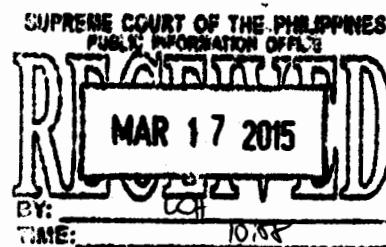




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated February 18, 2015, which reads as follows:

“G.R. No. 207089 (*People of the Philippines vs. Francisco Altubar*).
– This is an appeal which assails the Decision¹ dated September 27, 2012 of the Court of Appeals (CA) in CA-G.R. CEB CR-H.C. No. 01278 regarding the conviction of Francisco Altubar (accused-appellant) for the crimes of Rape and Acts of Lasciviousness.

Three separate Informations² were filed by AAA³ against her father, the accused-appellant, the accusatory portions of which read:

Criminal Case No. 074

That sometime in the year 1997 [in] x x x Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the father of one [AAA], 9 years of age, with lewd design and through force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of said offended party, against the latter’s will.

Contrary to Article 335 of the Revised Penal Code, as amended.

Criminal Case No. 073

That sometime on June 20, 2000 during daytime, [in] x x x Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the father of one [AAA], 12 years of age, with intent to abuse said [AAA] and gratify his sexual desire and through force and intimidation, did then and there willfully, unlawfully and feloniously kiss said [AAA] and touch the latter’s vagina.

¹ Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Carmelita Salandanan Manahan and Zenaida T. Galapate-Laguilles concurring; CA rollo, pp. 79-101.

² Id. at 80-81.

³ 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 initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]), and A.M. No. 04-11-09-SC dated September 19, 2006.

Contrary to Section 5(b), Article III of R.A. No. 7610, [as] amended.

Criminal Case No. 075

That at about 6:00 o'clock in the evening of July 10, 2000, [in] x x x Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the father of one [AAA], 12 years of age, with intent to abuse said [AAA] and gratify his sexual desire and by means of force and intimidation [sic], did then and there willfully, unlawfully and feloniously touch, fondle, and squeeze the breasts of said [AAA], against [the] latter's will.

Contrary to Section 5(b), Article III of R.A. No. 7610, [as] amended.⁴

When arraigned, the accused-appellant pleaded "not guilty".

Trial on the merits, thereafter, ensued.

Facts of the Case

AAA was born on May 18, 1988. She lives with her parents in Negros Oriental.⁵

Sometime in 1997, at 12:00 noon, AAA, who was then 9 years old, was watching television with her sisters at the *sala* of their house. The accused-appellant told her sisters to sleep inside their room. When AAA was left alone with the accused-appellant, he ordered her to wear a skirt. AAA refused but his anger forced her to do so. He also told her to lie down on the floor. AAA again refused but she got scolded and so she obeyed him. While laid on the floor, the accused-appellant touched her vagina and immediately removed his shorts and underwear. He mounted AAA and forcibly inserted his penis in her genitalia. After having satisfied his prurient desire, accused-appellant warned AAA not to tell anyone about what happened or else he will kill her mother.⁶

The two charges for acts of lasciviousness were anchored on the incidents dated June 20, 2000 and July 10, 2000.

On June 20, 2000, AAA and the accused-appellant were alone in the house when the latter touched the vagina of AAA. On July 10, 2000, at around 6:00 p.m., the accused-appellant entered the room of AAA where he squeezed her breasts and hugged her.⁷

⁴ CA *rollo*, pp. 80-81.

⁵ Id. at 36.

⁶ Id. at 34-35.

⁷ Id. at 35.

In defense, the accused-appellant denied the charges and averred that it was impossible for him to have sexual access with AAA because, every Saturday in 1997, she would often accompany her mother in selling vegetables in Basay. As to the charges of acts of lasciviousness, accused-appellant asserted that he could not afford to touch AAA's private parts not only because his wife was about to deliver a baby on June 20, 2000 but also because he had visitors in their house the entire day on July 10, 2000.⁸

Ruling of the RTC

The Regional Trial Court (RTC) rendered a Consolidated Decision⁹ on March 23, 2010 which found the accused-appellant guilty of all the charges filed against him.

In Criminal Case No. 074, the accused-appellant was sentenced to suffer the penalty of *reclusion perpetua* without the benefit of parole and was ordered to pay ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages in favor of AAA.

The RTC explained that in rape what is essential is the introduction of the male organ into the labia of the pudendum no matter how slight. The hymen need not be penetrated or ruptured¹⁰ as long as the carnal knowledge of the victim was committed under any of the circumstances¹¹ stated in Article 335 of the Revised Penal Code (RPC). In qualified rape, however, the overbearing moral influence of a father to his daughter is not defeated by the absence of violence or offer of resistance. The father's moral ascendancy over the child substitutes for violence and intimidation.¹² Also, as consistently held, lust, as such, is no respecter of time and place. Rape can be committed even in the presence of the victim's relatives for the place of its commission need not be ideal.¹³

The RTC disregarded the self-serving denial of the accused-appellant for being flimsy and uncorroborated while it accorded full weight and credence to AAA's testimony. It was held that AAA's immaturity and innocence¹⁴ carried the badges of truth and sincerity as she vividly detailed the harrowing experience she had with her father with teary eyes in open court.¹⁵

⁸ Id. at 36.

⁹ Issued by Executive/Presiding Judge Ananson E. Jayme; id. at 33-40.

¹⁰ Id. at 38.

¹¹ 1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under 12 years of age or is demented.

¹² CA *rollo*, pp. 37-38.

¹³ Id. at 37.

¹⁴ Id.

¹⁵ Id. at 38.

In Criminal Cases Nos. 073 and 075, the accused-appellant was also found guilty for the two counts of acts of lasciviousness. He was not held liable under Republic Act (R.A.) No. 7610¹⁶ because the Informations in Criminal Case Nos. 073 and 075 failed to allege that AAA was exploited in prostitution or subjected to other sexual abuse as required under Section 5(b),¹⁷ Article III thereof. Article 336¹⁸ in relation to Article 335¹⁹ of the RPC was instead applied. As such, he was sentenced to suffer an indeterminate sentence of *prisión correccional* in its maximum period with a duration of four (4) years, two (2) months and one (1) day to six (6) years and was ordered to pay ₱20,000.00 as moral damages for each count of acts of lasciviousness charged.

Ruling of the CA

In the CA Decision²⁰ dated September 27, 2012, the RTC ruling was partially affirmed.

In Criminal Case No. 074, the CA sustained the RTC's imposition of *reclusion perpetua* including the payment of ₱75,000.00 as civil indemnity, and exemplary damages of ₱25,000.00²¹ in favor of the victim, AAA. The amount of moral damages was, however, modified from ₱50,000.00 to ₱75,000.00 for it to coincide with the current jurisprudence.

The CA ratiocinated that carnal knowledge alone of a minor suffices to consummate rape. Absent any showing that the RTC misappreciated the facts or was arbitrary in giving probative value on the victim's testimony, no

¹⁶ SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT. Approved on June 17, 1992.

¹⁷ **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; and

x x x x (Emphasis ours)

¹⁸ **Art. 336. Acts of lasciviousness.** – Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prisión correccional*.

¹⁹ **Art. 335. When and how rape is committed.** – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

x x x x

²⁰ CA rollo, pp. 79-101.

²¹ Id. at 99.

other evidence need be adduced in order for him to be convicted.²² Accordingly, the accused-appellant may be convicted solely based on the testimony of AAA who was only 9 years old when the rape was committed against her.

In Criminal Case Nos. 073 and 075, the conviction for the two counts of acts of lasciviousness was also affirmed and adjudged within the context of the clause "other sexual abuse" in Section 5(b), Article III of R.A. No. 7610 in relation to Section 32,²³ Article XIII of its Implementing Rules and Regulations. The CA meted the penalty of *prisión correccional* in its maximum period, or from five (5) years, four (4) months and twenty-one (21) days to six (6) years. The amount of moral damages awarded were also increased from ₱20,000.00 to ₱30,000.00. An additional ₱15,000.00 was imposed as fine for each count charged.

Ruling of the Court

This Court finds no plausible ground to reverse the conviction.

This Court accords high respect and conclusiveness on the trial court's calibration of the testimonies of the witnesses and the conclusions derived therefrom when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and observed their deportment and manner of testifying during trial.²⁴ The rule finds an even more stringent application where the trial court's findings are sustained by the CA.²⁵

Criminal Case No. 074

It is well-settled that the gravamen of rape is sexual congress with a woman by force and without consent.²⁶ In statutory rape, it is the carnal knowledge of a woman below 12 years of age. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12.²⁷ When a daughter is raped by her father, "the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. When a father commits the

²² Id. at 85.

²³ 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 the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or public area of a person. (Emphasis ours)

²⁴ *People v. Alberto*, 625 Phil. 545, 555 (2010).

²⁵ *People v. Veloso*, G.R. No. 188849, February 13, 2013, 690 SCRA 586, 595.

²⁶ *People v. Lolos*, G.R. No. 189092, August 9, 2010, 627 SCRA 509, 516.

²⁷ *The People of the Philippines v. Guillermo B. Cadano, Jr.*, G.R. No. 207819, March 12, 2014.

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odious crime of rape against his own daughter, his moral ascendancy or influence over the latter substitutes for violence and intimidation. The absence of violence or offer of resistance would not affect the outcome of the case because the overpowering and overbearing moral influence of the father over his daughter takes the place of violence and offer of resistance required in rape cases committed by an accused who did not have blood relationship with the victim.”²⁸

The prosecution evidence successfully established the essential elements of statutory rape such as the carnal knowledge of the accused-appellant when AAA, his daughter, was merely 9 years old. Article 266-B(1) of the RPC, as amended by R.A. No. 8353,²⁹ however, qualifies the statutory rape committed by a father to his daughter who is below 18 years of age because of the circumstances of minority and relationship. Thus, qualified rape is statutory rape in its qualified form.³⁰

Criminal Case Nos. 073 and 075

Foremost, it is not the title of the information or the designation of the offense which controls but the actual facts alleged therein. “An accused cannot be convicted of an offense that is not clearly charged in the complaint or information. To convict him of an offense other than that charged in the complaint or information would be violative of the Constitutional right to be informed of the nature and cause of the accusation.”³¹

The Informations made no mention that AAA was exploited or subjected to other sexual abuse. The lewdness of the acts complained of should be adjudged as Acts of Lasciviousness under Article 336 of the RPC. Section 5(b) of R.A. No. 7610 does not apply. “A child is deemed exploited in prostitution or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.”³² As aptly stated by the RTC, the prosecution not only failed to allege specific acts of exploitation on AAA but there was even no attempt to prove the same. Also, although the accused-appellant was charged under Section 5(b), Article III of R.A. No. 7610, the offense for which he was convicted is a felony under the RPC. R.A. No. 7610 and Article 336 of the RPC have different elements. The two are separate and distinct crimes. So, even if the lascivious acts alleged were committed at the time when R.A. No. 7610³³ had already taken effect, the said law cannot still be applied because the elements proved during the trial partake that of the RPC and not R.A.

²⁸ *People v. Fragante*, G.R. No. 182521, February 9, 2011, 642 SCRA 566, 579-580, citing *People v. Orillosa*, 477 Phil. 814, 827-828 (2004).

²⁹ THE ANTI-RAPE LAW OF 1997. Approved on September 30, 1997.

³⁰ *People v. Gloria*, 534 Phil. 879, 893 (2006).

³¹ *Patula v. People*, G.R. No. 164457, April 11, 2012, G.R. No. 164457, April 11, 2012, 669 SCRA 135, 146.

³² *Supra* note 24, at 585, citing *People v. Larin*, 357 Phil. 987 (1998).

³³ R.A. No. 7610 took effect on June 17, 1992.

No. 7610, a special law. Thus, the Court is in accord with the RTC that it is Article 336 of the RPC on Acts of Lasciviousness and not Section 5(b), Article III of R.A. No. 7610 which should apply.

Also, the defense of denial cannot prevail over the positive and straightforward testimony of AAA on who molested her. There is no merit in the *alibi* that the accused-appellant was motivated by curiosity or passion to commit the lascivious acts alleged. Regretably, the defense failed to reverse AAA's unwavering testimony for it is highly inconceivable for a child her age to fabricate a story against her father unless there is truth to her allegation. Hence, the trial court's assessment of a witness' credibility, as affirmed by the CA, is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight or influence.³⁴

Penalty and Proper Indemnity

For the crime of qualified rape

The Court affirms the imposition of *reclusion perpetua* pursuant to Article 266-B³⁵ of the RPC, as amended by R.A. No. 8353 and Section 3³⁶ of R.A. No. 9346.³⁷

Anent the damages awarded, this Court agrees with the payment of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. However, the amount of exemplary damages is modified from ₱25,000.00 to ₱30,000.00³⁸ in order to coincide with what Article 266-A and Article 266-B of the RPC, as amended, provides.

For the two counts of Acts of Lasciviousness

Duration of the imprisonment

It is a fundamental principle in applying and interpreting criminal laws to resolve all doubts in favor of the accused or the so-called *in dubio pro reo*. When in doubt, rule for the accused because of the constitutional presumption of his innocence until the contrary is proven beyond reasonable doubt. Accordingly, when a criminal act is penalized by distinct criminal statutes, that penalty which is favorable to the accused shall be applied.

³⁴ *People v. Mirandilla, Jr.*, G.R. No. 186417, July 27, 2011, 654 SCRA 761, 771.

³⁵ Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

³⁶ Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. [4103], otherwise known as the Indeterminate Sentence Law, as amended.

³⁷ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

Approved on June 24, 2006.

³⁸ *People v. Bustamante*, G.R. No. 189836, June 5, 2013, 697 SCRA 411, 418.

In the present case, both the RPC and R.A. No. 7610 penalize the crime of acts of lasciviousness. The RPC provides for the lesser penalty of *prisión correccional* with a duration of four (4) years, two (2) months and one (1) day to six (6) years while R.A. No. 7610 provides for the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* as the maximum. Considering that the commission of the crime constituted the elements of Article 336 of the RPC, then the penalty provided for by the said provision shall apply.

And, in line with Article 64 of the RPC, the presence of an aggravating circumstance, such as relationship, without any mitigating circumstance to offset the same shall warrant the imposition of the penalty in its maximum period. In this respect, the Court upholds the RTC's imposition of the penalty of *prisión correccional* in its maximum which has the duration of four (4) years, two (2) months and one (1) day to six (6) years.

Damages Awarded

Article 2230³⁹ of the Civil Code provides for the award of exemplary damages as part of the civil liability when the crime was committed with one or more aggravating circumstances. Here, the aggravating circumstance of relationship was sufficiently alleged in the information and proved during the trial which warrants the award of ₱30,000.00⁴⁰ as exemplary damages per act of lasciviousness charged.

The award of civil indemnity is in the nature of actual and compensatory damages for the injury caused to the offended party and that suffered by her family. Hence, ₱20,000.00⁴¹ as civil indemnity is also awarded.

Lastly, moral damages of ₱15,000.00⁴² is awarded due to the moral suffering sustained by the victim.

In summary, the Court modifies the award of damages, as follows: ₱20,000.00 as civil indemnity; ₱15,000.00 as moral damages; and ₱30,000.00 as exemplary damages, for each count of acts of lasciviousness.

All damages awarded shall earn an interest of six percent (6%) *per annum* computed from the finality of this judgment until fully paid.⁴³

³⁹ Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

⁴⁰ *People v. Lomaque*, G.R. No. 189297, June 5, 2013, 697 SCRA 383, 407.

⁴¹ Id. at 409.

⁴² Id.

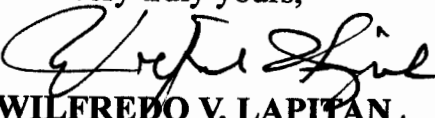
⁴³ *People v. Cabungan*, G.R. No. 189355, January 23, 2013, 689 SCRA 236, 249.

WHEREFORE, premises considered, the Decision dated September 27, 2012 of the Court of Appeals in CA-G.R. CEB CR-HC No. 01278 is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant Francisco Altubar is hereby found:

- 1.) **GUILTY** of Qualified Rape in Criminal Case No. 074. He is sentenced to suffer *reclusion perpetua* without eligibility for parole and ordered to pay the victim civil indemnity of ₱75,000.00, moral damages of ₱75,000.00 and exemplary damages of ₱30,000.00.
- 2.) **GUILTY** of Acts of Lasciviousness in Criminal Case Nos. 073 and 075. He is sentenced to suffer the penalty of *prisión correccional* in its maximum which has the duration of four (4) years, two (2) months and one (1) day to six (6) years and to pay ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱30,000.00 as exemplary damages, for each count charged.

Furthermore, all damages awarded shall earn an interest rate of six percent (6%) *per annum* to be computed from the finality of this Resolution until fully paid." (**Jardeleza, J.**, no part in view of participation in the Office of the Solicitor General; **Mendoza, J.**, designated additional member per Raffle dated January 26, 2015.).

Very truly yours,


WILFREDO V. LAPITAN
Division Clerk of Court *1/15*
WT

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