



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE
PHILIPPINES,

OF THE
Plaintiff-appellee,

G.R. No. 265272

Present:
CAGUIOA, *Acting C.J., Chairperson,*
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, *JJ.*

- versus -

ZZZ,*

Accused-appellant.

Promulgated:

November 6, 2023

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DECISION

SINGH, *J.*:

The accused-appellant, ZZZ (ZZZ), was charged with the crime of Qualified Rape under Article 266-A, paragraph 1(a) of the Revised Penal Code (RPC) and violation of Section 5(b), Article III of Republic Act No. 7610 (RA 7610),¹ or the *Special Protection of Children Against Abuse,*

* The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, 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; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES

Exploitation and Discrimination Act, under two (2) separate Informations filed before the Regional Trial Court of ██████, Misamis Oriental, Branch 42 (RTC).² The RTC convicted ZZZ for both offenses in its Joint Decision (**Joint Decision**),³ dated April 16, 2020. On appeal, the Court of Appeals (CA) affirmed the Joint Decision in its Decision (**CA Decision**)⁴ in CA-G.R. CR-HC No. 02566-MIN, dated March 29, 2022. ZZZ filed his Notice of Appeal (**Notice of Appeal**),⁵ on April 28, 2022. The CA gave due course to the appeal and ordered the elevation of the records of the case to the Court in its Resolution,⁶ dated July 21, 2022.

The Facts

The Version of the Prosecution

The victim AAA (AAA) is ZZZ's biological daughter. ZZZ is married to AAA's mother, YYY. ZZZ and YYY have six (6) children together. At the time of the commission of the offenses, AAA was only fourteen (14) years old. She lived with ZZZ and her other sibling BBB at the time. YYY was working in another town and would come home only twice or thrice a month.⁷

AAA testified that on November 28, 2016, at around 5:00 p.m., she was in her room taking a nap when ZZZ suddenly entered her room. She was awakened when ZZZ began removing her pants and underwear. AAA was terrified especially when ZZZ started to fondle and lick her vagina. ZZZ then went on top of AAA and inserted his penis into her vagina, making several push and pull motions. Once he was done, ZZZ left the room but not before threatening AAA that if she told anyone about the incident, he would be sent to jail and no one will take care of AAA and her siblings.⁸ During her testimony, AAA also stated that she did not shout or call for help because ZZZ had a scythe beside him.⁹

On December 12, 2016, at around 9:00 p.m., AAA and her nine (9)-year-old sibling, BBB, were sleeping when ZZZ suddenly entered their room. He fondled and sucked AAA's breasts. According to AAA, he then inserted his penis into her vagina and made several push and pull motions. Thereafter, ZZZ went back to his bed and left AAA crying. He threatened AAA that he

OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.

¹ Approved on June 17, 1992.

² *Rollo*, p. 9, CA Decision.

³ *Id.* at 29–46. Penned by Presiding Judge Judy A. Sia-Galvez.

⁴ *Id.* at 9–26. Penned by Associate Justice Ana Marie T. Mas and concurred in by Associate Justices Oscar V. Badelles and Lily V. Biton of the Twenty-Second Division, Court of Appeals, Cagayan De Oro.

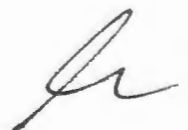
⁵ *Id.* at 4.

⁶ *Id.* at 7.

⁷ *Id.* at 32, Joint Decision.

⁸ *Id.*

⁹ *Id.* at 19, CA Decision.



will kill them all if she told anyone. AAA was not able to do anything for fear that ZZZ might include her younger sister BBB in his heinous acts.¹⁰

BBB also testified and said that when their mother YYY began working in another town, ZZZ started sleeping with her and AAA. She also narrated that she had asked their mother, YYY, if it was proper that ZZZ was often sleeping beside AAA.¹¹ Because of this, YYY decided to talk to AAA. AAA confessed to her mother what ZZZ had done to her. YYY and AAA thus went to the police station and reported ZZZ.¹²

On January 31, 2017, Dr. Rikka Allolea L. Macariola, Medical Officer II of Northern Mindanao Medical Center, examined AAA. According to her findings, “[t]here are partial healed lacerated wounds at 6 o’clock and complete healed lacerated wounds at 10 o’clock position.”¹³

