

PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. XXX ACCUSED-APPELLANT.

G.R. No. 230904. January 08, 2020

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

This appeal assails the Decision dated December 12, 2016[1] of the Court of Appeals in CA-G.R. CR-HC No. 07090 which affirmed the verdict of conviction against appellant for two (2) counts of rape by carnal knowledge, rape by sexual assault, two (2) counts of acts of lasciviousness, and violation of Section 5(c) of Republic Act (RA) 9262.[2]

Proceedings before the Trial Court

The Charges and Plea

Under six (6) Informations dated August 8, 2006, appellant XXX[3] was charged as follows:

- Criminal Case No. CR-06-8540 for rape by sexual assault:

That on or about the 3[rd] day of August 2006, at around 4:00 o'clock in the morning, in xxxxxxxxxx,[4] City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously sexually assault one AAA,[5] the seventeen (17) year old daughter of his common-law-wife, and living with him in the same house, by inserting his finger in her vagina, against her will and without her consent, acts of child abuse which debase, degrade and demean the intrinsic worth and dignity of the said AAA, as a human being, to her damage and prejudice.

Contrary to law.[6]

- In Criminal Case No. CR-06-8541 for acts of lasciviousness:

That on or about the 5[th] day of in the evening, more or less, in xxxxxxxxxx, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust and lewd desire, by means of force and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of BBB,[7] a fifteen (15) year-old daughter of his common-law-wife, living with him in the same house, by then and there touching her legs and private parts, against her will and without her consent, acts which debase, degrade or demean the intrinsic worth and dignity of the said BBB, to her damage and prejudice.

Contrary to law.[8]

- In Criminal Case No. CR-06-8542 for violation of Section 5(c), in relation to Section 6(b) of RA 9262:

That on or about the 5[th] day of August 2006, at around 9:00 o'clock in the evening, more or less, in

xxxxxxxxxxx, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of CCC,[9] 8-year[s]-old, and stepfather of AAA, 17 year[s] old, the latter being the daughter of accused's common-law-wife, with utter disregard of the respect owing to his said son and stepdaughter while armed with a bladed instrument, did then and there, willfully, unlawfully and feloniously attempt to cause said children physical harm by chasing them with the intention of causing them harm, thereby inflicting sufferings to the said CCC and AAA, acts which debase, degrade, and demean the intrinsic worth and dignity of the said children, to their damage and prejudice.

Contrary to law.[10]

- In Criminal Case No. CR-06-8543 for attempted rape:

That on or about the 4[th] day of August 2006, at around 3:00 o'clock in the afternoon, at xxxxxxxxxxxx, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above--named accused, did then and there willfully, unlawfully and feloniously with lewd design and by means of force, threat and intimidation commence the commission of the crime of rape against AAA, the 17-year-old daughter of his common-law-wife and living with him in the same house, directly by overt acts by kissing her, embracing her, forcing her to lay down and touching and mashing her breast, but said accused was not able to perform all the acts of execution that would consummate the crime of rape due to some cause other than his own spontaneous desistance; acts of sexual abuse which debase, degrade or demean the intrinsic worth and dignity of the said AAA, to her damage and prejudice.

Contrary to law.[11]

- In Criminal Case No. CR-06-8544 for rape by carnal knowledge:

That on or about the 14[th] day of August 2002, at around 6:00 o'clock in the evening, in xxxxxxxxxxxx, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of AAA, the fourteen (14) year old daughter of his common-law-wife and living with him in the same house, against her will and without her consent, acts of child abuse which debase, degrade and demean the intrinsic worth and dignity of said AAA, as a human being, to her damage and prejudice.

Contrary to law.[12]

- 6. In Criminal Case No. CR-06-8545 for rape by carnal knowledge:

That on or about the 21[st] day of August 2002 at around 3:00 o'clock in the afternoon, in xxxxxxxxxxxx, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, motivated by lust and lewd desire, and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of the said AAA, the fourteen (14) year old daughter of his common-law-wife and living with him in the same house, against her will and without her consent, acts of child abuse which debase, degrade and demean the intrinsic worth and dignity of said AAA, as a human being, to her damage and prejudice.

Contrary to law.[13]

The cases were consolidated and raffled to Regional Trial Court-Br. 39, Calapan City, Oriental Mindoro. On arraignment, appellant pleaded not guilty to all six (6) charges. Joint trial ensued.[14]

Prosecution's Evidence

During the trial, the prosecution offered the testimonies of AAA, BBB, CCC and DDD.[15] AAA and BBB were DDD's children with her first live-in partner, while CCC was her son with appellant.

AAA testified that she was born on November 24, 1988. She first met appellant when her mother DDD introduced him as her new live-in partner. At that time, she was still six (6) years old and living with her aunt in Barangay Tibag, Calapan City. When she reached third she started living with DDD and appellant in xxxxxxxxxxxx, Calapan City. She considered appellant her real father because her biological father left them when she was younger. Meanwhile, her sister BBB remained under the care of their grandmother in Naujan until she was already in high school. DDD and appellant had a child, CCC.[16]

The first time appellant raped her was on August 14, 2002. The night before the incident, on appellant's birthday, she overheard appellant talking to DDD downstairs in their house, asking permission to treat AAA as his wife ("Hinihingi po ako ng step-father ko sa nanay ko. Gusto niya po akong asawahin").[17] DDD got mad and immediately refused appellant's request. Alarmed by appellant's intention, she confronted DDD regarding the matter but DDD assured her that such incident would never happen. She felt relieved by DDD's assurance at first but realized later that the person whom she looked up to as her own father would still carry out his bestial desires.[18]

On the day of the incident, around 6 o'clock in the evening, she was left alone doing kitchen chores when appellant suddenly held her arms and forcibly leaned her against the wall. Appellant covered her mouth and removed her jogging pants. He took off his trousers as well. She struggled to free herself from appellant but the latter was just too strong. She also tried to shout for help but appellant simply covered her mouth again and threatened to kill DDD if she reported the incident to anyone.[19]

Appellant was behind her as he pushed her facing the wall. He forcibly inserted his penis into her vagina from behind. She felt a sharp pain during the insertion because it was the first time she had sexual intercourse. And just when she thought that appellant had already satisfied his lust, he sexually assaulted her by inserting his finger inside her private organ. Frightened and helpless, she could no longer fight back. Appellant only stopped when he realized that DDD was already on her way back home. Upon DDD's arrival, appellant acted as if nothing happened. For her part, she was too afraid to tell her mother about the incident for fear that appellant might hurt DDD.[20]

