



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE  
PHILIPPINES,

*Plaintiff-Appellee,*

versus

G.R. No. 226144

Present:

HERNANDO, J.,  
*Acting Chairperson,*

CARANDANG,\*

JAVIER,\*

INTING, and

DELOS SANTOS, JJ.

ZZZ,<sup>1</sup>

*Accused-Appellant.*

Promulgated:

14 OCT 2020

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DECISION

**HERNANDO, J.:**

On appeal<sup>2</sup> is the November 28, 2014 Decision<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04489 which affirmed with modification the March 3, 2010 Decision<sup>4</sup> of the Regional Trial Court, Branch 90 of ██████████,<sup>5</sup> Cavite (RTC). The RTC Decision convicted accused-appellant ZZZ for three (3) counts of Rape under Article 266-A, Paragraph 1(a) of the

\* Designated as additional members per Raffle dated October 5, 2020 vice Associate Justices Estela M. Perlas-Bernabe and Priscilla J. Baltazar-Padilla who recused due to prior action in the Court of Appeals.

<sup>1</sup> Initials were used for the name of accused-appellant per Supreme Court Amended Administrative Circular No. 83-2015 or *Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances* issued on September 5, 2017.

<sup>2</sup> All arguments raised in the Appellant's Brief (CA rollo, pp. 22-35) filed before the CA adopted and repleaded by the accused-appellant per November 15, 2016 Manifestation, rollo, pp. 23-25.

<sup>3</sup> CA rollo, pp. 86-98; penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta.

<sup>4</sup> Id. at 8-12.

<sup>5</sup> Geographical location was blotted out per Supreme Court Amended Administrative Circular No. 83-2015, *supra* note 1.

Revised Penal Code (RPC), as amended, in relation to Republic Act No. 7610 (RA 7610), as amended, otherwise known as the Act Providing for Stronger Deterrence and Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.

### The Facts

On November 26, 2008, ZZZ was charged with three (3) counts of Rape under Article 266-A, Paragraph 1(a) of the RPC, in relation to RA 7610. The Informations filed before the RTC accused ZZZ as follows:

In Crim. Case No. 5635-09:

That on or about the 13<sup>th</sup> day of September 2007, in the Municipality of [REDACTED], Province of Cavite, Philippines, a place within the jurisdiction of this Honorable Court, accused, being the stepfather of one AAA,<sup>6</sup> a fifteen (15) year-old minor, having been born on October 14, 1991, by means of violence, and intimidation, and by taking advantage of his moral ascendancy being the stepfather of the said minor, with lewd designs and actuated by lust, did then and there willfully, unlawfully and feloniously have carnal knowledge of his said stepdaughter, against her will and consent, thus debasing, degrading and demeaning her intrinsic worth and dignity as a child, to her damage and prejudice.

**CONTRARY TO LAW.<sup>7</sup>**

In Crim. Case No. 5636-09:

That on or about the 6<sup>th</sup> day of November 2007, in the Municipality of [REDACTED], Province of Cavite, Philippines, a place within the jurisdiction of this Honorable Court, accused, being the stepfather of one AAA, a sixteen (16) year-old minor, having been born on October 14, 1991, by means of violence, and intimidation, and by taking advantage of his moral ascendancy being the stepfather of the said minor, with lewd designs and actuated by lust, did then and there willfully, unlawfully and feloniously have carnal knowledge of his said stepdaughter, against her will and consent, thus debasing, degrading and demeaning her intrinsic worth and dignity as a child, to her damage and prejudice.

**CONTRARY TO LAW.<sup>8</sup>**

In Crim. Case No. 5637-09:

That on or about the year of 1999, in the Municipality of [REDACTED], Province of Cavite, Philippines, a place within the jurisdiction of this Honorable Court, accused, being the stepfather of one AAA, an eight (8) year-old minor, having been born on October 14, 1991, by means of violence, and intimidation, and by taking advantage of his moral ascendancy being the

<sup>6</sup> Initials were used for the name of minor victim per Supreme Court Amended Administrative Circular No. 83-2015, *supra* note 1.

