



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,** **G.R. No. 255677**

Plaintiff-Appellee,

Present:

— versus —

LEONEN, *SAJ.*, *Chairperson*,  
 LAZARO-JAVIER,  
 LOPEZ, M.,  
 LOPEZ, J., and  
 KHO, JR., *JJ.*

**XXX,\***

Accused-Appellant.

Promulgated:

DEC 07 2022

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**D E C I S I O N**

**M. LOPEZ, J.:**

Qualifying and aggravating circumstances are integral components of a crime that must be sufficiently alleged in the Information and established during trial with proof beyond reasonable doubt.<sup>1</sup> The accused cannot be held

\* The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act (R.A.) No. 7610, “An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes”; R.A. No. 9262, “An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and For Other Purposes”; Section 40 of Administrative Matter No. 04-10-11-SC, known as the “Rule on Violence Against Women and Their Children,” effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

<sup>1</sup> Revised Rules of Criminal Procedure, Rule 110, Section 8 provides that:  
 SECTION 8. *Designation of the offense.* — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and **specify its**

liable for the qualified nature of a crime and be condemned to suffer a higher penalty based on his own admission, the bare testimony of the complainant, or the stipulation of the parties. We observe these precepts in this Appeal assailing the Court of Appeals' (CA) Decision<sup>2</sup> dated June 23, 2020 in CA-G.R. CR HC No. 10042.

### ANTECEDENTS

XXX was charged with three counts of qualified rape before the Regional Trial Court, ██████████ City, Branch 214 (RTC), docketed as Criminal Case Nos. MC15-4695-FC, MC15-4696-FC, and MC15-4661-FC, thus:

#### [Criminal Case No. MC15-4695-FC]

That on or about the 14th of September 2013, in the City of ██████████, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously **have carnal knowledge of [AAA255677\*\*], a minor, twelve (12) years of age, against her will** and without her consent, to her damage and prejudice, **which act is qualified by the latter's minority and relationship to accused who is her step-father.**

CONTRARY TO LAW.

#### [Criminal Case No. MC15-4696-FC]

That on or about the first week of April 2014, in the City of ██████████, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously **have carnal knowledge of [AAA255677], a minor, twelve (12) years of age, against her will** and without her consent, to her damage and prejudice, **which act is qualified by the latter's minority and relationship to accused who is her step-father.**

CONTRARY TO LAW.

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**qualifying and aggravating circumstances.** If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. *Emphasis supplied.*

Also, Section 9 provides that:

SECTION 9. *Cause of the accusation.* — The acts or omissions complained of as constituting the offense and **the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute** but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment. *Emphasis supplied.*

<sup>2</sup> CA *Rollo*, pp. 109–123. Penned by Associate Justice Myra V. Garcia-Fenandez, with the concurrence of Associate Justices Fernanda Lampas-Peralta and Ruben Reynaldo G. Roxas.

\*\* The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006), and Amended Administrative Circular No. 83–2015 dated September 5, 2017.

## [Criminal Case No. MC15-4661-FC]

That on or about the 30th day of May 2015, in the City of [REDACTED], Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously **have carnal knowledge of [AAA255677], against her will** and without her consent, to her damage and prejudice, **which act is qualified by the fact that accused is the step-father of said AAA, a minor, twelve (12) years of age.**

CONTRARY TO LAW.<sup>3</sup> (Emphasis supplied)

XXX pleaded not guilty.

At the joint pre-trial, the parties stipulated on AAA255677's minority.<sup>4</sup> Trial then ensued. In Criminal Case No. MC15-4695-FC, AAA255677 testified that her mother just gave birth in a hospital. At that time, she was sleeping in the second floor of their house when she was awakened by the feeling of heaviness on her chest. AAA255677 then noticed that someone was pulling down her undergarments. Thereafter, AAA255677 saw her stepfather, XXX on top of her who was drunk and clad only in underwear. XXX lifted AAA255677's upper garments and pressed his body against her. AAA255677 felt pain when XXX inserted something in her vagina. AAA255677 was unsure what was inserted because XXX was not holding anything. Afterwards, AAA255677 felt something watery on the lower part of her body near her vagina. XXX told AAA255677 that one of her siblings urinated on her. AAA255677 cried out of fear after XXX left. In Criminal Case No. MC15-4696-FC, the prosecution established that AAA255677 was awakened when someone removed her clothes. AAA255677 shouted and cried after she felt that she was being choked. This caused her aunt to ask what was going on which prompted XXX to leave.<sup>5</sup>