On August 21, 2002, appellant raped her once again. Around 4 o'clock in the afternoon that day, while DDD and CCC were away, appellant shoved her face-down on the sofa. While she was in a stooping position (nakadapa), appellant removed her jogging pants and forcibly inserted his penis into her vagina. She felt pain while appellant made push and pull motions with his erect penis. She was too weak to resist. With her mouth against the sofa, she, too, failed to shout for help. Once again, she kept her silence for fear that appellant would kill DDD.[21]

The third incident of rape was on August 3, 2006. She was already seventeen (17) years old but still shared a bedroom with all her family members. That morning, she was awakened by the malicious embrace and kisses of appellant who groped her inside her jogging pants with his left hand. He proceeded to insert his middle finger into her vagina several times. She felt pain as appellant's nails scratched the inner parts of her vagina. Although CCC was asleep in the same room, this did not prevent appellant from carrying out the deed.[22]

In the evening of August 4, 2006, she was again molested by appellant. While she and appellant were alone inside their house, appellant started kissing and caressing her as she cleaned kitchen utensils. Appellant placed his hands inside her shirt and mashed breasts. He only withdrew from taking advantage of her when he saw DDD about to arrive. Thereupon, he pretended to have sent her to an errand and left the house. The morning after, appellant berated everyone in the house for no apparent reason. He would usually lose his temper and act that way

whenever he failed to satisfy his lust at her expense.[23]

On the night of August 5, 2006, while her family was watching television, appellant arrived home drunk and again berated everyone. He ridiculed her family, telling them they were good for nothing. He also called them demons and threatened to hack them into pieces. Later, she saw appellant come down the stairs, carrying a samurai. She immediately pulled CCC and ran out the house. They were separated from BBB and DDD who ran ahead of them but they were able to catch up with each other along the way. They proceeded to the police station to have the incident entered in the police blotter but the police did not accompany them back to their house.[24]

On their way home, they saw appellant burning their things. Shaken by what they saw, they decided to ask police officers to escort them home. The police officers obliged and immediately arrested appellant in their house.[25]

When she saw appellant behind bars, she finally mustered enough courage to report the abuses she experienced in his hands. But she was more shocked to have learned that appellant molested BBB that same night, too.[26]

BBB testified that she was fifteen (15) years old when appellant performed lascivious acts on her. On August 5, 2006, around 8 o'clock in the evening, an hour before appellant ran amok, appellant molested her by touching her thighs and breasts. She did not cry for help because appellant threatened to kill her family if she disclosed the incident to anyone. This, however, was not the first time she was sexually violated by appellant. She would experience it whenever she was left alone with appellant in their home.[27]

CCC corroborated AAA's testimony. On August 5, 2006, around 9 o'clock in the evening, appellant berated him and his sister before chasing them with a bladed weapon. They immediately went to the police station to report the incident. But when they returned home, they saw appellant burning their things so they went back to the police station to seek assistance, resulting in appellant's arrest. He was only thirteen (13) years old at that time.[28]

DDD testified that when she started living together with appellant, AAA was living with her (DDD's) sister while BBB, with her mother. AAA and BBB only came to live with them when they reached third grade and high school, respectively. AAA and BBB considered appellant as their tatay.[29]

On August 5, 2006, she was at home with all her children when appellant arrived drunk. They got frightened when he told them "Mga hayop kayo! Mga demonyo kayo! Tatadtarin ko kayo! Papatayin ko kayo!" Appellant went upstairs and they heard banging noises. When appellant went back downstairs, he was already carrying a bladed weapon so she and the children ran outside. She and BBB ran towards the barangay captain's house while appellant chased AAA and CCC. Appellant stopped chasing them when he saw one (1) of their neighbors Eddie Boy. They reported the incident to the police but when they got back home, appellant was already burning their things.[30]

The prosecution and the defense stipulated on the proposed testimony of Dr. Angelita Legaspi who examined AAA and found healed hymenal lacerations at 4 o'clock, 8 o'clock and 12 o'clock positions.[31] She formalized her findings in the Medical Certificate she issued to AAA.

Defense's Evidence

Appellant was the lone witness for the defense. He denied the first and second charges of rape against him. He claimed it was impossible for him to have committed these counts of rape since he was working in Puerto Galera for most of 2002. He was not free to leave work and visit DDD and the children regularly in Calapan City.[32]

He also denied sexually assaulting AAA on August 3, 2006. He could not have committed the crime especially in the presence of CCC in the room. As for BBB's claim that appellant molested her on August 5, 2006, no such molestation could have taken place since he went straight to bed that night.[33]

The alleged August 5, 2006 incident was fabricated. DDD's three (3) children probably held a grudge against him because days before his arrest, he and DDD had several bitter quarrels over the P80,000.00 which DDD owed him.[34]

The Trial Court's Ruling

Under Joint Decision dated June 24, 2014,[35] the trial court rendered a verdict of conviction, thus:

ACCORDINGLY, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. CR-06-8540, this Court finds the accused XXX GUILTY beyond reasonable doubt as principal of the crime charged against him in the aforementioned Information, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE, and to PAY the private complainant the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P25,000.00 as exemplary damages, and to pay costs;
2. In Criminal Case No. CR-06-8541, this Court finds the accused XXX GUILTY beyond reasonable doubt as principal of the crime of ACTS OF LASCIVIOUSNESS, defined and penalized under Article 336 of the RPC, and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from SIX (6) MONTHS OF ARRESTO MAYOR, AS MINIMUM, TO SIX (6) YEARS OF PRISION CORRECCIONAL, AS MAXIMUM, and to PAY the private complainant the amount of P20,000.00 as civil indemnity, P30,000.00 as moral damages, P30,000.00 as exemplary damages, and to pay the costs.
3. In Criminal Case No. CR-06-8542, this Court finds the accused XXX GUILTY beyond reasonable doubt as principal of the crime charged against him in the aforementioned Information and in default of any mitigating or aggravating circumstances, hereby sentences him to suffer the straight penalty of imprisonment for THREE (3) MONTHS OF ARRESTO MAYOR IN ITS MEDIUM PERIOD and to PAY the FINE OF ONE HUNDRED THOUSAND PESOS (P100,000.00).
4. In Criminal Case No. CR-06-8543, this Court finds the accused XXX GUILTY beyond reasonable doubt as principal of the crime of ACTS OF LASCIVIOUSNES, defined m1d penalized under Article 336 of the RPC, and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from SIX (6) MONTHS OF ARRESTO MAYOR, AS MINIMUM, to SIX (6) YEARS OF PRISION CORRECCIONAL (sic), AS MAXIMUM, and to PAY the private complainant the amount of P20,000.00 as civil indemnity, P30,000.00 as moral damages, P30,000.00 as exemplary damages, and to pay the costs.
5. In Criminal Case No. CR-06-8544, this Court finds the accused XXX GUILTY beyond reasonable doubt as principal of the crime charged against him in the aforementioned Information, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE, and to PAY the private complainant the amount [of] P75,000.00 as civil indemnity, P75,000.00 as moral damages, P25,000.00 as exemplary damages, and to pay costs;
6. In Criminal Case No. CR-06-8545, this Court finds the accused XXX GUILTY beyond reasonable doubt as principal of the crime charged against him in the aforementioned Information, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE, and to PAY the private complainant the amount [of] P75,000.00 as civil indemnity, P75,000.00 as moral damages, P25,000.00 as exemplary damages, and to pay costs.

