

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. IRENO BONAAGUA Y BERCE, APPELLANT.

G.R. No. 188897. June 06, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Ireno Bonaagua (Ireno) seeks the reversal of the Decision [1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03133 convicting him with three (3) counts of Statutory Rape under Paragraph 2, Article 266-A of the Revised Penal Code (RPC), as amended, in relation to Republic Act No. 7610 (R.A. No. 7610) and Acts of Lasciviousness under Section 5 (b) of R.A. No. 7610.

The factual and procedural antecedents are as follows:

In four (4) separate Informations, Ireno was charged by the Office of the City Prosecutor of Las Piñas City with four (4) counts of Rape under Paragraph 2, Article 266-A of the RPC, as amended, in relation to R.A. No. 7610, for inserting his tongue and his finger into the genital of his minor daughter, AAA. [2]

The accusatory portion of the Information in Criminal Case No. 03-0254 against Ireno reads:

That on or about the month of December 1998 in the City of Las Piñas and within the jurisdiction of this Honorable Court, the above-named accused, with abuse of influence and moral ascendancy, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously insert his tongue and finger into the genital of his daughter, [AAA], a minor then eight (8) years of age, against her will and consent.

CONTRARY TO LAW and with the special aggravating/qualifying circumstance of minority of the private offended party, [AAA], being then only eight (8) years of age and relationship of the said private offended party with the accused, Ireno Bonaagua y Berce, the latter being the biological father of the former. [3]

The Information in Criminal Case No. 03-0255 [4] has the same accusatory allegations while the Informations in Criminal Case Nos. 03-0256 [5] and Criminal Case Nos. 03-0257 [6] are similarly worded, except for the date of the commission of the crime and the age of AAA, which are December 2000 and ten (10) years old, respectively.

The cases were later consolidated [7] and upon his arraignment, Ireno pleaded not guilty to the four (4) counts of rape with which he was charged. Consequently, trial on the merits ensued.

At the trial, the prosecution presented the testimonies of the victim, AAA; the victim's mother; and Dr. Melissa De Leon. The defense, on the other hand, presented the lone testimony of the accused as evidence.

Evidence for the Prosecution

The prosecution established that in 1998, AAA and her mother left their house in Candelaria, Quezon to spend the Christmas with accused-appellant in Las Piñas City. They stayed in the house of a certain Lola Jean, the godmother in the wedding of her parents, at Sta. Cecilia Subdivision, Las Piñas City.

AAA was inside a room lying in bed one afternoon while her younger brothers were playing outside the house

and her mother was not home. Accused-appellant entered the room. He approached her, rolled her shirt upward, and removed her shorts and panty. She tried to resist by putting her clothes back on, but her father's strength prevailed. Thereafter, accused-appellant touched and caressed her breasts. He licked her vagina then inserted his finger into it.

In the evening of the same day, the accused-appellant raped AAA again in the same manner and under the same circumstances. AAA did not tell her mother that she was raped because accused-appellant threatened to kill her mother by placing the latter's body in a drum and have it cemented if she would report the incidents. She returned to Quezon with her mother before the end of the Christmas season.

In December 1999, AAA was raped by accused-appellant for the third time when he went to Candelaria, Quezon. In December 2000, AAA and her mother spent the Yuletide season with accused-appellant in Pulanglupa, Las Piñas City. In a single day, AAA was raped for the fourth and fifth time. While spending the afternoon inside her father's room at the car-wash station, he removed her shorts and panty then proceeded to touch and insert his finger into her vagina. Accused-appellant repeated the same sexual assault shortly thereafter. AAA again did not report these incidents for fear that her mother would be killed and cemented inside a drum.

On January 26, 2001, AAA complained of severe abdominal pain which prompted her mother to take her to Gregg Hospital in Sariaya, Quezon. AAA was transferred to the Quezon Memorial Hospital in Lucena City where Dr. Melissa De Leon performed on her a physical examination. The results revealed that there was a healed superficial laceration at the 9 o'clock position on the hymen of AAA. This medical finding forced AAA to reveal to her mother all the incidents of rape committed by accused-appellant.

