

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FLORO BUBAN BARCELA, ACCUSED-APPELLANT.

G.R. No. 208760. April 23, 2014

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the March 19, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04961, which affirmed with modifications the January 6, 2011 Decision[2] of the Regional Trial Court, Branch 93, San Pedro, Laguna (RTC), in Criminal Case Nos. 5517-SPL, 5526-SPL and 5527-SPL, finding accused-appellant Floro B. Barcelá (Barcelá) guilty beyond reasonable doubt of Qualified Rape committed against AAA,[3] and of Qualified Rape by Sexual Assault and Violation of Republic Act (R.A.) No. 7610 and Acts of Lasciviousness, committed against BBB.[4]

The Facts

Barcelá was charged with the following crimes: 1] Qualified Rape, docketed as Crim. Case No. 5517-SPL; 2] Violation of Article 266-A(2) in relation to R.A. No. 7610, docketed as Crim. Case No. 5526-SPL; and 3] Violation of R.A. No. 7610 (Acts of Lasciviousness), docketed as Crim. Case No. 5527-SPL, in three (3) separate Informations which read:

Crim. Case No. 5517-SPL

That sometime in the year 2002, in the Municipality of San Pedro, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, accused being the stepfather of AAA by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA, a minor, nine (9) years of age, against her will and to her damage and prejudice.

The crime is qualified by minority and relationship between the offender and offended party.

CONTRARY TO LAW.

Crim. Case No. 5526-SPL

That on or about November 12, 2004, in the Municipality of San Pedro, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, accused being then the stepfather of BBB, did then and there willfully, unlawfully and feloniously commit sexual assault and/or subject to sexual abuse the latter by inserting his finger into the genital or private part of the said BBB, a minor, fourteen (14) years of age, against her will and consent, which act being detrimental to her normal growth and development.

CONTRARY TO LAW.

Crim. Case No. 5527-SPL

That sometime on 2003 and subsequent thereto, in the Municipality of San Pedro, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, said accused did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon his stepdaughter BBB, a minor, fourteen (14)

years of age, by touching the private part of the said minor, against the latter's will and consent, which act is detrimental to the normal growth and development of the said minor child.

CONTRARY TO LAW. (Underscoring supplied)

Version of the Prosecution

The prosecution's version of the events was succinctly summarized by the Office of the Solicitor General (OSG) in its Brief[5] as follows:

Private complainants BBB and AAA were living, along with the appellant, their mother, grandmother and sister in a two-storey house where all of the family members sleep together in one room in San Pedro, Laguna, because the other rooms [were] being rented to other people. AAA was seven (7) years old when her stepfather, appellant Barcela, committed the despicable by sexually abusing her. She was lying on the floor sleeping one early morning in 2002, when she was awakened and noticed that her stepfather lifted her clothes and removed her shorts. Appellant then placed his hand on his organ as AAA lay still with her hands on the floor shocked by what was happening. Appellant successfully inserted his penis inside complainant AAA's vagina. While committing the bestial act, appellant threatened her not to tell anyone what he was doing to her, otherwise he would kill her.

Her elder sister BBB also suffered the same horrible fate. On 12 November 2004 at around 3:00 o'clock in the morning, appellant Barcela made a similar sexual assault upon BBB who was only fourteen (14) years at that time. It happened while BBB was sleeping in one room with her stepfather, mother and other sister. Appellant was lying at her right side. Suddenly, appellant lifted her skirt, removed her underwear and inserted his finger inside her vagina. After accomplishing the atrocious act, appellant threatened to kill her if she [would] disclose to anyone what happened to her. BBB was very afraid because of the threat that she pretended to be asleep after being raped. On that same night, BBB also saw her stepfather molesting her sister AAA. BBB also testified that prior to being raped in 2004, appellant had been regularly touching her private organ.

AAA informed her mother, grandmother and her sister BBB of what happened to her. Sadly, her mother did not believe her but her grandmother and sister BBB (who also suffered the same fate) believed her. BBB then informed her classmate, teacher and school principal of the grim experience she and her sister underwent in the hands of her stepfather. Her grandmother was summoned by the principal and, together, they reported to the police the rape incidents. In order to protect herself, AAA stayed at the "Kanlungan" shelter. As a result of the loathsome episode in their lives, AAA and BBB both felt afraid, ashamed and aggrieved.

