



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff-Appellee,

**G.R. No. 240441**

Present:

PERLAS-BERNABE,\*\* J.,  
 REYES, A., JR.,  
*Acting Chairperson,*  
 HERNANDO,  
 INTING, and  
 ZALAMEDA,\*\*\* JJ.

- versus -

**XXX,\***

Accused-Appellant.

Promulgated:

**04 DEC 2019**

X-----X

**DECISION**

**REYES, A., JR., J.:**

*In a criminal case where the life and liberty of the accused are at stake, every qualifying circumstance alleged in the Information must be proved as much as the crime itself. Thus, in the crime of rape and lascivious conduct under Republic Act (R.A.) No. 7610,<sup>1</sup> an allegation that the accused is the common-law spouse of the victim's mother must be sufficiently established. Equally noteworthy, the terms "common-law spouse" and*

\* At the victim's instance or, if the victim is a minor, that of his or her guardian, the complete name of the accused may be replaced by fictitious initials and his or her personal circumstances blotted out from the decision, resolution, or order if the name and personal circumstances of the accused may tend to establish or compromise the victims' identities, in accordance with Amended Administrative Circular No. 83-2015 (III [1][c]) dated September 5, 2017.

\*\* On official business.

\*\*\* Designated additional Member per Special Order No. 2727 dated October 25, 2019; on official leave.

<sup>1</sup> AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES (Approved on June 17, 1992).

*Reyes*

*“step-parent” are distinct terms bearing different legal meanings, which may not be used interchangeably.*

This treats of the Notice of Appeal<sup>2</sup> under Section 13(c), Rule 124 of the Rules on Criminal Procedure, as amended by A.M. No. 00-5-03-SC filed by accused-appellant XXX, seeking the reversal of the Decision<sup>3</sup> dated January 25, 2018, rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 08224, which affirmed the trial court’s ruling convicting him of the crimes of Violation of Section 5(b), Article III of R.A. No. 7610; Rape under Article 266-A, paragraph 1(d) of the Revised Penal Code (RPC); and Rape under Article 266-A, paragraph 1(a) of the RPC.

### **The Antecedents**

XXX was charged in three separate Informations with Violation of Section 5(b), Article III of R.A. No. 7610, Statutory Rape, and Rape under Article 266-A, paragraph 1(d) of the RPC, committed as follows:

#### **Criminal Case No. IR-7893**

That in the afternoon of December 2, 2006, inside their house at [REDACTED] Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in total disregard of the minority and naivety of the complainant, did, then and there willfully, unlawfully and feloniously commit an act of lascivious conduct upon one BBB,<sup>4</sup> a 14-year old girl, by then and there pulling and removing the latter’s blanket, placing his hand under the said minor’s shirt, and caressing her breast and legs while whispering to the latter words in the dialect “*sige na*”, thereby causing psychological injury, fear, trauma and shock to the minor-complainant, to the latter’s damage and prejudice in such amount as may be proven in court.

ACTS CONTRARY TO LAW.<sup>5</sup>

#### **Criminal Case No. IR-7957**

That sometime in August 1998 at around noontime and at the banana plantation in [REDACTED] Iriga City, Philippines and within the jurisdiction of this Honorable Court, the said accused, the step father of the complainant, taking advantage of the latter’s minority, and armed with a bolo, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge of his

<sup>2</sup> CA rollo, pp. 129-130.

<sup>3</sup> Penned by Associate Justice Victoria Isabel A. Paredes, with Presiding Justice and Chairperson Romeo F. Barza and Associate Justice Mario V. Lopez (now a Member of this Court), concurring; id. at 115-124.

<sup>4</sup> 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 the Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>5</sup> CA rollo, pp. 80-81.

*Reyes*

stepdaughter AAA who was then 8 years old and a minor at the time of the incident, by inserting his penis into her vagina against the latter's will, to the damage and prejudice of the said AAA in such amount as may be proven in court.

ACTS CONTRARY TO LAW.<sup>6</sup>

**Criminal Case No. IR-7958**

That sometime in April 2002 in the evening and at the coprahan in [REDACTED] Iriga City, Philippines and within the jurisdiction of this Honorable Court, the said accused, the step father of the complainant, taking advantage of the latter's minority and armed with a bolo, by means of force, threat and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge of his stepdaughter AAA who was then 13 years old and a minor at the time of the incident, by inserting his penis into her vagina against the latter's will, to the damage and prejudice of said AAA in such amount as may be proven in court.