After being discharged from the hospital, AAA's mother took her to the Police Headquarters of Sariaya, Quezon to file a complaint for rape against accused-appellant. AAA's mother also took her to the office of the National Bureau of Investigation in Legaspi City where she executed a sworn statement against accused-appellant. [8]

Evidence for the Defense

Accused-appellant denied committing the charges of rape hurled against him. He claimed to be working in Las Piñas City while AAA, her mother and siblings where (sic) in Sariaya, Quezon at the time the alleged rapes occurred. While he admitted that there were times when AAA and her mother would visit him in Las Piñas City, he nonetheless averred that they would leave on the same day they arrived after he gives them money.

Accused-appellant asserted further that the charges of rape against him were fabricated by AAA's mother, who suspected him of having an affair with another woman in Las Piñas City. [9]

On August 6, 2007, the Regional Trial Court (RTC), after finding the evidence for the prosecution overwhelming against the accused's defense of denial and alibi, rendered a Decision [10] convicting Ireno with four (4) counts of Rape, the dispositive portion of which reads:

WHEREFORE, premises considered, there being proof beyond reasonable doubt that accused IRENO BONAAGUA, has committed four (4) counts of RAPE under par. 2 of Article 266-A of the Revised Penal Code, as amended, in relation to R.A. 7610, as charged, the Court hereby pronounced him GUILTY and sentences him to suffer the penalty of RECLUSION PERPETUA for each case and to pay private complainant [AAA], the amount of Php50,000 for each case, or a total of Php200,000, by way of civil indemnity plus Php50,000 for each case or a total of Php200,000 as moral damages.

Costs against the accused.

SO ORDERED. [11]

Aggrieved, Ireno appealed the Decision before the CA, which appeal was later docketed as CA-G.R. CR-H.C. No. 03133.

On March 31, 2009, the CA rendered a Decision [12] affirming the decision of the RTC with modifications on the imposable penalty in Criminal Case Nos. 03-0254, 03-0256, and 03-0257, and finding Ireno guilty of Acts of Lasciviousness under Section 5 (b) of R.A. No. 7610, instead of Rape, in Criminal Case Nos. 03-0255, the decretal portion of which reads:

WHEREFORE, the Decision of the Regional Trial Court of Las Piñas City, Branch 254, finding Ireno Bonaagua y Berce guilty beyond reasonable doubt of the crime of rape is AFFIRMED with MODIFICATIONS:

1. Ireno Bonaagua y Berce is hereby sentenced to suffer the indeterminate penalty of 12 years of prision mayor, as minimum, to 20 years of reclusion temporal, as maximum, for each rape in Criminal Case Nos. 03-0254, 03-0256 and 03-0257 and is ordered to pay AAA the amount of P25,000.00 as exemplary damages in each case, apart from the civil indemnity and moral damages that have already been awarded by the trial court;
2. Ireno Bonaagua y Berce is hereby held guilty beyond reasonable doubt of the crime of acts of lasciviousness in Criminal Case No. 03-0255, with relationship as an aggravating circumstance. He is, accordingly, sentenced to suffer the indeterminate penalty of 12 years and 1 day to 17 years and 4 months of reclusion temporal in its minimum and medium periods and ordered to pay AAA the amount of PhP15,000 as moral damages and a fine of PhP15,000.00.

SO ORDERED. [13]

In fine, the CA found Ireno's defense of denial and alibi inherently weak against the positive identification of AAA that he was the culprit of the horrid deed. Thus, aside from modifying the imposable penalty in Criminal Case Nos. 03-0254, 03-0256 and 03-0257, the CA affirmed the decision of the RTC finding Ireno guilty of the crime of Rape Through Sexual Assault.

