



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 208354

Present:

SERENO, C.J.,
Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, JJ.

- versus -

RICARDO BACUS,
 Accused-Appellant.

Promulgated:

AUG 26 2015

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DECISION

PEREZ, J.:

This is an appeal from the Decision¹ dated April 19, 2013 of the Court of Appeals in C.A.-G.R. CEB-C.R.-H.C. No. 01290, affirming the Decision² dated November 18, 2010 rendered by the Regional Trial Court (RTC), Branch 24, Cebu City, in Criminal Cases No. CBU-72272 and No. CBU-72273, finding accused-appellant, Ricardo Bacus (Bacus), guilty beyond reasonable doubt of the crimes of *Rape* and *Acts of Lasciviousness* against his own daughter, AAA,³ in violation of Article 266-A of the

¹ Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla concurring; *rollo*, pp. 3-11.

² Penned by Presiding Judge Olegario R. Sarmiento, Jr.; *CA rollo*, pp. 42-50.

³ Pursuant to the mandate on confidentiality of proceedings involving violence against minors under Sec. 29 of R.A. No. 7610, Sec. 44 of R.A. No. 9262, Sec. 40 of A.M. No. 04-10-11-SC, and the ruling of the Court in *People v. Cabalquinto* (533 Phil. 703 [2006]), the name of the rape victim is withheld and instead, fictitious initials are used to represent her. The initials AAA represent the private offended party and the combined initials BBB refer to her mother.

Revised Penal Code, as amended by Republic Act (R.A.) No. 8353,⁴ in relation to R.A. No. 7610.⁵

The Facts

On January 19, 2005, accused-appellant Bacus was indicted in two separate sets of Information for violation of Article 266-A, No. 1(A) of the Revised Penal Code, as amended by R.A. No. 8353 or the Anti-Rape Law of 1997, in relation to R.A. No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act. The two sets of Information read:

Criminal Case No. CBU-72272

That [sometime] in the month of March 2004 at 8:30 o'clock (sic) in the evening, more or less, in the Municipality of Naga, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA, his own daughter, 16 years old[,] minor, against her will and consent.

CONTRARY TO LAW.⁶

Criminal Case No. CBU-72273

That on the 30th day of December 2004 at 9:00 o'clock in the evening, more or less, in the Municipality of Naga, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA, his own daughter, 16 years old, minor[,] against her will and consent.

CONTRARY TO LAW.⁷

⁴ The Anti-Rape Law of 1997.

⁵ Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

⁶ Records (Criminal Case No. CBU-72272), p. 1.

⁷ Records (Criminal Case No. CBU-72273), p. 1.

Accused-appellant was detained on the same date pursuant to the Order for Detention During the Pendency of the Case dated January 19, 2005.

When arraigned on April 11, 2005, accused-appellant Bacus pleaded not guilty to both charges.

Trial on the merits ensued.

During the trial, the prosecution presented the following witnesses, namely: 1) the victim, AAA; 2) Brenda Gabato (Gabato); and 3) Dr. Liwayway Reyes (Dr. Reyes). On the other hand, the defense presented the accused-appellant as its lone witness.

The prosecution likewise formally offered and marked the following in exhibit as its evidence: a) Exhibit "A" with submarkings – AAA's Birth Certificate; b) Exhibit "B" – Medical Certificate Report issued by Vicente Sotto Memorial Medical Center; c) Exhibit "C" – Social Case Study Report; and d) Exhibit "D" – In-take Form of the Vicente Sotto Memorial Medical Center.

The prosecution presented AAA as its first witness.