Private complainants were eventually examined by Dr. Roy Camarillo, a medico-legal officer of the Philippine National Police. In his medico-legal report, he concluded that BBB sustained a shallow healing laceration in her hymen caused by the insertion of a hard object which may be a penis, finger or a flat hard object. As regards the examination conducted on AAA, he concluded that there was no evident injury at the time of the examination but testified that the injury that AAA incurred may have totally healed as the rape occurred two (2) years from the time of the examination.[6]

Version of the Defense

Barcela denied the accusations and alleged the following in his Brief[7] to substantiate his claim of innocence:

Accused Floro B. Barcela is the common law husband of the private complainants' mother, CCC. They all resided at the two-storey house of CCC's mother in San Vicente, San Pedro, Laguna. On November 12, 2004, the private complainants were sleeping beside their mother CCC and their half-sister DDD, herein accused-appellant's daughter with CCC. He did not rape AAA. Neither did he insert his finger inside BBB's vagina, nor threatened either of the two (2) private complainants. He knew of no reason why the private complainants would accuse him of such crimes charged against him.[8]

Ruling of the RTC

In its January 6, 2011 Decision, the RTC found Barcelá guilty as charged. In its assessment, the testimonies of AAA and BBB have successfully met the test of credibility and were found to have been solely motivated by the desire to obtain justice for the wrong done against them. The denial proffered by Barcelá must then yield to the positive testimonies of the offended parties. The RTC explained:

The culpability of accused FLORO BUBAN BARCELA was clearly established by private complainants AAA and BBB. In this regard, there is nothing in the records to show that their testimony was motivated by any other reason other than to bring to justice the perpetrator of the crimes against them. Indeed, the Court finds that there is no evidence to show that AAA and BBB were prejudiced against accused FLORO BUBAN BARCELA that they would impute to him the commission of the crimes charged if he was not guilty thereof. It must be noted that not only were the testimony of AAA and BBB convincing and unequivocal, the same were also backedup by the physical evidence, which is a mute but eloquent manifestation of truth.[9]

The dispositive portion of the RTC decision reads:

WHEREFORE, the Court hereby renders judgment:

1) Finding accused FLORO BUBAN BARCELA GUILTY beyond reasonable doubt of Rape in Criminal Case No. 5517-SPL and hereby sentencing him to suffer the penalty of Reclusion Perpetua. In addition, accused FLORO BUBAN BARCELA is ORDERED to pay the victim the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages and P30,000.00 as exemplary damages.

2) Finding accused FLORO BUBAN BARCELA guilty beyond reasonable doubt of the crime of Violation of Article 266-A (2) in relation to R.A. 7610 in Criminal Case No. 5526-SPL and hereby sentencing him to suffer the penalty of imprisonment from Two (2) years, Four (4) Months and One (1) day of prision correccional as minimum to EIGHT (8) YEARS and ONE (1) DAY of prision mayor as maximum and to pay the victim the amounts of P30,000.00 as civil indemnity, P30,000.00 as moral damages and P30,000.00 as exemplary damages

3) Finding accused FLORO BUBAN BARCELA guilty beyond reasonable doubt of the crime of Violation of R.A. No. 7610 (Acts of Lasciviousness) in Criminal Case No. 5527-SPL and hereby sentencing him to suffer the penalty of imprisonment from EIGHT (8) YEARS and ONE (1) DAY of prision mayor as minimum to 17 years, 4 months and 1 day of reclusion temporal as maximum and to pay the victim the amounts of P30,000.00 as civil indemnity, P30,000.00 as moral damages and P30,000.00 as exemplary damages.

SO ORDERED.[10]

Feeling aggrieved, Barcelá appealed the RTC judgments of conviction before the CA.

The Ruling of the CA

On appeal, the CA affirmed the trial court's finding of Barcelá's guilt of the crimes charged. The appellate court lent credence to the testimonies of AAA and BBB, declaring the same to be credible and sufficient to sustain the conviction. It ruled that the crime of penile rape committed against AAA and that of rape by sexual assault committed against BBB were qualified by the special qualifying circumstances of minority and the relationship between the offender and the offended party because Barcelá was the common-law husband of the victims' mother. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the assailed RTC Decision dated January 06, 2011 is hereby AFFIRMED with MODIFICATIONS:

1. In Criminal Case No. 5517-SPL (Qualified Rape), Floro Barcelá y Bubán is hereby sentenced to suffer the

penalty of reclusion perpetua, without eligibility of parole. Accused-appellant is ordered to pay AAA P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages.