In Criminal Case No. 03-0255, however, after a diligent review of the evidence adduced by the prosecution, the CA only found Ireno guilty of the crime of Acts of Lasciviousness under Section 5 (b) of R.A. No. 7610. The CA opined that since the prosecution failed to establish the act of insertion by Ireno of his finger into the vagina of AAA, Ireno could only be found guilty of Acts of Lasciviousness, a crime which is necessarily included in the Information filed against him in Criminal Case No. 03-0255.

Ireno now comes before this Court for relief.

In a Resolution [14] dated December 16, 2009, the Court informed the parties that they may file their respective supplemental briefs if they so desire. In their respective Manifestations, [15] the parties waived the filing of their supplemental briefs and, instead, adopted their respective briefs filed before the CA.

Hence, Ireno raises the lone error:

I

The COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT. [16]

Simply put, Ireno maintains that the testimony of AAA was replete with inconsistencies and was extremely unbelievable. Ireno insists that the allegation that he inserted his tongue and finger into the genital of AAA was manifestly incredible as the deed is physiologically impossible. Moreover, the medical findings are grossly

inconclusive to prove that AAA was raped, since it only established that there was only one healed superficial laceration.

This Court, however, finds the arguments raised by Ireno untenable. To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. [17]

After perusing the testimony of the victim, AAA, the prosecution has indubitably established that Ireno was the one who sexually assaulted her. AAA categorically narrated that Ireno sexually abused her on several occasions and even threatened AAA that he would kill her mother if she would report the incidents.

Time and again, this Court has consistently held that in rape cases, the evaluation of the credibility of witnesses is best addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect because the judge had the direct opportunity to observe them on the stand and ascertain if they were telling the truth or not. Generally, appellate courts will not interfere with the trial court's assessment in this regard, absent any indication or showing that the trial court has overlooked some material facts of substance or value, or gravely abused its discretion. [18]

It is well entrenched in this jurisdiction that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. [19] A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. [20] Moreover, the Court has repeatedly held that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction. [21]

Moreover, contrary to Ireno's contention, the medical findings of Dr. Melissa De Leon did not refute AAA's testimony of defilement, but instead bolstered her claim. The RTC correctly concluded:

It is true that Dr. Melissa De Leon, when called to the witness stand to substantiate the same medical certification, did not rule out the possibility that the laceration might have been inflicted through some other causes and that there could have been only one instance of finger insertion into the vagina of private complainant. However, it is equally true that Dr. De Leon also did not rule out the possibility that finger insertion might have been the cause of the laceration (pp. 7-12, TSN, January 31, 2006). Dr. De Leon also clarified that only one laceration may be inflicted although a finger is inserted into the vagina on separate instances (pp. 19-26, supra). According to Dr. De Leon, this instance depends on the force exerted into the vagina and on whether or not the hymen is membranous or firm and thick. A membranous hymen is easily lacerated and so when a force is exerted into it on several occasions, several lacerations may occur. A thick and firm hymen is not easily lacerated and so a force exerted into it on several occasions may cause only one laceration. Private complainant has thick and firm hymen and this may explain why there is only (sic) laceration on her hymen although she claimed her father inserted into her vagina his finger several times (pp. 19-29, supra).

This non-categorical stance of Dr. De Leon is nonetheless understandable because Dr. De Leon has no

personal knowledge of what actually happened to private complainant that she (complainant) suffered hymenal laceration. However, there is one thing very certain though in the testimony of Dr. De Leon - that she medically examined [AAA], herein private complainant, because of the information that [AAA] was sexually abused by her [AAA's] own father (pp. 5-6, supra). And indeed, as already discussed lengthily above, there is no reason to doubt the veracity of AAA's allegation. [22]

The same conclusion was also arrived at by the CA, to wit:

While the medico-legal findings showed a single healed superficial laceration on the hymen of AAA, Dr. De Leon clarified that it is not impossible for a hymen to sustain only one laceration despite the fact that a finger had been inserted into the vagina on several accounts. This situation may arise depending on the force extended into the vagina and on whether or not the hymen of the victim is membranous or firm and thick. A membranous hymen is easily lacerated; thus, when a force is exerted into it on several occasions, several lacerations may occur. On the other hand, a thick and firm hymen is not easily lacerated; a force exerted into it on several occasions may cause only one laceration. According to Dr. De Leon, AAA has thick and firm hymen and this may explain why it has only one laceration despite her claim that accused-appellant inserted his finger inside her vagina several times. [23]

