



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 207765
Plaintiff-appellee,

Present:

-versus-

CARPIO, *J.*, Chairperson,
PERALTA,
MENDOZA,
LEONEN, and
MARTIRES, *JJ.*

JULITO DIVINAGRACIA, SR.,
Accused-appellant.

Promulgated:

26 JUL 2017

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DECISION

LEONEN, *J.*:

“Pa, don’t do that[,] Pa.”¹

Child victims of rape by their very own fathers usually continue to live in an environment where the perpetrators consistently underscore the weakness and worthlessness of their victims. In addition to the continued economic dependence of the child victims, this ensures enormous difficulty to find a safe space for them to reveal their ordeal and ensure protection. The animosity and intolerable indignity that child victims experience often lead them to find the courage to seek succor from someone who appears to have moral ascendancy over their perpetrator. This is often their mother, although at times, it may also be a relative.

¹ TSN dated April 24, 2002, p. 17.

This case is the story of the courage of AAA and BBB, sisters who were sexually molested by their father.

This resolves the appeal, through Rule 124, Section 13, paragraph (c)² of the Rules of Court, as amended by Administrative Matter No. 00-5-03-SC dated September 28, 2004, of the October 7, 2009 Joint Judgment³ of Branch 28, Regional Trial Court, Mandaue City in Criminal Case Nos. DU-8072 and DU-8074. The trial court found accused Julito Divinagracia, Sr. (Divinagracia) guilty beyond reasonable doubt of one (1) count of rape in relation to Republic Act No. 7610 and one (1) count of acts of lasciviousness in relation to Republic Act No. 7610. The Court of Appeals,⁴ upon intermediate review, affirmed the trial court's Decision.

This Court restates the facts as found by the lower courts.

Divinagracia and CCC were husband and wife with seven (7) children.⁵ The family lived in a one (1)-room house at Jagobiao, Mandaue City near the boundary of Riverside, Consolacion.⁶

Sometime in November 1996,⁷ Divinagracia and CCC quarrelled, prompting CCC to leave and spend the night at her sibling's house. Their daughters AAA and BBB were then left by themselves⁸ since their other siblings were either at their grandmother's house or with their friends.⁹

Later that evening, while AAA and BBB were sleeping side by side inside their house, BBB suddenly woke up to her father's tight embrace from behind and felt him roughly running his hand over her leg and breasts. BBB then felt her father poking his hard penis against her buttocks. BBB begged her father to stop, saying that she still had to go to school the following day. Divinagracia moved away from BBB and went out of the house.¹⁰

² RULES OF COURT, Rule 124, sec. 13(c) provides:
Section 13. Certification or appeal of case to the Supreme Court. —

....
(c) In cases where the Court of Appeals imposes reclusion perpetua, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

³ CA *rollo*, pp. 31–49. The Joint Judgment was penned by Judge Marilyn Lagura-Yap.

⁴ *Rollo*, pp. 3–19. The Decision, promulgated on July 30, 2012 and docketed as CA-G.R. CEB-CR-H.C. No. 01134, was penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Carmelita Salandanan-Manahan and Zenaida T. Galapate-Laguilles of the Twentieth Division, Court of Appeals, Cebu City.

⁵ TSN dated November 13, 2003, pp. 4–5.

⁶ *Id.* at 5, 10–11.

⁷ *Rollo*, p. 8. The narration reported “November 1986” but meant “November 1996.” BBB was nine (9) years old at that time while AAA was eight (8) years old.

⁸ TSN dated April 24, 2002, pp. 7–8.

⁹ *Id.* at 6.

¹⁰ *Id.* at 30–32.

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BBB was nine (9) years old at that time.¹¹

A few minutes later, Divinagracia went back inside the house and lay down beside AAA.¹² AAA woke up and asked her father where her mother was. Divinagracia pinched her ear and ordered her to keep quiet.¹³

AAA noticed that BBB, who was then lying beside her, slowly moved away. AAA tried to follow BBB, but Divinagracia pulled AAA towards him and made her face him. Divinagracia pulled down AAA's shorts and put his finger inside her vagina. Afterwards, Divinagracia got on top of AAA and inserted his penis inside her vagina. AAA's father then continued to molest her.¹⁴

AAA cried to her sister for help but BBB could do nothing but weep and cover her ears.¹⁵ AAA was eight (8) years old at that time.¹⁶

The following day, AAA was shocked and scared to find blood stains on her shorts. Divinagracia merely laughed when he saw AAA's distress.¹⁷

When CCC arrived later that day, AAA told her that she was molested by Divinagracia. AAA did not say that she was raped because she was afraid that her parents would only quarrel again. However, CCC did not believe her daughter. AAA claimed that CCC told Elvira Aburido (Aburido), Divinagracia's sister, about the molestation.¹⁸

On January 19, 1999, or a little over two (2) years after the incident, Sister Mary Ann Abuna (Sister Mary Ann), CCC's sister and a nun,¹⁹ visited her family in Cebu.²⁰

That same day, AAA told Sister Mary Ann that she wanted to stop her schooling and begged to go with her back to Manila because she did not want to see her father anymore. Sister Mary Ann asked AAA's sisters if their

¹¹ *Rollo*, p. 8, Court of Appeals Decision. The narration reported "November 1986" but meant "November 1996."