The aforementioned penalties shall be served by the accused SUCCESSIVELY.

SO ORDERED.[36]

The trial court anchored its guilty verdict on the testimonies of the prosecution witnesses.[37] Against their positive and categorical testimonies, appellant merely invoked denial and alibi which were inherently weak.[38]

More, the two (2) counts of rape by carnal knowledge and one (1) count by sexual assault committed against AAA (Criminal Case Nos. CR-06-8540, CR-06-8544 and CR-06-8545) were qualified by minority and relationship. Thus, the penalties against appellant for these crimes would have been death were it not for the enactment of RA 9346.[39]

The charge of attempted rape committed against AAA (Criminal Case No. CR-06-8543), however, was downgraded to acts of lasciviousness considering the prosecution's failure to prove that appellant attempted touch AAA's vagina.[40] Thus, the trial court convicted appellant of two (2) counts of acts of lasciviousness, the other having been committed against BBB (Criminal Case No. CR-06-8541). It also considered the victims' minority and their relationship with appellant in determining the proper penalty against the latter.[41]

Finally, the trial court found appellant's acts of berating DDD's children, running amok, and chasing them with a bladed weapon, to be clear acts of violence penalized under Section 5(b) of RA 9262.[42]

Proceedings before the Court of Appeals

Appellant faulted the trial court for rendering a verdict of conviction despite the alleged incredibility and implausibility of the testimonies of the prosecution witnesses.

On the charges of rape, appellant argued:

First. It was unimaginable why DDD, after hearing appellant's supposed indecent proposal, would not take extraordinary measures to ensure that her daughter would be safe from any form of molestation. She did not even attempt to physically separate her from appellant. She could have prevented the rape had she sent AAA to her grandmother's house where BBB was staying.[43]

Second. The Informations for rape alleged that appellant had carnal knowledge of AAA through force, intimidation and threat. But AAA's testimony did not establish any basis for any alleged threat. Nothing on record showed that appellant was armed with a weapon. None of the witnesses testified on whether appellant had violent tendencies or history of inflicting physical harm. More, it was unusual for AAA to have remained silent while she was being molested when she could have easily pleaded with appellant for mercy.[44]

Third. AAA knew that DDD either goes to the market or to meetings at the cooperative in the afternoon while appellant manages his upholstery business at home. Knowing their routines, she could have easily avoided being left at home with appellant had she exerted more effort. She could have just gone with her mother to the market or to her meetings since she was not under any compulsion to stay home.[45]

Fourth. The alleged rape incident on August 3, 2006 was highly improbable since CCC was asleep in the same bedroom. More, BBB and DDD were already awake when the alleged crime was committed; appellant would not have risked the chance of BBB and DDD stumbling upon them in a compromising situation.[46]

Fifth. Dr. Angelita Legazpi's report on the cervical vaginal examination she conducted on AAA should not be admitted in evidence since she did not testify in open court. Also, her findings could not have proved AAA was raped twice in 2002 since the examination was conducted four (4) years later in 2006.[47]

Finally. It was unfair for the trial court to have placed the burden on appellant to prove his innocence despite the defenses he offered.[48]

On the charge of acts of lasciviousness against BBB, appellant countered that the testimonies of the prosecution witnesses on the events which supposedly happened on August 5, 2006 were contradictory. According to AAA and CCC, appellant arrived home drunk that evening. He allegedly berated and chased them with a samurai. BBB testified, however, that she was alone in the house when appellant purportedly molested her.[49]

On the alleged violation of RA 9262, appellant harped on the prosecution's alleged failure to prove that the chasing incident actually happened. The prosecution witnesses claimed that other people saw it as it occurred but none of them testified in court.[50]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Derek R. Puertollano and Associate Solicitor II Mark Ranier C. Arenas defended the verdict of conviction.

It maintained that AAA's testimony sufficiently established that she was raped by appellant on August 14, 2002, August 21, 2002, and August 3, 2006. No decent and sensible woman will publicly admit to having been raped and run the risk of public contempt unless she is, in fact, a rape victim.[51] More, the crimes were qualified by AAA's minority and her relationship with appellant.

AAA and BBB gave credible testimonies on the lascivious acts which appellant committed on them. The alleged inconsistency in their testimonies pertaining to whether BBB was alone in the house on August 5, 2006, around 8 o'clock in the evening, was too minor and immaterial to destroy their credibility as witnesses.[52]

As for the chasing incident, AAA and CCC's testimonies sufficiently established that the same did transpire. More, the reluctance of witnesses to testify in court regarding the incident was understandable.[53]

The Court of Appeals' Ruling

Through its assailed Decision dated December 12, 2016, the Court of Appeals affirmed with modification of the penalties, viz.:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed June 24, 2014 Decision of the Regional Trial Court (RTC), Branch 39, of the City of Calapan, Oriental Mindoro, is MODIFIED in that:

(1) In Criminal Case No. CR-06-8540, for rape by sexual assault:

(a) the appellant is sentenced to suffer an indeterminate penalty of nine (9) years of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum;

(b) the award of civil indemnity is reduced to P30,000.00;

(c) the award of moral damages is reduced to P30,000.00;

(d) the award of exemplary damages is increased to P30,000.00; and

(e) all damages awarded shall earn interest at the rate of six percent (6%) per annum from date of finality of this judgment until fully paid.

