

SECOND DIVISION

[G.R. No. 218574, November 22, 2017]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. RAUL MACAPAGAL Y MANALO, ACCUSED-APPELLANT. D E C I S I O N

PERALTA, J.:

This is an appeal from the Decision^[1] dated August 8, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05495 which affirmed with modification the Decision^[2] dated July 19, 2011 of the Regional Trial Court (RTC) of Naga City, Branch 20, finding appellant Raul Macapagal y Manalo guilty beyond reasonable doubt of two (2) counts of rape through sexual intercourse, and one (1) count of rape through sexual assault.

In three (3) separate Informations, appellant Raul Macapagal y Manalo was charged with three (3) counts of violation of Article 266-A and Article 266-B of the Revised Penal Code,^[3] (RPC) in relation to Republic Act (R.A.) No. 7610,^[4] the accusatory portions of which read:

In Criminal Case No. RTC-2003-0294:

That on or about a week after April 13, 1998 at about 10:00 o'clock in the evening and for several similar occasions thereafter in the Municipality of Camaligan, Province of Camarines Sur, Philippines and within the jurisdiction of the Honorable Court, the said accused, with grave abuse of confidence being the father of the private offended party, by means of force and intimidation did, then and there, with lewd designs, willfully, unlawfully and feloniously succeed in inserting his finger inside the vagina of "BBB,"^[5] his 11-year-old daughter who is a minor, against her will and without her consent to her damage and prejudice in such amount as may be awarded by the Honorable Court.

ACTS CONTRARY TO LAW.

In Criminal Case No. RTC-2003-0295:

That sometime during summer vacation in the year 1999 at about 2:00 o'clock in the afternoon and for several occasions thereafter in the Municipality of Camaligan,

Province of Camarines Sur, Philippines and within the jurisdiction of the Honorable Court, the said accused, with grave abuse of confidence being the father of the private offended party, by means of force and intimidation did, then and there, with lewd designs, willfully, unlawfully and feloniously succeed in having sexual intercourse with "BBB," his 13-year-old daughter who is a minor, against her will and without her consent to her damage and prejudice in such amount as may be awarded by the Court.

ACTS CONTRARY TO LAW.

In Criminal Case No. RTC-2003-0296:

That sometime on March 30, 2003, at about 8:00 o'clock in the evening in the Municipality of Camaligan, Province of Camarines Sur, Philippines and within the jurisdiction of the Honorable Court, the said accused, with grave abuse of confidence being the father of the private offended party, by means of force and intimidation did, then and there, with lewd designs, willfully, unlawfully and feloniously succeed in having intercourse with "BBB," his 16-year-old daughter who is a minor, against her will and without her consent to her damage and prejudice in such amount as may be awarded by the Honorable Court.

ACTS CONTRARY TO LAW.^[6]

Before appellant was arraigned, a motion to quash was filed on the ground that the Informations charged more than one offense. The prosecution opted to amend the Informations by deleting the phrase "and for several similar occasions thereafter," which the court granted.

On March 25, 2004, appellant, assisted by counsel, was arraigned and pleaded not guilty to all rape charges. During pre-trial, the parties stipulated on the identities of the parties, the fact that the birth certificate^[7] shows that BBB is the daughter of appellant and a minor at the time of the alleged rape incidents. Joint trial of the cases followed.

In Criminal Case No. RTC-2003-0294, the incident of rape through sexual assault happened in April 1998 when BBB was only 11 years old. While sleeping with her mother and appellant in the sala of their house, BBB was awakened by someone rubbing her back. BBB did not recognize appellant at first because it was dark until he threatened her with a knife and told her not to make any noise. Appellant then forcibly removed BBB's shorts and panty, and inserted his finger into her genital, causing her to feel pain. Appellant also lifted BBB's shirt, held her breasts and molested her for an hour, during which she only cried.

In Criminal Case No. RTC-2003-0295, the incident rape through carnal knowledge occurred in March 1999 when BBB was 13 years old. While BBB was alone in their house watching TV, appellant told her to get inside the room, but she refused. Appellant got mad, slapped her face and dragged her inside the room. He then removed her shorts, slapped her again and covered her mouth when she tried to shout for help. After removing her bra and panty, appellant laid BBB on the bed, held her breasts and inserted his penis in her vagina, causing her to feel severe pain. BBB kept mum about the incident as she was afraid that he might kill her.

In Criminal Case No. RTC-2003-0296, the other incident of rape through carnal knowledge took place on March 30, 2003 when BBB was already 16 years old. Only appellant and BBB were at home that day since her mother and siblings went to Naga City. At about 8:00 p.m., BBB was preparing her beddings in their sala when appellant told her to undress herself. Since appellant threatened to kill her, BBB obeyed, Appellant also undressed himself, held BBB's breasts, kissed her and inserted his penis into her vagina for an hour.