¹² TSN dated April 24, 2002, p. 33.

¹³ TSN dated April 23, 2002, p. 4.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 5-6.

¹⁶ *Rollo*, p. 8, Court of Appeals Decision.

¹⁷ *Id.* at 6.

¹⁸ TSN dated April 24, 2002, pp. 20-22.

¹⁹ Sister Mary Ann Abuna was a member of the religious order of the Missionaries of Eucharistic Love, Children's Home of the Immaculate Heart of Mary in Pampanga. See TSN dated September 4, 2002, p. 2.

²⁰ TSN dated September 4, 2002, pp. 3-4.

father had changed his ways. BBB and their other sister responded that he had not reformed and even almost raped them.²¹

Sister Mary Ann asked the sisters to leave Cebu and go back with her to Manila to prevent their father from further molesting them. She brought AAA, BBB, their other sister, and CCC back with her to Manila. A few days later they all went to Pampanga where Sister Mary Ann was a missionary.²²

While in Pampanga, AAA saw CCC crying because she wanted to go back to Cebu. AAA then went to Sister Mary Ann and declared that if CCC would return to Cebu, she would not go back with her. It was at this point that AAA opened up to Sister Mary Ann about the sexual abuse she suffered from her father.²³

Sister Mary Ann brought AAA to the Hospital Ning in Angeles City to be examined by a doctor.²⁴ After examining AAA, Dr. Lauro C. Biag (Dr. Biag) issued a medical certificate,²⁵ a portion of which read:

Genitalia: labia majora/minora – well coaptated.
Hymen: orifice 0.7 cm old healed complete laceration on
11, 8, 2 o'clock.
old healed incomplete laceration 5 & 10 o'clock.
(-) abrasion, (-) hematoma, (-) discharge²⁶

Sister Mary Ann helped the girls file their respective complaints²⁷ against their father. At first, BBB was hesitant to file a complaint but she finally agreed because AAA would not stop crying and was always afraid.²⁸

On November 13, 2000, Divinagracia was charged with rape and acts of lasciviousness in relation to Republic Act No. 7610.²⁹ Pertinent portions of the Information for rape read:

That on or about the month of November 1996 in the Municipality of Consolacion, 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 wilfully, unlawfully and feloniously have carnal knowledge with [AAA], his own daughter an [8-year-old] girl at that time, against her will and consent.

²¹ Id. at 4–5.

²² Id. at 5–6.

²³ Id. at 6–7.

²⁴ Id. at 7–8.

²⁵ RTC records (DU-8072), p. 76.

²⁶ Id.

²⁷ RTC records (DU-8072), pp. 3–5 and (DU-8074), pp. 5–6.

²⁸ TSN dated September 4, 2002, pp. 9–10.

²⁹ Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act

CONTRARY TO LAW.³⁰

The Information for acts of lasciviousness read:

That on or about the month of November 1996 in the Municipality of Consolacion, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with force and intimidation and with lewd designs, did then and there wilfully, unlawfully and feloniously commit an act of lasciviousness against [BBB], his own daughter, a [12-year-old] girl by embracing her, pressing his penis against her buttocks and touching her breasts, against her will and consent.

CONTRARY TO LAW.³¹

Divinagracia, assisted by counsel, pleaded not guilty to the charge of rape against him.³² During pre-trial, defense admitted the following facts and stipulations:

1. The existence of a birth certificate of the private offended party. Her birth certificate shows that she was born in Consolacion, Cebu on October 29, 1988;
2. The accused is the father of the private offended party;
3. On November 1996 and prior thereto, the accused had been living together with his wife and children at Riverside, Consolacion, Cebu;
4. The existence of a medical certificate of the private offended party signed by a certain Dr. Lauro Biag, Medical Officer III of Hospital Ning Angeles City[.]³³

The prosecution, in turn, admitted the following facts and stipulations:

1. The house where the family of the accused stays at Riverside, Consolacion, Cebu is a one room affair, is about 6 x 8 meters which is more or less half of the area of this courtroom;
2. The whole family which includes seven (7) children, the accused and his wife slept in the same house;
3. The next door neighbor is about four (4) feet away from the house of the accused;
4. Elvira Divinagracia Aburido, sister of the accused, also lives at Riverside, Consolacion, Cebu;

³⁰ RTC Records (DU-8072), p. 1.

³¹ RTC Records (DU-8074), p. 1.

³² RTC Records (DU-8072), p. 17. The Information stated that BBB was 12 years old in November 1996 but it was established that she was only 9 years old considering the date of birth shown on her birth certificate.

³³ *Rollo*, p. 6, Court of Appeals Decision.