(2) In Criminal Case No. CR-06-8541, for acts of lasciviousness:

(a) the maximum term of the penalty is reduced to two (2) years, four (4) months and one (1) day of prision correccional;

(b) the award of exemplary damages is reduced to P10,000.00; and

(c) all damages awarded shall earn interest at the rate of six percent (6%) per annum from date of finality of this judgment until fully paid.

(3) In Criminal Case No. CR-06-8542, for violation of Section 5 (c) of Republic Act No. 9262, appellant is ordered to undergo mandatory psychological counseling and shall report compliance to the RTC.

(4) In Criminal Case No. CR-06-8543, for acts of lasciviousness:

(a) the maximum term of the penalty is reduced to two (2) years, four (4) months and one (1) day of prision

correccional;

(b) the award of exemplary damages is reduced to P10,000.00; and

(c) all damages awarded shall earn interest at the rate of six percent (6%) per annum from date of finality of this judgment until fully paid.

(5) In Criminal Case No. CR-06-8544, for qualified rape, the awards of civil indemnity, moral damages and exemplary damages are all increased to P100,000.00 each. In addition, all damages awarded shall earn interest at the rate of six percent (6%) per annum from date of finality of this judgment until fully paid.

(6) In Criminal Case No. CR-06-8545, for qualified rape, the awards of civil indemnity, moral damages and exemplary damages are all increased to P100,000.00 each. In addition, all damages awarded shall earn interest at the rate of six percent (6%) per annum from date of finality of this judgment until fully paid.

SO ORDERED.[54]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated July 12, 2017,[55] both appellant and the OSG manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[56]

Issue

Did the Court of Appeals en in affirming the verdict of conviction against appellant for two (2) counts of rape by carnal knowledge, rape by sexual assault, two (2) counts of acts of lasciviousness, and violation of Section 5(c) of Republic Act (RA) 9262?

Ruling

Appellant is guilty of two (2) counts of rape by carnal knowledge committed against AAA

Article 266-A of the Revised Penal Code states:

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

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

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- 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.

2) 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.

The elements of rape by carnal knowledge under Article 266-A(1)(a) are: (1) the offender had carnal knowledge of a woman; and (2) such act was accomplished through force, threat, or intimidation.[57]

Rape is a crime that is almost always committed in isolation or in secret, usually leaving only the victim to testify

about the commission of the crime. As such, an accused may be convicted of rape on the basis of the victim's sole testimony provided it is credible, consistent and convincing.[58]

Here, the prosecution sufficiently established that on August 14, 2002 and August 21, 2002, appellant had carnal knowledge of AAA, a minor daughter of her live-in partner DDD, through force, threat and intimidation. AAA testified on the first rape incident, thus:

PROS. JOYA: You said that on that date end time you were in the kitchen, cleaning, when your stepfather entered the same. When you were alone in the kitchen together with your stepfather what happened?

[AAA]:

When he was able to lean me on the wall, he covered my mouth so that I could not shout. He started to remove my jogging pants.

Q:

That time, how old were you, Ms. Witness?

A:

I was 14 Ma'am.

xxx xxx xxx

Q:

Where did your mother go at that time?

A:

She went to the market Ma'am.

Q:

According to you he leaned you on the wall, covered your mouth and removed your jogging pants, what happened after that?

A:

After removing my jogging pants, he also removed his short pants.

His hand that was covering my mouth was released. I tried to push him away but I could not because he was very strong.

Q:

Why did you not shout at the time when his hand covering your mouth was removed?

A:

Because every time I would attempt to shout, he would again cover my mouth and threaten me that if ever I would shout and tell the matter to anybody, he would kill my mother.

Q:

After he removed his shorts according to you, you tried to fight back.

What happened? Were you successful in fighting XXX?

A:

No Ma'am.

Q:

After he removed his shorts, what happened next?

A:

He tried hard to insert his organ to my sex organ.

Q:

At that time, what was your position?

A:

I was standing.

Q:

Straight or what?

A:

I was leaning on the wall. Every time I would try to bow down to raise my jogging pants, he would push me and I could not extricate from him.

Q:

You said you were leaning on the wall, facing the wall or against the wall?

A:

I was facing the wall.

xxx xxx xxx

Q:

You said that he was trying to insert his organ on your vagina. From what position was he trying to do that?

A:

At my back.

Q:

Was he successful in inserting his penis in your vagina?

A:

Yes, Ma'am.

Q:

While he was inserting his penis in your vagina, what did you feel?

A:

It was painful.

Q:

Aside from inserting his penis in your vagina, what, if any, was the accused doing?

A:

He was fingering me.

Q:

What do you mean by "fingering me"?

A:

He was inserting his finger Inside my vagina.

Q:

Which happened first, that fingering you or Inserting his organ in our vagina?

A:

He first inserted his penis in my vagina.

Q:

For how long was the penis of your stepfather inside your vagina?

A:

It seemed long.

Q:

Pardon me for asking this Ms. Witness, before that Incident, have you had any experience of sexual intercourse?

A:

None Ma'am.

Q:

Considering that according to you this is your first experience of sexual intercourse, what did you feel when the accused was doing this to you forcibly?

A:

I was very mad at him.

Court Interpreter: Witness was crying while answering the question of the prosecutor.[59]

As for the second rape incident on August 21, 2002, AAA testified:

PROS. JOYA: You said that your mother left on that day, August 21. Where was your little brother, CCC?

AAA:

He was with my mother.

Q:

You know that you would be left alone with the accused, why did you not go with your mother and your little brother?

A:

My stepfather would not allow me to go with my mother during that time.

Q:

You said you and your stepfather were alone in your house. When you were in the sala, he suddenly pulled you to where did he pull you?

A:

To the sofa.

Q:

He pulled you towards the sofa. What was your position after he pulled you?

A:

I stooped down, "nakasubsob", In the sala set.

Q:

At that time, what were you wearing, Ms. Witness?

A:

I was still wearing pants. I used to wear jogging pants.

Q:

On the sofa, with your face against the sofa, what happened Ms. Witness?

A:

He tried to pull down my jogging pants and tried to insert his sex organ to mine even if I was stooping down or nakadapa.

Q:

Why did you not resist?

A:

He succeeded in doing so.