AAA, single, a resident of Kabungahan, Naga, Cebu, and born on March 28, 1988, is the daughter of herein accused-appellant Bacus. AAA testified that sometime in March 2004, when she was 16 years old, she was at her grandmother's house in Inuguran, Naga, Cebu. Her drunken father came by to fetch her while she and her companions were eating, drinking and having some fun. When he arrived, accused-appellant was angry and claimed that AAA had no reason to stay in her grandmother's house since there were several things for her to do at home. AAA was told by her father that he would take her home.⁸

On their way home, they had to walk since there was no more means of transportation during that time. After an hour of walking, accused-appellant told his daughter AAA that he wanted to rest for a while. She did not want to rest but she was forced by her father to do so. She was afraid of him since he was drunk and was carrying a bolo with him.⁹

⁸ TSN, January 23, 2006, pp. 3-6.

⁹ Id. at 6-7.

Due to such fright, AAA obeyed her father and was forced to rest in a secluded place where there were no houses nearby. Thereafter, her father pulled and touched her. At that time, she was wearing short pants and a t-shirt. He tried to undress her by pulling her upper garments but they were soiled. However, he was able to remove her short pants and her panty.¹⁰

In the course of removing her undergarments, she kept on resisting so as to protect herself, to no avail. He threatened to kill her if she would not submit herself to him. Consequently, she was forced to remove her undergarments and lie down. He then touched (“*gihilabtan*”) her. Accused-appellant was wearing long pants and a t-shirt at that time. He removed his pants and was only naked from the waist down.¹¹

Thereafter, accused-appellant fondled AAA’s body, specifically her breasts and her genitals. He mounted her and pressed his penis (“*gidatogan*”) upon her.¹² He then inserted his penis into her vagina. AAA felt pain and bled. She kept on struggling and pleaded with him to stop because it was painful but her plea was not heeded and she was instead ordered to be quiet because somebody might hear them. After the incident, AAA dressed up and went home crying.¹³

They arrived home at 12 midnight. AAA’s mother, BBB, and AAA’s younger siblings were home at that time but AAA kept silent and did not tell her mother about the incident because of her fright that her father would kill her once she relayed the incident to anybody.¹⁴

On December 30, 2004, at around 9:00 p.m., AAA, who was then already 17¹⁵ years old, was at home with her siblings and her mother, BBB, when her father came home drunk. Accused-appellant asked AAA to accompany him to their neighbor’s house because their neighbor was having a *videoke* session. BBB prevented accused-appellant from bringing AAA with him but the infuriated accused-appellant exclaimed that they would only be out for a while. AAA was then forced to go outside the house with

¹⁰ Id. at 7-8.

¹¹ Id. at 9-10.

¹² Id. at 11.

¹³ TSN, July 10, 2006, pp. 4-6.

¹⁴ Id. at 6-7.

¹⁵ AAA mentioned that she was 17 years old on December 30, 2004 but our computation shows that she was 16 years old on said date, her date of birth being March 28, 1988.

her father. However, they were not able to reach the intended place because they stopped at a mango tree.¹⁶

AAA's father wanted to undress her but she struggled to keep her dress on. He was, however, able to remove her short pants, but AAA was able to put it back on. Eventually, AAA's father was able to successfully remove her short pants and underwear. Accused-appellant removed his pants and his briefs, and was half naked. After stripping, he kept on touching AAA's vagina.¹⁷

On the following day, BBB confronted AAA about the incident that happened the night before. She told AAA that the latter's uncle and her cousins saw them at the mango tree. AAA then disclosed to her mother, BBB, what had happened the night before, as well as the incident in March 2004.¹⁸

Initially, BBB could not believe that her husband could do such a thing to their own daughter. Eventually, however, BBB believed AAA and they reported the incident to the police and thereafter went to the DSWD. AAA had herself examined by a doctor on January 4, 2005 at the Vicente Sotto Memorial Medical Center.¹⁹ AAA was assisted in the preparation of her affidavit by a policeman of Naga.²⁰

As second witness, the prosecution presented Gabato, a resident and a Social Welfare Officer of Naga, Cebu, since 1996. To her recollection, she knew of AAA sometime in 2005 when she was tasked to conduct a social case study and to accompany her to a scheduled hearing pursuant to an Order from the court. AAA was referred to her by the latter's supervisor. She conducted home visits and collateral investigations from people who were aware of the incidents regarding AAA. She likewise solicited information from BBB and AAA's grandfather, and reduced the case study into a report.