<sup>7</sup> Records, pp. 1-2.

<sup>8</sup> *Id.* at 17-18.

stepfather of the said minor, with lewd designs and actuated by lust, did then and there willfully, unlawfully and feloniously have carnal knowledge of his said stepdaughter, against her will and consent, thus debasing, degrading and demeaning her intrinsic worth and dignity as a child, to her damage and prejudice.

**CONTRARY TO LAW.<sup>9</sup>**

Upon the prodding of her mother, victim AAA filed an Affidavit of Desistance to withdraw the case against ZZZ.<sup>10</sup> Despite this, arraignment proceeded. ZZZ pleaded not guilty to the charges.<sup>11</sup> Trial ensued. The prosecution presented as its witnesses AAA and Dr. Merle P. Tan (Dr. Tan), who was the examining physician at the University of the Philippines-Philippine General Hospital, Child Protection Unit. ZZZ alone testified for his defense.

**Version of the Prosecution:**

AAA was born on October 14, 1991.<sup>12</sup> She identified ZZZ as her stepfather.<sup>13</sup> She and her mother began living with ZZZ when her mother separated from her biological father. While able to recall only three specific occasions, AAA testified that ZZZ started perpetrating the acts complained of when she was in grade 5 or since she was 10 years old.<sup>14</sup> It happened at least twice a week to as often as every night in their house and usually whenever her mother was not around. ZZZ would wake AAA up, tell her to keep quiet, remove her shorts and panty, and then insert his organ into her private part. ZZZ would force himself on AAA even if her stepsister, BBB, was sleeping with them, and it never occurred to AAA to wake BBB up during those times. ZZZ always threatened to kill her and her mother if she would disclose the incidents to anyone. She also narrated that accused-appellant committed these sexual acts sometime before her birthday or on September 13, 2007.<sup>15</sup> She was 16 years old when she was last molested on November 6, 2007.<sup>16</sup> It was only after she disclosed incidents to her boyfriend (who in turn told AAA's mother) that she was able to leave their house, submit herself to a physical examination, and file the complaint against ZZZ.

Dr. Tan conducted her general physical and ano-genital examination.<sup>17</sup> Dr. Tan testified that while there was no evident injury on AAA's genitalia at the time of the examination on November 14, 2007, there was an indentation

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<sup>9</sup> Id. at 36-37.

<sup>10</sup> Id. at 31; Affidavit of Desistance dated January 30, 2009 signed by victim AAA.

<sup>11</sup> Id. at 52; RTC Order dated March 4, 2009.

<sup>12</sup> Id. at 11; Certificate of Live Birth of AAA, Exhibit "B".

<sup>13</sup> TSN, September 1, 2009, p. 4.

<sup>14</sup> Id. at 8; victim initially alleged in her *Sinumpaang Salaysay* that accused-appellant started molesting her in the year 1999 when she was 8 years old (records, p. 44.)

<sup>15</sup> Records, p. 44; victim's *Sinumpaang Salaysay*.

<sup>16</sup> Id.

<sup>17</sup> Id. at 55; per Final Medico-Legal Report Number: 2007-4966.

of her hymen suggesting a possibility that it was penetrated by a blunt object, possibly a sex organ.<sup>18</sup>

### **Version of the Defense:**

ZZZ denied the accusations against him. He averred that he was sleeping at the times he allegedly committed the sexual acts against AAA. He always slept beside his daughter, BBB, and while AAA slept on the same *banig* (mat) and in the same room, the latter stayed in a spot farther away from him. He was strict over AAA and was against her relationship with her boyfriend as he believed that the latter was already married to another person. The sexual acts imputed by AAA against him were all lies, since she and her boyfriend disliked his stern demeanor over their relationship.<sup>19</sup>