In Criminal Case No. MC15-4661-FC, AAA255677 narrated that she and her siblings were taking an afternoon nap. AAA255677 was awakened when XXX transferred her little sibling to the cradle. Suddenly, XXX mounted AAA255677, removed her undergarments, and inserted his penis into her vagina. AAA255677 felt pain, got frightened, and cried. XXX stopped and put on his shorts when one of AAA255677's siblings woke up. Thereafter, XXX caressed AAA255677 from her feet up to her breasts. XXX gestured to AAA255677 to keep quiet and then he left. This gave AAA255677 the opportunity to escape together with her siblings. AAA255677 narrated to her mother what happened and they reported the matter to the police. The physical examination revealed that AAA255677 had a deep healed laceration at 9:00 o'clock position which was clearly caused by the penetration of a blunt object, such as a penis or a finger. The prosecution then offered documentary evidence consisting of inquest referral letter, sworn statements of the

<sup>3</sup> *Id.* at 56-57.

<sup>4</sup> *Id.* at 57.

<sup>5</sup> *Id.* at 57-60.

witnesses, joint affidavit of arrest, booking sheet, request for physical examination, medico-legal report, and anatomical sketch.<sup>6</sup>

XXX denied the accusations and claimed that on the date of the alleged first rape, he was with his wife at the hospital while AAA255677 and her siblings were left under the care of their grandmother. As regards the second rape charge, XXX averred that he was busy with his work as a cigarette and salt vendor, and was occupied looking for other employment. Anent the supposed third rape, XXX explained that he was at home taking care of his children. XXX was surprised when police officers arrested him. XXX believed that AAA255677 fabricated the stories of sexual abuse when he disallowed her to meet her friends and her biological father.<sup>7</sup>

On October 4, 2017, the RTC, in a Joint Decision,<sup>8</sup> convicted XXX for qualified rape in Criminal Case No. MC15-4661-FC. The prosecution proved that XXX had carnal knowledge of minor AAA255677. Moreover, the prosecution established the minority of AAA255677 based on the stipulation of the parties during the pre-trial, and her relationship to XXX as his stepdaughter based on XXX's own admission during the direct examination. Also, the RTC found XXX guilty in Criminal Case No. MC15-4695-FC for acts of lasciviousness punished under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act (R.A.) No. 7610 considering that AAA255677 was just 10 years old at the time of the sexual violation. The RTC pointed out that the prosecution's evidence negates carnal knowledge because it was inconclusive whether XXX inserted his penis into AAA255677's vagina. Nonetheless, the RTC acquitted XXX in Criminal Case No. MC15-4696-FC for insufficiency of evidence, *viz.*:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In CRIMINAL CASE NO. MC15-4661-FC[,] the court finds accused [XXX] GUILTY beyond reasonable doubt of Rape defined and penalized under Article 266-A of the Revised Penal Code in relation to Article 266-B of the Revised Penal Code, as amended, and is hereby meted out the penalty of RECLUSION PERPETUA. Further, he is ORDERED to pay [AAA255677] civil indemnity of FIFTY THOUSAND PESOS (₱50,000.00), FIFTY THOUSAND PESOS (₱50,000.00) as moral damages and THIRTY THOUSAND PESOS (₱30,000.00) as exemplary damages, subject to an interest rate of six percent (6%) per annum from finality of this decision until fully paid.

In CRIMINAL CASE NO. MC15-4695-FC, the court finds accused [XXX] GUILTY beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Article II, [S]ection 5 (b) of [R.A. No.] 7610 and is hereby sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY of RECLUSION TEMPORAL MINIMUM, as minimum, to SIXTEEN (16) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of RECLUSION

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 60-62.

<sup>8</sup> *Id.* at 56-73. Penned by Presiding Judge Imelda L. Portes-Saulog.

TEMPORAL MEDIUM, as maximum. Likewise, he is ORDERED to pay [AAA255677] TWENTY FIVE THOUSAND PESOS (₱25,000.00) as moral damages and TWENTY THOUSAND PESOS (₱20,000.00) as exemplary damages subject to an interest rate of six percent (6%) per annum from finality of this decision until fully paid.