Sioanam M. Ariaso also interviewed AAA and prepared a Social Case Study Report, dated September 11, 2018. The Social Case Study Report corroborated AAA’s testimony that she was raped and sexually abused on November 28, 2016 and December 12, 2016 and that ZZZ threatened that he will go to jail and kill them all if AAA told anyone about what he did.¹⁴

The Version of the Defense

ZZZ denied the charges. According to him, on November 28, 2016, he, along with his eldest daughter, her husband, and their two (2) minor children slept with them in the same room where AAA and BBB slept. There was nothing peculiar happened that night.¹⁵

Further, ZZZ asserted that on December 12, 2016, he, along with AAA, BBB, and his two (2) sons, watched television at a neighbor’s house until they went home at 9:00 p.m. They made it home at 9:30 p.m. and proceeded to sleep on their mats. ZZZ remembered that he reprimanded AAA for using her phone that night. Again, nothing unusual happened.

ZZZ also stated that AAA is an obedient daughter, was not rebellious and had never given him any problems in school. He claimed that he did not know if AAA was lying when she testified, and that he does not know what AAA’s motives are.¹⁶

¹⁰ *Id.* at 32, Joint Decision.

¹¹ *Id.* at 33–34.

¹² *Id.* at 33.

¹³ *Id.* at 12, CA Decision.

¹⁴ *Id.* at 34, Joint Decision.

¹⁵ *Id.* at 35.

¹⁶ *Id.*



The Provincial Prosecutor of the Province of Misamis Oriental charged ZZZ with the crime of Qualified Rape under the RPC and Child Abuse under RA 7610 under two (2) separate Informations filed before the RTC.

ZZZ was arrested by virtue of a warrant of arrest on June 25, 2017. He was arraigned on July 12, 2017, when he pleaded not guilty.

During the pre-trial, the parties stipulated on the following:

1. that ZZZ is the same person charged with Qualified Rape and Violation of Sec. 5(b) of RA 7610 in two (2) Informations, both dated March 20, 2017, and arraigned on July 12, 2017, who pleaded not guilty to both cases;
2. that AAA is the biological daughter of ZZZ with YYY;
3. that AAA was born on [REDACTED], and was fourteen (14) years old on November 28, 2016 and December 12, 2016;
4. that from November 28, 2016 until December 12, 2016, AAA and ZZZ were living together in one house; and
5. that AAA has a younger sister named BBB.¹⁷

The Ruling of the RTC

After trial, the RTC found ZZZ guilty of both charges. The dispositive portion of the RTC's Joint Decision states:

F.C. CRIMINAL # 182-M (2017)

WHEREFORE, since there is proof beyond reasonable doubt, accused ZZZ is found **GUILTY** of the crime of **QUALIFIED RAPE**, as provided under **Article 266-A, paragraph 1 (a), in relation to Article 266-B, of the Revised Penal Code**, as amended, for having carnal knowledge with his biological daughter – 14-year-old AAA at around 5:30 o'clock in the afternoon on November 28, 2016 in their house at v, x, y, [REDACTED], Misamis Oriental, and is hereby sentenced to serve the penalty of **Reclusion Perpetua**, in lieu of the Death Penalty because of its suspension under R.A. No. 9346, without eligibility for parole.

Further, accused ZZZ is ordered to pay minor victim AAA the following:

Civil Indemnity Ex Delicto – One Hundred Thousand Pesos (Php100,000.00),

¹⁷ *Id.* at 31–32.



Moral Damages – One Hundred Thousand Pesos (Php 100,000.00)
&
Exemplary Damages – One Hundred Thousand Pesos (Php 100,000.00),

all with interest at the rate of 6% *per annum* from the date of finality of this judgment, until the amount is paid in full.

As provided under Article 29 of the Revised Penal Code, as amended, the period of preventive imprisonment of **ZZZ** shall be credited in full in the service of his sentence as he voluntarily agreed, in writing, to abide by the same disciplinary rules imposed upon convicted prisoners.

Costs *de officio*.

F.C. CRIMINAL # 183-M (2017)

WHEREFORE, since there is proof beyond reasonable doubt, accused **ZZZ** is found **GUILTY** of the crime of **violating Section 5(b) of R.A. 7610**, for sexually abusing his minor biological daughter AAA at around 9 o'clock in the evening on December 12, 2016 in their house at v, x, y, Misamis Oriental, and sentenced to serve the penalty of **Reclusion Perpetua**.