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

XXX pleaded not guilty to the charges. Trial on the merits ensued thereafter.<sup>8</sup>

The antecedent facts reveal that AAA and BBB are daughters of CCC, a widow. In January 1997, CCC and XXX started living together in Iriga City.<sup>9</sup>

Sometime in August 1998, XXX ordered AAA to bring his bolo to the banana plantation in Iriga City. AAA was then 10 years old. When AAA handed over the bolo, XXX took hold of her, directed her to remove her clothes, and ordered her to lie down on the ground. XXX threatened to kill her, should she refuse to obey his command. Out of fear, AAA obliged. Then, XXX removed his own clothes and positioned himself on top of AAA. He forcibly had carnal knowledge of her. The rape lasted for about an hour. AAA cried the whole time. Then, XXX told AAA to get dressed and warned her not to tell the incident to anyone, or else he will harm her family.<sup>10</sup>

Sometime in April 2002, at around 11:00 p.m., AAA was sleeping inside their house when XXX woke her up. He told her to quietly go outside the house. Fearful of what he might do to her family, AAA obliged.<sup>11</sup>

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<sup>6</sup> Id. at 81.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. at 83.

<sup>10</sup> Id.

<sup>11</sup> Id.

*peyer*

XXX took AAA to the coconut kiln. There, he ordered AAA to lie down on the floor. He removed her underwear, then took off his own clothes and laid on top of her. After which, he inserted his penis inside her vagina and made several push and pull movements. When he finished, he directed AAA to dress up and go back home.<sup>12</sup>

Sometime in December 2006, while BBB was sleeping in her room, she suddenly felt someone tugging her blanket. Upon waking, she saw XXX beside her. XXX inserted his hands under her shirt, mashed her breasts, and caressed her legs. She refused XXX's advances, which angered him. He warned her against talking back to him.<sup>13</sup>

Fearful that XXX might rape her, BBB reported the matter to their neighbor DDD.<sup>14</sup>

On December 8, 2006, AAA likewise reported the rape incident to the police authorities. Thereafter, AAA was referred to the City Health Office for medico-legal examination. The findings revealed that AAA had deep, healed lacerations in several positions on her hymen.<sup>15</sup>

XXX vehemently denied the charges leveled against him. He related that he started living with CCC when AAA was already 10 years old. As such, AAA's claim that she was raped when she was only 8 years old was untrue. Neither could he have raped her in April 2002, because at that time, CCC was already living in their house and would have thus immediately found out about the incident.<sup>16</sup>

Likewise, XXX averred that BBB's claim was untrue, considering that he no longer lived with them at the time of the alleged incident because he left after Typhoon Reming destroyed their house.<sup>17</sup>

### **Ruling of the RTC**

On January 26, 2016, the RTC rendered a Joint Judgment<sup>18</sup> convicting XXX of the crimes of violation of Section 5(b), Article III of R.A. No. 7610, Statutory Rape under Article 266-A, paragraph 1(d) of the RPC, and Rape under Article 266-A, paragraph 1(a) of the RPC.

The dispositive portion of the RTC ruling reads:

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<sup>12</sup> Id.

<sup>13</sup> Id. at 84.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id. at 60.

<sup>18</sup> Rendered by Presiding Judge Manuel M. Rosales; id. at 57-66.

*Meyer*

WHEREFORE, premises considered, judgment is hereby rendered finding [XXX] *GUILTY* beyond reasonable doubt,

in Criminal Case No. IR-7893 – for the crime of SEXUAL ABUSE under Section 5(b), Article III of [R.A. No.] 7610 and imposing upon him the penalty of *reclusion perpetua* and ordered to pay Private Complainant BBB the following: Php20,000.00 as civil indemnity, Php15,000.00 as moral damages, and Php15,000.00 as exemplary damages, with 6% annual interest from the time of finality of this judgment until full payment.

in Criminal [Case] Nos. IR-7957 and 7958 – for the crimes of STATUTORY RAPE and RAPE under ART. 266-A respectively and imposing upon him the penalty of *reclusion perpetua* without the possibility of parole for each [crime]. He is further ordered to pay Private Complainant AAA the amount of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, and Php30,000.00 as exemplary damages, with 6% annual interest from the time of finality of this judgment until full payment.