Even Ireno's contention that the charges against him were merely fabricated by his wife because she suspects that he is having an affair with another woman deserves scant consideration. Aside from the fact that the said allegation was not proved, it must be emphasized that no member of a rape victim's family would dare encourage the victim to publicly expose the dishonor to the family unless the crime was in fact committed, especially in this case where the victim and the offender are relatives. [24] It is unnatural for a mother to use her daughter as an engine of malice, especially if it will subject her child to embarrassment and lifelong stigma. [25]

Also, Ireno cannot likewise rely on the Affidavit of Desistance stating that AAA and her mother are no longer interested in pursuing the case filed against him.

Rape is no longer a crime against chastity for it is now classified as a crime against persons. [26] Consequently, rape is no longer considered a private crime or that which cannot be prosecuted, except upon a complaint filed by the aggrieved party. Hence, pardon by the offended party of the offender in the crime of rape will not extinguish the offender's criminal liability. Moreover, an Affidavit of Desistance ? even when construed as a pardon in the erstwhile "private crime" of rape ? is not a ground for the dismissal of the criminal cases, since the actions have already been instituted. To justify the dismissal of the complaints, the pardon should have been made prior to the institution of the criminal actions. [27] As correctly concluded by the CA, the said affidavit was executed in connection with another accusation of rape which Ireno committed against AAA in Candelaria, Quezon and not the four cases of rape subject of this appeal. In addition, AAA's mother testified that she executed the said affidavit to regain custody of her children who were brought to Bicol by Ireno's siblings. [28]

It has been repeatedly held by this Court that it looks with disfavor on affidavits of desistance. As cited in *People v. Alcazar*, [29] the rationale for this was extensively discussed in *People v. Junio*: [30]

x x x We have said in so many cases that retractions are generally unreliable and are looked upon with considerable disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process of having the [appellant] arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, [the rape victim] would suddenly turn around and declare that [a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.

Thus, we have declared that at most the retraction is an afterthought which should not be given probative

value. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who gave it later on changed his mind for one reason or another. Such a rule [would] make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable. [31]

Amidst the overwhelming evidence against him, Ireno offered nothing but his bare denial of the accusations against him and that he was someplace else when the dastardly acts were committed. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected. [32] It has been consistently held that denial and alibi are the most common defenses in rape cases. Denial could not prevail over complainant's direct, positive and categorical assertion. As between a positive and categorical testimony which has the ring of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail. [33] All said, as found by the CA, the prosecution has convincingly proved and more than sufficiently established that: (1) Ireno committed the accusations of Rape Through Sexual Assault against AAA in Criminal Cases Nos. 03-0254, 03-0256, and 03-0257; (2) that AAA was a minor when Ireno committed the sexual assault against her; [34] and (3) that Ireno was the biological father of AAA. [35]

Verily, 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 court to correct such error as may be found in the judgment appealed from. [36] Since the CA found Ireno guilty of Acts of Lasciviousness under Section 5 (b) of R.A. No. 7610 in Criminal Case No. 03-0255 instead of rape, the Court should thus determine whether the evidence presented by the prosecution was sufficient to establish that the intentional touching of the victim by Ireno constitutes lascivious conduct and whether the CA imposed the appropriate penalties.