Further, accused **ZZZ** is ordered to pay minor victim AAA the following:

Civil Indemnity *Ex Delicto* -- Seventy Five Thousand Pesos (Php 75,000.00),
Moral Damages -- Seventy Five Thousand Pesos (Php 75,000.00),
Exemplary Damages -- Seventy Five Thousand Pesos (Php 75,000.00), &
Fine -- Twenty Thousand Pesos (Php 20,000.00),

all with interest at the rate of 6% *per annum* from the date of finality of this judgment, until the amount is paid in full.

As provided under Article 29 of the Revised Penal Code, as amended, the period of the preventive imprisonment of **ZZZ** shall be credited in full in the service of his sentence as he voluntarily agreed, in writing, to abide by the same disciplinary rules imposed upon convicted prisoners.

Costs *de officio*.¹⁸ (Emphasis in the original)

ZZZ filed an Omnibus Notice of Appeal,¹⁹ dated June 24, 2020, which the RTC gave due course to.²⁰

¹⁸ *Id.* at 44-45.

¹⁹ CA *rollo*, p. 13.

²⁰ *Id.* at 15.



The Ruling of the CA

In his Appellant's Brief,²¹ dated May 19, 2021, filed before the CA, ZZZ argued that the prosecution failed to prove his guilt beyond reasonable doubt. He asserted that AAA is not a credible witness because there were discrepancies between AAA's statements in her affidavit and her testimony in open court.²²

In particular, ZZZ claimed that during her testimony pertaining to the November 28, 2016 incident, AAA stated that ZZZ inserted his penis into her vagina and then did a push and pull motion. However, in her affidavit, AAA did not mention any such push and pull motion.²³

Similarly, as to the alleged December 12, 2016 incident, AAA purportedly did not say in her affidavit that ZZZ performed any push and pull motion as her affidavit only stated that ZZZ mashed her breasts and sucked them several times.²⁴

According to ZZZ, these glaring discrepancies cast serious doubt on the veracity of AAA's claims.²⁵

Moreover, ZZZ argued that AAA's claim that she was raped while her younger sister, BBB, was merely eleven (11) inches away from her is incredible and should not be given any credence.²⁶

The CA denied ZZZ's appeal. It agreed with the RTC's conclusion that AAA is a credible witness and that her testimony, along with the other pieces of evidence on record, established ZZZ's guilt beyond reasonable doubt.²⁷

The dispositive portion of the CA Decision provides:

WHEREFORE, the appeal is DENIED.

The Joint Decision dated April 16, 2020 of the Regional Trial Court, 10th Judicial Region, Branch 42, xxx, Misamis Oriental, finding accused-appellant guilty beyond reasonable doubt of the crime of Qualified Rape under Article 266-A, paragraph 1(a), in relation to Article 266-B, of the Revised Penal Code, as amended, in F.C. Criminal Case No. 182-M (2017)

²¹ *Id.* at 40–52.

²² *Id.* at 48.

²³ *Id.* at 49.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 50.

²⁷ *Rollo*, p. 20.



and violation of Section 5(b) Article III of Republic Act No. 7610, in F.C. Criminal Case No. 183-M (2017), is hereby AFFIRMED.

SO ORDERED.²⁸ (Emphasis in the original)

ZZZ filed a Notice of Appeal which the CA gave due course to.

The Issue

Did the CA correctly affirm the ruling of the RTC which found ZZZ guilty of Qualified Rape under Article 266-A, paragraph 1(a) of the RPC and Child Abuse under RA 7610?

The Ruling of the Court

The Court denies the appeal.

The victim's testimony is credible and, along with the corroborating evidence on record, established the accused's guilt beyond reasonable doubt

ZZZ's sole argument in this appeal is that the RTC and the CA should not have relied on AAA's testimony because her testimony is not credible.