SO ORDERED.<sup>19</sup>

Aggrieved, XXX filed an appeal with the CA.

### **Ruling of the CA**

On January 25, 2018, the CA rendered the assailed Decision,<sup>20</sup> affirming with modification the conviction meted by the RTC.

The CA held that XXX may only be convicted of simple rape in Criminal Case Nos. IR-7957 and IR-7958, considering that the allegation in the Information that XXX was AAA's stepfather was never actually proven during the trial. What was established was simply that XXX was the common law spouse of the victim's mother.<sup>21</sup>

Also, the CA increased the awards of exemplary damages from P30,000.00 to P75,000.00; while maintaining the awards of civil indemnity of P75,000.00; and moral damages of P75,000.00.<sup>22</sup>

As for Criminal Case No. IR-7893, for violation of Section 5(b), Article III of R.A. No. 7610, the CA held that the aggravating circumstance of relationship may not be considered, as the said circumstance was not alleged in the Information. Accordingly, absent any mitigating or

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<sup>19</sup> Id. at 66.

<sup>20</sup> Id. at 115-124.

<sup>21</sup> Id. at 122.

<sup>22</sup> Id.

*Meyee*

aggravating circumstances, the penalty shall be applied in its medium period, which is *reclusion temporal* in its maximum period.<sup>23</sup>

As for the damages awarded, the CA affirmed the awards of civil indemnity, moral damages and exemplary damages of ₱75,000.00 each. In addition, the CA ordered XXX to pay a fine of ₱15,000.00.<sup>24</sup>

The dispositive portion of the assailed CA decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed January 26, 2016 *Joint Judgment* of the [RTC], Branch 34, Iriga City, is MODIFIED, thus:

(1) In Criminal Case Nos. IR-7957 and 7958, the penalty of *reclusion perpetua* is sustained for each count but the phrase “without the possibility of parole” is REMOVED pursuant to A.M. No. 15-08-02-SC; while the award of exemplary damages is INCREASED to Php 75,000.00 EACH count; and

(2) In Criminal Case No. IR-7893. The appellant is SENTENCED to an indeterminate penalty of imprisonment of fourteen (14) years and eight (8) months of *reclusion temporal* minimum, as minimum, to twenty (20) years of *reclusion temporal* maximum, as maximum; and he is further ORDERED to pay a FINE of Php 15,000.00.

The rest of the assailed Joint Judgment STANDS.

SO ORDERED.<sup>25</sup>

Aggrieved, XXX filed a Notice of Appeal<sup>26</sup> under Rule 124, Section 13(c) of the Rules of Criminal Procedure.

### The Issue

The main issue raised for the Court’s resolution is whether or not the prosecution proved beyond reasonable doubt XXX’s guilt for the crimes charged.

XXX assails the credibility of AAA and BBB, alleging that their testimonies are inconsistent and incredible.<sup>27</sup> Particularly, he points out that in AAA’s direct testimony, she claimed that she was first raped in August 1998, when she was just 8 years old. However, on cross-examination, AAA contradicted herself, and stated that she was 10 when she was first raped.<sup>28</sup>

<sup>23</sup> Id. at 123.

<sup>24</sup> Id.

<sup>25</sup> Id. at 123-124.

<sup>26</sup> Id. at 129.

<sup>27</sup> Id. at 33.

<sup>28</sup> Id. at 39-40.