5. The complaint against the accused was filed at the Provincial Prosecutor's Office on July 31, 2000.³⁴

The complaints for rape and acts of lasciviousness against Divinagracia were eventually consolidated for trial.³⁵

Divinagracia, assisted by counsel, also pleaded not guilty to the charge of acts of lasciviousness against him.³⁶ Defense then admitted the following facts and stipulations during pre-trial:

1. The accused is the father of the complaining witness;
2. The accused and the private complainant (his daughter) were residing at Riverside, Consolacion, Cebu at the time this incident occurred in November 1996 and prior thereto. As a matter of fact, according to Atty. Rodriguez, all the members of the family of the accused lived together at this place at this given time;
3. The existence of a Certificate of Live Birth and Baptismal Certificate of the complaining witness.³⁷

On the other hand, the prosecution admitted the following stipulations:

1. All the seven (7) children including the father and the mother lived together in a one-room house at Riverside, Consolacion, Cebu;
2. The mother of the complaining witness is a housewife;
3. The uncles and aunties of the complaining witness also live in Consolacion, Cebu;
4. The next door neighbor of the family of the complaining witness at Riverside, Consolacion, Cebu is about 4 feet away from their house;
5. The records show a [Si]numpaang Salaysay executed by the complaining witness and subscribed before the City Prosecutor of Angeles City on November 1999.³⁸

The prosecution presented the following as witnesses: AAA, BBB, Sister Mary Ann, and Dr. Naomi Poca (Dr. Poca).

³⁴ Id. at 6-7.

³⁵ CA *Rollo*, p. 32.

³⁶ RTC records (DU-8074), p. 20.

³⁷ *Rollo*, p. 7.

³⁸ Id. at 7-8.

Dr. Poca, a pediatrician who was also a child protection specialist,³⁹ interpreted the medical findings of Dr. Biag, who failed to attend the hearings due to the distance of Angeles City, Pampanga from Mandaue City, Cebu.⁴⁰

Dr. Poca testified that the healed lacerations at 11:00, 2:00, and 10:00 positions are “more likely congenital rather than acquired”.⁴¹ However, the lacerations at 8:00 and 5:00 positions could have only been caused by penetration into the vagina.⁴² Moreover, given AAA’s disclosure, Dr. Poca opined that the healed laceration at 8:00 position suggested sexual abuse.⁴³

The defense presented the following as its witnesses: Divinagracia, his neighbors Pamela Sison (Sison), Alvin Ho (Ho), Darwin Isok (Isok), and his sister Aburido.

Divinagracia denied abusing his daughters⁴⁴ and claimed that they had a happy⁴⁵ family life. He further claimed that he only found out about the complaints for molestation against him when he was arrested in 2001.⁴⁶ Divinagracia then accused his wife’s family of plotting against him.⁴⁷

Sison testified that Divinagracia and his family had been her neighbors as far back as the 1980s. Sison claimed that CCC used to go to her house all the time to complain about her financial problems and quarrels with Divinagracia.⁴⁸ Sison further averred that despite beating his wife, Divinagracia appeared to be a loving father because he was very affectionate and sent his children to school, even if he was financially hard-up most of the time.⁴⁹

Ho, who had been Divinagracia’s neighbor since 1992, attested that Divinagracia would often quarrel with and hit CCC.⁵⁰ He claimed that it was impossible for Divinagracia to abuse his children because they were always playful.⁵¹ He added that he had never seen the children look weak and tired or heard them complain.⁵²

³⁹ TSN dated February 12, 2003, pp. 3 and 5.

⁴⁰ RTC Records (DU-8072), pp. 31–32, 64.

⁴¹ TSN dated February 12, 2003, p. 7.

⁴² Id.

⁴³ Id. at 8–9.

⁴⁴ TSN dated November 13, 2003, pp. 13–14.

⁴⁵ Id. at 7.

⁴⁶ Id.

⁴⁷ Id. at 14.

⁴⁸ TSN dated September 20, 2004, pp. 4–7.

⁴⁹ TSN dated September 23, 2004, pp. 8–9.

⁵⁰ TSN dated February 7, 2005, pp. 3–5.

⁵¹ TSN dated February 8, 2005, pp. 8–9.

⁵² TSN dated February 7, 2005, pp. 6–7.



Isok claimed that he was friends with some of Divinagracia's children as they all lived in the same neighborhood.⁵³ Isok testified that he was close with and fond of Divinagracia's family, yet he never heard of any problems between Divinagracia and his children.⁵⁴

Aburido testified to being Divinagracia's sister and aunt to AAA and BBB.⁵⁵ She claimed that she was not close to Divinagracia and his family but that her nieces and nephews would sometimes ask her for rice. Her brother would also go to her whenever he had any financial problem. Aburido claimed that she first found out about her brother's supposed abuse of AAA and BBB when he was arrested.⁵⁶

In its Joint Judgment⁵⁷ dated October 7, 2009, Branch 28, Regional Trial Court, Mandaue City found Divinagracia guilty beyond reasonable doubt of the charges of rape and acts of lasciviousness against him.