As aptly found by the CA:

A diligent review of the evidence adduced by the prosecution, however, shows that accused-appellant cannot be held guilty as charged for the crime of rape in Criminal Case No. 03-0255. The prosecution failed to establish insertion by accused-appellant of his finger into the vagina of AAA, who testified on direct examination that accused-appellant "touched my private part and licked it but he did not insert his finger inside my vagina." In fact, even the trial court asked AAA if accused-appellant inserted his finger inside her vagina. She answered in the negative and averred that he licked her vagina and touched her breasts. In reply to the prosecution's query if accused-appellant did anything else aside from licking her organ, she said he also touched it. During cross-examination, AAA testified that accused-appellant "merely touched her vagina but did not insert his finger." [37]

Section 5 (b), Article III of R.A. No. 7610, defines and penalizes acts of lasciviousness committed against a child as follows:

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. [38]

Paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. 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. [39]

However, pursuant to the foregoing provision, 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. [40]

Acts of Lasciviousness, as defined in Article 336 of the RPC, has the following elements:

- (1) That the offender commits any act of lasciviousness or lewdness;
- (2) That it is done under any of the following circumstances:
 - By using force or intimidation; or
 - When the offended party is deprived of reason or otherwise unconscious; or
 - When the offended party is under 12 years of age; and
- (3) That the offended party is another person of either sex. [41]

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

- 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 other sexual abuse.
- The child, whether male or female, is below 18 years of age. [42]

Corollarily, Section 2 (h) of the rules and regulations [43] of R.A. No. 7610 defines "Lascivious conduct" as:

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. [44]

Undeniably, all the afore-stated elements are present in Criminal Case No. 03-0255. Ireño committed lascivious acts against AAA by touching her breasts and licking her vagina and the lascivious or lewd acts were committed against AAA, who was 8 years old at the time as established by her birth certificate. [45] Thus, the CA correctly found Ireño guilty of the crime of Acts of Lasciviousness under Section 5 (b) of R.A. No. 7610.

It must be emphasized, however, that like in the crime of rape whereby the slightest penetration of the male organ or even its slightest contact with the outer lip or the labia majora of the vagina already consummates the crime, in like manner, if the tongue, in an act of cunnilingus, touches the outer lip of the vagina, the act should also be considered as already consummating the crime of rape through sexual assault, not the crime of acts of lasciviousness. Notwithstanding, in the present case, such logical interpretation could not be applied. It must be pointed out that the victim testified that Ireño only touched her private part and licked it, but did not insert his

finger in her vagina. This testimony of the victim, however, is open to various interpretation, since it cannot be identified what specific part of the vagina was defiled by Ireno. Thus, in conformity with the principle that the guilt of an accused must be proven beyond reasonable doubt, the statement cannot be the basis for convicting Ireno with the crime of rape through sexual assault.

Penalties and Award of Damages

Having found Ireno guilty beyond reasonable doubt of Rape Through Sexual Assault in Criminal Case Nos. 03-0254, 03-0256, and 03-0257 and Acts of Lasciviousness in Criminal Case No. 03-0255, We shall proceed to determine the appropriate penalties imposable for each offense.

Criminal Case Nos. 03-0254, 03-0256, and 03-0257

Under Article 266-B of the RPC, the penalty for rape by sexual assault is reclusion temporal "if the rape is committed by any of the 10 aggravating/qualifying circumstances mentioned in this article." [46] In Criminal Case Nos. 03-0254, 03-0256, and 03-0257, the aggravating/qualifying circumstance of minority and relationship are present, considering that the rape was committed by a parent against his minor child. Reclusion temporal ranges from twelve (12) years and one (1) day to twenty (20) years.

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the RPC. Other than the aggravating/qualifying circumstances of minority and relationship which have been taken into account to raise the penalty to reclusion temporal, [47] no other aggravating circumstance was alleged and proven. Hence, the penalty shall be imposed in its medium period, [48] or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

On the other hand, the minimum term of the indeterminate sentence should be within the range of the penalty next lower in degree than that prescribed by the Code which is prision mayor or six (6) years and one (1) day to twelve (12) years. [49] Thus, Ireno should be meted the indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