In CRIMINAL CASE NO. MC15-4696-FC, ACCUSED [XXX] is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.<sup>9</sup>

XXX elevated the case to the CA docketed as CA-G.R. CR HC No. 10042. On June 23, 2020, the CA affirmed the RTC's findings with modifications as to the penalties and award of damages, to *wit*:

WHEREFORE, the appeal is DENIED. The decision of the [RTC] dated October 4, 2017 in Criminal Cases Nos. MC15-4661-FC and MC15-4695-FC is AFFIRMED with MODIFICATION, as follows:

1. In Criminal Case No. MC15-4661, accused-appellant [XXX] is found GUILTY beyond reasonable doubt of rape under Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended, and is sentenced to suffer the penalty of reclusion perpetua. In addition, said accused-appellant is ordered to pay private complainant [AAA255677] the amounts of One Hundred Thousand Pesos (₱100,000.00) for civil indemnity, One Hundred Thousand Pesos (₱100,000.00) for moral damages, and One Hundred Thousand Pesos (₱100,000.00) for exemplary damages; and,

2. In Criminal Case No. MC15-4695-FC, above[-]named accused-appellant is found GUILTY beyond reasonable doubt of acts of lasciviousness under Article 336 of the Revised Penal Code, as amended, in relation to Section 5 (b), Article III of R.A. 7610, and is sentenced to an indeterminate prison term of thirteen (13) years, nine (9) months and ten (10) days of *reclusion temporal* minimum, as minimum, to sixteen (16) years, five (5) months and nine (9) days of *reclusion temporal* medium, as maximum. In addition, accused-appellant is ordered to pay above[-]named private complainant the amounts of Twenty Thousand Pesos (₱20,000.00) for civil indemnity, Fifteen Thousand Pesos (₱15,000.00) for moral damages, Fifteen Thousand Pesos (₱15,000.00) for exemplary damages, and Fifteen Thousand Pesos (₱15,000.00) as fine.

Further, accused-appellant is ordered to pay private complainant interest on all damages awarded in both cases at the legal rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

SO ORDERED.<sup>10</sup>

Hence, this recourse.<sup>11</sup> The parties opted not to file supplemental briefs considering that all issues have already been exhaustively discussed in their pleadings before the CA. Thus, XXX reiterates his arguments that the

<sup>9</sup> *Id.* at 72–73.

<sup>10</sup> *Id.* at 121–122.

<sup>11</sup> See Notice of Appeal and Compliance dated July 9, 2020; *id.* at 124–126.

prosecution failed to establish the charges, and that AAA255677's testimony was incredible.

### RULING

The Appeal is partly meritorious.

XXX assailed his conviction on the ground that AAA255677's testimony is incredible. On this point, we stress that the CA and the RTC's assessment on the credibility of the prosecution witness and the veracity of her testimony are given the highest degree of respect,<sup>12</sup> especially if there is no fact or circumstance of weight or substance that was overlooked, misunderstood or misapplied, which could affect the result of the case.<sup>13</sup> Moreover, the trial court had the best opportunity to determine the credibility of the prosecution witness, having evaluated her emotional state, reactions and overall demeanor in open court.<sup>14</sup> Here, AAA255677 positively identified XXX as her ravisher. Also, AAA255677 vividly recounted her harrowing experience of sexual violations.

As such, XXX's uncorroborated denial and alibi cannot prevail over the positive declaration of the prosecution witness. These negative defenses are self-serving and undeserving of weight in law absent clear and convincing proof.<sup>15</sup> XXX did not adduce evidence that that he was somewhere else when the crimes were committed, and that it was physically impossible for him to be present at the crime scene or its immediate vicinity.<sup>16</sup> The crime scene, the alleged hospital, and XXX's place of work are within the same locality. It was not physically impossible for XXX to be in the place where the sexual abuses were committed. We now determine the criminal liability of accused-appellant.