2. In Criminal Case No. 5526-SPL (Qualified Sexual Assault in relation to RA 7610), accused-appellant 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. He is ordered to pay BBB P30,000 as civil indemnity, P30,000.00 as moral damages and P30,000.00 as exemplary damages.

3. In Criminal Case No. 5527-SPL (Acts of Lasciviousness in relation to RA 7610), accused-appellant is hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum. Consistent with the prevailing jurisprudence, he is ordered to pay a fine of P15,000.00 and to pay BBB of the amounts of P20,000.00 as civil indemnity, P15,000.00 as moral damages and P15,000.00 as exemplary damages.

SO ORDERED.[11]

The Issue

Insisting on his innocence, Barcela filed the present appeal and raised this lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSES CHARGED ALTHOUGH HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

The Court's Ruling

The appeal is devoid of merit.

Barcela faults the courts a quo for giving undue faith and credence to the testimonies of AAA and BBB, contending that the same were laced with inconsistencies and improbabilities that tainted the veracity of their charges. He avers that the lack of concrete prosecution evidence showing any unusual behavior exhibited by AAA and BBB after the alleged commission of the crimes, rendered said victims' complaints dubious. Barcela points out that it is incredible that AAA and BBB would still sleep with him in the same room despite the fact that they had been previously sexually assaulted by him. He argues that the absence of hymenal lacerations, healed or otherwise, in the vagina of AAA and the presence of a mere shallow laceration in the vagina of BBB, together with the inconsistencies in their testimonies, effectively belied their charges against him.

The Court, however, is not at all swayed by the contentions of Barcela. His arguments boil down to the credibility of the victims' testimonies and the weight and sufficiency of the prosecution evidence.

Jurisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts.[12] The trial judge has the advantage of actually examining both real and testimonial evidence including the demeanor of the witnesses. Hence, the judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal. In the absence of any substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings.[13] The rule is even more stringently applied if the appellate court has concurred with the trial court.

After a careful review of the records of this case, the Court finds no cogent reason to depart from the findings of the RTC and the CA, together with their respective calibration of the credibility of the private complainants. AAA

and BBB, guileless and innocent in the ways of the flesh, categorically narrated in detail their ghastly ordeal in the hands of Barcelá. Their respective stories bear the stamp of truth and candor. There is neither cause nor reason to withhold credence from their testimonies.

Moreover, Barcelá did not establish any ill motive that could have compelled the private complainants to falsely accuse him of committing the crimes charged. The failure of Barcelá to effectively cite any plausible reason for the private complainants' accusations, all the more strengthens the latter's credibility and the validity of their charges. Besides, no sane woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she was not, in truth, a victim of rape and impelled to seek justice for the wrong done to her.[14] The Court finds it hard to believe that AAA and BBB would fabricate a tale of defilement and make public knowledge that Barcelá robbed them of their virtue and chastity, dragging themselves and their family to a lifetime of agony and shame, unless motivated by a genuine desire to obtain redress for the foul deed forced upon them.

Barcelá claims that it is incredible that: 1] AAA did not cry out loud when he allegedly inserted his penis into her tight vagina; 2] BBB just went back to sleep after he allegedly inserted his finger into her vagina; and 3] private complainants still opted to sleep next to him despite the incidents. To him, these are contrary to human nature and could not be the actuations of abused young girls.

The Court is not convinced. Behavioral psychology teaches us that, even among adults, people react to similar situations differently, and there is no standard form of human behavioral response when one is confronted with a startling or frightful experience.[15] Let it be underscored that these cases involve victims of tender years, and with their simple, unsophisticated minds, they must not have fully understood and realized at first the repercussions of the contemptible nature of the acts committed against them. This Court has repeatedly stated that no standard form of behavior could be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult.[16] At any rate, it is not inconceivable that the victims continuously slept with Barcelá despite the sexual molestations as it was undisputed that everybody in the victims' family slept in one room.

The absence of hymenal laceration on AAA and the finding of a shallow vaginal laceration on BBB are not fatal to the cause of the prosecution. The Court has repeatedly held that the presence of hymenal rapture, vaginal laceration or any genital injury is not indispensable because the same is not an element of the crime of rape.[17] In the same breath, an intact hymen does not negate the finding that the victim was raped.[18] The alleged inconsistencies in the testimonies of AAA and BBB cannot exculpate him either. Obviously, the inconsistencies referred to are trivial and only pertained to inconsequential matters that do not alter the essential fact of the commission of rape. What is decisive in a rape charge is that the commission of rape has been sufficiently proven. Inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal.[19]

In stark contrast to the convincing narration of facts by AAA and BBB are the bare-faced and shaky defenses of denial and alibi proffered by Barcelá. Jurisprudence has decreed that alibi and denial cannot prevail over the positive and categorical testimony of the complainant and her identification of the accused.[20] Alibi is an inherently weak defense, which is viewed with suspicion because it can easily be fabricated.[21] Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[22] Here, not a shred of competent proof was adduced by Barcelá to corroborate his denial and alibi as they are only supported by his self-serving testimony. Hence, they do not merit any evidentiary value.