She interviewed AAA and perceived her story as a series of events which transpired on December 31. However, she corrected the aforesaid date from December 31 to December 30 in open court, and admitted that it was

¹⁶ TSN, July 10, 2006, pp. 8-9.

¹⁷ Id. at 10-11.

¹⁸ Id. at 12-13.

¹⁹ Id. at 13.

²⁰ TSN, June 4, 2007, pp. 2-3.

an erroneous entry. She likewise admitted on the witness stand that AAA mentioned accused-appellant's threat to her life by using a knife, as pertaining to the December incident, but she made no mention of the details as to the March 2004 incident. In addition, Gabato claimed that she did not let AAA read her report since it was considered confidential.²¹

The last witness presented was Dr. Reyes. She was the medico-legal officer who examined AAA when she was brought to the Women and Children's Protection Unit. She testified that she conducted a personal examination on AAA due to the incestuous rape carried out by the latter's own father – herein accused-appellant. She claimed that the findings of the examination showed that sexual abuse was perpetrated upon AAA, as manifested by physical/anogenital and psychological/behavioral changes after the incident.²²

Accused-appellant, in his defense, vehemently denied the accusations against him. He stated that he could not possibly be seen at the scene of the crime at that time of the day in March 2004 since he was working at the Carbon Market from 5:00 p.m. until the following day, but he, however, admitted that he remembered going to the place of his in-laws once in March 2004 to fetch his daughter, AAA.²³

Accused-appellant likewise stated in his testimony that he always brought with him a bolo or a knife due to cases involving ghost appearances of so-called “*ungo-ungo*” or “*hamok*” in his barangay. He argued that AAA's testimony lacked credibility due to inconsistencies as to what weapon was used during the incident. He added that AAA fabricated things and perhaps AAA's motive to press charges against him was due to her anger because he brought her home from the place of his in-laws, and, yet, he finds nothing wrong with such act.²⁴

As to the incident that happened on the evening of December 30, 2004, he claimed that he went to the house of the mother of a certain Juanita Paunil where there was a *videoke* for rent, and brought AAA with him only to find out that the *videoke* was no longer there so they went home after that.²⁵

²¹ TSN, July 23, 2007, pp. 3-10.

²² RTC Decision; *supra* note 2, at 47.

²³ *Id.* at 47-48.

²⁴ *Id.* at 48.

²⁵ TSN, July 7, 2008, p. 4.

The Ruling of the RTC

After weighing the evidence and testimonies adduced, the RTC found accused-appellant Bacus guilty beyond reasonable doubt of the crime of rape in Criminal Case No. CBU-72272, and the crime of acts of lasciviousness in Criminal Case No. CBU-72273.

The RTC gave credence to the testimony of AAA, saying that it was difficult “to understand why a provincial girl would be exposing herself to depravity in coming out in a public trial narrating about uncompromising circumstances, if it were not true, and propelled by the honest intention to seek justice of the wrong committed by her own father.”²⁶

The dispositive portion of the RTC is stated as follows:

WHEREFORE, in view of the foregoing premises, this court finds accused guilty beyond reasonable doubt of the crime of Rape in Crim. Case No. 72272, and hereby sentences him to suffer imprisonment of **reclusion perpetua**. In Crim. Case No. 72273, this court hereby sentences him to suffer imprisonment ranging from four (4) months and one (1) day to six (6) years of **prision correccional**. He shall suffer the accessory penalty attached to and inherent in the law. He is adjudged to pay the following measures of damages: Php50,000 by reason of the crime; Php50,000 by way of moral damages; Php25,000 in terms of exemplary damages to deter others from following the act constituting the crime and to pay the costs.