*XXX is guilty of simple rape absent allegation and proof as to the concurrence of the special qualifying circumstance of minority and relationship.*

In Criminal Case No. MC15-4661-FC, XXX was charged with qualified rape. The Information sufficiently alleged that XXX had carnal knowledge of AAA255677 and the special qualifying circumstance of minority concurring with stepfather-stepdaughter relationship of the accused and the victim.<sup>17</sup> Corollarily, the elements of rape through sexual intercourse are: (1) the accused had carnal knowledge of the victim; and (2) that said act

<sup>12</sup> *People v. Matignas*, 428 Phil. 834, 868-869 (2002) [Per *J. Panganiban, En Banc*]; *People v. Jaberto*, 366 Phil. 556, 566 (1999) [Per *J. Panganiban, Third Division*]; and *People v. Deleverio*, 352 Phil. 382, 401 (1998) [Per *J. Vitug, En Banc*].

<sup>13</sup> *People v. Orosco*, 757 Phil. 299, 310 (2015) [Per *J. Villarama, Jr., Third Division*].

<sup>14</sup> *People v. Gerola*, 813 Phil. 1055, 1064 (2017) [Per *J. Caguioa, First Division*]; and *People v. Lumikid*, G.R. No. 242695, June 23, 2020, 940 SCRA 90, 100-101 [Per *C.J. Peralta, First Division*].

<sup>15</sup> *People v. Togahan*, 551 Phil. 997, 1013-1014 (2007) [Per *J. Tinga, Second Division*].

<sup>16</sup> *People v. Espina*, 383 Phil. 656, 668 (2000) [Per *J. Quisumbing, Second Division*].

<sup>17</sup> REVISED PENAL CODE, Article 266-B, paragraph 1.



was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.<sup>18</sup> Here, AAA255677 categorically narrated in open court how XXX forcibly undressed her and inserted his penis into her vagina. “As an element of rape, force, threat or intimidation need not be irresistible, but just enough to bring about the desired result.”<sup>19</sup> AAA255677 testified that she got frightened and cried. XXX threatened AAA255677 through his gesture warning her to keep silent. The existence of hymenal laceration based on the medical findings of the attending physician who examined AAA255677 further supports the fact of forcible defloration.<sup>20</sup>

As to the circumstance of minority of the victim, it is undisputed that the prosecution failed to adduce the certificate of live birth of AAA255677 or any acceptable substitutionary documentary evidence to prove her age. Instead, the prosecution relied on the stipulation of the parties during pre-trial, the testimony of AAA255677, and the factual findings of the CA and the RTC. On this score, the pronouncement in *People v. Pruna*<sup>21</sup> is instructive. In that case, the Court formulated guidelines after it surveyed jurisprudence where no birth certificate was presented and the prosecution did not duly prove the age of the victim as well as case law where the age of the victim was sufficiently established despite the failure to submit the birth certificate, as follows:

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

<sup>18</sup> *People v. Vañas*, 850 Phil. 201, 210–213 (2019) [Per J. Del Castillo, First Division].

<sup>19</sup> *People v. Hilarion*, 722 Phil. 52, 55 (2013) [Per J. Brion, Second Division].

<sup>20</sup> *People v. Banayat*, 828 Phil. 231, 240 (2018), citing *People v. Sabal*, 734 Phil. 742, 746 (2014) [Per J. Martires, Third Division].

<sup>21</sup> 439 Phil. 440 (2002) [Per C.J. Davide, Jr., *En Banc*].

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, **the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.**

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. **The trial court should always make a categorical finding as to the age of the victim.**<sup>22</sup> (Emphasis supplied; citation omitted)

In this case, this Court finds that the prosecution proved the minority of AAA255677 notwithstanding the non-presentation of her birth certificate. AAA255677, who was competent to testify on her age, stated that she was born on October 29, 2002, and that she was only 12 years old when XXX raped her. The CA and the RTC also made categorical rulings that the “*accused-appellant had carnal knowledge of private complainant without her consent and by force and intimidation on May 30, 2015, when the victim was twelve (12) years old.*”<sup>23</sup> More importantly, XXX openly admitted and stipulated during pre-trial that AAA255677 was a 12-year old minor. The accused’s admission of the age of the victim was express and clear. Taken together, the evidence indicating that AAA255677 was 12 years old at the time she was raped deserves probative value.<sup>24</sup>

With regard to the circumstance of relationship, the CA and the RTC anchored their findings that XXX is the stepfather of AAA255677 solely on his admission during direct examination that he is married to AAA255677’s mother, thus:

Q: Mr. witness do you know the complainant in this case?

