *Id.* at 462.

[17] CA rollo, pp. 238-239.

[18] Records, p. 457.

[19] *People v. Montinola*, G.R. No. 178061, 31 January 2008, 543 SCRA 412, 424.

[20] *People v. Maglente*, *supra* note 15 at 467.

[21] *Id.*

[22] *Id.*

[23] *People v. Anguac*, G.R. No. 176744, 5 June 2009, 588 SCRA 716, 723.

[24] *Id.* at 723, citing *People v. Alejo*, G.R. No. 149370, 23 September 2002, 411 SCRA 563, 573 and *People v. Rata*, G.R. Nos. 145523-24, 11 December 2003, 418 SCRA 237, 248-249.

[25] Pursuant to Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 (AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES).

Section 11. Article 335 of the same Code is hereby amended to read as follows:

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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.

[26] *People v. Garbida*, G.R. No. 188569, 13 July 2010. Republic Act No. 9346 (AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES) provides:

SEC. 2. In lieu of the death penalty, the following shall be imposed.

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

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

[27] *People v. Mejia*, G.R. No. 185723, 4 August 2009, 595 SCRA 356, 376.

[28] *People v. Documento*, G.R. No. 188706, 17 March 2010, 615 SCRA 610, 618.

[29] CA rollo, p. 117.

[30] *Id.*

[31] *People v. Abello*, G.R. No. 151952, 25 March 2009, 582 SCRA 378, 394, citing *People v. Larin*, G.R. No.

128777, 7 October 1998, 297 SCRA 309, 318; *Amployo v. People*, G.R. No. 157718, 26 April 2005, 457 SCRA 282, 295; *Olivarez v. Court of Appeals*, G.R. No. 163866, 29 July 2005, 465 SCRA 465, 473; and *Malto v. People*, G.R. No. 164733, 21 September 2007, 533 SCRA 643.

[32] 357 Phil. 987 (1998).

[33] Records, p. 445.

[34] 369 Phil. 966, 978 (1999).

[35] CA rollo, pp. 228-229.

[36] *People v. Montinola*, supra note 19 at 432.

[37] G.R. No. 174472, 19 June 2007, 525 SCRA 170, 195.

[38] TSN (Ernesto Fragante), 18 March 2003, p. 6 .

[39] In *People v. Leonardo*, G.R. No. 181036, 6 July 2010, the Court explained the range of the penalty prescribed under Section 5, Article III of Republic Act No. 7610, thus:

The minimum, medium and maximum term of the [prescribed penalty] is as follows: minimum - 14 years, 8 months and 1 day to 17 years and 4 months; medium - 17 years, 4 months and 1 day to 20 years; and maximum - reclusion perpetua.

[40] *People v. Montinola*, supra note 19 at 433; *People v. Sumingwa*, G.R. No. 183619, 13 October 2009, 603 SCRA 638, 661.

[41] *People v. Montinola*, supra note 19 at 433.

[42] G.R. No. 183619, 13 October 2009, 603 SCRA 638, 655-656.

[43] The victim in *Montinola* was 14 years old while the victim in *Sumingwa* was 15 years old at the time of the commission of the offense.

[44] AAA was only ten (10) years old at the time of the commission of the crime.

[45] AAA was only ten (10) years old at the time of the commission of the crime.

[46] AAA was only eleven (11) years old at the time of the commission of the crime.

[47] AAA was only eleven (11) years old at the time of the commission of the crime.

[48] AAA was only eleven (11) years old at the time of the commission of the crime.

[49] See *Dulla v. Court of Appeals*, G.R. No. 123164, 18 February 2000, 326 SCRA 32, 48, where the Court stated:

The penalty for acts of lasciviousness under Art. III, 5(b) of R.A. No. 7610 is reclusion temporal in its medium period, the range of which is from 14 years, 8 months and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law and in the absence of modifying circumstances, the maximum term of the sentence to be imposed shall be taken from the medium period of the imposable penalty, which is reclusion temporal medium, the range of which is from 15 years, 6 months and 20 days to 16 years, 5 months and 9 days, 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 12 years and 1 day to 14 years and 8 months.

[50] G.R. Nos. 132635 & 143872-75, 21 February 2001, 352 SCRA 455, 478. The Court stated:

x x x Aira is a two-year old child. The penalty imposable for acts of lasciviousness against children under 12 years of age should be that provided by R.A. 7610, which is reclusion temporal in its medium period. Accused-appellant is Aira's grandfather. His relationship to his victim aggravates the crime, and, as provided by R.A. 7610, Section 31, the penalty shall be imposed in the maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity. Hence, the maximum period of reclusion temporal medium should be imposed. Applying the provisions of the Indeterminate Sentence Law, the minimum of the penalty to be imposed should be reclusion temporal minimum.

[51] *People v. Montinola*, supra note 19 at 433; *People v. Sumingwa*, G.R. No. 183619, 13 October 2009, 603 SCRA 638, 661.

[52] *Flordeliz v. People*, G.R. No. 186441, 3 March 2010, 614 SCRA 225, 243.

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