In DU-8072, the Regional Trial Court ruled that AAA's testimony was direct, candid, and convincing, clearly proving that Divinagracia had carnal knowledge of AAA when she was only eight (8) years old. The Regional Trial Court also held that Dr. Poca's testimony corroborated AAA's version of the abuse she experienced.⁵⁸

In DU-8074, the Regional Trial Court found BBB's testimony to be clear and convincing on the acts of lasciviousness committed by her father. The Regional Trial Court held that BBB was direct and remained consistent and steadfast during her testimony.⁵⁹

The Regional Trial Court further held that Sister Mary Ann's testimony corroborated both the testimonies of AAA and BBB.⁶⁰

The dispositive portion of the Regional Trial Court's Joint Judgment read:

WHEREFORE, in DU-8072, Joint Judgment is hereby rendered finding the accused Julito Divinagracia, Sr., guilty beyond reasonable doubt of rape. The Court hereby imposes upon him the indeterminate sentence of reclusion perpetua together with the accessory penalties of the law.

⁵³ TSN dated May 9, 2005, pp. 3-4.

⁵⁴ Id. at 6-7.

⁵⁵ TSN dated August 9, 2005, p. 3.

⁵⁶ Id. at 5-6.

⁵⁷ CA *Rollo*, pp. 31-50.

⁵⁸ Id. at 43-44.

⁵⁹ Id. at 46.

⁶⁰ Id. at 47.

In DU-8074, judgment is hereby rendered finding the accused Julito Divinagracia, Sr., guilty beyond reasonable doubt of acts of lasciviousness. The Court hereby imposes upon him the penalty of 14 years and 4 months of reclusion temporal as the minimum term to 17 years and 4 months of reclusion temporal as the maximum term together with the accessory penalties of the law.

The accused shall be given credit of his preventive detention but he shall not be eligible for parole.

With costs against the accused.

IT IS SO ORDERED.⁶¹

On March 8, 2010, after Divinagracia filed an appeal from the Joint Judgment, the Regional Trial Court transmitted the records of the case to the Court of Appeals.⁶²

On July 30, 2012, the Court of Appeals⁶³ denied Divinagracia's appeal.

The Court of Appeals agreed with the Regional Trial Court that AAA's testimony on her father's rape was clear, candid, and deserving of belief. Additionally, her testimony was corroborated by BBB.⁶⁴ The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, premises considered, this appeal is **DENIED**. The *Joint Judgment* dated October 7, 2009 rendered by the Regional Trial Court (RTC), Branch 28, Mandaue City, in Criminal Case Nos. DU-8072 and DU-8074 finding him guilty for *Rape* and *Acts of Lasciviousness*, respectively, is hereby **AFFIRMED in toto**. Costs against the appellant.

SO ORDERED.⁶⁵

Divinagracia filed a Notice of Appeal⁶⁶ with the Court of Appeals. On August 28, 2013, this Court noted the records forwarded by the Court of Appeals and informed the parties that they may file their respective supplemental briefs. This Court also required the Chief Superintendent of the New Bilibid Prison to confirm Divinagracia's confinement therein.⁶⁷

On November 12, 2013, Divinagracia manifested⁶⁸ that he would be

⁶¹ Id. at 49.

⁶² Id. at 3.

⁶³ *Rollo*, pp. 3-19.

⁶⁴ Id. at 15-16.

⁶⁵ Id. at 18.

⁶⁶ *CA Rollo*, pp. 109-111.

⁶⁷ *Rollo*, p. 25.

⁶⁸ Id. at 26-29.

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adopting in toto the contents of his brief⁶⁹ filed before the Court of Appeals.

On November 15, 2013, the Office of the Solicitor General also manifested⁷⁰ that it would be adopting its brief⁷¹ filed before the Court of Appeals.

In his Appellant's Brief, Divinagracia points to several inconsistencies in the testimonies of AAA and BBB that purportedly lessen their credibility as witnesses.

First, he claims that it was not clear when AAA told Sister Mary Ann about her rape. AAA claimed that she confided to her aunt Sister Mary Ann when she visited them in Cebu in 1996. However, Sister Mary Ann testified that AAA only told her about the rape when they were in Pampanga in 1999.⁷²

Second, AAA testified that she told her mother about the rape the following day after it happened. This contradicts Sister Mary Ann's testimony that AAA's mother only learned of the rape after AAA was physically examined in Pampanga. Furthermore, AAA said that after she told her mother, CCC disclosed what happened to Aburido. During her testimony, Aburido denied that she knew about the rape and claimed that she only found out about it when her brother was arrested.⁷³

Third, Divinagracia emphasizes that BBB never actually saw him having sexual intercourse with AAA since BBB only testified to seeing him on top of AAA. Divinagracia also insists that BBB's accusation of acts of lasciviousness against him was uncorroborated, even by AAA who was in the same room when it supposedly happened.⁷⁴

Finally, Divinagracia asserts that the charges of rape and acts of lasciviousness against him were unfounded and that his guilt was never established beyond reasonable doubt.⁷⁵

The prosecution, in turn, avers that it was able to prove Divinagracia's guilt on both charges beyond reasonable doubt.⁷⁶

⁶⁹ CA Rollo, pp. 14–30, Brief for the Accused-Appellant.