A: Yes ma’am.

Q: And why do you know her?

A: She is the daughter of my wife in her first husband ma’am.

<sup>22</sup> *Id.* at 470–471.

<sup>23</sup> CA rollo, p. 116.

<sup>24</sup> *People v. XXX*, G.R. No. 244048, February 14, 2022 [Per *J. Hernando*, Second Division]; *People v. Sanay*, G.R. No. 248113, December 7, 2021 [Per *J. Caguioa*, First Division]; and *People v. Ordaneza*, G.R. No. 250640, May 5, 2021 [Per *J. Delos Santos*, Third Division].



Q: In other words Mr. witness she is your stepdaughter?

A: Yes ma'am

Q: Now Mr. witness how long have you been married to the mother of [AAA]?

A: Eight (8) years ma'am

Q: And when did you get married Mr. witness?

A: February 16, 2008 ma'am.<sup>25</sup>

Notably, the relationship between a stepfather and a stepdaughter assumes the existence of a legitimate relationship, that is, the stepfather should be legally married to the stepdaughter's mother. The best evidence to prove the relationship is a marriage contract.<sup>26</sup> Unlike in minority, the accused's admission is inconclusive to prove the fact of marriage or relationship. This is clear from the decisions in *People v. Victor*,<sup>27</sup> *People v. Mendoza, Jr.*,<sup>28</sup> *People v. Balbarona*,<sup>29</sup> and *People v. Abello*,<sup>30</sup> consistent with the rule that qualifying and aggravating circumstances must be proven with competent evidence.

In *Victor*, the declaration of accused-appellant that he was married to the victim's mother, even if made in the course of the proceedings in the trial court, is not a conclusive proof that the two are legally married. The prosecution cannot conveniently rely on the disputable presumption of marriage, to *wit*:

Oddly, the prosecution agreed that the case be submitted for the decision of the court instead of moving for the continuance of the hearing to enable accused-appellant to present to the court a copy of the said contract of marriage between him and [REDACTED]. This resulted in the prosecution's failure to offer in evidence the said marriage contract.

**The declaration of accused-appellant that he was married to [REDACTED], even if made in the course of the proceedings in the trial court, is not conclusive proof that the two are legally married. Said declaration did not dispense with the burden of the prosecution to adduce in evidence the marriage contract of accused-appellant and [REDACTED].** Neither may the prosecution rely on the disputable presumption that when a man and a woman live together as husband and wife, they are presumed to be married. Relationship is a qualifying circumstance in rape and must not only be alleged. It must also be proved beyond reasonable doubt as the crime itself.<sup>31</sup> (Emphasis supplied; citations omitted)

In *Mendoza, Jr.*, the bare testimony of the appellee and the admission of the appellant is likewise insufficient to prove their relationship. The seriousness of the penalty warrants such strict rule, thus:

<sup>25</sup> Records, pp. 271–272; TSN dated February 8, 2017, pp. 4–5.

<sup>26</sup> *People v. Santos*, 452 Phil. 1046, 1066 (2003) [Per J. Carpio, *En Banc*].

<sup>27</sup> 441 Phil. 798 (2002) [Per J. Callejo, Sr., *En Banc*].

<sup>28</sup> 455 Phil. 347 (2003) [Per J. Carpio Morales, *En Banc*].

<sup>29</sup> 472 Phil. 73 (2004) [Per J. Carpio Morales, *En Banc*].

<sup>30</sup> 601 Phil. 373 (2009) [Per J. Brion, Second Division].

<sup>31</sup> *People v. Victor*, *supra* note 27 at 813.

As for the special qualifying circumstance of [REDACTED] relationship with appellant, the prosecution failed to prove it beyond reasonable doubt. The complaint alleged that he is the father of [REDACTED]. [REDACTED] testified that appellant is her father. And appellant admitted during the pre-trial and the trial that he is [REDACTED] father. **The bare testimony of the complainant and the admission of the accused as to their relationship do not suffice, however, for an accused cannot be condemned to suffer the supreme penalty of death on the basis of stipulations or his own admissions. This strict rule is warranted by the seriousness of the penalty of death.** The fact that appellant is the father of [REDACTED] must be sufficiently established by competent and independent evidence. This the prosecution failed to discharge.