SO ORDERED.²⁷

On appeal, accused-appellant Bacus questioned the RTC’s decision and averred that it erred in convicting him on the ground that the prosecution failed to prove his guilt beyond reasonable doubt purportedly due to inconsistencies in the testimony of AAA.

²⁶ Supra note 2, at 49.

²⁷ Id. at 50. (Emphases ours.)

The Ruling of the Court of Appeals

The appellate court affirmed the ruling of the RTC. It held that the RTC's perceptive assessment of accused-appellant's guilt is fully supported by the evidence on record. The testimony of AAA regarding the sexual assault is so graphic, straightforward, and duly supported by medical findings.

As to the issue of inconsistencies in the testimony of AAA, the appellate court affirmed the finding of the RTC that such are insignificant matters. It likewise observed that accused-appellant ironically corroborated some portions of the testimony of the victim like his admission that sometime in March 2004, he fetched his daughter once from the house of his in-laws, thereby contradicting his statement that he was working at Carbon Market, and affirming his presence and acts as regards the December 30, 2004 incident.

The appellate court held that the prosecution indisputably established the commission of the alleged offenses, and that they are attributable to herein accused-appellant as the latter merely denied the allegations and provided an alibi, insisting on his innocence.²⁸

The decretal portion of the appellate court's decision reads:

IN VIEW THEREOF, the assailed consolidated *Decision* dated November 18, 2010 of the Regional Trial Court, Branch 24, Cebu City in Criminal Cases No. CBU-72272 and [No.] CBU 72273 is **AFFIRMED**. Costs against accused-appellant.

SO ORDERED.²⁹

Our Ruling

After a perusal of the records and evidence, this Court finds the testimonies of the prosecution's witnesses credible and plausible. We uphold the findings of the RTC and the appellate court as to the credibility of the prosecution witnesses. We find no compelling reason to discredit the integrity of the testimonies of the witnesses.

²⁸ Supra note 1, at 8-11.

²⁹ Id. at 11. (Emphases and italic ours.)

It is a well-entrenched principle that factual findings of the trial court are accorded great evidentiary weight and utmost respect by the mere fact of the unparalleled opportunity of observance and assessment of the demeanor of the witness firsthand to satisfactorily prove his credibility.³⁰ The RTC observed that the testimony of AAA is straightforward, graphic and spontaneous; whereas the accused-appellant simply denied the allegations against him. The act of crying while testifying on the gruesome incident that AAA had undergone supports the fact that crime indeed occurred.³¹ Such kind of testimony is enough to convict the accused-appellant and supports the fact of commission of the crime.³² The Rules on Evidence provide that positive testimonies prevail over mere denials and alibis.³³

Accused-appellant asserts that there lies an ill-motive behind the pressed charges against him and that his daughter fabricates things. Accused-appellant shamelessly testified during his direct examination that nothing is wrong in taking home his daughter from the house of his in-laws. The accused-appellant testified as follows:

Q So you said you were innocent of all the rape incidents that your daughter is charging you. So could you give us any motive why your daughter is charging you [with] all these cases, Mr. Witness?

A That is what is wrong with my daughter because she fabricates things. Maybe because she was angry with me especially that there was a time that I brought her home from the place of my in-laws.

Q What is wrong with that, Mr. Witness? Could you tell us?

A That is why, what is wrong with it.

ATTY. TAYAD: (To witness)

Q So, what are you now asking from this Court, Mr. Witness?

A It's up to the Court what to decide on this case.

ATTY. TAYAD: I have nothing further, Your Honor.³⁴

On the other hand, AAA categorically stated the reason why she filed charges against her father. In her redirect examination, she stated:

³⁰ *People v. Sabalan*, 405 Phil. 370, 376 (2001).

³¹ TSN, June 4, 2007, p. 5.