⁷⁰ Rollo, pp. 31–32.

⁷¹ CA Rollo, pp. 65–88, Brief for the Appellee.

⁷² Id. at 23–25.

⁷³ Id. at 25–26.

⁷⁴ Id. at 26–27.

⁷⁵ Id. at 28.

⁷⁶ Id. at 74.

The prosecution posits that the straightforward and candid testimonies of AAA and BBB, with the medical certificate issued by Dr. Biag corroborating AAA's testimony, sufficiently proved the elements of the charges against their father.⁷⁷

The prosecution contends that the supposed inconsistencies on when AAA told Sister Mary Ann of the abuse or when CCC and Aburido learned of the ordeal she underwent are trivial matters, which have no bearing on the crimes committed.⁷⁸

The issue for resolution before this Court is whether the prosecution proved beyond reasonable doubt Divinagracia's guilt for the crimes of rape and acts of lasciviousness against his minor daughters.

This Court affirms Divinagracia's conviction with some modifications.

I

The alleged inconsistencies in the testimonies of AAA, BBB, and Sister Mary Ann are immaterial as these are not elements of the crime and do not detract from the credibility of the witnesses. In fact, minor inconsistencies may even be expected from AAA and BBB who are not accustomed to public trial and were only eight (8) and nine (9) years old, respectively, at the time of their father's sexual abuse.⁷⁹

The rule cited in *People v. Pacala*⁸⁰ that inconsistencies on minor details and collateral matters do not affect the veracity, substance, or weight of the witness' testimony finds application in the case at bar.⁸¹

Divinagracia insists on inconsistencies on when AAA and BBB told Sister Mary Ann about their father's attack. AAA claims that she told her aunt sometime in 1996,⁸² contradicting Sister Mary Ann's testimony that AAA told her about the rape in 1999.⁸³

The records show that AAA admitted that she could no longer recall when she told her aunt of the rape, but AAA was consistent in her testimony

⁷⁷ Id. at 75–78.

⁷⁸ Id. at 84.

⁷⁹ *People v. Avanzado, Sr.*, 242 Phil. 163, 169 (1988) [Per J. Melencio-Herrera, Second Division].

⁸⁰ 157 Phil. 365 (1974) [Per J. Antonio, En Banc].

⁸¹ Id. at 375.

⁸² TSN dated April 24, 2002, p. 26.

⁸³ TSN dated September 4, 2002, pp. 5–7.

that she eventually told her aunt about the rape when they left Cebu.⁸⁴ This corroborates Sister Mary Ann's testimony that she only learned of AAA's rape in 1999, when they were no longer in Cebu. As found by the Court of Appeals:

Stress is made that per the victim's testimony, when Sister [Mary] Ann visited their family here in Cebu in 1996, she (AAA) did not say that she was raped but was molested. She only divulged the real incident when they were already in Manila and even then, her relatives required that she undergo a medical examination, which could have been an avenue for them to verify and ascertain that what she was telling, that is, about being raped by her father, was the truth.

Moreover, it was BBB who was adamant that they told Sister Mary Anne [sic] about the incident in 1999 while they were already in Manila. Sister Mary Anne [sic] herself even testified that she was told that the children were abused while still in Cebu and was told about the rape only in Manila. She even asked her niece AAA to undergo a medical examination in order to confirm if AAA was really raped.⁸⁵ (Citations omitted)

These supposed discrepancies, not being elements of the crime, do not diminish the credibility of AAA's declarations. Jurisprudence has held "youth and immaturity [to be] badges of truth and sincerity"⁸⁶ and has generally given leeway to minor witnesses when relating traumatic incidents of the past.⁸⁷

II

Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, provides the elements for the crime of rape:

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

⁸⁴ TSN dated April 24, 2002, pp. 23–24.

⁸⁵ *Rollo*, pp. 17–18.

⁸⁶ *People v. Dimanawa*, 628 Phil. 678, 689 (2010) [Per J. Nachura, Third Division].

⁸⁷ *People v. Dominguez*, 667 Phil. 105, 119 (2011) [Per J. Sereno (now Chief Justice), Third Division].

present.

Rape becomes qualified when committed by a parent against his child less than 18 years of age. This is provided for under paragraph 1, Article 266-B:

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

....

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[.]

