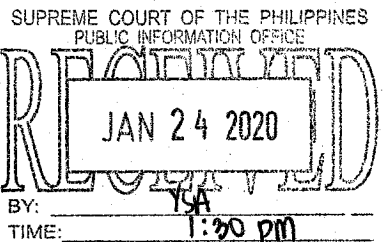




Republic of the Philippines
Supreme Court
Manila



THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **November 13, 2019**, which reads as follows:

“**G.R. No. 243580 (People of the Philippines v. Ponciano Abarientos)**. - For automatic review is the Decision¹ dated June 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02421 finding Ponciano Abarientos (accused-appellant) guilty beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to Section 5(b), Article III of Republic Act No. (R.A.) 7610 in Criminal Case No. 12-36758 and for the crime of Rape under Article 266-A of the RPC in Criminal Case No. 12-36759, affirming the Decision² dated November 7, 2016 of the Regional Trial Court of Bacolod City, 6th Judicial Region, Branch 43 (RTC) in Criminal Case Nos. 12-36758, 12-36759, and 12-36760.

On March 11, 2019, We required the parties to file their respective Supplemental Briefs.³ However, the parties filed a Manifestation⁴ adopting their Appellant’s⁵ and Appellee’s Briefs,⁶ which sufficiently raised all their claims and arguments.

Accused-appellant was charged with the crime of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. 7610, under the following complaint:

Criminal Case No. 12-36758

That on or about the 31st day of December, 2011, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, motivated by lewd designs, did, then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of

¹ Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Louis P. Acosta, concurring; *rollo*, pp. 4-17.

² Penned by Judge Philadelfa B. Pagapong-Agraviador; CA *rollo*, pp. 19-32.

³ *Rollo*, pp. 24-25.

⁴ *Id.* at 35-37, 41-42.

⁵ CA *rollo*, pp. 44-58.

⁶ *Id.* at 88-113.

the undersigned complainant, [AAA],⁷ a 9-year-old minor, by then and there taking off her shorts and panty, kissing and licking her vagina, kissing her breasts and thereafter letting her hold his penis, against her will.

Act contrary to law.⁸

Two separate Informations were also filed charging accused-appellant with Rape under Article 266-A of the RPC, which read as follows:

Criminal Case No. 12-36759

That on or about the 17th day of June, 2012, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, by means of force, violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of the herein offended party, [AAA], a 9-year-old minor against the latter's will.

Act contrary to law.⁹

Criminal Case No. 12-36760

That sometime in January, 2012, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, by means of force, violence and intimidation, did, then and there willfully, unlawfully, and feloniously have carnal knowledge of the herein offended party, [AAA], a 9-year-old minor against the latter's will.

Act Contrary to Law.¹⁰

When arraigned, accused-appellant pleaded not guilty to the charge. Thereafter, during the pre-trial conference, the parties agreed to the following:

1. The jurisdiction of the Court and identity of the accused-appellant;
2. Accused-appellant was residing at Fuentebella Subdivision, Bacolod City at the time of the incident and he only transferred to Purok Punay, JJ Gonzaga Subd., Brgy. Mansilingan, Bacolod City on June 29, 2012;
3. Accused-appellant knows the private offended party, AAA, and her mother BBB, who live beside his house;

⁷ The real name of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 otherwise known as the "Special Protection of Children against Abuse, Exploitation and Discrimination Act" and A.M. No. 12-7-15-SC entitled "Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names."

⁸ CA rollo, p. 13.

⁹ Id. at 15.

¹⁰ Id. at 17.

4. Accused-appellant and AAA are familiar with each other; and
5. Accused-appellant and AAA have been neighbors for about three years.

Version of the Prosecution

AAA testified that on December 31, 2011, at about 7:00 p.m., accused-appellant, who AAA calls "Lolo Junior," ordered her to buy rice and cigarette. When AAA arrived at the house of accused-appellant, the latter ordered AAA to cook the rice. Suddenly, accused-appellant pulled AAA towards the bed where she was told to lie down. At that time, AAA and accused-appellant were alone in the house. Accused-appellant removed AAA's shorts and panty. AAA testified that before accused-appellant did his disdainful acts, the latter told her not to tell her mother, otherwise he would kill her. Accused-appellant was between AAA's legs which were bended and spread apart. Accused-appellant then kissed and sucked AAA's vagina. The latter felt pain. AAA could not shout for help because her mouth was covered by the left hand of accused-appellant. He then took off his shorts and pulled up the blouse of AAA, then sucked her nipples. AAA was not able to shout or push accused-appellant's head away because AAA was afraid that he would kill her. Accused-appellant forced AAA to hold his penis and play with it by doing pull and push motions until there was a sticky substance that came out of it. Thereafter, accused-appellant put on AAA's clothes on the latter and gave her ₱20.00. AAA went home and did not tell her mother because she was afraid.

AAA testified that another incident happened on June 17, 2012. AAA said that accused-appellant ordered her to turn on the lights in his house. When AAA turned on the lights, she was pulled by her feet and brought to the bed and was made to lie down. Accused-appellant then removed her shorts and panty and laid on top of her. Accused-appellant inserted his penis into AAA's vagina and made push and pull motions. AAA felt pain when accused-appellant did this. AAA did not resist because she was afraid that something might happen to her mother. Accused-appellant stopped what he was doing when they heard AAA's mother calling her. Then, accused-appellant gave AAA ₱20.00 and made her go home.

Five days after that incident, AAA had a fever. She then told her mother what accused-appellant did to her. When her mother learned what accused-appellant did, she cried and brought AAA to the police station where they reported the incident.

On cross-examination, AAA claimed that after the incident on December 31, 2011, accused-appellant had sexual intercourse with her only once on June 17, 2012.

BBB,¹¹ the mother of AAA, testified that on June 21, 2012, she was awakened by AAA, who whispered to her that accused-appellant inserted his penis into AAA. BBB cried and shivered but could not say anything because her daughter was also shivering with fever and had asthma. BBB, was shocked when she heard AAA during her sleep saying, “[n]o, no because it is painful.” That morning, BBB brought AAA to the Women’s Desk at the police station to report the incident. Thereafter, she brought AAA to the medico-legal officer of Bacolod City, Dr. Eli C. Cong (Dr. Cong) for medical examination.

BBB identified the Birth Certificate¹² of AAA which clearly shows that AAA was born on September 7, 2002. Thus, AAA was only 9 years old at the time of the incidents.

Dr. Cong testified on his findings, as contained in his Medical Certificate,¹³ which revealed injuries indicating possible sexual intercourse between a nine-year old minor and an adult male. Dr. Cong found in the *introitus*, thickened and dark discoloration of prepuce of the clitoris and surrounding area; abrasion lateral and bilateral and posterior *fourchette*, which means that these injuries were caused by continuous friction in the area and the abrasion was caused by the intrusion of a foreign object that was bigger than the opening. This caused the superficial break in the skin. There was also a strong abrasion or friction on the posterior *fourchette*, which caused the second degree laceration. Dr. Cong further found complete lacerations in the hymen of AAA located at the 1 o’clock, 6 o’clock and 10 o’clock positions, which might have been caused by an intrusion of a bigger object than the opening of the hymen.¹⁴

Version of the Defense

Accused-appellant testified that he knew AAA because she is the granddaughter of his older sister. Accused-appellant claimed that on December 31, 2011, before 9:00 p.m., he was in the store of his older sibling because he was requested to stay there since his older sibling would go to a party. At 8:00 p.m., he was playing *mahjong* and ate his supper there. Accused-appellant claimed that he did not see AAA on that day. As for his whereabouts on June 17, 2012, he cannot recall where he was that day because it was a long time ago.

Accused-appellant alleged that he had a good relationship with the family of AAA because there were times that they asked him for fare and

¹¹ The real name of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 otherwise known as the “*Special Protection of Children against Abuse, Exploitation and Discrimination Act*” and A.M. No. 12-7-15-SC entitled “*Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names.*”

¹² Not attached to the *rollo*.

¹³ Not attached to the *rollo*.

¹⁴ CA *rollo*, p. 23.

allowance. There was a time when he was giving ₱20.00 a day to CCC,¹⁵ another child of BBB. But he stopped giving the money after six (6) months because CCC was always out of the house and accused-appellant was afraid of what would happen to CCC. Accused-appellant also gave ₱30.00 daily to DDD,¹⁶ another child of BBB, but accused-appellant stopped giving ₱30.00 when DDD stopped going to school to just hang out in the computer shop. Accused-appellant claimed that the charges against him were all made up because he refused to give BBB money for their electricity connection and also because he refused to go to church with BBB.

On cross-examination, accused-appellant stated that at about 7:00 p.m. on December 31, 2011, he was playing *mahjong* in a place about 100 meters away from his house. It will take only three minutes to go from his house and to the *mahjong* place. While he cannot remember where he was on June 17, 2011, he stated that he was probably in his home at that time.

Juliet Carumayan (Juliet) testified that on December 31, 2011 she was playing *mahjong* at a wake in Purok Kabukiran, Brgy. Taculing, Bacolod City. She saw accused-appellant playing at the other table. Juliet claimed that she was at the *mahjong* place until 7:00 p.m. When she left the *mahjong* place at 7:00 p.m., accused-appellant was still there playing. Juliet returned to the *mahjong* place after 30 minutes and still saw accused-appellant playing *mahjong*. They then played until 8:00 p.m. Thereafter they went to a vacant lot at the back of Juliet's house, which was 90 meters away from the *mahjong* place. She and the accused-appellant ate their dinner at the vacant lot. After eating dinner, they returned to the *mahjong* place and played until 10:00 p.m.

During her cross-examination, she claimed that she saw AAA around 8:30 or 9:00 p.m. asking money from accused-appellant. The latter gave her money, then accused-appellant asked AAA to go home because it was already dark. She further claimed that she lived near the house of accused-appellant and it would take more or less 30 minutes to go from their houses to the *mahjong* place, which was 90 meters away.

RTC Ruling

On November 7, 2016, the RTC found accused-appellant guilty beyond reasonable doubt of the crimes of Acts of Lasciviousness and Rape. The RTC found that the prosecution duly established that the accused-appellant sexually molested and raped AAA. Further, the defense of denial and alibi of accused-appellant cannot be believed. Accused-appellant failed to prove that it was physically impossible for him to be at the crime scene

¹⁵ The real name of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 otherwise known as the "Special Protection of Children against Abuse, Exploitation and Discrimination Act" and A.M. No. 12-7-15-SC entitled "Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names."

¹⁶ Id.

when the crime was committed. In fact, he testified that it would only take three minutes for him to go from his house to the *mahjong* place. Thus:

WHEREFORE, in view of all the foregoing, this Court finds the accused, PONCIANO ABARIENTOS y ROBLES "GUILTY" beyond reasonable doubt of:

1. Acts of Lasciviousness (under Art. 336 of the Revised Penal Code as amended) in relation to Sec. 5 (B), Art. III of R.A. 7610 in Criminal Case No. 12-36758 and there being no mitigating nor aggravating circumstances according[ly] sentences him to suffer the indeterminate penalty of Twelve (12) years and One (1) day of Reclusion Temporal minimum (sic) in its minimum as minimum to Fourteen (14) years and Eight (8) months of Reclusion Temporal medium in its minimum as maximum and all the accessory penalties provided for by law.

In addition, he is ordered to pay the private offended party, [AAA], her heirs and assigns the following:

- a. Thirty Thousand Pesos (P30,000.00) as civil indemnity;
- b. Thirty Thousand Pesos (P30,000.00) as moral damages;
- c. Fifteen Thousand Pesos (P15,000.00) as exemplary damages.

2. Rape under Art. 266-A of the Revised Penal [Code] as amended in Criminal Case No. 12-36759 and there being no mitigating nor aggravating circumstances, according[ly] sentences him to suffer the penalty of Reclusion Perpetua and all the accessory penalties provided for by law.

In addition, he is ordered to pay [AAA], the private offended party, her heirs and assigns, the following:

- a. Fifty Thousand Pesos (P50,000.00) as civil indemnity;
- b. Fifty Thousand Pesos (P50,000.00) as moral damages;
- c. Twenty Thousand Pesos (P20,000.00) as exemplary damages.

3. Rape under Article 266-A of the Revised Penal [Code] as amended in Criminal Case No. 12-36760 and there being no mitigating nor aggravating circumstances, according[ly] sentences him to suffer the penalty of Reclusion Perpetua and all the accessory penalties provided for by law.

In addition, he is ordered to pay [AAA], the private offended party, her heirs and assigns, the following:

- a. Fifty Thousand Pesos (P50,000.00) as civil indemnity;
- b. Fifty Thousand Pesos (P50,000.00) as moral damages;
- c. Twenty Thousand Pesos (P20,000.00) as exemplary damages.

There is no pronouncement as to the costs of the proceedings.

SO ORDERED.¹⁷

CA Ruling

On appeal, the CA affirmed the conviction of accused-appellant for Acts of Lasciviousness in Criminal Case No. 12-3678 and for Rape in Criminal Case No. 12-36759.

The CA held that the elements of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of R.A. 7610, were sufficiently established by the prosecution. The act of accused-appellant of kissing and licking AAA's vagina and sucking her nipples constitute lascivious conduct. While accused-appellant did not threaten AAA with a weapon, there was a sufficient form of compulsion equivalent to intimidation which annulled or subdued the free exercise of the will of AAA.

As for the charge of Rape in Criminal Case No. 12-36759, the CA gave full credence to the testimony of AAA, who was "simple in her speech, straightforward in her demeanor and spoke without any guile."¹⁸ The CA also found that AAA's credibility was not destroyed by the fact that she failed to immediately report the incident to the authorities, or when she did not shout for help considering that her mother was just in the other room, and that, despite the fact that accused-appellant molested her on December 31, 2011, AAA still returned to the house of accused-appellant.

However, the CA acquitted accused-appellant for another count of Rape in Criminal Case No. 12-36760. The prosecution was not able to show any evidence that accused-appellant had sexual intercourse with AAA prior to June 17, 2012. In fact, AAA testified that aside from the rape that was committed on June 17, 2012, no other rape was committed by the accused. Thus:

WHEREFORE, premises considered, the appeal is PARTLY GRANTED.

1. In Criminal Case No. 12-36758

The Decision dated November 7, 2016 of the Regional Trial Court, Branch 43, Bacolod City, finding appellant Ponciano Abariento y Robles guilty beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b), Article III of Republic Act 7610 in Criminal Case No. 12-36758 is AFFIRMED with the MODIFICATION that Ponciano Abarientos y Robles is

¹⁷ CA rollo, pp. 31-32.

¹⁸ Rollo, p. 11.

sentenced to an indeterminate penalty of imprisonment of twelve (12) years, ten (10) months and twenty-one (21) days of reclusion temporal, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal, as maximum. The award of civil damages is sustained.

2. In Criminal Case No. 12-36759

The Decision dated November 7, 2016 of the Regional Trial Court, Branch 43, Bacolod City, finding appellant Ponciano Abarientos y Robles guilty beyond reasonable doubt of the crime of Rape under Article 266-A of the RPC in Criminal Case No. 12-36759 is hereby **AFFIRMED** with the following **MODIFICATIONS**:

- (1) The award of civil indemnity is increased to Seventy-Five Thousand Pesos (₱75,000.00).
- (2) The award of moral damages is increased to Seventy-Five Thousand Pesos (₱75,000.00).
- (3) The award of exemplary damages is increased to Seventy-Five Thousand Pesos (₱75,000.00).
- (4) Interest at the legal rate of 6% *per annum* is imposed on the total damages awarded from the date of the finality of this Decision until fully paid.

3. In Criminal Case No. 12-36760

The Decision dated November 7, 2016 of the Regional Trial Court, Branch 43, Bacolod City, finding appellant Ponciano Abarientos y Robles guilty beyond reasonable doubt of the crime of Rape under Article 266-A of the RPC in Criminal Case No. 12-36760 is hereby **REVERSED** and **SET ASIDE**. Appellant Ponciano Abarientos y Robles is hereby **ACQUITTED** of the crime charged on the ground of reasonable doubt.

SO ORDERED.¹⁹

Issue

Whether the accused is guilty beyond reasonable doubt of the crime charged.

¹⁹ Id. at 16-17.

Ruling of the Court

After a perusal of the records of the case, this Court resolves to dismiss the appeal of the accused-appellant for his failure to show that the CA committed any reversible error in affirming the findings of fact of the RTC.

Accused-appellant questions the credibility of AAA because: (1) she failed to immediately report the incident to the authorities; (2) AAA did not shout for help considering that BBB was just in the other room; and (3) AAA still returned to the house of accused-appellant despite the earlier alleged molestation.

A perusal of the records of this case shows Us that the prosecution had established beyond reasonable doubt that accused-appellant molested and raped AAA.

It is well-settled that the failure to immediately report the lascivious conduct or the rape does not negate the commission of the rape nor tarnish the credibility of the victim. Be it noted that the victim herein is a nine-year old minor and accused-appellant is someone the victim calls "Lolo Junior." When asked as to why AAA did not immediately tell her mother what accused-appellant did to her, AAA said that she was afraid that accused-appellant will kill her mother. The fear that accused-appellant instilled in AAA crippled her and forced her to silence.

Also, the fact that AAA did not shout for help when her mother was just in another room and the fact that AAA still returned to the house of the accused-appellant despite the earlier molestation, are not indications that the charges are fabricated. The Court had consistently found that there is no uniform behavior that can be expected from those who have had the misfortune of being sexually molested. This Court cannot expect AAA to act like an adult and force upon her a uniform behavior after the molestation.

To escape conviction, accused-appellant offered the defense of denial and alibi. Accused-appellant claimed that on the night of December 31, 2011, he was not at home and was playing *mahjong* outside. Accused-appellant's alibi, however, cannot outweigh the positive identification of AAA since accused-appellant was not able to show the physical impossibility of being at the place of the crime at the time of its commission. In fact, accused-appellant testified that it would only take him three minutes to go home from the *mahjong* place. While accused-appellant cannot remember where he was on June 17, 2012, he testified that he was probably at home at that time.

Further, accused-appellant's allegation that the charges against him were fabricated because: (1) he stopped giving allowance to BBB's other kids; (2) he refused to pay for the reconnection of the electricity in BBB's house; and (3) he refused to go to church with her, are all too flimsy reasons and excuses. No woman would concoct a story of defloration, allow an examination of her private parts, and submit herself to public humiliation and scrutiny, if her charges were not true and was only motivated by her mother for the above reasons. The charges of Acts of Lasciviousness and Rape against accused-appellant are motivated by their fervent desire to seek justice.

Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of R.A. 7610.

Article 336 of the RPC states:

Article 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 on the preceding article, shall be punished by *prision correccional*.

For a successful prosecution for Acts of Lasciviousness under the RPC, it is necessary: (a) that the offender commits any act of lasciviousness or lewdness; (b) that it is done under any of the following circumstances: (i) through force, threat, or intimidation; (ii) when the offended party is deprived of reason or otherwise unconscious; (iii) by means of fraudulent machination or grave abuse of authority; and (iv) when the offended party is under 12 years of age or is demented, even though none of the circumstances mentioned above be present; and (c) the offended party is another person of either sex.²⁰

Section 2 of the Rules and Regulations²¹ of R.A. 7610 defines lascivious conduct in this wise:

(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, 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.** (Emphasis ours)

²⁰ *People v. Ladra*, 813 Phil. 862, 873 (2017).

²¹ Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

AAA was consistent and straightforward in her testimony that on the night of December 31, 2011, accused-appellant made her lie down on the bed, removed her undergarments then kissed and sucked her vagina. Accused-appellant sucked the breasts of AAA, then made AAA play with his penis until a white sticky substance came out from it. These acts clearly constitute lascivious conduct as defined in R.A. 7610.

As held in *People v. Caoili*²² and *People v. Tulagan*,²³ when the victim of the lascivious conduct is under 12 years of age, as in this case, the crime committed is Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of R.A. No. 7610. Under the said law, when the victim of the lascivious conduct is 12 years of age and below, the imposable penalty is *reclusion temporal* in its medium period.²⁴

Since there is neither an aggravating nor mitigating circumstance present in this case, the maximum penalty to be imposed on accused-appellant is within the medium period of *reclusion temporal*, which ranges from 15 years, 6 months and 20 days to 16 years, 5 months and 9 days.

Applying the Indeterminate Sentence Law, the minimum of the penalty should be taken from *reclusion temporal* in its minimum period, it being the penalty one degree lower from that provided by law, which ranges from 12 years and 1 day to 14 years and 8 months.

As such, We see no reason to modify the penalty prescribed by the CA in Criminal Case No. 12-36758, since the same is within the penalties provided by law. However, We modify the damages awarded because the recent case of *People v. Tulagan*²⁵ provides that for those convicted of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of R.A. 7610, the amounts of ₱50,000.00 as moral damages, ₱50,000.00 as civil indemnity and ₱50,000.00 as exemplary damages are to be imposed.

²² 815 Phil. 839 (2017).

²³ G.R. No. 227363, March 12, 2019.

²⁴ 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 victim 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)

²⁵ Supra note 23.

Further, a legal interest of six percent (6%) *per annum* is to imposed on the total damages awarded reckoned from the date of finality of this Resolution until full payment thereof.

Rape under Article 266-A of the RPC.

Under Article 266-A of the RPC, to be convicted of rape, the prosecution needs to prove beyond reasonable doubt, that the accused had carnal knowledge with a woman, under 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.

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. 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. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.²⁶

In this case, the prosecution presented the Birth Certificate of AAA showing that she was born on September 7, 2002, making her only nine years old at the time of the molestation and the rape incidents. As consistently testified by AAA, on the night of June 17, 2012, after accused-appellant ordered here to turn on the lights in his house, accused-appellant pulled her legs and made her lie down on the bed. Accused-appellant then removed AAA's clothes and inserted his penis into her vagina. AAA stated that she was not able to resist because of her fear that something might happen to her mother. Accused-appellant stopped his disdainful acts when he heard BBB calling for AAA.

The prosecution has sufficiently established beyond reasonable doubt that accused-appellant had carnal knowledge with AAA, a nine-year old girl. As We have held above, accused-appellant was not able to prove his denial and alibi.

²⁶ *People v. Cadano, Jr.*, 729 Phil. 576, 584-585 (2014).

Thus, We affirm the penalty of *reclusion perpetua* and the amount of damages imposed by the CA, since the same is in line with current jurisprudence on the matter.²⁷

WHEREFORE, the instant appeal is **DISMISSED**. The Decision dated June 29, 2018 in CA-G.R. CR-HC No. 02421 of the Court of Appeals is hereby **AFFIRMED** with the following **MODIFICATIONS** in Criminal Case No. 12-36758: Accused-appellant Ponciano Abarientos is found **GUILTY** beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610, and is hereby imposed an indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. The accused-appellant is further **ORDERED** to pay AAA, the following amounts:

- a. ₱50,000.00 as civil indemnity;
- b. ₱50,000.00 as moral damages; and
- c. ₱50,000.00 as exemplary damages.

A legal interest of six percent (6%) *per annum* shall be imposed on the awarded amounts, counted from the finality of this Resolution until fully paid.

Insofar as the disposition of the Court of Appeals in Criminal Case No. 12-36759, the same is **AFFIRMED in toto**.

SO ORDERED." (Leonen, J., on official business; Gesmundo, J., designated as Acting Chairperson of the Third Division per Special Order No. 2737; Lazaro-Javier, J., designated as Additional Member of the Third Division per Special Order No. 2728, on official leave.)

Very truly yours,

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Misael Domingo C. Battung III

²⁷ *People v. Jugueta*, 783 Phil. 806 (2016).

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1229 Legaspi Village, Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 43, 6100 Bacolod City
(Crim. Case Nos. 12-36758 to 60)

CSSupt. Gerardo F. Padilla
Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
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Mr. Ponciano Abarientos
c/o Superintendent
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