### **The RTC Ruling**

The RTC convicted ZZZ as charged. It found his defense of denial and alibi too weak as against the victim's positive identification and categorical testimony of Rape. The trial court also disbelieved ZZZ's unsubstantiated theory that the filing of the Rape charge was motivated by AAA's hate for him and his manner of discipline. The RTC decreed in its Decision<sup>20</sup> in the following manner:

WHEREFORE, premises considered, the Court hereby finds the accused guilty beyond reasonable doubt of the crime of rape, as defined and penalized under Article 266-A, par. 1(a) of the Revised Penal Code in relation to R.A. 7610 and hereby sentences the accused to suffer the penalty of *reclusion perpetua* for each criminal information in CRIM. CASE NO. 5635-09; CRIM. CASE NO. 5636-09 and CRIM. CASE NO. 5637-09, and to pay the victim moral damages in the amount of Php50,000.00, civil indemnity *ex-delicto* in the amount of Php25,000.00. Accordingly, the number of days he spent under detention shall be deducted from the aforesaid judgment.

Costs against the accused.

SO ORDERED.<sup>21</sup>

ZZZ appealed to the CA.<sup>22</sup>

### **The CA Ruling**

The CA did not doubt the victim's credibility and affirmed the RTC's judgment of conviction. It found ZZZ's bare denial as opposed to AAA's positive testimony without evidentiary value, and that ill motive will not overturn an established charge of Rape. The appellate court, however,

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<sup>18</sup> TSN, May 13, 2009, pp. 4-7.

<sup>19</sup> TSN, November 24, 2009.

<sup>20</sup> CA *rollo*, pp. 8-12.

<sup>21</sup> *Id.* at 12.

<sup>22</sup> *Id.* at 15; Notice of Appeal.

deleted the award of exemplary damages in the absence of an aggravating circumstance. In its assailed Decision,<sup>23</sup> the CA held in this wise:

**WHEREFORE**, the appeal is **DENIED**. The decision dated March 3, 2010 of the Regional Trial Court of [REDACTED], Cavite, Branch 90, finding [ZZZ] guilty beyond reasonable doubt of three (3) counts of rape as defined under Article 266-A, par. 1(a) of the Revised Penal Code in relation to Republic Act No. 7610 and sentencing him to suffer the penalty of *reclusion perpetua* in each case is **AFFIRMED WITH MODIFICATION**. The award of civil indemnity of P50,000.00 and moral damages of P50,000.00 is **affirmed**. The award of exemplary damages is **deleted**.

**SO ORDERED.**<sup>24</sup>

ZZZ thus appeals to this Court.<sup>25</sup>

### Issue

Whether or not ZZZ's guilt for the crimes charged was proven beyond reasonable doubt.

### The Court's Ruling

The appeal has no merit.

Article 266-A of the RPC, as amended, describes how the crime of Rape is committed:

Art. 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 is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

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[.] (Emphasis supplied.)

There is no reason for the Court to doubt that ZZZ had repeatedly obtained carnal knowledge of the victim, a minor, by means of coercion, threats, and intimidation. To quell all misgivings, if any, in AAA's testimony,

<sup>23</sup> Id. at 86-98.

<sup>24</sup> Id. at 97-98.

<sup>25</sup> Id. at 99; Notice of Appeal.



the same is reproduced in exhaustive part:

ASST. PROS. JARLOS:

x x x You are the private complainant in this case?  
A: Opo.

Q: You know [ZZZ]?

A: Opo.

Q: Why do you know him?

A: Stepfather ko po, Sir.

x x x x

Q: Is he inside the Courtroom?

A: Opo.

Q: Please point to him?

A: (Witness is pointing to a man wearing a yellow T-shirt who when asked answered the name of [ZZZ].)

Q: And what year were you born, Madam Witness?

A: September 13, 1991, Sir.

Q: Hindi ba October 14, 1991?

A: Yon pong birthday September 13, 1991, Sir, pero ang nakalagay dyan October 14, 1991.

ASST. PROS. JARLOS:

May we [ask] for a correction, your Honor. Bali September 13, 1991, your Honor.