The February 10, 1997 Certification of the Bais City, Negros Oriental Civil Registrar which therein quotes entries on the "facts of birth appear[ing] in our Registry of Births on page 99 of book number 32" shows that [REDACTED] was born on October 30, 1982 to [REDACTED] and [REDACTED]. This does not, however, clearly prove with moral certainty the father-daughter relationship as the name of [REDACTED] father as indicated in the Certification is [REDACTED] and not [REDACTED].

The *concurrence* of the minority of the victim *and* her relationship to the offender constitutes *one* special qualifying circumstance which must be both alleged and proved with certainty, otherwise, the death penalty cannot be imposed.<sup>32</sup> (Emphasis supplied, citations omitted)

Similarly, *Balbarona* echoed that the relationship of the appellant to the victim cannot be established by mere testimony or even by the accused's very own admission of such relationship, *viz.*:

As a special qualifying circumstance raising the penalty for rape to death, the minority of the victim and her relationship to the offender must be alleged in the criminal complaint or information and proved conclusively and indubitably as the crime itself. While the above-quoted information alleged the concurrence of the victim's minority and her relationship to appellant as his daughter, the jurisprudentially required evidence to prove such circumstance is utterly lacking.

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**Likewise, the relationship of the accused to the victim cannot be established by mere testimony or even by the accused's very own admission of such relationship.**<sup>33</sup> (Emphasis supplied; citations omitted)

In *Abello*, the Court reiterates that marriage contract still remains the best evidence to prove the fact of marriage, to wit:

The three Informations all alleged the stepfather-stepdaughter relationship between AAA and Abello. Relationship as an alternative circumstance under Article 15 of the RPC, as amended, and is an aggravating circumstance in crimes against chastity and in rape. **This modifying circumstance, however, was not duly proven in the present case due to the prosecution's failure to present the marriage contract**

<sup>32</sup> *People v. Mendoza, Jr.*, *supra* note 28 at 368-369.

<sup>33</sup> *People v. Balbarona*, *supra* note 29 at 95-96.

**between Abello and AAA's mother.** If the fact of marriage came out in the evidence at all, it was *via* an admission by Abello of his marriage to AAA's mother. **This admission, however, is inconclusive evidence to prove the marriage to AAA's mother, as the marriage contract still remains the best evidence to prove the fact of marriage.** This stricter requirement is only proper as relationship is an aggravating circumstance that increases the imposable penalty, and hence must be proven by competent evidence.<sup>34</sup> (Emphasis supplied; citations omitted)

In this case, the prosecution failed to present the marriage contract between XXX and AAA255677's mother. Neither of the parties stipulates on the relationship between the accused-appellant and the victim. **The admission of XXX during his direct examination that he was married to AAA255677's mother is not part of the prosecution evidence in chief, and did not dispense the duty to offer the proof of marriage.** The prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the defense.<sup>35</sup> Had XXX waived his right to testify, the CA and the RTC would have no basis to qualify the crime. To be sure, the prosecution had already rested its case when XXX made the admission. Inarguably, the prosecution did not present independent evidence to prove the fact of marriage. Evidently, the flaw committed by the prosecution spared XXX from the gallows of qualified rape and its prescribed penalty. At most, XXX is liable only for simple rape in Criminal Case No. MC15-4661-FC.

*XXX is liable for Lascivious Conduct under Section 5(b) of R.A. No. 7610 since the Information alleged that the victim was exactly 12 years old although it was proven during trial that she was below the threshold age at the time of the commission of the offense.*

In Criminal Case No. MC15-4695-FC, this Court agrees with the CA and the RTC's factual findings that XXX violated Section 5(b) of R.A. No. 7610 absent evidence of carnal knowledge of the victim. Yet, the CA and the RTC reversibly erred in the classification of the offense. The Court provided the guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty,<sup>36</sup> to wit:

<sup>34</sup> *People v. Abello*, *supra* note 30 at 396-397.

<sup>35</sup> *Patula v. People*, 685 Phil. 376, 391-392 (2012) [Per J. Bersamin, First Division].

<sup>36</sup> *People v. Ursua*, 819 Phil. 467, 480 (2017) [Per J. Peralta, Second Division]; and *People v. Caoili*, 815 Phil. 839, 893-894 (2017) [Per J. Tijam, *En Banc*]. See also *People v. Tulagan*, 849 Phil. 197, 228 (2019) [Per J. Peralta, *En Banc*, citing *People v. Caoili*, *supra*].