When BBB's mother learned of the rape incidents, she accompanied BBB at NBI Naga City to file a complaint against appellant. Dr. Jane Fajardo conducted a medico-legal examination and came up with these findings: (1) old, deep, but healed hymenal lacerations at the 6 and 9 o'clock positions, (2) the edges are round and coaptible, and; (3) the hymenal orifice measures 2.5 cms. as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing hymenal injury.

Appellant denied all the rape charges against him for the following reasons: (1) after his wife gave birth on April 13, 1998, the lights in their bedroom were turned on all night; (2) in the summer of 1999, all his children stayed home all the time for no one among them took summer classes, and he was busy taking care of his one-year-old daughter; (3) in September 2002, he only required her daughter BBB to take a urine test because he learned that she missed her period.^[8] He dismissed the allegations against him as a mere fabrication of his wife's relatives who were against their marriage. He also claimed that BBB allowed herself to be part of such malicious scheme, as she was angry at him for having slapped and hurt her when he learned that she has a boyfriend and she missed two menstruation periods. He also denied having caused the abortion of BBB's baby in Manila, but admitted that he went there with BBB to visit his sister Rebecca who had arrived from the United States.

On July 19, 2011, the RTC rendered a judgment, convicting appellant of one (1) count of rape by sexual assault and two (2) counts of rape by sexual intercourse, thus:

WHEREFORE, premises considered, the judgment is hereby rendered finding accused **Raul Macapagal y Manalo** guilty beyond reasonable doubt of rape, on two counts, through **sexual intercourse** and one count of rape through **sexual assault**.

As regards rape through **sexual intercourse**, accused is hereby sentenced to suffer *Reclusion Perpetua* for each count without eligibility for parole and to pay the offended party civil indemnity in the amount of P75,000.00, moral damages of P75,000.00 and exemplary damages of P30,000.00, in each of the two cases.

As regards the rape committed through **sexual assault**, accused is hereby sentenced to suffer the indeterminate penalty of imprisonment often (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, and to indemnify the offended party civil indemnity of P30,000.00, moral damages of P30,000.00 and exemplary damages of P15,000.00.

SO ORDERED.^[9]

The RTC found BBB's testimony credible as she was able to narrate clearly and unwaveringly how each of the rape incidents was done to her by appellant, her very own father, despite rigid cross-examinations conducted by the defense. The RTC noted that the genital examination conducted on BBB, showing the presence of old hymenal lacerations, is consistent with the finding of previous sexual intercourse.

With respect to appellant's defenses, the RTC held that his lame excuses of presence of other family members, lights turned on overnight and open bedroom door during the rape incidents, cannot prevail over the categorical narration of BBB of her defloration in the hands of appellant. As to the claim that BBB was angry at appellant as she suffered severe bruises when appellant learned that she was impregnated by her boyfriend, the RTC pointed out that he failed to prove that BBB indeed had a boyfriend that time. The RTC was also not impressed by appellant's claim that the malicious accusations against him are orchestrated by the family of his wife, considering that his in-laws even gave his family material and financial support. Anent the delay in the reporting of the incidents, the RTC found the same as justified in view of appellant's constant showing of his knife to BBB, and his verbal threat upon her while she was being raped to the effect that he would kill her should she tell anyone about the incidents. Although BBB cannot state precisely the dates of the rape incidents, the RTC stressed that the supposed inconsistencies merely refer to minor details, which have no effect on her credibility, and that the exact dates of the commission of the crime are not the element of the offense.

Aggrieved by the RTC judgment, appellant, through the Public Attorney's Office, filed an appeal. Appellant argued that while the last rape incident as testified to by BBB happened on March 30, 2003, the hymenal lacerations diagnosed by Medico-Legal Officer Dr. Jane Fajardo on April 3, 2003 are old and healed lacerations which were inflicted more than a month or a year before. Faulting BBB's credibility, appellant contended that not only did she tell anyone about the rape incident, she also tolerated similar incidences for the past five (5) years from April 1998 to April 3, 2004, which is rather odd because there were times when she was only with her mother at the clinic. Assuming that she was raped by her father, appellant claimed that BBB could have found solace in a safe house or in government institutions rendering social services for rape victims.

The Office of the Solicitor General insisted that appellant's guilt for the crimes charged had been proven beyond reasonable doubt by the prosecution's testimonial and documentary evidence.