The doctrine is settled that a "trial court's assessment of the credibility of a witness is entitled to great weight, sometimes even finality."²⁹ In the absence of proof that the trial court "overlooked or misinterpreted some material facts or that it gravely abused its discretion,"³⁰ the Court will not disturb its factual findings. In *People v. Gabrino*,³¹ the Court explained:

This is clearly because the judge in the trial court was the one who personally heard the accused and the witnesses, and observed their demeanor as well as the manner in which they testified during trial. Accordingly, the trial court, or more particularly, the RTC in this case, is in a better position to assess and weigh the evidence presented during trial.³²

The Court rules that ZZZ has not shown that the RTC and the CA erred in their appreciation of AAA's credibility, let alone that the RTC and the CA committed grave abuse of discretion in their appreciation of the evidence.

²⁸ *Id.* at 25–26.

²⁹ *People v. Rubio*, 683 Phil. 714, 721 (2012) [Per J. Velasco, Third Division].

³⁰ *People v. Gabrino*, 660 Phil. 485, 493 (2011) [Per J. Velasco, Third Division].

³¹ *Id.*

³² *Id.*



Significantly, the CA emphasized that AAA testified in a spontaneous and straightforward manner and “never wavered under a grueling scrutiny.”³³ The Court quotes with approval the CA’s pronouncement on this point:

The records show that AAA testified in a spontaneous and straightforward manner and never wavered under a grueling scrutiny. AAA vividly described how she was raped, detailing explicitly the elements of the crime. Nowhere in the course of her testimony, not even in her cross examination, did it appear that she was impelled by improper motive. The relevant portion of AAA’s testimony is as follows:

Direct Examination

Q. On November 28, 2016 at 5:30 o’clock in the afternoon, where were you, if you can remember?

A. I was inside the room of our house, Ma’am.

Q. What were you doing there inside your room?

A. I was resting at that time because I felt tired in celebration of the death anniversary of my grandmother, Ma’am.

Q. While you were inside your room, can you tell us if something happened to you?

A. My father got inside our room, Ma’am.

Q. When your father got inside your room, what did he do, if any?

A. He took off my pants and panty, Ma’am.

Q. Did you wake up when he took off your pants and panty?

A. Yes, Ma’am.

Q. And after he removed your pants and panty, what happened next?

A. He then fondled my vagina and then licked it, Ma’am.

....

Q. And after your father fondled your vagina and licked it, what happened next?


A. He then inserted his penis into my vagina, Ma’am.

Q. After he inserted his penis into your vagina, what did he do next?

A. He then made a push and pull motion.

Q. How long did he do the push and pull motion?

³³ *Rollo*, p. 17, CA Decision.



A. Many times, Ma'am.

Q. After that, what did your father do after doing the push and pull motion?

A. He then left the room, Ma'am.

Q. Did he tell you anything before he went away?

A. He threatened me that if I will tell the incident to anyone, he will be imprisoned and no one will take care of us, Ma'am.

Q. What did you feel after that?

A. I was crying, Ma'am.

Q. Where was your mother at that time?

A. She was in [REDACTED], Misamis Oriental for work, Ma'am.

Q. Were you living together with your father?

A. Yes, Ma'am.

....

Based on the foregoing, the Court finds that AAA was able to candidly answer the questions propounded to her during the direct and cross examinations in court and vividly communicated the ordeal she suffered in [sic] the hands of accused-appellant when he sexually assaulted her. Slight inconsistency, if any, is immaterial as it does not obliterate the fact that accused-appellant sexually abused her.³⁴

Any inconsistencies between AAA's affidavit and her testimony in open court do not detract from her credibility. These alleged inconsistencies pertain to tangential matters and do not affect the very essence of the crime, that is, that ZZZ raped and sexually abused AAA, his own daughter, when she was only fourteen (14) years old. The Court does not expect, nor does the law demand, that a victim must be able to repeatedly narrate her abuse with laser-sharp precision.

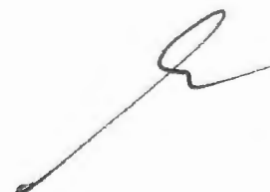
Further, the Court emphasizes the rule that whenever there are discrepancies between the affidavit and the testimony of a witness in court, the testimony commands greater weight.³⁵ In *People v. Sanchez*,³⁶ the Court held:

Sworn statements/affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant's mental faculties are not in such a state as to afford him a

³⁴ *Id.* at 17-18 and 20.