The Court will now determine the specific crimes committed by Barcelá with the corresponding penalties to be

imposed and the appropriate damages to be awarded.

Criminal Case Nos. 5517-SPL and 5526-SPL

The statutory provisions relevant to the present review are Article 266-A and Article 266-B of the Revised Penal Code (RPC), which state:

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

- By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat, or intimidation; xxx

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

- By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

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

xxxx

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

xxxx

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.

xxxx

Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

xxxx

Reclusion temporal shall also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article. (Emphases supplied)

To sustain a conviction for qualified rape, the following elements must concur: a) the victim is a female over 12 years but under 18 years of age; b) 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; and c) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she was deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.[23]

In Criminal Case No. 5517-SPL, the prosecution proved that AAA was only 7 years old when the penile rape was committed in 2002. Her birth certificate showed that she was born on September 24, 1994. The prosecution was also able to establish the fact of sexual intercourse between Barcela and AAA. The Court notes that AAA told her story by words and demonstrations using male and female dolls. AAA recounted that while she was lying on the floor of their house, Barcela lifted her clothes and removed her shorts; that he inserted his penis into her vagina; that she felt pain; and that he warned her not to tell the incident to anyone, otherwise, he would kill her. The

straightforward narration of AAA of what transpired, and her categorical identification of Barcelá as the malefactor, sealed the case for the prosecution.

In the crime of rape, the concurrence of the minority of the victim and her relationship with the offender is a special qualifying circumstance and raises the penalty to the supreme penalty of death. It is essential that this circumstance must be alleged in the criminal complaint or information and must be proved conclusively and indubitably as the crime itself; otherwise, the crime shall be considered simple rape warranting the imposition of the lower penalty of reclusion perpetua.[24]

The aforesaid qualifying circumstance, however, could not be appreciated in Criminal Case No. 5517-SPL. To begin with, AAA was under 12 years old (only 7 years old) when she was raped in 2002. More importantly, the prosecution failed to prove the allegation in the information that Barcelá was the step-father of AAA at the time of the commission of the crime. It bears stressing that a stepfather-stepdaughter relationship presupposes a legitimate relationship, which in this case is the valid marriage between Barcelá and the natural mother of AAA (also of BBB), and the best evidence to prove the same is the marriage contract.[25] Nowhere in the record, though, does it show that such certificate of marriage was submitted in evidence by the prosecution. In *People v. Manggasin*,[26] the Court held that the qualifying circumstance was not proved because there was no proof of the allegation that the accused-appellant was the stepfather of the complainant as the evidence showed that he was not married to the complainant's mother.

Being regarded as the "tatay," Barcelá had gained such moral ascendancy over AAA and BBB that any resistance normally expected from girls their age could not have been put up by them. His moral ascendancy and influence over them substituted for actual physical violence and intimidation as an element of rape. This made them easy prey for his sexual advances. Barcelá's moral and physical dominion of AAA and BBB are sufficient to cow them into submission to his beastly desires. No further proof is needed to show lack of consent of the victims to their own defilement. Further, record shows that threat and intimidation were indeed employed by Barcelá to consummate the purpose which he had in mind. The threat of death he communicated to AAA and BBB produced fear in their minds which made them yield to his bestial demands. In any event, the prosecution need not prove that Barcelá employed force, threat or intimidation against AAA because rape is committed when the offender had carnal knowledge of the offended party who is under 12 years of age.

The Court likewise finds convincing the testimony of BBB, which clearly established that at around 3:00 A.M. of November 12, 2004, she was awakened when Barcelá, who was then sleeping next to her, lifted her skirt, removed her panty and, thereafter, inserted his finger into her vagina; and that she suffered pain during the insertion but could not shout for fear that Barcelá would kill her. The Court notes that she consistently and without hesitation pointed to Barcelá as the person who sexually molested her. The prosecution also established that she was only 14 years old when she was sexually molested as evidenced by her birth certificate.