The elements of qualified rape are: “(1) sexual congress; (2) with a woman; (3) [done] by force and without consent; . . . (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.”⁸⁸

It was not disputed that AAA was eight (8) years old in November 1996. The medical findings of Dr. Biag, as interpreted and testified to by Dr. Poca, also corroborate AAA’s allegations of her father’s abuse. Dr. Poca testified that while some of the healed lacerations could still be considered as normal variant finding rather than acquired, the lacerations at 8:00 and 5:00 positions could have only been caused by the insertion of a penis, object, or finger into the vagina:

At 11, 8 and 2 – the findings at 11 and 2 o’clock are still considered, based on studies, more likely congenital rather than acquired, whereas the 8 o’clock finding is more likely an acquired condition and that could have been caused by penetration of the vagina. Then the old healed incomplete laceration . . . at 5 and 10 o’clock, again the 10 o’clock might still be a normal finding or a normal variant finding, but the 5 o’clock is more probably the result of an acquired condition like trauma.⁸⁹

Dr. Poca likewise testified that given AAA’s revelation of her ordeal caused by her father, “the complete healed laceration at 8:00 o’clock” is indicative of sexual abuse.⁹⁰

⁸⁸ *People v. Buclao*, 736 Phil. 325, 336 (2014) [Per J. Leonen, Third Division] citing *People v. Candellada*, 713 Phil 623, 635 (2013) [Per J. Leonardo-De Castro, First Division].

⁸⁹ TSN dated February 12, 2003, p. 7.

⁹⁰ *Id.* at 8–9.

*People v. Noveras*⁹¹ emphasized that when a rape victim's allegation is corroborated by a physician's finding of penetration, "there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge."⁹²

It is well-established that "[p]hysical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses."⁹³ The physical evidence of the healed lacerations in AAA's vagina strongly corroborates AAA and BBB's testimonies that AAA was raped by their father.

Nonetheless, this Court notes that even if AAA was only physically examined almost three (3) years after she was sexually abused by her father, the defense never questioned the credibility of the expert witness, nor was Dr. Poca's testimony impeached.

The trial court, as upheld by the Court of Appeals, also ruled that AAA's testimony was credible and competent, sufficiently proving the charge of rape against her father, thus:

The private complainant categorically stated that the accused (her father) had sexual intercourse with her. The private complainant clearly described the rape incident. "*After he pulled my waist, he had me face him and he pulled down my shorts and at that time I was not wearing any panty then he inserted his penis into my vagina but first he inserted his finger.*" This candid description of the molestations is a direct statement that undoubtedly shows carnal knowledge by the accused with his daughter.⁹⁴ (Emphasis in the original)

It is likewise immaterial that it took AAA more than two (2) years before divulging the sexual abuse she experienced at her father's hands.

The records show that the day following her abuse, AAA immediately told her mother but CCC did not believe her. This lack of support from the very person she was expecting it from naturally made AAA wary of whom she could trust. It was only when she became close to and felt safe with Sister Mary Ann and after she was no longer in Cebu under her father's control that she found the courage to reveal her traumatic experience. This is consistent with the normal reaction of a child raped by her father.

Dr. Poca, a child protection specialist, also confirmed that AAA's failure to immediately disclose her abuse is a normal reaction of children:

⁹¹ 550 Phil. 871 (2007) [Per J. Callejo Sr., Third Division].

⁹² Id. at 887.

⁹³ *People v. Sacabin*, 156 Phil 707, 713 (1974) [Per J. Fernandez, Second Division].

⁹⁴ CA Rollo, p. 44, Regional Trial Court Joint Judgment.

Given her disclosure or her revelation that her father inserted his finger and later his penis into her vagina *but not having disclosed immediately because of fear which is a normal reaction of children, and then having disclosed only to an aunt about 3 years later, which again is a normal reaction of children especially if they do find a person whom they can trust and whom they can feel safe with*, between 1996 and 1999 if there were any injuries at that point in 1996, that could have healed and giving us these results in 1999.⁹⁵ (Emphasis supplied)

This Court also notes that AAA asked, “*Pa, where is Nanay?*”⁹⁶ when she woke up to find her father lying beside her. Her question was telling. At that moment, she perhaps already entertained a fear that something so wrong was about to happen to her. At the same time, she was trying to tell him that her mother would not approve of what he was about to do.

Furthermore, BBB testified that her father groped her and poked his penis against her buttocks but that he stopped and left the house after she pleaded with him. However, she saw him go back a few minutes later and she tried to warn AAA by pinching her, but AAA did not wake up. When AAA did wake up, Divinagracia was already beside her.⁹⁷

BBB testified that she saw her father get on top of AAA, who could not repel his advances. BBB admitted that AAA was crying and calling out for help the whole time their father was on top of her, but BBB lamented that she was unable to go to her sister because she could not move due to fear.⁹⁸

BBB’s reaction is consistent with the normal, expected actuations of a child seeing her father doing despicable acts on her younger sister, especially after she herself had fallen victim to his acts of lasciviousness. Her action is a mixture of denial and fear—denial that the father whom she trusted could do these acts and fear, not so much for her physical safety, but more for her economic and financial support.