*Mejia*

He avers that it was impossible for him to have committed the crime, as he started cohabiting with CCC when AAA was already 10 years old.<sup>29</sup>

In the same vein, XXX alleges that AAA's behavior after the purported rape renders her tale questionable. It was strange that AAA did not even bother to wake up her siblings, or seek help, despite knowing XXX's plan to rape her. Instead, she willingly walked with him to the coconut kiln. Also, it was odd that after the purported rape incident, AAA simply returned to their house and went back to sleep as if nothing terrible happened. XXX urges that it is beyond comprehension that AAA still stayed with him, and still treated him as her stepfather, if he indeed defiled her.<sup>30</sup>

In addition, XXX contends that AAA's reason for reporting the rape incident was suspect, as she admitted that she filed the case out of fear that XXX will rape her sister BBB. According to XXX, this proves that she was merely coaxed by DDD to file charges against him. Added to all this, it took nine years from the first rape incident, and five years from the second incident, for AAA to report the rape.<sup>31</sup>

Similarly, XXX surmises that the lacerations in AAA's hymen could have been caused by other factors.<sup>32</sup>

Furthermore, XXX points out that the prosecution failed to prove the elements of force and intimidation. AAA admitted that he did not force or intimidate her into committing the sexual acts. Although she claimed that XXX threatened her, these threats were allegedly done after the commission of the rape, and thus, could not have been sufficient to subdue her.<sup>33</sup>

Anent BBB's accusation, XXX claims that he could not have sexually abused her on December 2, 2006, considering that at that time, BBB was already living with DDD, while he was living alone in a makeshift house in Iriga City.<sup>34</sup>

XXX likewise claims that the prosecution failed to prove all the elements for violation of Section 5(b), Article III of R.A. No. 7610. BBB did not claim that XXX forced her or intimidated her, or subdued the free exercise of her will.<sup>35</sup>

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<sup>29</sup> Id. at 45.

<sup>30</sup> Id. at 41.

<sup>31</sup> Id. at 42-43.

<sup>32</sup> Id. at 47.

<sup>33</sup> Id. at 47-48.

<sup>34</sup> Id. at 45.

<sup>35</sup> Id. at 50.

*Meyer*

On the other hand, the People, through the Office of the Solicitor General (OSG), counters that the prosecution sufficiently proved XXX's guilt beyond reasonable doubt. The OSG maintains that the prosecution sufficiently established all the elements for the crimes charged, and the testimonies of the victims AAA and BBB were worthy of credence.<sup>36</sup>

### **Ruling of the Court**

*The instant appeal is bereft of merit.*

#### ***The Prosecution Established Beyond Reasonable Doubt the Guilt of XXX for the Crimes of Rape Under Article 266-A, 1(a) and 1(d)***

Article 266-A of the RPC, as amended by R.A. No. 8353,<sup>37</sup> defines the crime of rape as follows:

**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;

Accordingly, to sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt, namely: (i) that the accused had carnal knowledge of the victim; and (ii) that said act 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>38</sup>

In the instant case, the Informations in Criminal Case Nos. IR-7957 and IR-7958, charge XXX with raping AAA twice.

<sup>36</sup> Id. at 84-102.

<sup>37</sup> *The Anti-Rape Law of 1997.*

<sup>38</sup> *People v. Esteban*, 735 Phil. 663, 670 (2014).

*Meyer*



The first rape incident took place in April 1998, when AAA was merely 10 years old. AAA's age was sufficiently established from her testimony, and confirmed through the presentation of her birth certificate, which indicates that she was born on February 19, 1988.<sup>39</sup> This proves that she was in fact 10 years old in April 1998.

It cannot be gainsaid that "sexual congress with a girl under 12 years old is always rape."<sup>40</sup> In statutory rape, force and intimidation are immaterial, and the only subject of inquiry is the age of the child and whether carnal knowledge in fact took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years. In the same vein, the child's consent is immaterial because of her presumed incapacity to discern evil from good.<sup>41</sup>

The fact of carnal knowledge was proven through the credible testimony of AAA, viz.:

Prosecutor Nonna Beltran:

Q: After giving to [XXX] the bolo, what happened?

A: He take [sic] hold of me.

Q: After that, what happened next?

A: He instructed me to remove my clothes and he asked me to lie down on the ground.

Q: Did you follow the instruction of your stepfather to remove your clothes?

A: Yes, ma'am.

Q: Why did you obey that instruction of [XXX] to remove your clothes?

A: I obeyed to [sic] the instruction given to me by [XXX] because he said that if I will not obey him, he will kill my family.

Q: When [XXX] was uttering those words, where was then the bolo which you delivered to him?