Q:

What did you feel when the accused Inserted his pants into your vagina?

A:

Of course I felt pain.

Q:

For how long was the penis of your stepfather inside you?

A:

Only for a while.

Q:

What were you doing while his penis was inside you Ms. Witness?

A:

Nothing. I just cried.

Q:

Why did you not shout?

A:

I could not shout because he was on top of me and my mouth was pushed through the sala set.[60]

Indeed, central to appellant's conviction for rape was the credible and convincing testimony of his minor victim AAA. Her revelation that appellant forcibly had carnal knowledge of her not once but twice, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the sordid details of the assaults on her dignity, could not be so easily dismissed as mere concoction.[61] It is highly improbable that a girl, only seventeen (17) years old, would fabricate a story that would expose herself and her family to a lifetime of dishonor,[62] especially when her charge would mean the long-term imprisonment, if not death, of her "tatay."

By itself, AAA's testimony withstands scrutiny sufficient to sustain a verdict of conviction. But when corroborated by physical evidence, AAA's testimony assumes even more probative weight.

As stipulated by both the prosecution and the defense, Dr. Legaspi examined AAA and found healed hymenal lacerations at the 4 o'clock, 8 o'clock and 12 o'clock positions. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. And when the consistent and forthright testimony of a rape victim is consistent with medical findings, as here, the essential requisites of carnal knowledge are deemed to have been sufficiently established.[63]

Appellant, nevertheless, claims that the prosecution failed to establish his supposed use of force, threat and intimidation in the commission of the rapes. For nothing on record showed that he was armed. More, it was unusual for AAA to have remained silent throughout her ordeal.

We are not persuaded.

Threat or intimidation need not be shown by appellant's use of a weapon. Instead, these concepts must be viewed in light of AAA's perception and judgment at the time of rape, and not by any hard and fast rule. It is enough that they produced fear - that if she does not yield to the bestial demands of appellant, something would happen to her at the moment or thereafter, as when she was threatened with death if she reports the incident.[64]

At any rate, the Court held in *People v. Bentayo*[65] that when the offender is the victim's father, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter who was a minor at the time the crime was committed, his moral ascendancy or influence over the latter substitutes for violence and intimidation.[66] Here, the fact that appellant is the live-in partner of AAA's mother, and whom she considered her tatay since she was six (6) years old, established his moral ascendancy over AAA. Appellant's moral ascendancy and influence over AAA substitutes for threat and intimidation.[67]

AAA could not also be faulted for her failure to shout for help. Rape victims react differently. There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as rape. The workings of the human mind placed under emotional stress are unpredictable, and people react differently: some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. None of these conducts, however, impair the credibility of a rape victim.[68]

Appellant next claims that these incidents could have been avoided had DDD taken extraordinary measures to ensure AAA's safety, such as physically separating them and sending AAA to live with her grandmother. More, AAA was well aware of DDD's routine of leaving their house every afternoon. Hence, she could have exerted more effort to avoid being left alone at home with appellant.

In so arguing, appellant essentially blames AAA and DDD for exposing AAA to a vulnerable situation. This is unacceptable. Indeed, the Court has chastised appellants for resorting to the appalling act of victim-blaming. In *People v. Villaros*,[69] the Court pronounced:

This reasoning is outrageous, if not outright despicable. In his desperate attempt to exculpate himself from criminal liability, the accused-appellant turned on his victim who, to repeat, was a minor at the time the rape incidents were committed, and blamed her for putting herself in a vulnerable position in her own home. Grasping at straws, the accused--appellant not only committed the abhorrent practice of victim-blaming so prevalent in sexual abuse cases, but he also failed to recognize that he made the irrational proposition that the victim should not have been comfortable in her own abode. (Emphasis and italics in the original)

In fine, the trial court and the Court of Appeals correctly gave credence to AAA's testimony. Surely, the trial court's factual findings on the credibility of witnesses are accorded high respect. This is because the trial court has the unique opportunity to observe the witnesses' demeanor, and is in the best position to discern whether they are telling the truth or not.[70] This rule becomes more compelling when such factual findings carry the full concurrence of the Court of Appeals, as here.[71]

In this light, appellant's negative and self-serving defenses of denial and alibi crumble and cannot prevail over AAA's affirmative testimony and her categorical and positive identification of the appellant as the person who raped her.[72]

In any event, appellant's claim that he was in Puerto Galera when the two (2) counts of rape were committed is no reason for this Court to render a verdict of acquittal. Puerto Galera is only about 40 kilometers from Calapan City. The proximity between the two places does not render appellant's commission of the crime on two separate occasions impossible.

Appellant committed two (2) counts of lascivious conduct on AAA

AAA testified on the sexual assault she experienced in the hands of appellant on August 3, 2006:

PROS. JOYA: So what happened, Miss Witness while you were still upstairs with your little brother and the accused in the same room?

A:

He went near me and tried to start embracing me since he was stronger than I am, although I was trying to struggle, I could not do so Ma'am.

Q:

Your mother and your sister BBB was just downstairs, why did you not shout for help?

A:

Because he was threatening me that if I would tell this matter to my mother, he would kill her Ma'am.

Q:

And you believed his threat?

A:

Yes Ma'am.

Q:

So what happened while the accused was trying to embrace and kiss you?

A:

He was trying to insert his hand Inside my jogging pants Ma'am.

Q:

Was he successful in inserting his hand Inside your jogging pants?

A:

Yes Ma'am.

Q:

What did he do after?

A:

He started kissing me and then his hand remained on my private part Ma'am.

Q:

Moving to what direction?

A:

I cannot explain how but his hand was moving.

PROS. JOYA: The witness is crying while answering the question, Your Honor.

Q:

So for how long did the hand of the accused was in your private part?

A:

Only for a while Ma'am.

Q:

And for a while that it was in your vagina, how did (discontinued) in what way was (discontinued) please explain to us, Miss Witness the hand of the accused was doing in your vagina?

A:

His hand was continuously moving and it seemed that he was inserting in and out of his finger into my vagina, Ma'am.

Q:

Pardon me for using this word Miss Witness but do I understand that he fingered you or he inserted his finger into your vagina?

Court Interpreter: Witness nodded.

PROS. JOYA: What did you feel, Miss Witness when the finger of the accused was going in and out of your vagina?

xxx xxx xxx

A:

It was painful because his nail would touch the inner portion of my vagina, Ma'am.[73]

AAA also testified that appellant molested her on August 4, 2006, viz.:

Q:

So what happened when you were alone with the accused on August 4, 2006?