COURT: What is the date on the Certificate of Live Birth?

ASST. PROS. JARLOS:

October 14, 1991, your Honor. So, your Honor, this is correct.

x x x x

COURT: Proceed, Fiscal.

ASST. PROS. JARLOS:

So, how old are you now Madam Witness?  
A: Seventeen (17) po.

x x x x

Q: And you said that the accused in this case is your stepfather, how come?

A: Asawa po ng mama ko, Sir.

Q: Pagkatapos maghiwalay ng mama mo at [ng] papa mo, siya na ang asawa ngayon ng mama mo?

A: Opo.

x x x x

Q: So, you are living with them together?

A: Opo.

x x x x

Q: Now, while he was staying with you, do you remember whether there was an unusual incident that happened inside your house between you and the accused in this case?

A: Opo.

Q: What was that?

A: Noong ginalaw niya po ako, Sir.

COURT: Ilang taon ka [noong] una kang ginalaw ng taong yan?

A: Ten (10) years old, Ma'am.

ASST. PROS. JARLOS:

And where did he molest you?

A: Sa bahay po.

x x x x

Q: And what time was that when the accused first molested you?

A: Tuwing matutulog po.

Q: During night time?

A: Opo.

COURT: Anong buwan at araw ng unang panghahalay sayo?

A: Grade five (5) po ako.

COURT: So, that was the first rape when she was in grade 5.

ASST. PROS. JARLOS:

x x x x

The first time, how did he start molesting you?

A: Tinatakot niya po ako.

Q: What were you doing at that time?

A: Sumusunod lang po ako.

COURT: Ano ang hinihigaan niyo, kama o banig?

A: Banig po.

x x x x

ASST. PROS. JARLOS:

Q: You said we, who was your companion?

A: Kapatid ko po.

Q: A younger sibling?

A: Opo.

Q: And when you were about to sleep, what happened if there was any?

A: Tulog na po ako tapos gigisingin niya po ako.

x x x x

Q: What did he tell you when he was trying to wake you up?

A: Wag daw po ako maingay. Wag daw po ako magsumbong sa mama ko.

Q: And then, what did you do next?

A: Natakot po ako.

COURT: Sumiping ba sayo?

A: Opo.

Q: Pagkatapos tumabi sa yo, ano ang ginawa niya?

A: Hinubad niya po ang short ko at panti ko.

ASST. PROS. JARLOS:

Q: You were totally nude?

A: Opo.

COURT: Hinubuan ka lang or hinubaran ka?

A: Hinubaran po.

Q: Tinanggal pati pang taas mo?

A: Hindi po.

Q: Yun lang?

A: Tinanggal po yung short at panti ko.

x x x x

ASST. PROS. JARLOS:

After he took off your short and panti, what happened next?

A: Pinasok niya po ang kanyang ari.

Q: What about the accused, what was he wearing during that time when he inserted his private organ?

A: Wala po. Hinubad niya rin po.

Q: And how long did it take the accused to insert and remove his penis or organ from your organ?

A: Saglit lang po. Tapos inalis niya po.



Q: Immediately after inserting his organ [into] your organ, what did he do next?

A: He was pumping.

Q: Thereafter he withdrew his organ?

A: Opo.

Q: What happened next after that?

A: Ibinalik niya po sa akin yung short ko at panti ko.

Q: And what did he tell you if there was any?

A: Wag daw po ako magsusumbong sa nanay ko.

COURT: May dala ba siyang patalim?

A: Lagi po siyang may dalang patalim.

Q: Itinututok ba yan sayo?

A: Sabi lang niya na papatayin ako at nanay ko pag nagsumbong ako.

ASST. PROS. JARLOS:

When was that repeated again?

A: Minsan tuwing gabi. Minsan sa isang lingo.

Q: How many times a week?

A: Minsan gabi-gabi.

COURT: Gabi-gabi ba yan ginagawa sa yo?

A: Minsan po.