The rule is settled that the factual findings and the evaluation of witnesses’ credibility and testimony made by the trial court should be entitled to great respect, unless it is shown that the trial court may have “overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance.”⁹⁹

Aside from the supposed inconsistencies in AAA’s and Sister Mary

⁹⁵ TSN dated February 12, 2003, p. 8.

⁹⁶ TSN dated April 23, 2002, p. 4.

⁹⁷ TSN dated April 24, 2002, pp. 30–33.

⁹⁸ Id. at 33–35.

⁹⁹ *People v. De Jesus*, 695 Phil. 114, 122 (2012) [Per J. Brion, Second Division].

Ann's testimonies, Divinagracia only managed to present a defense of denial, which must fail in light of AAA's categorical and competent testimony as well as the undisputed findings of healed lacerations in her vagina. This Court is not swayed by Divinagracia's argument that his daughters were manipulated by his in-laws into filing these charges against him. *People v. Venturina*¹⁰⁰ aptly stated that "[n]ot even the most ungrateful and resentful daughter would push her own father to the wall as the fall guy in any crime unless the accusation against him is true."¹⁰¹

Even the well-meaning testimonies of the other defense witnesses¹⁰² did not disprove AAA's account of the rape since they only managed to prove that Divinagracia and his wife constantly quarrelled. What their testimonies inadvertently revealed, though, was Divinagracia's proclivity towards violence, particularly when dealing with his wife. His sister and neighbors testified that they would regularly hear and see Divinagracia quarrelling with CCC, with Divinagracia usually hitting CCC in the course of their arguments. Divinagracia's violent nature frames an inference of a lack of appreciation of the humanity of every member of the family and highlights his attitude of impunity.

This Court sees no reason to reverse the findings of the Regional Trial Court and the Court of Appeals that Divinagracia was guilty beyond reasonable doubt of rape in relation to Republic Act No. 7610.

IV

On the charge of acts of lasciviousness in relation to Republic Act No. 7610, Article 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610 defines lascivious conduct as:

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

As with the rape case, the parties in the case for acts of lasciviousness also affirmed BBB's minority at the time of the assault and her relationship with Divinagracia.

¹⁰⁰ 694 Phil 646 (2012) [Per J. Del Castillo, Second Division].

¹⁰¹ Id. at 655.

¹⁰² CA *Rollo*, pp. 40-43.

The Regional Trial Court and Court of Appeals likewise found that there was clear and convincing evidence to hold Divinagracia guilty of committing sexual violence against his daughter BBB. The lower courts also found BBB's testimony to be candid, credible, and competent; thus:

Such finding of lasciviousness is solely attributable to the testimony of the private complainant BBB whom the court considers credible and competent. BBB categorically stated that the accused (her father) lay down beside her, embraced her and poked his penis to her buttocks. BBB clearly recalled the manner the lascivious acts by demonstrating these in the court. "*He embraced me tightly this way (witness demonstrating by closing her arms in front of her fist), the (sic) after that he slipped his hand from here up to here, touching my body (witness demonstrating by tracing her palm from the left thigh upward towards the left side of her body under her armpit.*" This candid description of the molestation is a direct statement that undoubtedly proves the crime committed by the accused with his daughter.¹⁰³ (Emphasis in the original, citation omitted)

Compared to his daughter's candid and categorical testimony, Divinagracia's defense of denial must fail. *Imbo v. People*¹⁰⁴ emphasized that the self-serving defense of denial falters against the "positive identification by, and straightforward narration of the victim."¹⁰⁵

This Court has repeatedly held that the lone yet credible testimony of the offended party is sufficient to establish the guilt of the accused.¹⁰⁶

V

Despite upholding the findings of fact and appreciation of the evidence by the lower courts, there is a need to modify the penalties awarded. Section 5(b) of Republic Act No. 7610 provides for the penalty of *reclusion perpetua* if the rape victim is below 12 years old while the penalty of *reclusion temporal* in its medium period is imposed if the victim of lascivious conduct is also below 12 years old:

Section 5. Child Prostitution and Other Sexual Abuse. —

....

(b) Those who commit the act of sexual intercourse or lascivious conduct

¹⁰³ CA *Rollo*, p. 46.

¹⁰⁴ G.R. No. 197712, April 20, 2015 <|| HYPERLINK "<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/197712.pdf>" http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/197712.pdf > [Per J. Perez, First Division].

¹⁰⁵ Id. at 7.