A:

He went near me, started kissing me and embracing me and then he inserted his hand inside my shirt ma'am.

Q:

So what happened, Miss Witness while the accused's hand was inside your shirt?

A:

He was mashing my breast, ma'am.

Q:

And what was your position during that time?

A:

He was at my back, ma'am.

Q:

And in what part of the house were you then?

A:

Near the kitchen ma'am.

Q:

Before the incident happened what were you doing?

A:

I was about to clean our kitchen utensils ma'am.

Q:

So he came from behind you, what did you feel when you felt his hand on your body?

A:

"Nandidiri po ako sa kanya" whenever he would touch or mash my breast, it hurts ma'am.

Q:

So Miss Witness, aside from mashing your breast, kissing and embracing you, what did the accused do, if any?

A:

Nothing more because he already saw my mother coming ma'am.

Q:

Were you able to likewise see your mother coming?

A:

No ma'am.

Q:

What did the accused do upon noticing that your mother was arriving?

A:

Nothing ma'am, he left and pretended that he was sending me to an errand.

Q:

What did you do when your mother arrived?

A:

None ma'am. I just remained silent.

Q:

Why did you not report the incident to your mother?

A:

Because I was afraid, ma'am.

Q:

Afraid of what?

A:

About any possible thing that he would do to my mother, ma'am.[74]

Contrary to appellant's defense, CCC's presence in the same room on August 3, 2006 did not render impossible appellant's act of sexually assaulting AAA right there. Instead, appellant's depraved behavior only proved that lust is not a respecter of people, time, or place.[75]

Noted in *People v. Peyra*, [76] we have already encountered far too many instances where rape was committed in

plain view. We even took judicial notice of the fact that among poor couples with big families cramped in small quarters, copulation does not seem to be a problem despite the presence of other persons there. Rape could be committed under circumstances as indiscreet as a room full of family members sleeping side by side.

Appellant's act of inserting his finger into AAA's vagina would have amounted to rape by sexual assault punishable under Article 266-A(2) of the Revised Penal Code as amended. Considering, however, that AAA was only seventeen (17) years old when she was abused by appellant, there is a need to modify the nomenclature of appellant's crime.

In *People v. Tulagan*,^[77] the Court elucidated that when sexual assault is committed against a victim 12 years old or older but below 18, or is 18 years old but under special circumstances, the crime committed is lascivious conduct under Section 5 (b) of RA 7610, the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, viz.:

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:

xxxx

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected 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 3361 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.

The Implementing Rules and Regulations (IRR) of RA 7610 defines lascivious conduct, thus:

Section 2. Definition of Terms. - As used in these Rules, unless the context requires otherwise -

xxxx

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 pubic area of a person; (emphasis added)

The elements of lascivious conduct under Section 5(b) of RA 7610 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 other sexual abuse, "children exploited in prostitution and other sexual abuse" those children, whether male or female, (1) who for money, profit or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct;

(3)

The child, whether male or female, is below 18 years of age.[78]

Under the foregoing legal edicts, appellant's act of sexually assaulting AAA on August 3, 2006 qualifies as lascivious conduct under Section 5(b) of RA 7610. The Information, in fact, sufficiently alleged the elements of the offense, thus:

xxx by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously sexually assault one AAA, the seventeen (17) year old daughter of his common-law-wife, and living with him in the same house, by inserting his finger in her vagina, against her will and without her consent, acts of child abuse which debase, degrade and demean the intrinsic worth and dignity of the said AAA, as a human being, to her damage and prejudice.[79]

Hence, the trial court and Court of Appeals' designation of appellant's crime as "rape by sexual assault" must be modified to "lascivious conduct under Section 5(b) of RA 7610."

As for the lascivious conduct appellant committed on AAA on August 4, 2006, suffice it to state that appellant did not offer any argument specifically assailing such finding. Instead, he merely relied on his general assertions against AAA's credibility which the courts below had already established.

Appellant committed lascivious conduct on BBB

BBB testified on the harrowing ordeal she experienced on August 5, 2006, viz.:

Q:

Now you said [Miss] Witness that after sometime that you resided with your mother and the accused, the situation became unpleasant. Why? Please elaborate on that.

A:

Because I treated him as a real father but he did not treat as a real daughter he was doing acts of lasciviousness on me.

PROS. JOYA: Witness is crying while giving the answer.

Q:

You said that he committed acts of lasciviousness against you. What specific acts of lasciviousness against you. What specific acts of lasciviousness did he commit on you?

A:

He was touching my thighs and even some other parts of my body.

Q:

Which specific part of your body did he touch?

A:

My breast.

Q:

How many times did XXX do that to you?

A:

Every time that only the two (2) of us were at home.

Q:

And what did you feel when XXX was doing that to you?

A:

Anger and fear, Ma'am.

Q:

Did you relay to anybody of that acts of lasciviousness being committed by your stepfather to you?

A:

No ma'am because he threatened me that if I tell this thing to anybody he would kill us.

Q:

And what made you come out in the open and finally relayed what you are telling us right now?

A:

When he was already caught by the police.

Q:

Under what circumstances was XXX arrested by the police?

A:

Because there was a time when he was caught in the act by the police officers burning some of our things and he even chased my two (2) siblings with a bolo.

Q:

That was the incident of August 5, 2006?

A:

Yes Ma'am.

Q:

Now during that day August 5, 2006 as according to you usually clone by XXX against your person, did he likewise commit acts of lasciviousness to your person during that time?

A:

Yes Ma'am.[80]

Appellant countered that the testimonies of the prosecution witnesses on that day's events were contradictory: on the one hand, CCC testified that appellant arrived home drunk that evening, berated and chased them with a samurai; on the other, BBB testified she was alone in the house that evening when appellant molested her.

Appellant's alleged inconsistency is more imagined than real. BBB's testimony on cross is illuminating, thus:

Q:

Now a few more questions, Madam Witness. BBB, the last instance happened on August 5, 2006 at around 8:00 o'clock p.m. is it not?

A:

Yes, Sir.

Q:

Did it happen upstairs or downstairs?

A:

Downstairs Sir.

Q:

But according to CCC, your stepbrother, you were together with him and your ate AAA downstairs, do you confirm this?