Q: Isang [beses] sa isang gabi. Halimbawa nangyari ngayon gabi, kinabukasan ginawa pa niya ulit sayo?

A: Minsan po ganon.

Q: Sa isang lingo, ilang araw na ginagawa yan sayo?

A: Mga dalawang [beses] po.

Q: Dalawang [beses] sa isang lingo?

A: Opo.

Q: Tapos titigil. Sa susunod na lingo, gagawin ulit sayo? Ilang [beses] sa susunod na lingo?

A: Minsan tatlong beses.

Q: So, nung sampung taon ka ginagawa niya sayo yan?

A: Opo.

ASST. PROS. JARLOS:

Until when did he stop molesting you, how old were you?

A: Third year high school po.

Q: From that time until he stopped doing that to you, you did not mind telling this to your mother?

A: Natatakot po ako sabihin kasi sabi niya papatayin daw niya kami pag nagsumbong ako sa nanay ko.<sup>26</sup>

No exact account was made in open court anent the alleged September 13, 2007 and November 6, 2007 incidents. Even so, AAA was still able to lay out the sordid circumstances and the pertinent specifics of her Rape during the said dates in her initiatory *Sinumpaang Salaysay*:<sup>27</sup>

9. T[ANONG]: Bakit ka naririto sa aming opisina?  
S[AGOT]: Para idemanda ang aking step father [na si ZZZ].

10. T: Bakit naman nais mo siyang idemanda?  
S: Kasi po ni-rape niya ako.

x x x x

12. T: Kailan at saan naman yung huling pang-rarape sayo?  
S: November 6, 2007 bandang 11:00 PM, sa loob ng aking kwarto.

13. T: Maari mo bang ikwento sa akin ang pangyayari noong November 6, 2007?

S: Matutulog na po ako, pumasok si Papa. Naramdaman ko na hinihipuan ako sa dibdib. Tinanggal niya ang panty ko. Pumatong na po siya sa akin. Pinasok niya yung ari niya sa ari ko. Hinalikan niya ako sa buong katawan. Umalis din siya pagkatapos.

14. T: Gaano kadalas ito ginagawa ng Papa mo?  
S: Sa tatlong (3) beses sa isang linggo.

15. T: May natatandaan ka ba petsa?  
S: Basta po malimit na niya ako nirarape. Noong bago ako magbirthday September 13, 2007, ni rape ulit ako ni papa.

16. T: Papaano ka ni rape ni Papa?  
S: Wala ulit si mama, nagtitinda siya sa gabi. Pumasok ako sa kwarto para matulog. Sumunod si papa sa akin. Pumatong siya sa akin at hinalikan niya ako sa buong katawan. Tapos tinanggal niya ang panty ko. Ipinasok niya ang ari niya sa ari ko. Umalis siya pagkatapos.

[17]. T: Mayroon ka pa ba natatandaan[g] insidente katulad nito?  
S: Maraming beses po niya ako nirarape pero hindi [ko po] talaga matandaan ang mga petsa.<sup>28</sup>

AAA identified this *Sinumpaang Salaysay* as her own on the witness stand.<sup>29</sup> It thus formed part of her direct testimony, and its contents were subjected to cross-examination by the defense. In open court, she readily recognized and pointed to ZZZ as her violator. She recounted the harrowing nights that tormented her for six years of living with ZZZ. The examining

<sup>26</sup> TSN, September 1, 2009, pp. 3-14.

<sup>27</sup> Records, pp. 9-10.

<sup>28</sup> Id.

<sup>29</sup> TSN, September 1, 2009, p. 17.

physician's *Medico-Legal* Report,<sup>30</sup> which stated "blunt force or penetrating trauma" in AAA's ano-genital examination, corroborated the latter's testimony. The Court sees no compelling motive for the victim to lie. After all, no person, especially one of tender age, would ordinarily cry "rape" and subject oneself to the consequent rigors and embarrassments of medical examination and public trial, if not for the quest for rightful justice.<sup>31</sup>

Moreover, ZZZ miserably failed to overturn the burden of evidence against him. His defenses were threefold: denial, alibi, and imputation of ill motive against the victim. All such defenses, however, disintegrate on their own.