³² *People v. Joya*, G.R. No. 79090, October 1, 1993, 227 SCRA 9.

³³ HERRERA, O., REMEDIAL LAW (1999), Vol. VI, pp. 377-378.

³⁴ TSN, July 7, 2008, pp. 5-6.

Q But for the record AAA, you filed this case not because you resented the discipline imposed by your father against you?

A No.

Q For the record, what was the reason that you filed this case against your father?

A Because he raped me and he has destroyed my person.

PROS. LOMANTA:

I would like to put on record, [your] Honor, that when the witness answered the last question, she cried.³⁵

The above-quoted testimony of the victim shows that she was not ill-motivated in pressing charges against herein accused-appellant but because she was violated by her own father. More so, the act of crying by the victim while testifying supports her credibility as such reaction is born out of the verity of human nature due to an appalling incident.³⁶

The appellate court aptly held that -

In addition, the fact that a strict father often chastises his children does not necessarily lead to the conclusion that a daughter would accuse her father and invent charges of rape which would bring shame and humiliation to the victim and to her family if such did not really happen.³⁷

It has become fundamental in rape cases that no woman of sound mind would be willing to publicize her grueling experience and risk the ordeal of interrogation, were it not for the purpose of vindicating her honor. The victim's willingness and courage to face the interrogation and medical examination is a silent but eloquent proof of the truth.³⁸

Further, in *Campos v. People*,³⁹ this Court held:

³⁵ TSN, June 4, 2007, p. 5.

³⁶ *People v. Joya*, supra note 32.

³⁷ CA Decision, supra note 1, at 10, citing *People v. Bosi* (689 Phil. 66 [2012]). (Underscoring ours.)

³⁸ *People v. Joya*, supra note 32, at 25.

³⁹ 569 Phil. 658 (2008).

Moreover, a rape victim's testimony against her parent is entitled to great weight since, customarily, Filipino children revere and respect their elders. These values are so deeply ingrained in Filipino families that it is unthinkable for a daughter to concoct brazenly a story of rape against her father, if such were not true. Indeed, courts usually give greater weight to the testimony of a girl who fell victim to sexual assault, especially a minor, particularly in incestuous rape as in this case, because no woman would be willing to undergo a public trial and bear the concomitant shame, humiliation, and dishonor of exposing her own degradation were it not for the purpose of condemning injustice and ensuring that the offender is punished.⁴⁰

The accused-appellant likewise questions the inconsistencies in AAA's testimony such as the kind of weapon used during the March 2004 incident and the dates of the commission of the crime. We concur, however, with the ruling of the RTC that such matter is insignificant in character since such is not a material element in the crime of rape. The discrepancy as to the kind of weapon used, as reflected in the victim's affidavit and her testimony in open court, does not outweigh the credibility of the witness since the affidavit was not read to her by the Naga police officer who assisted her in its preparation.⁴¹ Such inconsistency does not likewise remove the fact of rape.

As held in *People v. Domingo*:⁴²

Affidavits or sworn statements are usually incomplete since they are often prepared by administering officers who cast the same in their language and understanding of what the affiant has said. Most of the time, they are products of partial suggestions and sometimes of want of suggestions and searching inquiries without the aid of which witnesses may be unable to recall the circumstances necessary for an accurate recollection.⁴³

Moreover, the accused-appellant himself confirmed in his testimony that he always brought with him a bolo or a knife due to ghost appearances called "*ungo-ungo*" or "*hamok*" in his barangay, thus establishing the fact that he was in possession of a bladed weapon.

Furthermore, an essential element of the crime of rape is the existence of force and intimidation inflicted by the perpetrator upon the victim. In the

⁴⁰ Id. at 668. (Citations omitted.)

⁴¹ TSN, June 4, 2007 pp. 2-3.

⁴² 579 Phil. 254 (2008).

⁴³ Id. at 268. (Citation omitted.)

instant case, the moral ascendancy of the accused-appellant takes the place of the element of force and intimidation.