¹⁰⁶ *Ricalde v. People*, 751 Phil 793, 807 (2015) [Per J. Leonen, Second Division]; *Garingarao v. People*, 669 Phil. 512, 522 (2011) [Per J. Carpio, Second Division]; *People v. Tagaylo*, 398 Phil. 1123, 1131-1132 (2000) [Per CJ Davide, Jr, First Division].

with a child exploited in prostitution or subjected to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under *Article 335, paragraph 3, for rape* and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, *That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period*[.] (Emphasis supplied)

The Regional Trial Court correctly set the penalty of *reclusion perpetua* for rape. However, since the victim was under twelve (12) years of age at the time of the crime, the imposable penalty for lascivious conduct should have been within the range of 14 years, **8 months, and 1 day** to 17 years and 4 months, or *reclusion temporal* in its medium period, as mandated by Republic Act No. 7610. Instead, the Regional Trial Court imposed the range of 14 years and **4 months** to 17 years and 4 months. Applying the Indeterminate Sentence Law¹⁰⁷ and with the presence of the alternative aggravating circumstance¹⁰⁸ of relationship, the maximum term of the sentence to be imposed should be taken from the maximum period of the imposable penalty, that is *reclusion temporal* maximum, which ranges from 17 years, 4 months, and 1 day to 20 years.¹⁰⁹ The minimum term under the Indeterminate Sentence Law shall be within the range of one (1) degree lower than *reclusion temporal*, which is *prision mayor* with a total range of six (6) years and one (1) day to 12 years.¹¹⁰

There is also a need to review the lack of civil indemnity and other damages in the decisions of the lower courts. The Regional Trial Court, as affirmed by the Court of Appeals, held that since Divinagracia, as the father of AAA and BBB, stood to benefit from the monetary award, it would not be proper to award civil indemnity:

The Court shall not award civil indemnity to the private complainant. The accused as the father of the private complainants stands to benefit from the monetary award if adjudicated to his daughters since he is a compulsory heir. The concept of indemnification is not served if the very person made to pay for his crime shall benefit from it.¹¹¹

¹⁰⁷ Act No. 4103 (1933).

¹⁰⁸ Revised REV. PEN. CODE Penal Code, art. 15 provides:

Article 15. Their concept. — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional it shall be considered as an aggravating circumstance.

¹⁰⁹ REV. PEN. CODE, art. 76.

¹¹⁰ REV. PEN. CODE, art. 76.

¹¹¹ CA *Rollo*, p. 48, Regional Trial Court Joint Judgment.

The lower courts are mistaken.

Civil indemnity *ex delicto*, as a form of monetary restitution or compensation to the victim, attaches upon a finding of criminal liability because “[e]very person criminally liable for a felony is also civilly liable.”¹¹²

On the other hand, moral damages are treated as “compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong.”¹¹³ The award of moral damages is meant to restore the status *quo ante*; thus, it must be commensurate to the suffering and anguish experienced by the victim.¹¹⁴

Finally, exemplary or corrective damages are imposed as an example to the public,¹¹⁵ serving as a deterrent to the commission of similar acts. Exemplary damages are also awarded “as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances.”¹¹⁶

In view of the depravity of the acts committed by Divinagracia against his minor daughters, this Court imposes the following monetary awards, in accordance with jurisprudence:

For rape against AAA, Divinagracia is directed to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages¹¹⁷

For acts of lasciviousness against BBB, this Court adopts the ruling in *People v. Santos*¹¹⁸ and directs Divinagracia to pay BBB ₱20,000.00 as civil indemnity and ₱30,000.00 as moral damages. However, in light of the heinous nature of the crime committed, exemplary damages are increased from ₱2,000.00 to ₱20,000.00.

¹¹² REV. PEN. CODE, art. 100.

¹¹³ *Bagumbayan Corp. v. Intermediate Appellate Court*, 217 Phil. 421, 425–426 (1984) [Per J. Aquino, Second Division].

¹¹⁴ *Lambert v. Heirs of Castillon*, 492 Phil. 384, 395, citing CESAR SANGCO, TORTS & DAMAGES 986 (1994 ed.) [Per J. Ynares-Santiago, First Division].

¹¹⁵ CIVIL CODE, art. 2229 provides:

Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated, or compensatory damages.

¹¹⁶ CIVIL CODE, art. 2230 provides:

Article 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.


¹¹⁷ *People v. Jugueta*, G.R. No. 202124, April 5, 2016 < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> > [Per J. Peralta, En Banc].

¹¹⁸ 753 Phil 637, 652 (2015) [Per J. Carpio, Second Division].

In addition, interest at the legal rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid.¹¹⁹


WHEREFORE, the Court of Appeals Decision in CA-G.R. CEB CR-H.C. No. 01134 dated July 30, 2012 is **AFFIRMED with MODIFICATION**. Accused-appellant Julito Divinagracia, Sr. is sentenced to suffer the penalty of a) *reclusion perpetua* for the crime of rape in relation to Republic Act No. 7610; and b) the indeterminate penalty of 12 years of *prision mayor*, as minimum, to 20 years of *reclusion temporal*, as maximum, for the crime of acts of lasciviousness in relation to Republic Act No. 7610. Furthermore, he is ordered to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. He is also ordered to pay BBB ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱20,000.00 as exemplary damages. All the awarded damages shall earn the legal interest rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



SAMUEL R. MARTIRES
Associate Justice

¹¹⁹ *Ricalde v. People*, 751 Phil 793, 816 (2015) [Per J. Leonen, Second Division].

ATTESTATION

I attest 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.

**ANTONIO T. CARPIO**

Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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**

Chief Justice