A: The bolo was beside him.

x x x x

THE COURT:

Q: The question is what [XXX] did to you and not what you did.

A: [XXX] raped me already.

Prosecutor Beltran:

Q: When [XXX] raped you, what was your position.

A: I was lying down on the ground.

<sup>39</sup> CA rollo, p. 89.

<sup>40</sup> *People v. Sabal, Jr.*, 734 Phil. 742, 745 (2014), citing *People v. Perez*, 595 Phil. 1232, 1260 (2008).

<sup>41</sup> *People v. Sabal*, id., citing *People v. Teodoro*, 622 Phil. 328, 342-343 (2009).

*Meyer*

Q: And what was then the position of your legs?

A: Open legs.

Q: And when you said you were already lying down and your legs were open, where was [XXX] in relation to you?

A: He was on top of me.

x x x x

Q: When [XXX] laid down on top of you, what did he do in relation to your vagina?

x x x x

A: **[XXX] inserted his penis to my vagina.**

Q: And what did you feel when [XXX] inserted his penis to your vagina?

A: I felt pain, ma'am.

Q: **And after [XXX] was able to insert his penis to your vagina, what movement did he do if any?**

A: **He made a push and pull movement.**<sup>42</sup> (Emphases ours)

XXX assails AAA's credibility by claiming that she made inconsistent statements regarding her age in April 1998. XXX points out that, during AAA's direct examination, she claimed that she was 8 years old when XXX first raped her. However, she later on stated during her cross examination that was already 10 years old when she was first raped.

**XXX's argument fails to persuade.**

"In statutory rape, time is not an essential element except to prove that the victim was a minor below twelve years of age at the time of the commission of the offense."<sup>43</sup> Thus, what matters in the instant case is the fact that the prosecution established that AAA was definitely short of 12 years when she was raped.

Anent the charge of rape through force and intimidation, AAA credibly narrated that sometime in April 2002, XXX ordered her to go with him to the coconut kiln. AAA was left with no choice but to obey XXX, out of fear that he will kill her family if she refuses to give in to his advances.<sup>44</sup> Undoubtedly, XXX succeeded in having carnal knowledge with AAA by intimidating her into submission.

<sup>42</sup> CA rollo, pp. 90-91.

<sup>43</sup> *People v. Teodoro*, supra note 41, at 344.

<sup>44</sup> CA rollo, p. 94.

*Mejia*

Added to this, AAA, being a child of tender years easily succumbed to XXX's intimidation and coercion. It must be remembered that AAA looked at XXX as her "Tatay."<sup>45</sup> XXX's moral ascendancy as common-law spouse of the victims' mother takes the place of force and intimidation as an element of rape.<sup>46</sup> It is well-settled that the term "intimidation" may also include moral intimidation and coercion,<sup>47</sup> which are precisely what XXX used to overpower AAA.

***AAA's Behavior After the Rape Incidents, and Her Failure to Timely Report the Abuse She Experienced Do Not Destroy Her Credibility***

XXX cannot attack AAA's credibility by claiming that her behavior and actuations after the rape incident are atypical of a rape victim. To begin with, there is no such thing as a typical reaction or norm of behavior among rape victims. The workings of the human mind when placed under emotional stress is unpredictable. Some victims may shout, some may faint, while others may be shocked into insensibility. Not every victim can be expected to act with reason or conformably with the usual expectation of mankind.<sup>48</sup> Certainly, it is unfair to expect and demand a rational reaction or a standard behavioral response from AAA, who was confronted with such startling and traumatic experience. Her failure to shout, or seek for help does not negate rape. Neither shall her refusal to get angry at XXX or leave her residence be taken against her.

Furthermore, AAA's credibility is not affected by her delay in reporting the rape incident.

In *People v. Gersamio*<sup>49</sup> and *People v. Velasco*,<sup>50</sup> the Court emphasized that the victim's failure to report the rape to other persons does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge,<sup>51</sup> and does not necessarily cast doubt on the credibility of the victim.<sup>52</sup> This especially holds true if the victim faces the threat of physical violence.<sup>53</sup> Unfortunately for the victim, pain and ignominy are better than risking having the offender make good his threats of retaliation.<sup>54</sup> In fact, "it is not uncommon for a

<sup>45</sup> Id. at 95.