*First*, denial is an inherently weak defense. While a conviction rests not on the weakness of the defense but on the strength of the evidence against the accused, the Court finds that the prosecution has fully discharged its evidentiary duty. The testimony of the victim was categorical, leaving no room to doubt that ZZZ truly raped her. It is long settled that a clear narration by a victim of the awful circumstances of her defloration, even if it stands on its lonesome, can sustain a strong verdict of guilt.

Also, ZZZ cannot escape culpability by highlighting AAA's intimate relationship with her boyfriend. The following is his attempt to invite suspicion by alleging in his *Brief* that AAA's live-in relationship with her boyfriend preceded the conduct of her *medico-legal* examination in 2007:

[Anent] the findings of Dr. Tan of the presence of a deep notch in [AAA's] hymen, the same cannot be conclusively attributed to the alleged rape committed by the accused-appellant, **considering that she started cohabiting with her boyfriend when she was sixteen (16) years old and prior to the medico-legal examination.** [AAA] testified:

ATTY ANDRADE: But would (sic) agree with me that **you undergone (sic) examination at PGH. You have already a boyfriend, is it not?**

A: Opo.

**This is bolstered by the testimony of the accused:**

Q: **Were they already living together before the private complainant file (sic) this case?**

A: **Opo. Nagsasama na sila, mayroon na po silang anak.**

ATTY. ANDRADE: No further questions, your Honor.<sup>32</sup>

[Emphasis supplied; original emphasis and citations omitted.]

<sup>30</sup> Records, p. 55; Final Medico-Legal Report Number: 2007-4966.

<sup>31</sup> *People v. Bagsic*, 822 Phil. 784, 796 (2017); citing *People v. Basmayor*, 598 Phil. 184, 194 (2009).

<sup>32</sup> CA rollo, pp. 31-32.

Premarital relationships do not necessarily entail sexual intimacy. Neither can the sexual behavior of a rape victim reverse her violator's criminal culpability. It must always be remembered that the lack of consent is the line crossed in non-Statutory Rape. Romantic affairs voluntarily engaged into by a rape victim, whether before, during, or after the rape incident, will not overwrite the established fact that her violator forcibly obtained carnal knowledge of her without her consent.

Nonetheless, the trial court had clarified the matter with AAA upon the conclusion of her cross-examination:

COURT: Just a moment. When for the first time did you have sex with your boyfriend?  
A: Noong nagsama po kami.  
Q: Ito lang 2008?  
A: Opo.<sup>33</sup>

*Next*, it is not physically impossible for the rapist to sexually abuse the victim even in the presence of another person. Criminal lust does not discriminate. Undaunted by age, sex, relationship, place, distance, time, aesthetic preferences, or moral considerations, sexual predators attack with reckless abandon and surprising ingenuity, always impelled by the sole aim of having their worldly fill. Perverse desires find ways. A mere arm-span distance from the victim or a lack of privacy will not deter a rapist who has been consumed entirely by lust.

*Lastly*, that the victim harbored animosity against the rapist's fatherly discipline hardly dents the evidence proffered against him by the prosecution. Ill motive becomes inconsequential in the face of an affirmative and credible declaration from the rape victim, who had already clearly established the liability of the accused.<sup>34</sup> Moreover, ZZZ's theory is specious at best. It was never corroborated, and bare allegations deserve scant consideration for being self-serving.

The designation of the crimes committed by ZZZ, however, must be corrected.

ZZZ faces conviction for three specific charges: one count of Rape committed against the victim when she was 15 years old under Criminal Case No. 5635-09, and another count of Rape in Criminal Case No. 5636-09 when the victim at the time was a 16-year-old. Article 266-A, Paragraph 1(a) of the RPC applies to these two charges, herein reiterated:

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<sup>33</sup> TSN, September 1, 2009, p. 1.