³⁵ *Lejano v. People*, 652 Phil. 512 (2010) [Per J. Abad, *En Banc*].

³⁶ 361 Phil. 692 (1999) [Per J. Austria-Martinez, First Division].



fair opportunity of narrating in full the incident which has transpired. Testimonies given during trials are much more exact and elaborate. Thus, testimonial evidence carries more weight than sworn statements/affidavits.³⁷

The foregoing doctrine, coupled with the fact that AAA is a credible witness, convinces the Court that the RTC and the CA did not err in their factual findings.

ZZZ also argues that AAA's testimony is incredible because she stated that she was sexually abused while her sister BBB was a mere eleven (11) inches away. The Court disagrees. As the Court has oft repeated, lust is no respecter of time and place. The Court ruled in *People v. Nuyok*,³⁸

The presence of others as occupants in the same house where the accused and AAA lived did not necessarily deter him from committing the rapes. The crowded situation in any small house would sometimes be held to minimize the opportunity for committing rape, but it has been shown repeatedly by experience that many instances of rape were committed not in seclusion but in very public circumstances. Cramped spaces of habitation have not halted the criminal from imposing himself on the weaker victim, for privacy is not a hallmark of the crime of rape.³⁹

Neither can ZZZ discredit AAA's credibility through his assertion that it is not believable that AAA did not even shout when the alleged abuse took place. It cannot be overemphasized that the law does not impose on the rape victim the burden to prove that she shouted or resisted the assault.⁴⁰

Moreover, there is no single appropriate response when a woman is sexually assaulted. In *People v. Palanay*,⁴¹ the Court said:

Rape victims react differently. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault. The workings of the human mind placed under emotional stress are unpredictable, and people react differently some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. However, any of these conducts does not impair the credibility of a rape victim.⁴²

The Court agrees with the CA that a rape victim who is a girl of tender age can easily be intimidated and cowed into silence by the mildest threat

³⁷ *Id.* at 720.


³⁸ 759 Phil. 437 (2015) [Per J. Bersamin, First Division].

³⁹ *Id.* at 454.

⁴⁰ *People v. Palanay*, 805 Phil. 116 (2017) [Per J. Velasco, Third Division].

⁴¹ *Id.*

⁴² *Id.* at 126-127.



against her life.⁴³ This is especially true in this case where the assailant is the minor victim's own father who exercises moral ascendancy over her.

ZZZ has also not presented evidence that would convince the Court that AAA had any reason to concoct lies against her own father. He even admitted during his testimony that AAA is an obedient daughter and that she has never given him any problems. He also admitted that he is unaware of any reason which would convince AAA to lie about the abuse.

The ruling of the Court in *People v. Gayomma*⁴⁴ is applicable here:

It is settled that where there is no evidence showing devious reasons or improper motives why a prosecution witness would falsely testify against an accused or implicate him in a heinous crime, the testimony is worthy of full faith and credit. A young girl's revelation that she has been raped, coupled with her voluntary submission to medical examination and her willingness to undergo public trial where she could be compelled to give out details of an assault on her womanhood cannot be so easily dismissed as a mere concoction. The credibility of a rape victim is augmented when, as in the instant case, she has no malevolent motive to testify against the accused or where there is absolutely no evidence which even remotely suggests that she could have been actuated by such motive.⁴⁵

The RTC best summed up the credibility and reliability of AAA's testimony in this wise:

It is unthinkable for AAA to make a story of sexual abuse against ZZZ if it is not true.

AAA had to undergo telling and retelling her ordeal to the investigating police officer, to the municipal social worker, to the examining physician, to the investigating prosecutor, to the trial prosecutor, and to the Court, among others. She even bore the stigma of causing the incarceration of her father. AAA will not go through these if the incidents did not happen to her.⁴⁶ (Emphasis supplied)

In addition, AAA's testimony is corroborated by the other pieces of evidence on record. First, AAA's younger sister, BBB, testified that when their mother began to work in another town, ZZZ started to sleep with her and AAA. She also stated that she had asked their mother if it was proper that ZZZ was sleeping beside AAA. It was, in fact, BBB's questions on this matter that prompted YYY to ask AAA about ZZZ's actions and led to AAA's

⁴³ *Rollo*, p. 23, CA Decision.