<sup>46</sup> *People v. Viernes*, 423 Phil. 463, 484 (2001).

<sup>47</sup> *Quimvel v. People*, 808 Phil. 889, 930 (2017); *People v. Leonardo*, 638 Phil. 161, 186 (2010).

<sup>48</sup> *People v. Zafrá*, 712 Phil. 559, 572 (2013).

<sup>49</sup> 763 Phil. 523 (2015).

<sup>50</sup> 722 Phil. 243 (2013).

<sup>51</sup> *People v. Gersamio*, supra note 49, at 536-537.

<sup>52</sup> *People v. Velasco*, supra note 50, at 253-254.

<sup>53</sup> Id. at 255.

<sup>54</sup> *People v. Gersamio*, supra note 49, at 536-537.

*Meyer*

young girl to be intimidated and cowed into silence and conceal for some time the violation of her honor, even by the mildest threat against her life.”<sup>55</sup> In AAA’s case, she was cowed into silence by XXX, who threatened to kill her family should she report the rape incident.

***The Prosecution Sufficiently Proved Beyond Reasonable Doubt that XXX is Guilty of Lascivious Conduct Under Section 5(b), Article III of R.A. No. 7610 Committed Against BBB***

Essentially, Section 5(b) of R.A. No. 7610 states in no uncertain terms that:

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

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

X X X X

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

To sustain a conviction under Section 5(b) of R.A. No. 7610, the prosecution must establish that: (i) the accused commits an act of sexual intercourse or lascivious conduct; (ii) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (iii) the child is below 18 years old.<sup>56</sup>

Parenthetically, “‘lascivious conduct’ means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of

<sup>55</sup> *People v. Mantis*, 477 Phil. 275 (2004), citing *People v. Bea, Jr.*, 366 Phil. 334, 340-341 (1999).

<sup>56</sup> *People v. Rayon, Sr.*, 702 Phil. 672, 684 (2013).

*Reyes*

any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.”<sup>57</sup>

Furthermore, a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult.<sup>58</sup>

XXX’s acts of inserting his hands inside BBB’s t-shirt, mashing her breasts, and caressing her legs to gratify his sexual desire, undoubtedly fall under the definition of lascivious conduct under Section 2(h) of the rules and regulations of R.A. No. 7610.

XXX used his moral ascendancy over BBB, the daughter of his common-law spouse, in order to perpetrate his lascivious conduct. BBB lived with XXX during her formative years, and had always regarded him as her father. Added to this, BBB was afraid of him because he usually beat her and her family whenever he was in a bad mood.<sup>59</sup>

Finally, as established through BBB’s testimony and birth certificate, she was only 14 years old when XXX molested her. BBB was born on September 11, 1992,<sup>60</sup> which makes her 14 years old when she was molested on December 2, 2006.

The following exchange reveals BBB’s harrowing experience:

Prosecutor Nonna Beltran:

Q: Miss Witness, do you recall where were you in the early morning of December 2, 2006.

A: Yes, ma’am.

Q: Where were you?

A: I was then in the room sleeping.

x x x x

Q: While you said you were sleeping, what happened?

A: I was awakened when I felt the blanket was being pulled away.

x x x x

Q: After you were awakened, what happened next?

A: As I have said, after I was awakened, I saw [XXX] on my side and I noticed that he inserted his hand under my shirt.

x x x x

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<sup>57</sup> Id. at 683.

<sup>58</sup> *People v. Montinola*, 567 Phil. 387, 407 (2008).

<sup>59</sup> *CA rollo*, p. 100.

<sup>60</sup> Id. at 99.

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Q: You said that [XXX] inserted his hand inside your shirt. What did he do?

A: He mashed my breast and legs.

Q: Both your two (2) breasts?

A: Yes, ma'am.

x x x x

Q: What did you do, Miss Witness, during that time when [XXX] was mashing your breasts?

A: I told him not to do that to me, ma'am.

x x x x

Q: What did [XXX] tell you?

A: [XXX] was angry and he said, "*di mo'ko pag orag-oragan.*"

Q: What did you feel when [XXX] uttered those words to you?

A: I felt afraid.