A:

My older sister and CCC went somewhere together with my mother, Sir.

Q:

So you mean to say that you were left downstairs at the sala?

A:

Yes, sir.

Q:

Then your father arrived drunk and ready to create trouble that night?

A:

He was not really drunk. He was tipsy.

Q:

When he arrived, you and him were the only ones inside the house, is that correct?

A:

Yes, sir.

Q:

That is why he was able to molest you?

A:

Yes, sir.

Q:

Then he went upstairs?

A:

Yes, sir.

Q:

So nobody else were in the house because according to you, AAA and CCC and your mother were somewhere out of the house?

A:

There was nobody upstairs, Ma'am (sic).

Q:

And you heard him yell and bang a lot upstairs?

A:

No Sir, when he molested me that evening, my mother, older sister, and brother suddenly came.

Q:

And that was when he went upstairs and started yelling?

A:

Yes, Sir. (emphases added)[81]

Meanwhile, CCC testified, thus:

Q:

Now Mr. Witness, do you recall the 5[th] day of August 2006?

A:

Yes Ma'am.

Q:

In the evening of that day around 9:00 o'clock where were you?

A:

I was at home, Ma'am.

Q:

Who was with you at the house at that time?

A:

AAA

Q:

So what happened Mister Witness at that date and time while you and your Ate AAA was at home?

A:

Our father suddenly arrived.[82]

Clearly, there was no inconsistency between the testimonies of the minor witnesses. BBB testified that on August 5, 2006, around 8 o'clock in the evening, she was alone with appellant in their house when the latter molested her. Appellant only stopped when AAA, CCC and DDD arrived home. Thereafter, appellant started yelling at them and went upstairs. This corroborates CCC's testimony that around 9 o'clock that evening, they were watching television when appellant started berating them. During the one (1)--hour window, appellant accomplished his dastardly deed of maliciously touching BBB's thighs and breasts.

As with AAA's testimony, both the trial court and Court of Appeals rightfully gave full weight and credit to the testimonies of the minor witnesses BBB and CCC. The Court has repeatedly held that youth and immaturity are generally badges of truth and sincerity.[83] Absent any ill-motive on the part of the minor witnesses, the credibility of their testimonies are not diminished.

As earlier discussed, however, there is a similar need here to modify the designation of appellant's offense from "acts of lasciviousness" to "lascivious conduct under Section 5(b) of RA 7610."

Appellant violated Section S(c) of RA 9262

Finally, the Court of Appeals did not err in affirming appellant's conviction for violation of Section 5(c) of RA 9262, viz.:

SECTION 5. Acts of Violence Against Women and Their Children. - The crime of violence against women and their children is committed through any of the following acts:

xxx

(c) Attempting to cause the woman or her child physical harm;

xxx

Here, AAA, CCC and DDD testified that on August 5, 2006, appellant, in a drunken stupor, berated them "Mga demonyo kayo! Mga walang kwenta! Tatadtarin ko kayo!" Thereupon, appellant went upstairs, took a samurai, and chased AAA's family with it. These acts of the appellant clearly evince an attempt to cause them physical harm.

Appellant claims, however, that the prosecution failed to prove that the chasing incident actually happened. The prosecution witnesses testified that their neighbors saw it as it occurred but none of them testified in open court.[84] The argument, however, essentially assails the credibility and sufficiency of the testimonies of the prosecution witnesses. Again, these are matters that have already been addressed by the courts below. At any rate, the testimonies of the victims' neighbors are essential and merely corroborative at best.

Penalties

For the two (2) counts of rape by carnal knowledge (CR-06-8544 and CR-06-8545), both the trial court and Court of Appeals correctly sentenced appellant to reclusion perpetua without eligibility for parole for each count. Since the minor victim was the daughter of appellant's common-law spouse, the proper penalty under Article 266-B of the Revised Penal Code[85] would have been death were it not for the enactment of RA 9346.[86] As such, the trial court correctly specified that appellant is not eligible for parole.[87] Pursuant to *People v. Jugueta*,[88] appellant is also liable for civil indemnity, moral damages, and exemplary damages of Php100,000.00 each for every count of rape.

For the three (3) counts of lascivious conduct under Section 5(b) of RA 7610 (CR-06-8540, CR-06-8541 and

CR-06-8543), appellant's penalties must be modified in accordance with *People v. Tulagan*.^[89] The Court instructed that the proper penalty for each count of lascivious conduct is reclusion temporal in its medium period to reclusion perpetua. Since appellant is the stepfather of the victims, the penalty shall be imposed in its maximum period in consonance with Section 31(c) of RA 7610.^[90] Appellant shall therefore be sentenced to reclusion perpetua for each count. Appellant shall also pay civil indemnity, moral damages, and exemplary damages of P75,000.00 each for every count of lascivious conduct under Section 5(b) of RA 7610.^[91]

Finally, appellant's violation of Section 5(c) of RA 9262 (CR-06-8542) is punishable by one (1) month and one (1) day to six (6) months of arresto mayor pursuant to Section 6(b) of the same law.^[92] In view of the attendant alternative circumstance of relationship between appellant and his victims, the maximum penalty of six (6) months of arresto mayor shall be imposed. Since the penalty does not exceed one (1) year, the indeterminate sentence law does not apply. In addition to imprisonment, appellant shall pay fine of P100,000.00. He shall also undergo mandatory psychological counseling and report his compliance to the trial court.^[93]

All amounts, except for the fine, shall earn six percent (6%) interest per annum from finality of this decision until fully paid.

WHEREFORE, the appeal is DENIED. The Decision of the Court of Appeals dated December 12, 2016 in CA-G.R. CR-HC No. 07090 is AFFIRMED with MODIFICATION:

- In CR-06-8540, XXX is found GUILTY of lascivious conduct under Section 5(b) of Republic Act 7610 and sentenced to reclusion perpetua. He is required to pay civil indemnity, moral damages, and exemplary damages of P75,000.00 each. These amounts shall earn six percent (6%) interest per annum from finality of this decision until fully paid;

- In CR-06-8541, XXX is found GUILTY of lascivious conduct under Section 5(b) of Republic Act 7610 and sentenced to reclusion perpetua. He is required to pay civil indemnity, moral damages, and exemplary damages of P75,000.00 each. These amounts shall earn six percent (6%) interest per annum from finality of this decision until fully paid;

- In CR-06-8542, XXX is found GUILTY of violation of Section 5(c) of Republic Act 9262 and sentenced to six (6) months of arresto mayor and fine of P100,000.00. He is ordered to undergo psychological counseling and report compliance to the trial court;

- In CR-06-8543, XXX is found GUILTY of lascivious conduct under Section 5(b) of Republic Act 7610 and sentenced to reclusion perpetua. He is required to pay civil indemnity, moral damages, and exemplary damages of P75,000.00 each. These amounts shall earn six percent (6%) interest per annum from finality of this decision until fully paid.