Taken in this light, the Court affirms Barcelá's conviction in Criminal Case No. 5526-SPL of rape by sexual assault under Art. 266- A, par. 2 of the RPC, but not in its qualified form. The special qualifying circumstances of minority and relationship were likewise not present. While the minority of BBB was duly proven, the allegation of stepfather-stepdaughter relationship was not established.

Although it was shown during the trial that Barcelá was the common-law spouse or live-in partner of the mother of victims AAA and BBB, this fact would not alter the crimes in their qualified form inasmuch as the two separate informations did not specifically allege such relationship as a qualifying circumstance. Otherwise, he would be deprived of his right to be informed of the charge lodged against him.[27] The relationship alleged in the informations is different from that actually proven. Verily, the CA erred in convicting Barcelá of qualified rape in

Criminal Case No. 5517-SPL and qualified rape by sexual assault in Criminal Case No. 5526-SPL.

There being no qualifying circumstance attendant to the commission of rape in Criminal Case No. 5517-SPL, Barcela should be convicted of simple statutory rape and should suffer the penalty of reclusion perpetua. The award of damages should also be modified in line with prevailing jurisprudence.[28] AAA is thus awarded the amounts of P50,000.00 as civil indemnity; P50,000.00 as moral damages; and P25,000.00 as exemplary damages.

In Criminal Case No. 5526-SPL, Barcela should be convicted with simple rape by sexual assault, instead with the penalty of prision mayor as provided in Art. 266-B par. 7 of the RPC. Considering that there was neither aggravating nor mitigating circumstance, the penalty should be imposed in its medium period pursuant to Article 64(1)[29] of the RPC. Applying the Indeterminate Sentence Law, Barcela should be sentenced to an indeterminate penalty the minimum of which is prision correccional (6 months and 1 to 6 years) and the maximum of which is within the range of prision mayor, in its medium period (8 years and 1 day to 10 years). More specifically, the Court imposes the penalty ranging from five (5) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum. The Court sustains the CA in awarding P30,000.00 as civil indemnity, P30,000.00 as moral damages; and P30,000.00 as exemplary damages being consistent with prevailing jurisprudence.[30]

Criminal Case No. 5527-SPL

The Court also upholds Barcela's conviction in Criminal Case No. 5527-SPL of Acts of Lasciviousness committed against a child under Section 5(b), Article III of R.A. No. 7610, which reads:

SEC. 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:

xxxxxxx

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: x x x. (Italics supplied)

The elements of sexual abuse under the above provision are as follows:

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

Here, it was proven with certitude that Barcela had repeatedly molested BBB by regularly touching her vagina since 2003 when she was still in Grade III. This act is covered by the definition of "lascivious conduct" under Section 2 (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement R.A. No. 7610:

(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 intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or private area of a person.

The circumstance of relationship, Barcelá being the common-law husband of BBB's mother, cannot be considered as an ordinary aggravating circumstance to increase the imposable penalty. While it is true that the alternative circumstance of relationship is always aggravating in crimes against chastity[32] (such as Acts of Lasciviousness), regardless of whether the offender is a relative of a higher or lower degree of the offended party, it is only taken into consideration under Article 15 of the Revised Penal Code "when the offended party is the spouse, ascendant, descendant, legitimate, natural or adopted brother or sister, or relative by affinity in the same degree of the offender." The relationship between Barcelá and BBB is not covered by any of the relationships mentioned.

Considering that no aggravating or mitigating circumstance is present, the penalty should be imposed in its medium period.[33] Applying the Indeterminate Sentence Law, Barcelá should be sentenced to an indeterminate penalty the minimum of which is prision mayor in its medium period to reclusion temporal in its minimum period (8 years and 1 day to 14 years and 8 months) and the maximum of which is within the range of reclusion temporal in its medium period to reclusion perpetua, in its medium period (17 years, 4 months and 1 day to 20 years). Thus, the CA is correct in imposing the penalty of 8 years and 1 day of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum. Likewise, the award of P20,000 as civil indemnity; P15,000.00 as moral damages; P15,000.00 as exemplary damages; and the fine of P15,000.00, are proper.[34]

WHEREFORE, the Court AFFIRMS with MODIFICATION the March 19, 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04961, which should read:

1. In Criminal Case No. 5517-SPL, finding accused-appellant Floro Bubán Barcelá GUILTY beyond reasonable doubt of the crime of Simple Statutory Rape under subparagraph (d) of Article 266-A, paragraph 1 of the Revised Penal Code, as amended, the Court sentences him to suffer the penalty of reclusion perpetua, and to pay AAA the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity; Fifty Thousand Pesos (P50,000.00) as moral damages, and Twenty Five Thousand Pesos (P25,000.00) as exemplary damages.
2. In Criminal Case No. 5526-SPL, finding accused-appellant Floro Bubán Barcelá GUILTY beyond reasonable doubt of the crime of Simple Rape by Sexual Assault under Article 266-A, paragraph 2 of the Revised Penal Code, as amended, the Court sentences him to suffer the penalty of five (5) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum; and to pay AAA in the amount of Thirty Thousand Pesos (P30,000.00) as civil indemnity; Thirty Thousand Pesos (P30,000.00) as moral damages; and Thirty Thousand Pesos (P30,000.00) as exemplary damages.
3. In Criminal Case No. 5527-SPL, finding the accused-appellant Floro Bubán Barcelá GUILTY of the crime of Acts of Lasciviousness in relation to R.A. No. 7610, the Court sentences him to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum; and to pay the amount of Fifteen Thousand Pesos (P15,000.00) as fine; and to pay BBB the amounts of Twenty Thousand Pesos (P20,000.00) as civil indemnity; Fifteen Thousand Pesos (P15,000.00) as moral damages; and P15,000.00 as exemplary damages, consistent with prevailing jurisprudence.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Leonen, JJ., concur.

May 2, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____April 23, 2014____ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on May 2, 2014 at 10:30 a.m.

Very truly yours,

(SGD)

LUCITA ABJELINA SORIANO

Division Clerk of Court

[1] Rollo, pp. 2-21. Penned by Associate Justice Rosmari D. Carandang with Associate Justice Ricardo R. Rosario and Associate Justice Leoncia R. Dimagiba, concurring.

[2] Penned by Judge Francisco Dizon Pano; CA rollo, pp. 16-20.

[3] Per this Court's Resolution dated 19 September 2006 in A.M. No. 04-11-09-SC, as well as our ruling in *People v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), pursuant to Republic Act No. 9262 or the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victims and their immediate family members other than the accused are to be withheld and fictitious initials are to be used instead. Likewise, the exact addresses of the victims are to be deleted.

[4] *Id.*

[5] Rollo, pp. 62-82.

[6] *Id.* at 68-71.

[7] *Id.* at 38-50.

[8] *Id.* at 43-44.

[9] Records, p. 19.

[10] *Id.* at 20.

[11] Rollo, pp. 19-20.

[12] *People v. Nieto*, 571 Phil. 220, 233 (2008).

[13] *People v. Dominguez, Jr.*, G.R. No. 180914, November 24, 2010, 636 SCRA 134, 161.

[14] *People v. Bon*, 536 Phil. 897, 915 (2006).

[15] *People v. Francisco*, 406 Phil. 947, 959 (2001).

[16] *People v. Crespo*, 586 Phil. 542, 566 (2008).

[17] *People v. Valenzuela*. G.R. No. 182057, February 6, 2009, 578 SCRA 157, 169.

[18] *People v. Tamos*, 455 Phil. 844, 858 (2003).

[19] *People v. Bares*, 407 Phil. 747, 764-765 (2000).

[20] *People v. Abulon*, 557 Phil. 428, 447 (2007).

[21] *People v. Penaso*, 383 Phil. 200, 210 (2000).

[22] *People v. Burce*, 336 Phil. 283, 302 (1997).

[23] *People v. Arcilla*, G.R. No. 181491, July 30, 2012, 677 SCRA 624, 634.

[24] *People v. Alemania*, 440 Phil. 297, 306 (2002).

[25] *People v. Victor*, 441 Phil. 798, 812 (2002).

[26] 365 Phil. 683, 706 (1999).

[27] *People v. Negosa*, 456 Phil. 861, 877 (2003).

[28] *People v. Caoile*, G.R. No. 203041, June 5, 2013.

[29] Art. 64. Rule for application of penalties which contain three periods. – In cases in which the penalties prescribed by law contain three periods, xxx, the courts shall observe for application of the penalty the following rules, xxx:

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

[30] *People v. Lindo*, G.R. No. 189818, August 9, 2010, 627 SCRA 519, 534; *People v. Dominguez*, G.R. No. 191065, June 13, 2011, 651 SCRA 791, 810-811.

[31] *Malto v. People*, 560 Phil. 119, 134 (2007).

[32] *People v. Montinola*, 567 Phil. 387, 409 (2008).

[33] Art. 64 of the Revised Penal Code, *supra* note 27.

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

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