Q: When he said, "orag-oragan," what did [XXX] meant by that?

A: To my understanding, he might harm me, ma'am."<sup>61</sup>

Against this factual backdrop, all that XXX offers are the weak defenses of denial and alibi. In addition, he claims that BBB's testimony is questionable, as she was uncertain on whether the rape took place on December 2 or December 6.

**These contentions fail to persuade.**

The defenses of denial and alibi are always viewed with disfavor as they can easily be concocted. Besides, these defenses easily falter against BBB's positive and categorical identification of XXX as her defiler.

Anent BBB's alleged uncertainty as to the precise date of the sexual molestation, it bears stressing that the precise date and time of the commission of the offense is not an essential element of lascivious conduct. Regardless of whether the abuse took place on December 2 or 6, is immaterial, considering that BBB was able to prove that it in fact took place, and that she was 14 years old when she was abused.

***The Proper Penalty for Criminal  
Case Nos. IR-7957 and IR-7958  
for Rape***

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<sup>61</sup> Id. at 98-99.

*Meyer*

Under Article 266-B of the RPC, the supreme penalty of death shall be imposed against the accused if the victim of rape is below 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. However, to justify the imposition of the death penalty, it is essential that the special qualifying circumstances of minority and relationship are properly alleged in the Information and duly proven during the trial.<sup>62</sup>

The RTC convicted XXX of qualified rape, in view of the qualifying circumstances of minority and relationship – XXX being the common law spouse of AAA’s mother. A perusal of the Informations, however, reveal that what was alleged was that XXX was the “stepfather” of AAA. Because of this, the Court agrees with the CA that XXX may only be convicted of simple rape, due to the absence of proof that he was in fact AAA’s stepfather. It does not help that the prosecution was able to establish that XXX was the common-law spouse of AAA’s mother, as this circumstance was not alleged in the Information.

It cannot be gainsaid that the terms “stepfather” and “common-law spouse” are two distinct terms that may not be used interchangeably. In *People v. Hermocilla*,<sup>63</sup> the Court explained that “a stepdaughter is a daughter of one’s spouse by previous marriage, while a stepfather is the husband of one’s mother by virtue of a marriage subsequent to that of which the person spoken is the offspring.”<sup>64</sup> As such, the allegation that the victim is the stepdaughter of the accused requires competent proof and should not be easily accepted as factually true. The bare contention that the accused was married to the victim’s mother is not enough, in the same manner that the victim’s reference to the accused as her stepfather will not suffice.<sup>65</sup> Remarkably, in *People v. Abello*,<sup>66</sup> the Court stressed that the best evidence of such relationship will be the marriage contract. 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>67</sup>

Notably, the cases of *People v. Barcelá*,<sup>68</sup> and *People v. Salvador*,<sup>69</sup> bear similar factual moorings with the instant case. In *Barcelá*, the Information stated that the accused was the stepfather of the rape victim, but what was proven during the trial was that the accused was merely the common-law spouse of the victim’s mother. The Court refused to apply the qualifying circumstance of relationship, considering that the relationship alleged in the information was different from that actually proven during the

<sup>62</sup> *People v. Lomaque*, 710 Phil. 338, 354 (2013).

<sup>63</sup> 554 Phil. 189 (2007).

<sup>64</sup> Id. at 197.

<sup>65</sup> *People v. Lomaque*, supra note 62.

<sup>66</sup> 601 Phil. 373 (2009).

<sup>67</sup> Id. at 396-397.

<sup>68</sup> 734 Phil. 332 (2014).

<sup>69</sup> 790 Phil. 782 (2016).

*Reyes*

trial. The Court held that a contrary ruling will run counter to Barcelá's right to be informed of the charge lodged against him.<sup>70</sup>

The same circumstances existed in the case of *Salvador*, where the Information filed against therein accused-appellant charged him with raping his stepdaughter, but a perusal of the records showed that therein accused-appellant was only the common-law husband of the victim's mother. In this case, the Court stated that even if it was proven that therein accused-appellant was indeed the common law spouse of the victim's mother, this cannot be appreciated, since the information did not specifically allege it as a qualifying circumstance.<sup>71</sup>

Applying the foregoing pronouncements to the instant case, the qualifying circumstance of relationship cannot be used against XXX. The allegation in the Information that he was AAA's stepfather was not proven during the trial, and hence, shall not be used against him. In the same vein, although the prosecution proved that he was in fact CCC's common-law spouse, this too shall not be appreciated against him, as this circumstance was not specified in the Information. Accordingly, the CA correctly downgraded the offense to simple rape for both Criminal Case Nos. IR-7957 and IR-7958.