It must be clarified, however, that the reasoning expounded by the Court in the recent case of *People v. Armando Ching y Parcia*, [50] for imposing upon the accused the higher penalty provided in Section 5 (b), Article III of R.A. No. 7610, has no application in the case at bar. In the said case, the Court, acknowledging the fact that to impose the lesser penalty would be unfair to the child victim, meted upon the accused the higher penalty of reclusion temporal in its medium period as provided in Section 5 (b), Article III of R.A. No. 7610, instead of the lesser penalty of prision mayor prescribed by Article 266-B for rape by sexual assault under paragraph 2, Article 266-A of the RPC. The Court elucidated:

In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under Art. 266-A, par. 2 of the Revised Penal Code, as amended by R.A. No. 8353, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is prision mayor, considering that VVV was below 12 years of age, and considering further that Armando's act of inserting his finger in VVV's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is reclusion temporal in its medium period.

The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Art. 366 in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of reclusion temporal in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by prision mayor. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to

children. Despite the passage of RA No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those "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."

In the present case, the factual milieu was different since the offender, Ireno, is the father of the minor victim. Hence, the offenses were committed with the aggravating/qualifying circumstances of minority and relationship, attendant circumstances which were not present in the Chingh case, which in turn, warrants the imposition of the higher penalty of reclusion temporal prescribed by Article 266-B of the RPC. Considering that the RPC already prescribes such penalty, the rationale of unfairness to the child victim that Chingh wanted to correct is absent. Hence, there is no more need to apply the penalty prescribed by R.A. No. 7610.

As to civil liabilities, the damages awarded in the form of civil indemnity in the amount of P50,000.00 and moral damages, also in the amount of P50,000.00, for each count of Rape must be both reduced to P30,000.00, respectively, in line with current jurisprudence. [51] Also, the amount of exemplary damages awarded in the amount of P25,000.00 must be increased to P30,000.00 for each count of Rape. [52]

Criminal Case No. 03-0255

It is beyond cavil that when the sexual abuse was committed by Ireno, AAA was only eight (8) years old. Hence, the provisions of R.A. No. 7610, or The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, should be applied.

Thus, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is reclusion temporal in its medium period which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. As the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating. [53] Therefore, Ireno should be meted the indeterminate penalty of thirteen (13) years, nine (9) months and eleven (11) days of reclusion temporal, as minimum, to sixteen (16) years, five (5) months and ten (10) days of reclusion temporal, as maximum.

Moreover, the award in the amount of P15,000.00 as moral damages and a fine in the amount of P15,000.00, is proper in line with current jurisprudence. [54] However, civil indemnity ex delicto in the amount of P20,000.00 should also be awarded. [55] In view of the presence of the aggravating circumstance of relationship, the amount of P15,000.00 as exemplary damages should likewise be awarded. [56]

WHEREFORE, premises considered, the Decision of the Court of Appeals, dated March 31, 2009 in CA-G.R. CR-H.C. No. 03133, is AFFIRMED with MODIFICATIONS:

1. In Criminal Case Nos. 03-0254, 03-0256, and 03-0257, IRENO BONAAGUA y BERCE is hereby sentenced to suffer the indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, for each count. He is likewise ordered to pay AAA the amounts of P30,000.00 as civil indemnity, P30,000.00 as moral damages, and P30,000.00 as exemplary damages for each count of Qualified Rape Through Sexual Assault or a total of P90,000.00 for each count.
2. In Criminal Case No. 03-0255, IRENO BONAAGUA y BERCE is meted to suffer the indeterminate penalty of thirteen (13) years, nine (9) months and eleven (11) days of reclusion temporal, as minimum, to sixteen (16) years, five (5) months and ten (10) days of reclusion temporal, as maximum. In addition to moral damages and fine, he is likewise ordered to pay P20,000.00 as civil indemnity and P15,000.00 as exemplary damages.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Mariano C. del Castillo (now a member of this Court), with Associate Justices Isaias P. Dicdican and Ramon M. Bato, Jr., concurring; rollo, pp. 2-19.

[2] 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*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] Records, Criminal Case No. 03-0254, pp. 4-5.

[4] Records, Criminal Case No. 03-0255, pp. 1-3

[5] Records, Criminal Case No. 03-0256, pp. 1-3.