<sup>34</sup> *People v. Gersamio*, 763 Phil. 523, 537-538 (2015). Citation omitted.

Art. 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;**

x x x x (Emphasis supplied.)

He is also found liable for a third count of Rape in Criminal Case No. 5637-09 which he committed when the victim was only eight years of age. Article 266, Paragraph 1(d), not 1(a), now operates:

Art. 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:

x x x x

**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[.]** (Emphasis supplied.)

Sexual intercourse with a victim who is under 12 years old, as defined under Article 266-A, Paragraph 1(d) of the RPC, is Statutory Rape.<sup>35</sup> Where the victim is below 12 years old, the only subject of inquiry is whether carnal knowledge took place.<sup>36</sup> Under the law, *carnal knowledge* is the act of a man having sexual intercourse or sexual bodily connections with a woman.<sup>37</sup> The victim's consent to the vile act holds no relevance here – it is settled that a child's consent is immaterial because of his or her presumed incapacity of discerning evil from good.<sup>38</sup>

It bears noting that the initiatory Information in Criminal Case No. 5637-09 had alleged that AAA was eight years old at the time of the commission of the crime. AAA later on declared in open court that she was 10 years of age, not eight, when she was first raped by ZZZ. The discrepancy in age between that which was alleged from that which was proved does not matter. Whether 8 or 10 years, either age still falls under the qualifying bar of Statutory Rape, which is below 12 years old.

Article 266-B of the RPC prescribes the appropriate penalty for the commission of Rape under Paragraph 1, Article 266-A of the same law, *viz.*:

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<sup>35</sup> *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

<sup>36</sup> *People v. Bejim*, 824 Phil. 10, 23 (2018).

<sup>37</sup> *Id.*

<sup>38</sup> *People v. Ronquillo*, 818 Phil. 641, 648 (2017); citing *People v. Arpon*, 678 Phil. 752 (2011) and *People v. Macafe*, 650 Phil. 580, 588 (2010).



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

The courts below prosecuted and convicted ZZZ for all three counts of Rape committed against the minor victim as defined under **Article 266-A, Paragraph 1(a) of the RPC in relation to RA 7610**. The Court fixes this error in the nomenclature of ZZZ's crimes. As it now stands, ZZZ is criminally liable for two (2) counts of Rape defined under **Article 266-A, Paragraph 1(a) and one count of Statutory Rape under Paragraph 1(d), all penalized under Article 266-B of the RPC.**<sup>39</sup> **The correlation to RA 7610 is deleted.** *People v. Tulagan*<sup>40</sup> explains the *ratio* for a correct designation of offenses under Article 266-A, Paragraph 1(a) and Article 266-B of the RPC and not under RA 7610:

Assuming that the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information – *e.g.*, carnal knowledge or sexual intercourse was due to "force or intimidation" with the added phrase of "due to coercion or influence," one of the elements of Section 5(b) of R.A. No. 7610; or in many instances wrongfully designate the crime in the Information as violation of "Article 266-A, paragraph 1 (a) in relation to Section 5(b) of R.A. No. 7610," although this may be a ground for quashal of the Information under Section 3(f) of Rule 117 of the Rules of Court – and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610. Indeed, **while R.A. No. 7610 is a special law specifically enacted to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development, We hold that it is contrary to the legislative intent of the same law if the lesser penalty (*reclusion temporal medium to reclusion perpetua*) under Section 5(b) thereof would be imposed against the perpetrator of sexual intercourse with a child 12 years of age or below 18.**

**Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, is not only the more recent law, but also deals more particularly with all rape cases, hence, its short title "*The Anti-Rape Law of 1997*." R.A. No. 8353 upholds the policies and principles of R.A. No. 7610, and provides a "stronger deterrence and special protection against child abuse," as it imposes a more severe penalty of *reclusion perpetua* under Article 266-B of the RPC x x x**<sup>41</sup>(Emphasis supplied.)