***The Proper Penalty for Criminal Case No. IR-7893 for Lascivious Conduct under Section 5(b) of R.A. No. 7610***

Section 5(b) of R.A. No. 7610 provides that the imposable penalty for lascivious conduct<sup>72</sup> shall be *reclusion temporal*, in its medium period, to *reclusion perpetua*.<sup>73</sup>

It must be noted that the RTC erred in appreciating the qualifying circumstance of relationship, as the Information for Criminal Case No. IR-7893 failed to specifically allege the relationship between XXX and BBB.

<sup>70</sup> *People v. Barcelá*, supra note 68, at 340-341.

<sup>71</sup> *People v. Salvador*, supra note 69, at 791-792.

<sup>72</sup> *People v. Ursua*, 819 Phil. 467, 480-481 (2017).

In *People v. Ursua*, the Court enunciated that "[i]f 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>73</sup> *Id.*

*Meyra*



Applying the indeterminate sentence law, XXX shall be sentenced with a penalty consisting of a maximum term, which is the penalty under the RPC properly imposed after considering any attending circumstance, and a minimum term that is within the range of the penalty next lower than that prescribed by the RPC for the offense committed. Accordingly, the CA correctly imposed the penalty of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

The damages awarded by the CA must be modified to conform with the Court's recent pronouncement in the case of *People v. Tulagan*.<sup>74</sup> XXX shall be liable for ₱50,000.00 civil indemnity; ₱50,000.00 moral damages; and ₱50,000.00 exemplary damages. In addition, XXX shall pay a fine of ₱15,000.00 as provided for in Section 31(f) of R.A. No. 7610 and as affirmed in *People v. Ursua*.<sup>75</sup>

Finally, the CA correctly ordered the payment of interest at the rate of six percent (6%) *per annum*, which shall run from the date of finality of this Decision until full satisfaction.

**WHEREFORE**, premises considered, the instant appeal is **DISMISSED for lack of merit**. The Decision dated January 25, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08224, convicting accused-appellant XXX of Rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, Rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, and Lascivious Conduct under Section 5(b) of Republic Act No. 7610, is **AFFIRMED with modification**, in that, in Criminal Case No. IR-7893 for Lascivious Conduct under Section 5(b) of Republic Act No. 7610, XXX is declared liable to pay BBB ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages, in addition to a fine of ₱15,000.00.

All amounts due shall earn a legal interest of six percent (6%) *per annum* from the date of finality of this Decision until full satisfaction.

All other aspects of the CA decision are affirmed.

<sup>74</sup> *People of the Philippines v. Salvador Tulagan*, G.R. No. 227363, March 12, 2019.  
<sup>75</sup> 819 Phil. 467 (2017).

*Meyer*

**SO ORDERED.**

*Reyes*  
**ANDRES B. REYES, JR.**  
Associate Justice

**WE CONCUR:**

(On official business)  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

*Ramon Paul L. Hernando*  
**RAMON PAUL L. HERNANDO**  
Associate Justice

*Henri Jean Paul B. Inting*  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

(On official leave)  
**RODIL V. ZALAMEDA**  
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.

*Reyes*  
**ANDRES B. REYES, JR.**  
Associate Justice  
Acting Chairperson, Second Division

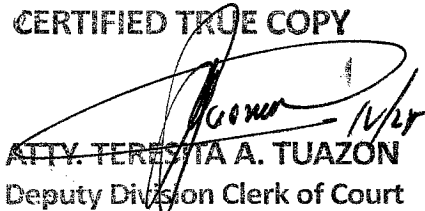
### CERTIFICATION

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.



**DIOSDADO M. PERALTA**  
Chief Justice

CERTIFIED TRUE COPY



ATTY. TERESITA A. TUAZON  
Deputy Division Clerk of Court