[6] Records, Criminal Case No. 03-0255, pp. 1-3.

[7] Records, Criminal Case No. 03-0254, p. 39.

[8] Rollo, pp. 4-6.

[9] *Id.* at 6-7.

[10] CA rollo, pp. 12-32.

[11] *Id.* at 32.

[12] Rollo, pp. 2-19.

[13] *Id.* at 18-19.

[14] *Id.* at 34-35.

[15] *Id.* at 36-38; 41-43.

[16] CA rollo, p. 52.

[17] *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653, 664-665.

[18] *People v. Alcazar*, G.R. No. 186494, September 15, 2010, 630 SCRA 622, 632.

[19] *Flordeliz v. People*, G.R. No. 186441, March 3, 2010, 614 SCRA 225, 234.

[20] *People v. Matunhay*, G.R. No. 178274, March 5, 2010, 614 SCRA 307, 316-317.

[21] *Id.* at 317, citing *People v. Quiñanola*, 366 Phil. 390 (1999).

[22] CA rollo, pp. 29-30.

[23] Rollo, pp. 11-12.

- [24] *People v. Flores*, 448 Phil. 840, 855-846 (2003).
- [25] *People v. Ibarrientos*, 476 Phil. 493, 512 (2004).
- [26] Republic Act No. 8353.
- [27] *People v. Montes*, 461 Phil. 563, 584 (2003).
- [28] Rollo, p. 11.
- [29] *Supra* note 18, at 635-636.
- [30] G.R. No. 110990, October 28, 1994, 237 SCRA 826.
- [31] *Id.* at 834. (Emphasis omitted.)
- [32] *People v. Balunsat*, G.R. No. 176743, July 28, 2010, 626 SCRA 77, 97-98.
- [33] *Supra* note 20, at 317.
- [34] Record, Criminal Case No. 03-0254, pp. 48 and 107.
- [35] *Id.*; TSN, June 13, 2006, p. 6.
- [36] *Gelig v. People*, G.R. No. 173150, July 28, 2010, 626 SCRA 48, 49.
- [37] Rollo, p. 13. (Emphasis theirs).
- [38] Emphasis supplied.
- [39] *Flordeliz v. People*, *supra* note 19, at 240.
- [40] *Navarrete v. People*, G.R. No. 147913, January 31, 2007, 513 SCRA 509, 517.
- [41] *Flordeliz v. People*, *supra* note 19, at 240-241; *Navarrete v. People*, *supra*.
- [42] *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 656; *Navarrete v. People*, *supra* note 40, at 521; *Olivares v. Court of Appeals*, 503 Phil. 421, 431 (2005).
- [43] Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (adopted on October 11, 1993).
- [44] *Flordeliz v. People*, *supra* note 19, at 241, citing *Navarrete v. People*, *supra* note 40, at 521-522; *Olivarez v. Court of Appeals*, *supra* note 42, at 431-432; *People v. Bon*, 444 Phil. 571, 584 (2003).
- [45] Record, Criminal Case No. 03-0254, p. 107.
- [46] ART. 266-B. Penalties. - x x x
x x x x
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.
- [47] *Flordeliz v. People*, *supra* note 19, at 243.
- [48] Revised Penal Code, Art. 64, Par. 1.

[49] Supra note 19, at 243.

[50] G.R. No. 178323, March 16, 2011.

[51] People v. Alfonso, G.R. No. 182094, August 18, 2010, 628 SCRA 431, 452-453.

[52] Id. at 452, citing People v. Lindo, 627 SCRA 519, 533 (2010).

[53] People v. Montinola, G.R. No. 178061, January 31, 2008, 543 SCRA 412, 432.

[54] Id.; People v. Candaza, G.R. No. 170474, June 16, 2006, 491 SCRA 280; Olivares v. Court of Appeals, supra note 42.

[55] Flordeliz v. People, supra note 19, at 243; People v. Palma, 463 Phil. 767 (2003).

[56] Flordeliz v. People, supra.

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