As held in *People v. Garte*⁴⁴ -

[T]he **use of a knife or any other weapon for that matter is not an element of the crime of rape**. As long as the evidence shows that force, violence or intimidation was used to have a carnal knowledge of the victim, the requisite components of the crime are deemed satisfied.

It bears emphasizing that in a rape committed by a father against his own daughter, the former's **moral ascendancy and influence sufficiently takes the place of violence or intimidation**. Under the same circumstances, proof of force and violence is not even essential, because the **moral and physical ascendancy of the father over his daughter is sufficient to cow her into submission to his bestial desires**.⁴⁵

As regards the disparity in the dates of the commission of the crime, accused-appellant questions AAA's inconsistent statement as reflected in the Social Case Study Report which cites the date December 31, 2004, and in her statement in open court which cites the date December 30, 2004.

Section 11, Rule 110 of the Revised Rules of Criminal Procedure⁴⁶ reads:

Sec. 11. *Date of commission of the offense*. - It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

Thus, the alleged inconsistency in the victim's testimony as to the date of the commission of the offense does not necessarily downgrade her credibility as witness. This steadfast rule is corroborated by the fact that the alleged disparity or inconsistency in the dates was corrected in open court by the assigned Social Worker who prepared the Social Case Study Report where the alleged inconsistency was reflected, and she admitted that such erroneous entry was attributable to her.⁴⁷

⁴⁴ 592 Phil. 304 (2008).

⁴⁵ Id. at 317, citing *People v. Rodavia*, 426 Phil. 707, 719 (2002). (Emphases ours.)

⁴⁶ RULES OF COURT, Rule 110, Sec. 11.

⁴⁷ TSN, July 23, 2007, pp. 7-8.

Our consistent ruling is that the conviction of the accused-appellant does not solely lie on the preciseness of dates of the commission of the crime but on the veracity and credibility of the witnesses' testimonies which the court *a quo* has adjudged to be with truthfulness, spontaneity and straightforwardness – criteria needed by the Court to suitably convict an accused.

We now discuss the imposable penalties accorded by law for the offenses in the instant case. Article 266-A(1) of the Revised Penal Code, as amended by R.A. No. 8353, provides when and how a rape is committed:

Article 266-A. Rape: When and How Committed. – xxx.

- 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.⁴⁸

Article 266-B provides that **the penalty imposable for the crime of rape under paragraph 1 is *reclusion perpetua*** if any of the following circumstances is present:

Article 266-B. Penalty. – xxx.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.⁴⁹

⁴⁸ Emphases ours.

⁴⁹ Emphases ours.

In addition, the **penalty of death is imposable:**

l) 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[.]⁵⁰

The aforesaid elements and circumstances are present in Criminal Case No. CBU-72272. AAA was 16 years old when she was raped in March 2004. The fact of the victim's age was duly substantiated by her Birth Certificate which was formally offered in evidence and marked as Exhibit "A." Further, the offender, herein accused-appellant Bacus is AAA's father. Such fact of relationship between the offender and the offended party was likewise supported by the Birth Certificate of the latter and corroborated by the testimonies of the former. Therefore, as aptly held by the RTC and correctly affirmed by the appellate court, accused-appellant is found guilty beyond reasonable doubt of the crime of rape under Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, for which he is to suffer the penalty of *reclusion perpetua* in view of the abolition of the death penalty under Section 2 of R.A. No. 9346.⁵¹

In addition to the penalty imposed upon accused-appellant, it is a fundamental rule that civil indemnity must be awarded if the fact of rape is established without further need of proof for moral damages.⁵² Under existing jurisprudence,⁵³ where death is the penalty warranted by the facts but is not imposable under the present law, then the following amounts should be imposed: ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; and ₱100,000.00 as exemplary damages.