⁴⁴ 374 Phil. 249 (1999) [Per Belosillo, Second Division].

⁴⁵ *Id.* at 259.

⁴⁶ *Rollo*, p. 42, Joint Decision.



revelation to her mother.⁴⁷ Second, the result of AAA's medical examination shows that her genitalia had partially healed lacerated wounds at the 6 o'clock position and complete healed lacerated wound at the 10 o'clock position, which are physical evidence corroborating AAA's testimony that ZZZ raped her.⁴⁸

Given the foregoing, the Court cannot but affirm the conclusion of the RTC and the CA that AAA is a credible witness and that her testimony, along with the other evidence on record, adequately established ZZZ's guilt.

*The elements of Qualified Rape were
duly established*

The elements of Qualified Rape under Article 266-A of the RPC are as follows: (1) the offender has carnal knowledge or sexual intercourse with a woman; (2) the sexual intercourse was done by force and without consent; (3) the victim is under eighteen (18) years old at the time of the rape; and (4) the offender is the victim's parent (whether legitimate, illegitimate or adopted).⁴⁹

As to AAA's age and her relationship with ZZZ, the parties stipulated that AAA is ZZZ's biological daughter and that she was fourteen (14) years old on November 28, 2016, the date of the commission of the rape. As to the fact of sexual intercourse, as discussed in this Decision, the prosecution has proven beyond reasonable doubt that there was penetration.

As regards the existence of force or intimidation, the Court has consistently ruled that in Qualified Rape, and particularly where the assailant is the father and the victim is his minor child, as in this case, **moral ascendancy or influence supplants the element of violence or intimidation.**⁵⁰

Here, the Court cannot miss the opportunity to expound on the gender dynamics the circumstances bring to the fore: in incestuous rape, the power dominance of the abuser-father juxtaposed as against the defenseless victim-daughter. This gender imbalance is not only physical, a full grown male adult against a physically immature child, but also emotional and psychological, where the father's influence and moral ascendancy over the offspring is palpable; and, equally significant, even economic as clearly evident in the threats of ZZZ here against AAA that if she reports what he has done, ZZZ will be sent to jail and no one will feed her and her siblings. These are factors that make incestuous rape easier to perpetrate, and thus more prevalent, and

⁴⁷ *Id.* at 33–34.

⁴⁸ *Id.* at 36–37.

⁴⁹ *People v. Salaver*, 839 Phil. 90 (2018) [Per J. Del Castillo, First Division].

⁵⁰ *People v. Bentayo*, 810 Phil. 263 (2017) [Per J. Peralta, Second Division].



harder to prevent. Unless and until the State is able to provide safe harbor for children who are at risk of being or are already victims of incestuous abuse, these beastly offenses will not abate, as it is empirically proven that majority of the victims of incestuous rape are abused through a series of acts perpetrated over time, precisely because these abused children have nowhere to go and are completely dependent on their abusers for support.

Thus, all the elements of the crime of Qualified Rape are present in this case.

The elements of Lascivious Conduct under Section 5(b), Article III, RA 7610 were duly established

The elements of Lascivious Conduct under Section 5(b), Article III of RA 7610 are as follows: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subject to other sexual abuse; and (3) the child, whether male or female, is below eighteen (18) years old.⁵¹

Here, it is an admitted fact that AAA was only fourteen (14) years old at the time of the commission of the crime. Thus, the third element is undoubtedly present.

As to the first element, the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases define “Lascivious Conduct” as follows:

[T]he 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[.]

ZZZ’s act of squeezing and sucking AAA’s breasts on December 12, 2016, patently constitutes Lascivious Conduct.

Finally, as to the second element, there is no denying that AAA is a sexually abused child, having been subjected to rape only fourteen (14) days earlier.⁵²

⁵¹ *Capueta v. People*, 883 Phil. 502 (2020) [Per J. Delos Santos, Second Division].

⁵² *Rollo*, p. 41, Joint Decision.



Against the convincing evidence on record, and specifically AAA's straightforward, clear, and consistent testimony that ZZZ, her own father, raped and sexually abused her on November 28, 2016 and December 12, 2016, ZZZ has no defense other than denial.

In this regard, the Court notes that while ZZZ claims that he and AAA were with his other children during the alleged dates when the crimes were committed, none of his other children testified in Court. In fact, ZZZ was the defense's lone witness. The evidence for the defense simply failed to weaken the prosecution's case.

