

# FIRST DIVISION

[ G.R. No. 230624, June 06, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
RONALDO DE VERA Y HOLDEM, ACCUSED-APPELLANT.**

## D E C I S I O N

**DEL CASTILLO, J.:**

On appeal is the September 13, 2016 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 07301, which affirmed with modification the November 26, 2014 Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 65, Sorsogon City, in Criminal Case Nos. 09-1118, 09-1119, and 09-1121, convicting Ronaldo de Vera y Holdem (accused-appellant) of qualified rape and two counts of acts of lasciviousness.

### ***Antecedent Facts***

Three separate Informations were filed against the accused-appellant charging him with acts of lasciviousness and two counts of qualified rape, in relation to Republic Act (RA) No. 7610.<sup>[3]</sup> The accusatory portions of the Informations read, as follows:

Criminal Case No. 09-1118 That on or about 11:00 x x x in the evening of November 3, 2009 at x x x, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force and intimidation, and acting with discernment, did then and there willfully, unlawfully and feloniously commit lascivious conduct on the person of [AAA],<sup>[4]</sup> a 17-year old girl, a minor, by touching her breasts, against her will and without her consent, which act likewise constitute [s] child abuse as it debases, degrades and demeans the dignity of the victim as a child causing emotional and psychological trauma, to her damage and prejudice.

The following aggravating circumstances are present: relationship and minority. The victim being the daughter of the accused and x x x only 17 years old at the time of the incident.

CONTRARY TO LAW.<sup>[5]</sup>

### Criminal Case No. 09-1119

That on or about 11:00 x x x in the evening of November 4, 2009 at x x x, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, acting with discernment, with lewd designs, by means of force and intimidation, and taking advantage of the minority of the victim, did then and there, willfully, unlawfully and feloniously, have carnal knowledge [of] one [AAA], a 17-year old girl, a minor, against her will and without her consent, which act likewise constitute [s] child abuse as it debases, degrades and demeans the dignity of the victim as a child causing emotional and psychological trauma, to her damage and prejudice.

The following aggravating circumstances are present: relationship and minority. The victim being the daughter of the accused and x x x only 17 years old at the time of the incident.

CONTRARY TO LAW.<sup>[6]</sup>

### Criminal Case No. 09-1121

That on or about 12:00 x x x midnight of November 5, 2009 at x x x, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, acting with discernment, with lewd designs, by means of force and intimidation, and taking advantage of the minority of the victim, did then and there, willfully, unlawfully and feloniously, [insert] his finger inside the vagina of one [AAA], a 17-year old girl, a minor, against her will and without her consent, which act likewise constitute [s] child abuse as it debases, degrades and demeans the dignity of the victim as a child causing emotional and psychological trauma, to her damage and prejudice.

The following aggravating circumstances are present: relationship and minority. The victim being the daughter of the accused and x x x only 17 years old at the time of the incident.

CONTRARY TO LAW.<sup>[7]</sup>

The accused-appellant pleaded not guilty to all three charges during his arraignment.<sup>[8]</sup> Thereafter, the three cases were consolidated for trial.<sup>[9]</sup>

During the pre-trial conference, the parties stipulated on the identity of the accused-appellant;<sup>[10]</sup> that AAA was the biological daughter of the accused-appellant; and that she was a 17-year old minor at the time the alleged crimes were committed. Trial on the merits ensued.<sup>[11]</sup>

## ***Version of the Prosecution***

The prosecution presented AAA and Dr. James Apin (Dr. Apin), Municipal Health Officer of Pataleon Gotladera, Bulan, Sorsogon,<sup>[12]</sup> as witnesses.

AAA testified that, on November 3, 2009, at around 11:00 p.m., while inside their house, accused-appellant approached her while she was lying in bed and proceeded to insert his hands inside her shirt and touched her breasts, saying that she should let him touch them.<sup>[13]</sup>

The following day, on November 4, 2009, again at around 11:00 p.m., while inside their house, the accused-appellant touched AAA's breasts and vagina. He also inserted his finger into her vagina and proceeded to undress AAA and himself. He then mounted AAA and inserted his penis into her vagina.<sup>[14]</sup>

The next day, on November 5, 2009, while inside their house, the accused-appellant once more approached AAA while she was sleeping and touched her vagina.<sup>[15]</sup> However, when he started to undress AAA, her younger sibling, CCC, woke up and uttered "*Papa, Si Neneng*", thinking that she was their other sister, Neneng. CCC noticed that AAA was crying, but she kept pinching CCC so that the former would not leave. CCC also cried and asked why AAA was crying. CCC wanted to report the incident to their mother, who at that time was sleeping a little farther from them, but still inside the same bedroom.<sup>[16]</sup>

The accused-appellant then went inside the comfort room and started banging his head on the wall, which was witnessed by DDD, AAA's 20-year old brother. DDD also noticed that AAA was crying, and it was at this time that their mother, BBB, woke up. DDD then asked AAA why she was crying, but because she did not answer, BBB slapped her.<sup>[17]</sup> That was when the accused-appellant left the house.<sup>[18]</sup> When the accused-appellant returned, he told BBB not to hurt AAA and that it would be better to have him incarcerated as it was he who did something wrong.<sup>[19]</sup>

The prosecution presented AAA's birth certificate and her sworn statement executed on November 6, 2009 before the Municipal Police Station of Bulan, Sorsogon; both of these documents were duly identified by AAA.<sup>[20]</sup> The prosecution also asked AAA to identify accused-appellant, which she did by pointing to him in open court.<sup>[21]</sup>

Dr. Apin testified that AAA came to him with a Letter-Request dated November 6, 2009 from the Philippine National Police for a medical examination. On internal examination of her vagina, he found recent lacerations at the 9 o'clock, 11 o'clock and 6 o'clock positions, indicating that it had been penetrated. He also observed that there was no resistance when his index finger was inserted into her vagina

during the examination, which could have been the result of a previous penetration. He issued a Medical Report dated November 7, 2009 which he duly identified in open court.<sup>[22]</sup>

### ***Version of the Defense***

The accused-appellant testified that AAA was the second of his six children. He lived with all six children in their house with their mother, BBB. His three sons occupied one bedroom and his three daughters occupied another bedroom, while he and BBB slept on a mat near the kitchen. He denied having committed any lascivious conduct on AAA on November 3, 2009 or having raped her on November 4 and 5, 2009. He claimed that AAA filed these cases against him because he tried to discipline her as she was in the habit of going out at night.<sup>[23]</sup>

### ***Ruling of the Regional Trial Court***

The RTC upheld AAA's candid, vivid, and straightforward account of her ordeal at the hands of the accused-appellant, especially so because it was sufficiently corroborated by the medical findings of Dr. Apin.<sup>[24]</sup> The RTC ruled that the accused-appellant's defense of denial could not prevail over the positive testimony of the victim-daughter, who moreover clearly identified him as her molester. The RTC noted that the accused-appellant failed to present any strong evidence of innocence, which made his denial purely self-serving.<sup>[25]</sup>

However, in Criminal Case No. 09-1121, the RTC found the accused-appellant liable only for acts of lasciviousness because the prosecution failed to prove that there was any penetration of AAA's vagina on the night of November 5, 2009, whether by his penis, finger, or any other object.<sup>[26]</sup> The RTC ruled that the prosecution merely succeeded in establishing that the accused-appellant had touched AAA's vagina before CCC woke up and saw him undressing AAA.<sup>[27]</sup> The RTC also appreciated against accused-appellant the attendant circumstances of relationship and minority because these had been sufficiently alleged in the information and proven during the trial.<sup>[28]</sup>

Thus, on November 26, 2014, the RTC rendered its Decision,<sup>[29]</sup> the decretal portion of which reads:

WHEREFORE, in view of the foregoing, accused RONALDO DE VERA y HOLDEM having been found GUILTY BEYOND REASONABLE DOUBT OF QUALIFIED RAPE IN RELATION TO RA. 7610 in Criminal Case No. 09-1119 and ACTS OF LASCIVIOUSNESS in Criminal Case Nos. 09-1118 and 09-1121, he is sentenced to suffer -

1. In Criminal Case No. 09-1119, the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay AAA P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages;
2. In Criminal Case No. 09-1118, the penalty of *reclusion perpetua* and ordered to pay AAA P20,000.00 as civil indemnity, P15,000.00 as moral damages, and a fine of P15,000.00; and
3. In Criminal Case No. 09-1121, the penalty of *reclusion perpetua* and ordered to pay AAA P20,000.00 as civil indemnity, P15,000.00 as moral damages, and a fine of P15,000.00; and

AAA is entitled to an interest on all damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.<sup>[30]</sup>

From this Decision, the accused-appellant appealed to the CA.

### ***Ruling of the Court of Appeals***

In the assailed Decision, the CA affirmed with modification the findings of the RTC, to wit:

ACCORDINGLY, the appeal is DENIED. The assailed Decision dated November 26, 2014 is AFFIRMED with MODIFICATION with respect to Criminal Case No. 09-1119, INCREASING the award of civil indemnity from P75,000.00 to P100,000.00, moral damages from P75,000.00 to P100,000.00, and exemplary damages from P30,000.00 to P100,000.00.

SO ORDERED.<sup>[31]</sup>

The CA sustained the conviction of the accused-appellant for two counts of acts of lasciviousness in Criminal Case Nos. 09-1118 and 09-1121. It found that the elements of acts of lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to RA No. 7610, had been sufficiently established by the prosecution.<sup>[32]</sup> It ruled that the accused-appellant used his moral ascendancy or influence, in lieu of force or intimidation, to commit acts of lewdness on AAA.<sup>[33]</sup>

The CA also sustained the RTC's findings that the accused-appellant was guilty of qualified rape in relation to RA No. 7610.<sup>[34]</sup> It emphasized that AAA was accused-appellant's biological minor daughter, over whom he exercised moral ascendancy and influence, sufficiently powerful enough to cause her to submit herself to his

sexual desires.<sup>[35]</sup> The CA ruled that his acts of purposely touching her breasts and vagina, and the subsequent insertion of his finger and penis into her vagina to commit sexual intercourse with her against her will, clearly established the felony of qualified rape.<sup>[36]</sup>

The CA nonetheless modified the awards of civil indemnity, moral damages, and exemplary damages in Criminal Case No. 09-1119,<sup>[37]</sup> in light of this Court's ruling in *People v. Jugueta*.<sup>[38]</sup>

Hence, this appeal.

The accused-appellant insists that the CA gravely erred in finding him guilty of the crimes charged.<sup>[39]</sup> He contends that the evidence of the prosecution fell short of the legal standard to convict him because AAA's testimony was incredible and inconsistent with human experience;<sup>[40]</sup> that it was unbelievable that AAA failed to seek help from her family members who were then sleeping beside her when the incidents happened;<sup>[41]</sup> that AAA's testimony showed that she was unsure of the identity of her attacker until the November 5, 2009 incident occurred;<sup>[42]</sup> and finally, that AAA concocted the charges against him as an act of vengeance for having punished AAA for staying out late with her friends.<sup>[43]</sup>

### **Ruling**

The appeal has no merit.

The Court cannot give any credence to the accused-appellant's argument that his identity was never established by the prosecution. It was clear from AAA's testimony that she was certain that it was her father who committed the vicious acts against her on November 3, 2009 to November 5, 2009. While the defense attempted to confuse the victim and cast doubt on her testimony on cross-examination, AAA never wavered in her statement that it was the accused-appellant who forced himself upon her on November 4, 2009 as she confirmed his identity when she was able to touch his tattoo while the act was being committed.

During the commission of the first lascivious act on November 3, 2009, AAA was able to confirm the accused-appellant's identity when he told her to allow him to touch her breasts. The accused-appellant's identity was again confirmed on November 5, 2009, not only by AAA herself, but also by his younger daughter, CCC, who had awakened while accused-appellant was attempting to force himself on AAA again. In this jurisdiction, the identity of an accused may sufficiently be established by the sound of his voice and familiarity with his physical features where the witness and the accused had known each other personally and closely for a number of years.<sup>[44]</sup>

The Court disagrees with the accused-appellant's assertion that AAA's testimony was incredible in that she could have easily shouted for help, or sought the help of her other family members who were sleeping nearby when the incidents happened. Time and again, this Court has ruled that there is no clear-cut standard required, or expected from a rape victim or a victim of acts of lasciviousness, especially when the offender is the victim's own biological father who has a history of being violent, or being irrational, as in the present case.<sup>[45]</sup> Thus, AAA's failure to shout or call for help cannot be taken against her.

Nor can credence be accorded to accused-appellant's claim that AAA filed these cases because she did not agree with his method of disciplining her. No daughter, especially a minor like AAA, would impute a serious crime of rape against her own biological father, unless she was impelled by a desire to vindicate her honor, aware as she is that her action or decision must necessarily subject herself and her family to the burden of trial and public humiliation, if the same were untrue.<sup>[46]</sup> Absent any proof that the filing of the cases was inspired by any ill-motive, the Court cannot be swayed from giving full credence to the victim's testimony.<sup>[47]</sup>

We sustain the conviction of accused-appellant for the crime of qualified rape in relation to RA No. 7610 in Criminal Case No. 09-1119.

The elements necessary to sustain a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.<sup>[48]</sup> Moreover, rape is qualified when "the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim."<sup>[49]</sup>

A thorough review of the records of the case supports the conclusion that the prosecution had sufficiently established the presence of all the elements of qualified rape. AAA clearly testified that it was her own biological father, the herein accused-appellant, who sexually assaulted her on November 4, 2009, without her consent, while she was still a 17-year old minor. The accused-appellant's paternal relations with AAA and her minority were in fact stipulated upon by the parties during the pre-trial stage.<sup>[50]</sup> Moreover, AAA's account of the rape was corroborated by Dr. Apin, who testified that his examination revealed that AAA suffered hymenal lacerations.<sup>[51]</sup>

The RTC, as affirmed by the CA, correctly imposed upon the accused-appellant the penalty of *reclusion perpetua*, by virtue of RA No. 9346 which suspended the

imposition of the penalty of death, the imposable penalty for qualified rape under Article 266-B of the RPC.

With respect to the award of damages, the Court affirms the modifications made by the CA as to the amounts awarded in Criminal Case No. 09-1119, in consonance with this Court's ruling in *People v. Jugueta*,<sup>[52]</sup> that AAA is entitled to P100,000.00 as civil indemnity, P100,000.00 as moral damages, and P100,000.00 as exemplary damages for the crime of qualified rape.

As for Criminal Case Nos. 09-1118 and 09-1121, the Court agrees with the CA that the accused-appellant is guilty in both instances.

To sustain a conviction under Section 5(b), Article III of RA No. 7610, the prosecution must establish the following elements: (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 sexual abuse; and (3) the child, whether male or female, is below 18 years of age.

In the present cases, the above elements were duly established by the prosecution. On two separate occasions, the accused-appellant was found to have subjected his 17-year old daughter, AAA, to sexual abuse and committed lascivious conduct against her, using his moral ascendancy or influence, in lieu of force or intimidation. On November 3, 2009, he was accused of sliding his hands under AAA's shirt and touching her breasts while they were inside their house when the other members of their family were sleeping. This reprehensible act was again repeated on November 5, 2009 when the accused-appellant touched AAA's vagina and would have proceeded to have carnal knowledge of her had not his other daughter awakened and called him out.

However, there is a need to modify the nomenclature of the offenses and the damages imposed, in light of this Court's ruling in *People v. Caoili*,<sup>[53]</sup> to wit:

Conversely, when the victim, at the time the offense was committed is aged twelve (12) years or over but under eighteen (18), or is eighteen (18) or older but unable to fully take care of herself/himself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the nomenclature of the offense should be Lascivious Conduct under Section 5(b) of R.A. No. 7610, since the law no longer refers to Article 336 of the RPC, and the perpetrator is prosecuted solely under R.A. No. 7610.

x x x x



2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.

3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.<sup>[54]</sup>

Accordingly, accused-appellant is hereby found guilty of two counts of lascivious conduct under Article 336 of the RPC, in relation to RA No. 7610, in Criminal Case Nos. 09-1118 and 09-1121. As regards the penalty imposed, the RTC properly imposed the penalty of *reclusion perpetua*. Under Section 5(b) of RA No. 7610, the imposable penalty for lascivious conduct is *reclusion temporal* in its medium period to *reclusion perpetua* since AAA was over 12 but under 18 years of age at the time of the commission of the offense.<sup>[55]</sup> Considering, however, the attendant circumstance of relationship, the penalty must be applied in its maximum period, which is *reclusion perpetua*, without eligibility of parole, in accordance with Section 31 (c) of RA No. 7610.<sup>[56]</sup>

However, the damages awarded in Criminal Case Nos. 09-1118 and 09-1121 must be modified in light of recent jurisprudence where the victim is entitled to civil indemnity, moral damages and exemplary damages, for each count, each in the amount of P75,000.00, regardless of the number of qualifying/aggravating circumstances present if the circumstances surrounding the crime call for the imposition of *reclusion perpetua*.<sup>[57]</sup>

**WHEREFORE**, the appeal is hereby **DISMISSED**. The assailed September 13, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 07301 is **AFFIRMED with MODIFICATION** that in Criminal Case Nos. 09-1118 and 09-1121, accused-appellant is ordered to pay AAA, for each count, the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary damages, and a fine of P15,000.00, respectively, which shall all earn interest at the rate of 6% *per annum* from finality of this Decision until fully paid.

**SO ORDERED.**

*Bersamin (C.J.), Jardeleza, and Gesmundo, JJ., concur.*  
*Carandang, J., on official leave.*

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[1] *Rollo*, pp. 2-29; penned by then CA Associate Justice Amy C. Lazaro-Javier (now a member of this Court) and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang.

[2] *CA rollo*, pp. 76-90; penned by RTC Judge Adolfo G. Fajardo.

[3] *Rollo*, pp. 3-5

[4] "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. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, Providing Penalties for its Violation, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadag*, 667 Phil. 664, 669 (2011).

[5] Records (Criminal Case No. 09-1118), p. 1.

[6] Records (Criminal Case No. 09-1119), p. 1.

[7] Records (Criminal Case No. 09-1121), p. 1.

[8] *Rollo*, p. 5.

[9] *Id.*

[10] *CA rollo*, p. 33

[11] *Id.*

[12] *Id.* at 33-35.

[13] *Id.* at 33-34.

[14] *Id.* at 34.

[15] *Id.*

[16] Id.

[17] Id.

[18] Id. at 34-35.

[19] Id. at 35.

[20] Id. at 41.

[21] Id. at 35.

[22] Id. at 35.

[23] Id. at 35-36.

[24] Id. at 37-38.

[25] Id. at 38-39.

[26] Id. at 41.

[27] Id.

[28] Id. at 41-42.

[29] Id. at 76-90.

[30] Id. at 42-43.

[31] *Rollo*, pp. 28-29.

[32] Id. at 11-20.

[33] Id. at 13.

[34] Id. at 20-24.

[35] Id. at 23-24.

[36] Id.

[37] Id. at 28-29

[38] 783 Phil. 806, 848 (2016).

[39] *CA rollo*, pp. 63-73.

[40] *Id.* at 69.

[41] *Id.* at 70.

[42] *Id.* at 71.

[43] *Id.* at 68.

[44] *People v. Bulasag*, 582 Phil. 243, 250-251 (2008).

[45] *People v. Pacheco*, 632 Phil. 624, 633-634 (2010).

[46] *People v. Mendoza*, 441 Phil. 193,206 (2002).

[47] *People v. Rusco*, 796 Phil. 147, 157-158 (2006).

[48] REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353 (1997).

[49] REVISED PENAL CODE, Article 266-B, as amended by Republic Act No. 8353 (1997).

[50] Records (Criminal Case No. 09-1121), p. 21.

[51] TSN, March 26, 2012, pp. 4-6.

[52] *Supra* note 38.

[53] G.R. Nos. 196342 and 196848, August 8, 2017, 107 SCRA 153.

[54] *Id.* at 154.

[55] *People v. Ladra*, G.R. No. 221443, July 17, 2017, 252 SCRA 267.

[56] ARTICLE XII of RA 7610 - Common Penal Provisions

Sec. 31. Common Penal Provisions. -

x x x x

(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; x x x.

[57] Id. at 848.



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