On August 8, 2014, the CA rendered a Decision affirming the RTC judgment with modification on the damages awarded:

WHEREFORE, in view of the foregoing, the Decision dated July 19, 2011 of the Regional Trial Court of Naga City, Branch 20, is hereby **AFFIRMED with MODIFICATION**, to read as follows:

1. In Criminal Case No. RTC-2003-0294, appellant Raul Macapagal is hereby held GUILTY beyond reasonable doubt of the crime of Rape Through Sexual Assault and he is hereby sentenced to suffer the Indeterminate penalty of imprisonment of Ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, and to indemnify the offended party civil indemnity of Thirty Thousand Pesos (P30,000.00), moral damages of Thirty Thousand Pesos (P30,000.00) and exemplary damages of Thirty Thousand Pesos (P30,000.00);

2. In Criminal Case No. RTC Nos. 2003-0295 and 2003-0296, appellant Raul Macapagal is hereby held GUILTY beyond reasonable doubt of two (2) counts of Rape Through Sexual Intercourse and that, for each count, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and ordered to pay the private offended party civil indemnity in the amount of Seventy-Five Thousand Pesos (P75,000.00), moral damages also in the amount of Seventy-Five Thousand Pesos (P75,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (P30,000.00);

3. Appellant Raul Macapagal is further ordered to pay the private offended party interest on all damages awarded at the legal rate of Six Percent (6%) per annum until the same are fully paid.

SO ORDERED.^[10]

The CA agreed with the RTC that BBB's testimony is credible, as she was firm and unwavering in her narration of her traumatic experience during the rape incidents perpetrated by her own father. The CA also ruled that the medical report and the testimony of the medico-legal officer on BBB's deep and healed hymenal lacerations are consistent with BBB's allegations of rape against appellant. The CA observed that prior to the last rape incident, BBB had been victimized by appellant to countless sexual abuses which started in 1998, which explains the healed lacerations in BBB's genitals. The CA noted that BBB initially preferred to conceal her dishonor because the culprit was her own flesh and blood, who even threatened her life should she report the rape incidents to anyone. With respect to the inconsistencies pointed out by appellant, the CA ruled that they even tend to bolster her credibility as they are proofs of an unrehearsed testimony. Anent the claim that BBB could have avoided the rape incident by finding solace in a safe house or in a government institution, the CA stressed that BBB could hardly be expected to know what to do under such circumstances as she was only 11 years old when the first rape incident took place. The CA also ruled that it is unnatural for grandparents to use their grandchild in a scheme of malice against her own father, not to mention that it will subject the child to embarrassment and stigma.

Dissatisfied with the CA Decision, appellant filed a notice of appeal.

The appeal is devoid of merit.

After a careful review of the records, the Court finds no reason to reverse the RTC's judgment of conviction, but a modification of the penalty imposed, the damages awarded, and the nomenclature of the offense committed, are in order.

In Criminal Case No. RTC-2003-0294, appellant should be held liable for acts of lasciviousness under Art. 336^[11] of the RPC, in relation to Section(b), Art. III of R.A. No. 7610^[12] instead of rape through sexual assault under Art. 266-A, paragraph 2 of the RPC.^[13]

In ***Dimakuta v. People***,^[14] the Court stressed that in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Art. 266-A, paragraph 2 of the RPC, which is punishable by *prision mayor*, the offender should be liable for violation of Section 5 (b), Art. III of R.A.

No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable of sexual abuse under R.A. No. 7610. The reason for the foregoing is that, aside from the affording special protection and stronger deterrence against child abuse, R.A. No. 7610 is a special law which should clearly prevail over R.A. 8353, which is a mere general law amending the RPC.^[15]

In ***People v. Chingh***,^[16] the Court noted that "it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those 'persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.'"

In ***People v. Noel Go Caoili***,^[17] the Court prescribed guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty. "If the victim of lascivious conduct 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), Article III of R.A. No. 7610' and pursuant to the second *proviso* thereof, the imposable penalty is *reclusion temporal* in its medium period." In this case, it was alleged in the information, stipulated during pre-trial and indicated in her birth certificate^[18] that BBB was 11 years old at the time of the commission of the crime charged in Criminal Case No. RTC-2003-0294.