Given the foregoing, the Court affirms the ruling of the RTC and the CA. ZZZ is guilty beyond reasonable doubt of the crime of Qualified Rape under Article 266-A of the RPC and Child Abuse in violation of Section 5(b), Article III, of RA 7610.

The Court, however, modifies the penalty for violation of Section 5(b), Article III of RA 7610 to include the payment of a fine in the amount of PHP 15,000.00 in accordance with Section 31(f), Article XII, of RA 7610 and *Trocio v. People*.⁵³

WHEREFORE, the appeal is **DENIED**. The Court of Appeals Decision, dated March 29, 2022 in CA-G.R. CR-HC No. 02566-MIN is **AFFIRMED** with **MODIFICATION**.

The accused-appellant, ZZZ, is found guilty beyond reasonable doubt of the crime of Qualified Rape under Article 266-A, paragraph 1(a), in relation to Article 266-B, of the Revised Penal Code and is sentenced to serve the penalty of *reclusion perpetua* without eligibility for parole. The accused is also ordered to pay the victim the following: civil indemnity *ex delicto* in the amount of PHP 100,000.00; moral damages in the amount of PHP 100,000.00; and exemplary damages in the amount of PHP 100,000.00.


The accused-appellant, ZZZ, is also found guilty beyond reasonable doubt of Child Abuse in violation of Section 5(b), Article III of Republic Act No. 7610 and is sentenced to serve the penalty of *reclusion perpetua*. He is further ordered to pay the victim the following: civil indemnity *ex delicto* in the amount of PHP 75,000.00; moral damages in the amount of PHP 75,000.00; and exemplary damages in the amount of PHP 75,000.00. The penalty is modified to include a fine in the amount of PHP 15,000.00.

The foregoing amounts shall earn interest at the rate of six percent (6%) per annum, from the date of the finality of this Decision until fully paid.

⁵³ G.R. No. 252791, August 23, 2022 [Per J. Inting, Third Division].

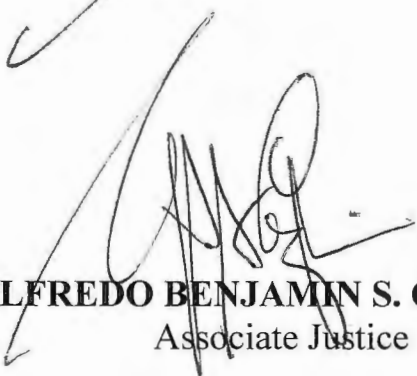


SO ORDERED.

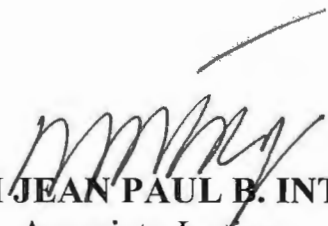


MARIA FILOMENA D. SINGH
Associate Justice


WE CONCUR:



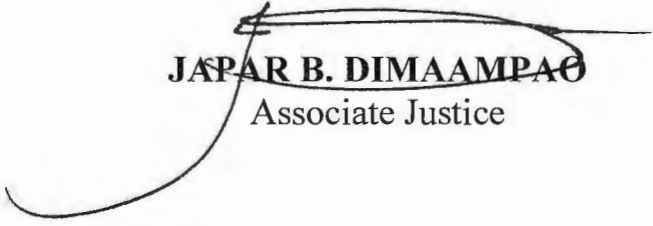
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



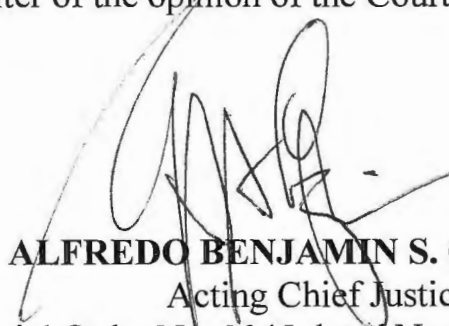
SAMUEL H. GAERLAN
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



ALFREDO BENJAMIN S. CAGUIOA
Acting Chief Justice

Per Special Order No. 3045 dated November 3, 2023