Hence, the awards of civil indemnity and moral damages by the RTC, as affirmed by the Court of Appeals, are hereby increased from ₱50,000.00 to ₱100,000.00, and the award of ₱25,000.00 as exemplary damages is increased to ₱100,000.00.

With respect to the decision of the RTC in Criminal Case No. CBU-72273 as regards the penalty imposable upon the accused-appellant for the

⁵⁰ Emphasis ours.

⁵¹ An Act Prohibiting the Imposition of Death Penalty in the Philippines.

⁵² PINEDA, E. (2009), Torts and Damages, p. 247.

⁵³ *People v. Gambao*, G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533.

crime of Acts of Lasciviousness in relation to R.A. No. 7610, we modify the penalties to be imposed.

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

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

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 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.]⁵⁴

Sexual abuse under Section 5 of R.A. No. 7610 has three essential elements:⁵⁵

- (1) The accused commits an 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 xxx is below 18 years [old].⁵⁶

Section 2(h) of the Implementing Rules and Regulations of R.A. No. 7610 defines lascivious conduct as follows:

[T]he *intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person,*

⁵⁴ Emphases ours.

⁵⁵ *Navarrete v. People*, 542 Phil. 496 (2007).

⁵⁶ *Id.* at 510.

*bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.*⁵⁷

Further, *Common Penal Provisions* under Section 31(c), Article XII of R.A. No. 7610 provides the imposable penalty for lascivious conduct—

(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[.]⁵⁸

In accord with the definition stated and applying the same in the instant case, accused-appellant's intentional act of touching AAA's vagina after undressing her on the 30th of December 2004 amounts to a lascivious conduct. To determine the penalty due to accused-appellant, in conformity with the penalty meted out by law, the relationship of the perpetrator with the victim and the latter's age must also be taken into account. In the present case, it has been duly substantiated with evidence and testimonies that the perpetrator of the lascivious conduct is the father of the victim. Supported likewise by proof is the age of the victim at the time of the incident. As testified to by the victim herself,⁵⁹ she was 17⁶⁰ years old at the time the lascivious conduct was committed against her, thus establishing her minority.

Applying the rules provided for by law, herein accused-appellant is therefore liable to suffer the penalty of *reclusion perpetua*. In addition thereto and in consonance with prevailing jurisprudence,⁶¹ accused-appellant is likewise liable to pay ₱15,000.00 as fine, ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages for the lascivious conduct perpetrated upon the victim.

WHEREFORE, the instant appeal is **DISMISSED**. The Decision of the Court of Appeals in C.A.-G.R. CEB-C.R.-H.C. No. 01290, finding

⁵⁷ Italics ours.

⁵⁸ Emphases ours.

⁵⁹ TSN, January 23, 2006, p. 4.

⁶⁰ Supra note 15.

⁶¹ *People v. Alhambra*, G.R. No. 207774, June 30, 2014, 727 SCRA 629, 647.

accused-appellant Ricardo Bacus guilty of the crimes of rape and acts of lasciviousness, is hereby **AFFIRMED** with **MODIFICATIONS**.

In Criminal Case No. CBU-72272, the penalty of *reclusion perpetua* imposed upon herein accused-appellant for violation of Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, is hereby affirmed. Following existing rulings, accused-appellant is not eligible for parole.⁶² We increase, however, the amounts of damages awarded. In congruence with recent jurisprudence,⁶³ accused-appellant is liable for ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.


In Criminal Case No. CBU-72273, in consonance with existing jurisprudence,⁶⁴ accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, for lascivious conduct amounting to child abuse under Section 5(b) of R.A. No. 7610. He is hereby ordered to pay ₱15,000.00 as fine, ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages.

In addition, accused-appellant is ordered to pay AAA interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this judgment.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

⁶² R.A. No. 9346, Sec. 3.

⁶³ *People v. Gambao*, supra note 53,

⁶⁴ *People v. Alhambra*, supra note 61.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice