



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **January 25, 2023** which reads as follows:*

**“G.R. No. 256955 (PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. XXX256955, Accused-appellant).** — The conviction of the accused for the crime of rape by sexual assault is the subject of review in the appeal assailing the Court of Appeals (CA) Decision<sup>1</sup> dated September 30, 2020 in CA-G.R. CR HC No. 13059.

The facts follow.

XXX256955 is charged with the crime of rape by sexual assault under Paragraph 2, Article 266-A of the Revised Penal Code (RPC) in relation to Republic Act (RA) No. 7610,<sup>2</sup> as follows:

That on or about November 13, 2011, in [REDACTED], Bataan, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously succeed in sexually assaulting his daughter AAA256955, 13 years old, by inserting his finger into the vagina of said minor girl, against her will and consent, thereby subjecting her to sexual abuse, to her damage and prejudice.

CONTRARY TO LAW.<sup>3</sup>

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<sup>1</sup> CA *rollo*, pp. 118–134.

<sup>2</sup> Entitled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES.” Approved on June 17, 1992.

<sup>3</sup> CA *rollo*, pp. 1–2.

Upon arraignment, XXX256955 pleaded not guilty.<sup>4</sup> Trial on the merits then ensued.

The prosecution established that AAA256955, born on August 18, 1998,<sup>5</sup> is the daughter of BBB256955 and XXX256955. AAA256955 lived with her family at [REDACTED], [REDACTED], Bataan.<sup>6</sup>

About 6:00 p.m. of November 13, 2011, AAA256955 was inside their house when XXX256955 arrived from his work as a carpenter. During that time, BBB256955 was at the market while AAA256955 was cooking rice in the kitchen. XXX256955 approached AAA256955 and started kissing her neck. He then inserted his hand inside AAA256955's underwear and touched her vagina. AAA256955 asked XXX256955 to stop, but he still continued kissing and touching her. XXX256955 ordered AAA256955 to hold his penis and when she refused, XXX256955 grabbed her hand and placed it on his penis. XXX256955 then inserted his finger inside AAA256955's vagina. AAA256955 felt pain and tried to pull XXX256955's hand away, but XXX256955 pushed her against the wall and tried to remove her underwear. XXX256955 only stopped when BBB256955 arrived from the market and knocked on the locked door. AAA256955 did not immediately tell her mother about the incident. The next day, AAA256955 decided to tell BBB256955 what happened because she was afraid that her father would abuse her again. When told of the incident, BBB256955 was shocked and asked AAA256955 what her father's penis looked like. AAA256955 responded that it was big, black, and hard. Upon confirming that AAA256955 was correct, BBB256955 decided not to leave the house anymore. AAA256955 and BBB256955 proceeded to the police station and reported the incident. Thereafter, BBB256955 brought AAA256955 to the doctor for a medical examination.

XXX256955 denied committing sexual assault against AAA256955. He claimed that he came home from work at the time of the incident but went to the house of his friend, Lennen, for a drinking spree. XXX256955 added that the drinking session started at around 7:00 p.m. until past 12 midnight. XXX256955 also averred that the rape charge was instigated by BBB256955 as she wanted to separate from him. XXX256955 alleged that he and BBB256955 had a verbal fight when XXX256955 allegedly saw an "I love you" text message from someone else on BBB256955's cellular phone. XXX256955 believed that the said fight was the reason why his daughter would make the rape complaint against him.

On May 28, 2019, the RTC found XXX256955 guilty of rape by sexual assault. The RTC gave credence to the testimony of AAA256955 that XXX256955 inserted his finger into her vagina. It also ruled that XXX256955 exerted violence and intimidation on AAA256955 when he committed the crime,<sup>7</sup> thus:

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<sup>4</sup> *Id.* at 12–13.

<sup>5</sup> *Id.* at 86.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Rollo*, pp. 25–43. Penned by Presiding Judge Ma. Lourdes Eltanal-Ignacio.

WHEREFORE, in view of all the foregoing, the court hereby finds the accused [XXX256955] GUILTY beyond reasonable doubt of the crime of Rape as defined under paragraph 2 of Article 266-A of the Revised Penal Code in relation to R.A. No. 7610. He is sentenced to suffer the penalty of reclusion perpetua. He is also ordered to pay the victim AAA256955 the amounts of [PHP] 30,000.00 as civil indemnity, [PHP] 30,000.00 as moral damages, and [PHP] 25,000.00 as exemplary damages.

SO ORDERED.<sup>8</sup>

Aggrieved, XXX256955 elevated the case to the CA docketed as CA-G.R. CR HC No. 13059. XXX256955 questioned the credibility of AAA256955 and the non-presentation of the medico-legal certificate showing that there was laceration or bleeding in AAA256955's vagina caused by the alleged sexual assault. On September 30, 2020, the CA affirmed the RTC's findings that XXX256955 perpetrated the crime. The CA ratiocinated that AAA256955's categorical and positive testimony establishing that XXX256955 sexually assaulted her prevails over XXX256955's bare defense of denial. The CA likewise held that the presentation of a medical certificate is not indispensable to a successful prosecution for rape because the accused may be convicted solely on the basis of the victim's credible, natural, and convincing testimony,<sup>9</sup> viz.:

WHEREFORE, the trial court's Decision dated May 28, 2019 finding accused-appellant [XXX256955] guilty beyond reasonable doubt of rape by sexual assault is affirmed, subject to the modification that exemplary damages are increased to [PHP] 30,000.00 and all damages awarded are subject to interest at the legal rate of 6% per annum, to be reckoned from the date of finality of this judgment until full payment.

In all other respects, the Decision dated May 28, 2019 is affirmed.

SO ORDERED.<sup>10</sup>

Hence, this appeal. The parties opted not to file supplemental briefs considering that all issues have already been exhaustively discussed in their pleadings before the CA. Thus, XXX256955 reiterates his arguments that the prosecution failed to establish the elements of rape, and that AAA256955's testimony was incredible. XXX256955 points out that AAA256955's demeanor was inconsistent with a rape victim as AAA256955 did not scream and ask for help from her two other siblings who were at home during the incident, and she failed to immediately disclose what happened to her mother. XXX256955 also assails the non-presentation of the medico-legal certificate to support the alleged sexual assault.

The appeal is unmeritorious.

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<sup>8</sup> *Id.* at 43.

<sup>9</sup> *Id.* at 8–23. Penned by Associate Justice Fernanda Lampas-Peralta, with the concurrence of Associate Justices Nina G. Antonio-Valenzuela and Tita Marilyn B. Payoyo-Villordon of the Second Division, Court of Appeals, Manila.

<sup>10</sup> *Id.* at 22.

We stress the settled rule that the RTC and the CA's assessment on the credibility of witnesses and the veracity of their testimonies is given the highest degree of respect,<sup>11</sup> especially if there is no fact or circumstance of weight or substance that was overlooked, misunderstood, or misapplied, which could affect the result of the case.<sup>12</sup> This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.<sup>13</sup> In this case, AAA256955 positively identified XXX256955 as the perpetrator of the crime. AAA256955 vividly recalled the incident on how XXX256955 sexually assaulted her by inserting his finger into her vagina, to wit:

Q Do you know XXX256955?

A Yes, sir. He is my father.

x x x x

Q On November 13, 2011, where were you AAA256955?

A I was in our house.

Q At about 6:00 pm, where were you?

A I was also in our house.

Q What were you doing then?

A I was cooking rice.

Q Where was your mother then?

A She went to the market.

x x x x

Q And while you were cooking rice, was there any an (*sic*) unusual incident that happened?

A Yes, sir.

Q Will you please tell the Honorable Court what unusual incident happened?

A He kissed me in my neck.

Q Who kissed you?

A My father.

Q And what did you tell him when he kissed you?

A I said, stopped (*sic*) it.

Q What did your father do after you asked him to stop?

A He did not stop.

Q What else did he do?

A He is touching my vagina.

Q And what else did you tell to your father?

A I told him not to touch my vagina.

<sup>11</sup> *People v. Matignas*, 428 Phil. 834, 868–869 (2002) [Per J. Panganiban, *En Banc*].

<sup>12</sup> *People v. Jumamoy*, 293 Phil. 351, 363 (1993) [Per J. Davide, Third Division].

<sup>13</sup> *People v. Dayaday*, 803 Phil. 363, 371 (2017) [Per J. Caguioa, First Division].

x x x x

Q Were you wearing any panty?  
A Yes, sir.

Q **So, were you [are] saying that your father placed his finger and touched your vagina above your panty?**  
A **No, sir. He inserted his hand inside my panty.**

x x x x

Q **Did you feel it or did you feel his finger while inside the vagina?**

A **Yes, sir.**

x x x x

Q What did you feel?  
A It is painful, sir.

x x x x

Q After your father inserted his finger to your vagina what happened next?  
A He was asking me to hold his pennies (*sic*), sir.

Q Did you hold his pennies (*sic*) after he told you to do so?  
A I refused to hold his pennies (*sic*) but he hold my hand and then held his penis (*sic*), sir.

x x x x

Q After your father inserted his finger to your vagina, what happened next?  
A Tinatabig ko po ang kamay nya.

Q After that what happened next?  
A He kissed me, sir.

Q After that what did your father do?  
A Isinasandal po nya ako sa pader.

Court Why was he pushing you against the wall?  
Witness Para galawin nya po ako.

x x x x

Court What do you mean by galawin?  
Witness So that he can do what he wants.  
Court What does he want to do?  
Witness To insert his penis into my vagina, sir.

x x x x

Q But your father did not succeed in sexual intercourse with you?  
A Yes, sir.

Q Why?

A Because my mother arrived.

Court And your mother saw your father doing something bad against you?

Witness No, sir. Because the door was locked.

Court Why do you know that your mother came?

Witness Because she was knocking the door.

Court That is why your father stopped doing something to you?

Witness Yes, sir.<sup>14</sup>

Indeed, AAA256955's positive identification of her father, XXX256955, as the person who sexually assaulted her and her categorical account of what transpired deserve full weight and credit. We have reiterated in numerous cases that a young girl's revelation that she has been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give the details of her ignominy, cannot just be dismissed as a mere concoction.<sup>15</sup> Besides, a rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her,<sup>16</sup> as in this case of a daughter against her own father.

Furthermore, AAA256955's failure to scream does not negate the commission of rape. The failure of the victim to run, shout, or seek help does not negate rape, and neither does her lack of resistance imply that she consented to the sexual act, especially when she was intimidated into submission by the perpetrator.<sup>17</sup> Here, AAA256955 persistently struggled against her father's advances, constantly pushing his hand off when XXX256955 was touching and inserting his finger inside her vagina. Moreover, as XXX256955 was AAA256955's very own father, his moral ascendancy and influence over AAA256955 intimidated her into submission.

Also, we emphasize that the non-presentation of a medico-legal certificate indicating that AAA256955 suffered any physical, internal, or hymenal injury does not automatically result in XXX256955's acquittal. The medical examination of the victim as well as the medical certificate is merely corroborative in character.<sup>18</sup> The testimony of the victim alone, if credible, is sufficient to convict.<sup>19</sup>

As opposed to the foregoing, XXX256955's uncorroborated denial and alibi cannot prevail over the positive declaration of the prosecution witness. These negative defenses are self-serving and undeserving of weight in law absent clear

<sup>14</sup> *CA rollo*, pp. 125-129.

<sup>15</sup> *People v. Deocares*, G.R. No. 246585, June 17, 2020, <<https://sc.judiciary.gov.ph/wp-content/uploads/2022/11/252860.pdf>> [Notice, First Division], citing *People v. Fraga*, 405 Phil. 698 (2000) [Per J. Mendoza, *En Banc*].

<sup>16</sup> *People v. AAA*, G.R. No. 248777, July 7, 2020, <<https://sc.judiciary.gov.ph/wp-content/uploads/2022/11/254477.pdf>> [Per C.J. Peralta, First Division].

<sup>17</sup> *People v. Pareja*, 724 Phil. 759, 778 (2014) [Per J. Leonardo-De Castro, First Division].

<sup>18</sup> *People v. Manaligod*, 831 Phil. 204 (2018) [Per J. Martires, Jr., Third Division].

<sup>19</sup> *People v. Pareja*, *supra* at 776.

and convincing proof.<sup>20</sup> Notably, XXX256955 did not adduce evidence that he was somewhere else when the crime was committed and that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.<sup>21</sup>

As to the criminal liability, XXX256955's act of inserting his finger into AAA256955's vagina would have amounted to rape by sexual assault punishable under Article 266-A(2)<sup>22</sup> of the Revised Penal Code, as amended. Considering, however, that AAA256955 was only 13 years old when she was sexually molested by her father, there is a need to modify the nomenclature of XXX256955's crime.

In *People v. Tulagan*,<sup>23</sup> this Court explained that if the victim is 12 years old or above but under 18 years old, or at least 18 years old under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5(b) of RA No. 7610" with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC. In this case, XXX256955's act of sexually assaulting AAA256955 qualifies as lascivious conduct under Section 5(b) of RA No. 7610. The prosecution sufficiently proved all the elements of the offense, to wit: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.<sup>24</sup> It was duly established that AAA256955 was 13 years old at the time of the commission of the offense per her Certificate of Live Birth.<sup>25</sup> Also, XXX256955 committed lascivious conduct when he inserted his finger into AAA256955's vagina.<sup>26</sup> Likewise, it was proven that AAA256955 was subjected to other sexual abuse because she indulged in lascivious conduct under XXX256955's coercion and influence.<sup>27</sup> XXX256955 used his moral influence and ascendancy as a father to perpetrate lascivious conduct on his daughter, who

<sup>20</sup> *People v. Togahan*, 551 Phil. 997 (2007) [Per J. Tinga, Second Division].

<sup>21</sup> *People v. XXX*, G.R. No. 243638, November 16, 2020, <[https://benchcompanion.cdasia.com/jurisprudences/71492?s\\_params=ExjENpRcLsKWwJUJZjzb](https://benchcompanion.cdasia.com/jurisprudences/71492?s_params=ExjENpRcLsKWwJUJZjzb)> [Notice, Second Division], citing *People v. Espina*, 383 Phil. 656, 668 (2000) [Per J. Quisumbing, Second Division], citing *People v. Francisco*, 373 Phil. 733, 747 (1999) [Per J. Gonzaga-Reyes, Third Division]; *People v. Baniel*, 341 Phil. 471, 481 (1997) [Per J. Francisco, Third Division]; *People v. Henson*, 337 Phil. 318, 324 (1997) [Per J. Vitug, First Division].

<sup>22</sup> Article 266-A (2) of the Revised Penal Code provides:

Article 266-A. Rape: When and How Committed. — Rape is committed:

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

<sup>23</sup> 849 Phil. 197, 228 (2019) [Per J. Peralta, *En Banc*].

<sup>24</sup> *People v. XXX*, G.R. No. 244609, September 8, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66725>> [Per J. Reyes, J. Jr., First Division], citing *People v. Jaime*, 836 Phil. 871, 879 (2018) [Per J. Martires, Third Division].

<sup>25</sup> *CA rollo*, p. 86.

<sup>26</sup> Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement the provisions of R.A. No. 7610 defines lascivious conduct as follows:

"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 public area of a person."

<sup>27</sup> See *Olivarez v. Court of Appeals*, 503 Phil. 421, 432 (2005) [Per J. Ynares-Santiago, First Division]. In this case, the Supreme Court explained that the phrase "other sexual abuse" covers not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult.



was only a minor. Though there is no showing that he employed persuasion, inducement, enticement, or coercion to make complainant engage in lascivious conduct, his moral influence or ascendancy as her biological father takes the place of violence or intimidation.<sup>28</sup>

As discussed above, the penalty for lascivious conduct under Section 5(b) of RA No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*, which has a range of 14 years, 8 months and 1 day to *reclusion perpetua*. Since the perpetrator is AAA256955's father, and such alternative circumstance of relationship was alleged in the Information and proven during trial, the same should be considered as an aggravating circumstance for the purpose of increasing the period of the imposable penalty. There being no mitigating circumstance to offset the alternative aggravating circumstance, the penalty prescribed shall be imposed in its maximum period, i.e., *reclusion perpetua*.<sup>29</sup> This is in consonance with Section 31(c)<sup>30</sup> of RA No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the parent of the victim.<sup>31</sup> As to the civil liability of XXX256955, the award of civil indemnity, moral damages, and exemplary damages when the penalty of *reclusion perpetua* is imposed is PHP 75,000.00 each.<sup>32</sup> Finally, Section 31(f)<sup>33</sup> of RA No. 7610 imposes a fine upon the perpetrator, which jurisprudence pegs in the amount of PHP 15,000.00.<sup>34</sup> The award of damages shall all earn interest at the rate of 6% per annum from finality of the decision until fully paid.<sup>35</sup>

**FOR THESE REASONS**, the Appeal is **DISMISSED**. The Decision of the Court of Appeals dated September 30, 2020 in CA-G.R. CR HC No. 13059 is **AFFIRMED** with **MODIFICATION**. Accused-appellant XXX256955 is **GUILTY** of Lascivious Conduct under Section 5(b) of Republic Act No. 7610 and is sentenced to suffer the penalty of *reclusion perpetua* and to **PAY** a fine of PHP 15,000.00. Accused-appellant is further **DIRECTED** to pay the victim AAA256955 the amounts of PHP 75,000.00 civil indemnity, PHP 75,000.000 moral damages, and PHP 75,000.00 exemplary damages, all with legal interest at the rate of 6% per annum from the finality of judgment until full payment.

**SO ORDERED.”**

<sup>28</sup> *People v. ZZZ*, 861 Phil. 907, 923–924 (2019) [Per J. Lazaro-Javier, Second Division].

<sup>29</sup> *ABC v. People*, G.R. No. 248300, January 27, 2020, <[https://benchcompanion.cdasia.com/jurisprudences/68384?s\\_params=4FcuWSGd^kn5bkxF4bhW](https://benchcompanion.cdasia.com/jurisprudences/68384?s_params=4FcuWSGd^kn5bkxF4bhW)> [Notice, First Division], citing *Ramilo v. People*, 852 Phil. 471, 479 (2019) [Per J. Peralta, Third Division].

<sup>30</sup> Republic Act No. 7610, Article XII:

SECTION 31. Common Penal Provisions. — (c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked.

<sup>31</sup> *People v. Caoili*, 815 Phil. 839, 894 (2017) [Per J. Tijam, *En Banc*].

<sup>32</sup> *People v. Tulagan*, 849 Phil. 197, 288 (2019) [Per J. Peralta, *En Banc*].

<sup>33</sup> Republic Act No. 7610, Article XII:

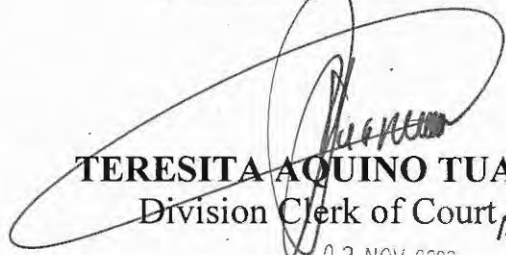
SECTION 31. Common Penal Provisions. — (f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

<sup>34</sup> *People v. XXX*, G.R. No. 230981, July 15, 2020 [Per J. Inting, Second Division].

<sup>35</sup> *Nacar v. Gallery Frames*, 716 Phil. 267, 281–283 (2013) [Per J. Peralta, *En Banc*].



By authority of the Court:



**TERESITA AQUINO TUZON**  
Division Clerk of Court *18/1/3*  
03 NOV 2023

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Accused-Appellant  
c/o The Director  
Bureau of Corrections  
1770 Muntinlupa City

THE DIRECTOR (reg)  
Bureau of Corrections  
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 5  
[REDACTED]  
(Crim. Case No. DH-2746-11)

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Supreme Court, Manila

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\*with copy of CA Decision dated September 30, 2020  
*Please notify the Court of any change in your address.*  
GR256955. 01/25/2023(331)URES(m)