- In CR-06-8544, XXX is found GUILTY of Rape, qualified by minority and relationship, and is sentenced to reclusion perpetua without eligibility for parole. He is required to pay civil indemnity, moral damages, and exemplary damages of P100,000.00 each. These amounts shall earn six percent (6%) interest per annum from finality of this decision until fully paid; and

- In CR-06-8545, XXX is found GUILTY of Rape, qualified by minority and relationship, and is sentenced to reclusion perpetua without eligibility for parole. He is required to pay civil indemnity, moral damages, and exemplary damages of P100,000.00 each. These amounts shall earn six percent (6%) interest per annum from finality of this decision until fully paid.

SO ORDERED.

Peralta, C. J., Caguioa, and J. Reyes, Jr., concur.

Lopez, J., on official leave.

[1] Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Magdangal M. de Leon and Elihu A. Ybañez; rollo, p. 2.

[2] Otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004."

[3] Pursuant to the Court's ruling in *People v. Cabalquinto* (533 Phil. 703 [2006]), the real name of the victim shall be withheld and fictitious initials will be used to represent her in its decisions. Likewise, the personal circumstances of the victim or any other information tending to establish or compromise her identity as well as those of her immediate family or household members shall not be disclosed.

[4] *Id.*

[5] *Id.*

[6] Rollo, p. 5.

[7] *Supra* note 3.

[8] Rollo, pp. 5-6.

[9] *Supra* note 3.

[10] Rollo, p. 6.

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

[12] *Id.* at 7.

[13] *Id.* at 7-8.

[14] CA rollo, p. 69.

[15] Pursuant to the Court's ruling in *People v. Cabalquinto* (533 Phil. 703 [2006]), the real name of the victim shall be withheld and fictitious initials will be used to represent her in its decisions. Likewise, the personal circumstances of the victim or any other information tending to establish or compromise her identity as well as those of her immediate family or household members shall not be disclosed.

[16] CA rollo, p. 70.

[17] TSN, June 25, 2007, p. 13.

[18] Rollo, p. 9; CA rollo, p. 71.

[19] CA rollo, p. 70.

[20] *Id.* at 70-71.

[21] *Id.* at 71.

[22] *Id.* at 71-72.

- [23] Id. at 72.
- [24] Id.
- [25] Id.
- [26] Id. at 72-73.
- [27] Rollo, p. 10; CA rollo, p. 73.
- [28] CA rollo, p. 73.
- [29] Rollo, pp. 10-11.
- [30] Id. at 11.
- [31] Id.
- [32] CA rollo, p. 74.
- [33] Id.
- [34] Id.
- [35] Penned by Judge Manuel C. Luna, Jr.; CA rollo, p. 65.
- [36] Id. at 84-86.
- [37] Id. at 80.
- [38] Id. at 81.
- [39] Id. at 80-81.
- [40] Id. at 82.
- [41] Id. at 83.
- [42] Id. at 83-84.
- [43] Id. at 53-56.
- [44] Id. at 56.
- [45] Id. at 57-58.
- [46] Id. at 58.
- [47] Id. at 58-59.
- [48] Id. at 59.
- [49] Id. at 59-60.
- [50] Id. at 60.
- [51] Id. at 113-117.
- [52] Id. at 117-119.

- [53] Id. at 119-121.
- [54] Rollo, pp. 22-23.
- [55] Id. at 45.
- [56] Id. at 45 and 52.
- [57] *People v. Bentayo*, 810 Phil. 263, 269 (2017).
- [58] See *People v. Ortega*, 680 Phil. 283, 894 (2012).
- [59] TSN, June 25, 2007, pp. 15-19.
- [60] TSN, June 25, 2007, pp. 23-25.
- [61] *People v. Cadano, Jr.*, 729 Phil. 576, 585 (2014).
- [62] *People v. Peyra*, G.R. No. 225339, July 10, 2019.
- [63] *People v. Sabal*, 734 Phil. 742, 746 (2014).
- [64] *People v. Espinosa*, 476 Phil. 42, 55-56 (2004).
- [65] *Supra* note 57.
- [66] Id.
- [67] See *People v. Belen*, 803 Phil. 751, 774 (2017).
- [68] *People v. Palanay*, 805 Phil. 116, 126-127 (2017).
- [69] G.R. No. 228779, October 08, 2018.
- [70] See *People v. Nelmidia*, 694 Phil. 529, 556 (2012).
- [71] See *People v. Regaspi*, 768 Phil. 593, 598 (2015).
- [72] See *People v. Gabriel*, 807 Phil. 516, 524 (2017).
- [73] TSN, July 15, 2008, pp. 7-10.
- [74] Id. at 16-17.
- [75] See *People v. Ofemiano*, 625 Phil. 92, 100 (2010).
- [76] *Supra* note 62.
- [77] G.R. No. 227363, March 12, 2019.
- [78] Id.
- [79] Rollo, p. 5.
- [80] TSN, November 23, 2010, pp. 6-7.
- [81] Id. at 12-13.
- [82] TSN, May 18, 2010, p. 4.
- [83] *People v. Galuga*, G.R. No. 221428, February 13, 2019.

[84] CA rollo, p. 60.

[85] Article 266-B. Penalty. - xxx

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

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

xxxx

[86] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[87] Under A.M. 15-08-02, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "without eligibility for parole":

(1)

In cases where the death penalty is not warranted, there is no need to use the phrase "without eligibility for parole" to qualify the penalty of reclusion perpetua; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

(2)

When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "without eligibility for parole" shall be used in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

[88] 783 Phil. 806, 846 (2016).

[89] Supra note 77.

[90] Section 31. Common Penal Provisions. -

xxxx

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

xxxx

[91] Supra note 77.

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

xxxx

(b) Acts falling under Section 5(c) and 5(d) shall be punished by arresto mayor;

xxxx

[93] Section 6(b), RA 9262.

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