1. The age of the victim is taken into consideration in designating the offense, and in determining the imposable penalty.

2. If the **victim is under twelve (12) years of age, the nomenclature of the crime should be “Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610.”** Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, **the imposable penalty is *reclusion temporal* in its medium period.**

3. **If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as “Lascivious Conduct under Section 5(b) of R.A. No. 7610,” and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.**<sup>37</sup> (Emphasis supplied; citation omitted)

Here, the CA and the RTC erred in convicting XXX of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610.<sup>38</sup> Although AAA255677 was just 10 years old at the time of the sexual violation, such fact cannot be appreciated because her age as alleged in the Information was exactly 12 years old which is different from that actually proven. Hence, the offense should be designated as lascivious conduct under Section 5(b) of R.A. No. 7610, and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.<sup>39</sup> Indeed, the prosecution proved all the elements of the offense, to wit: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.<sup>40</sup>

It is undisputed that AAA255677 was a minor at the time of the commission of the offense and is, therefore, within the protective mantle of the law.<sup>41</sup> Also, XXX committed lascivious conduct to arouse or gratify his sexual desires,<sup>42</sup> when he intentionally removed the undergarments of AAA255677, mounted her, pressed his body against her, and inserted something in her vagina.<sup>43</sup> Further, it was proven that AAA255677 was

<sup>37</sup> *People v. Ursua*, *supra* at 480–481.

<sup>38</sup> AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES; approved: June 17, 1992.

<sup>39</sup> *People v. Tulagan*, *supra* note 36 at 229.

<sup>40</sup> *People v. Sumingwa*, 618 Phil. 650, 667 (2009) [Per *J. Nachura*, Third Division].

<sup>41</sup> Republic Act No. 7610, Article 1, Section 3 (a) provides:  
SEC. 3. Definition of Terms-

(a) “**Children**” refers to persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]

<sup>42</sup> *PO3 Sombilon, Jr. v. People*, 617 Phil. 187, 196–197 (2009) [Per *J. Leonardo-De Castro*, First Division].

<sup>43</sup> Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement the provisions of R.A. No. 7610 defines lascivious conduct as follows:

SECTION 2. Definition of Terms. – x x x

x x x x

h) “Lascivious conduct” means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia,

subjected to other sexual abuse because she indulged in lascivious conduct under XXX's coercion and influence.<sup>44</sup> XXX's moral ascendancy over AAA255677 is an *indicium* of coercion.<sup>45</sup> More telling is that AAA255677 cried out of fear after the sexual violation.

*The Court finds it proper to modify the penalties and award of damages corresponding to XXX's criminal liabilities.*

In Criminal Case No. MC15-4661-FC, XXX is liable only for simple rape and should be sentenced with *reclusion perpetua*.<sup>46</sup> Also, pursuant to current jurisprudence,<sup>47</sup> the crime entitles the victim to the award of ₱75,000.00 civil indemnity, ₱75,000.00 moral damages, and ₱75,000.00 exemplary damages, all with interest at the rate of 6% per annum from the date of finality of the judgment until fully paid.<sup>48</sup>

As discussed earlier, XXX is guilty in Criminal Case No. MC15-4695-FC for lascivious conduct under Section 5(b) of R.A. No. 7610 which prescribes the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* which has a range of fourteen (14) years, eight (8) months and one (1) day to *reclusion perpetua*. Applying the Indeterminate Sentence Law, and considering that there are neither mitigating nor aggravating circumstance, the maximum term of the indeterminate sentence should be taken from the medium period of the prescribed penalty or between seventeen (17) years, four (4) months and one (1) day to twenty (20) years. Whereas, the minimum term must be within the range of the penalty next lower in degree from that prescribed for the offense or *prision mayor* in its medium period to *reclusion temporal* in its minimum period which has a range of eight (8) years and one (1) day to fourteen (14) years and eight (8) months. Thus, this Court modifies the penalty and imposes upon accused-appellant the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, and to pay a fine of ₱15,000.00.<sup>49</sup> As to the civil liability of accused-appellant, this Court deems it proper to award ₱50,000.00 civil indemnity, ₱50,000.00 moral damages, and ₱50,000.00 exemplary damages

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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[.]