Withal, the rectification of ZZZ's conviction for three counts of Rape under a single criminal law provision is in order. ZZZ is liable for two counts of Rape defined in Article 266, Paragraph 1(a) of the RPC in Criminal Cases Nos. 5635-09 and 5636-09, and one count of Statutory Rape

<sup>39</sup> *People v. Tulagan*, supra note 35.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*



under Article 266, Paragraph 1(d) of the RPC, for Criminal Case No. 5637-09. The penalty of *reclusion perpetua* in each case as imposed by the courts below are unaffected and retained.

The awards of damages to AAA also begs modification.

The trial court held ZZZ liable for moral damages of ₱50,000.00, civil indemnity of ₱50,000.00, and exemplary damages of ₱25,000.00 for each count. The appellate court affirmed the grant of moral damages and civil indemnity but canceled the award of exemplary damages after finding no attendant aggravating circumstance in the cases. In line with prevailing jurisprudence,<sup>42</sup> the Court increases the amounts of moral damages and civil indemnity from ₱50,000.00 to ₱75,000.00 for each count of rape. The grant of exemplary damages is also restored in the amount of ₱75,000.00, also for each count.

All amounts due shall further earn legal interest of six percent (6%) *per annum* from the date of the finality of this judgment until full payment, following *Nacar v. Gallery Frames*.<sup>43</sup>

**WHEREFORE**, the appeal is **DISMISSED**. The November 28, 2014 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04489 is **AFFIRMED with MODIFICATION**. Accused-appellant ZZZ is hereby found **GUILTY** beyond reasonable doubt of two (2) counts of Rape under Article 266-A, Paragraph 1(a), and one (1) count of Statutory Rape defined under Article 266-A, Paragraph 1(d) of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997. He is sentenced to suffer the penalty of *reclusion perpetua* in each case. Accused-appellant ZZZ shall pay the victim AAA the following amounts for every count of Rape and Statutory Rape:

- (1) ₱75,000.00 as civil indemnity;
- (2) ₱75,000.00 as moral damages; and
- (3) ₱75,000.00 as exemplary damages.

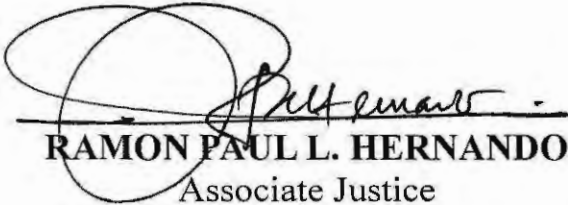
All amounts carry legal interest at the rate of six percent (6%) *per annum* from finality of this ruling until fully paid.

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<sup>42</sup> See *People v. XXX*, G.R. No. 243789, September 11, 2019; *People v. Francica*, 817 Phil. 972 (2017).

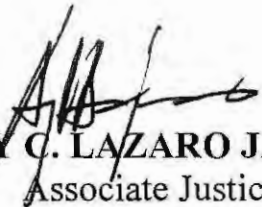
<sup>43</sup> 716 Phil. 267 (2013).

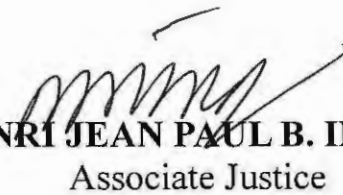
**SO ORDERED.**


  
**RAMON PAUL L. HERNANDO**  
Associate Justice

WE CONCUR:

  
**ROSMARI D. CARANDANG**  
Associate Justice


  
**AMY C. LAZARO JAVIER**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

**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.

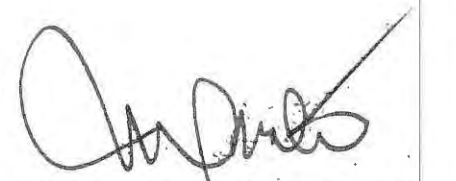


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**RAMON PAUL L. HERNANDO**  
Associate Justice  
Acting Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.



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**DIOSDADO M. PERALTA**  
Chief Justice