<sup>44</sup> See *Olivarez v. Court of Appeals*, 503 Phil. 421, 432–433 (2005) [Per *J. Ynarez-Santiago*, First Division]. In this case, the Court explained that the phrase, "other sexual abuse" covers not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult. *Id.* at 432.

<sup>45</sup> See *Olivarez v. Court of Appeals*, *supra* in this case, the Supreme Court explained that the phrase, "other sexual abuse" covers not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult. *Id.*

<sup>46</sup> REVISED PENAL CODE, Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 1.

<sup>47</sup> *People v. Jugueta*, 783 Phil. 806 (2016) [Per *J. Peralta*, *En Banc*].

<sup>48</sup> *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per *J. Peralta*, *En Banc*].

<sup>49</sup> Republic Act No. 7610, Article XII, Section 31(f). See also *People v. VVV*, G.R. No. 230222, June 22, 2020, 939 SCRA 96 [Per *J. Inting*, Second Division]; and *People v. BBB*, G.R. No. 232071, July 10, 2019 [Per *J. Peralta*, Third Division].



consistent with prevailing jurisprudence.<sup>50</sup> The award of damages shall all earn interest at the rate of 6% per annum from finality of this Decision until fully paid.

On a final note, this Court reminds that the Information must allege not only the elements of the crime, but also the proper qualifying and aggravating circumstances that would change the nature of the offense or increase the penalty. In case of doubt in the allegations in the Information, such doubt shall be construed in favor of the accused and against the State if only to give life to the constitutional right of the accused to be informed of the nature and cause of the accusation against them and their presumption of innocence.<sup>51</sup>

**ACCORDINGLY**, the Appeal is **DISMISSED**. The Court of Appeals' Decision dated June 23, 2020 in CA-G.R. CR HC No. 10042 is **AFFIRMED** with **MODIFICATIONS**.

In Criminal Case No. MC15-4661-FC, accused-appellant XXX is found **GUILTY** of simple rape and is sentenced to suffer the penalty of *reclusion perpetua*. Accused-appellant is also held liable to pay the victim ₱75,000.00 civil indemnity, ₱75,000.00 moral damages, and ₱75,000.00 exemplary damages.

In Criminal Case No. MC15-4695-FC, accused-appellant is found **GUILTY** of lascivious conduct under Section 5(b) of Republic Act No. 7610 and is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, and to pay a fine of ₱15,000.00. Accused-appellant is also ordered to pay ₱50,000.00 civil indemnity, ₱50,000.00 moral damages, and ₱50,000.00 exemplary damages.

The award of damages in both cases shall all earn legal interest at the rate of 6% per annum from the finality of this Decision until full payment.

**SO ORDERED.**

  
**MARIO V. LOPEZ**  
Associate Justice

<sup>50</sup> *People v. Tulagan*, *supra* note 36.

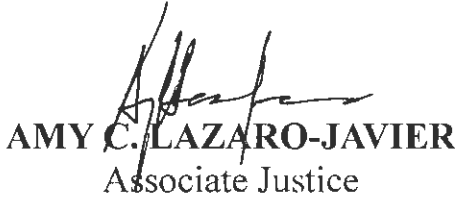
<sup>51</sup> *People v. XYZ*, G.R. No. 244255, August 26, 2020, 947 SCRA 96 [Per J. Gesmundo, Third Division].



**WE CONCUR:**



**MARVIC M.V. F. LEONEN**  
Senior Associate Justice  
Chairperson



**AMY C. LAZARO-JAVIER**  
Associate Justice



**JHOSEP Y. LOPEZ**  
Associate Justice



**ANTONIO T. KHO, JR.**  
Associate Justice

**ATTESTATION**

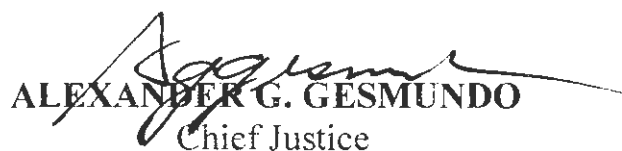
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M.V. F. LEONEN**  
Senior Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Article VIII, Section 13 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.



**ALEXANDER G. GESMUNDO**  
Chief Justice