However, before an accused can be held criminally liable for lascivious conduct under Section 5(b), Art. III of R.A. No. 7610, the Court held in ***Quimvel v. People***^[19] that the requisites of acts of lasciviousness as penalized under Art. 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5(b), Art. III of R.A. No. 7610, namely:

1. The offender commits any act of lasciviousness or lewdness;
2. That it be done under any of the following circumstances:
 - a. Through force, threat, or intimidation;
 - b. When the offended party is deprived of reason or 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;

3. That said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and

4. That the offended party is a child, whether male or female, below 18 years of age.

Regarding the first requisite, intentional touching, either directly or through clothing, of the genitalia of any person, with intent to abuse or gratify sexual desire falls under the definition of "lascivious conduct"^[20] under Section 2 (h) of the rules and regulations of R.A. No. 7610. With respect to the second requisite, "force and intimidation" is said to be subsumed under "coercion and influence" and such terms are used almost synonymously.^[21] This can be gleaned from Black's Law Dictionary definitions of "coercion" as "*compulsion; force; duress*", of "influence" as "*persuasion carried over to the point of overpowering the will*", and of "force" as "*constraining power, compulsion; strength directed to an end*"; as well as from jurisprudence which defines "intimidation" as "*unlawful coercion; extortion; duress; putting in fear*".^[22] Anent the third requisite, a child is deemed exploited in prostitution or subjected to other sexual abuse when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit or any other consideration; or (b) under the coercion or any influence of any adult, syndicate or group.^[23] As for the fourth requisite, "children" refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.^[24]

All the elements of acts of lasciviousness under Art. 336 of the Revised Penal Code, in relation to Section 5(b), Art. III of R.A. No. 7610, were established by the prosecution through the credible testimony of BBB to the effect that appellant, her father, showed a knife and threatened to kill her should she make any noise, then forcibly removed her shorts and panty, and inserted his finger in her vagina, causing her to feel pain.

As the trial court aptly observed, BBB was able to describe how each of the rape incidents was done to her by her father, and her narration of the incidents were clear and detailed as she was able to clearly and unwaveringly narrate her ordeal in the hands of her very own father, thus:

[PROS. ZHELLA M. MANRIQUE]

Q: In this incident [on April 13, 1998] which you remember what time is it?

A: 10:00 o'clock in the evening.

Q: While you were in your sala at 10:00 o'clock in the evening, who were your companions inside the house?

A: My mother, me and my father.

Q: What were you doing at that time at around 10:00 o'clock in the evening?

A: I was awakened when I felt somebody rubbing my back.

Q: You said, you were awakened because somebody was rubbing or holding your back, who was that person holding your back?

A: My father.

Q: You said you were sleeping with your mother, where was your mother at that time when you were awakened?

A: When I was awakened my mother was no longer around.

Q: Do you know where was your (sic) mother at that time when you were awakened?

A: I learned that she transferred in another room.

Q: When you were awakened and saw your father holding your back, what happened next?

A: He threatened me not to make any noise because he will kill me.

Q: After he threatened you, what was your reaction?

A: I was afraid, I know that he will really kill me and in fact he threatened and showed me a knife.

Q: After that, what happened next?

A: After that he removed my shorts and my panty.

Q: And after removing your shorts and your panty what did he do?

A: He told me that he will just insert his finger in my vagina.

Q: What did you feel when he told you that he will insert his finger into your vagina?

A: I did not like it ma'am. (sic)

Q: And then what did he say?

A: He told me that he will really insert his finger.

Q: And then what did he do?

A: He inserted his finger into my vagina.

Q: When he inserted his finger into your vagina, what did you feel?

A: I felt pain.

Q: Because you felt pain, what was your reaction?

A: I was crying at that time.

Q: Did you not try to shout because it is painful?

A: No ma'am, because I was afraid that he could kill me.

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Q: You said that aside from inserting his finger into your vagina, what else did he do to you?

A: He lifted my t-shirt and he is holding my breast.

Q: On that day of April 1998, how old are you?

A: 11 years old.^[25]

With respect to Criminal Cases Nos. RTC-2003-0295 and RTC-2003-0296, the prosecution was, likewise, able to prove beyond reasonable doubt all the elements of qualified rape as defined under paragraph 1, Art. 266-A^[26] and penalized under paragraph 1, Art. 266-B^[27] of the RPC, as amended, namely: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under 18 years of age at the time of the rape; (5) 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.^[28]

Through the categorical and consistent testimony of BBB, the prosecution established that appellant, her father, threatened to kill and undressed her, then inserted his penis in her vagina for about an hour, sometime in the summer of 1999 and on March 30, 2003, to wit:

Q: You said that you remember something in the year 1999 about what time is that when said incident happened?

A: The incident that happened in the year 1999 happened at about 2:00 o'clock in the afternoon.

Q: Can you tell us, what was the month if you can remember?

A: I think it was in the month of March.

Q: Why do you say March?

A: The incident happened shortly after summer vacation.

Q: You said that an incident transpired between you and your father shortly after summer vacation, where did this transpire?

A: At that time I was at the sala watching television.

Q: In your house?

A: Yes, ma'am.

Q: Who were your companions at that time in your house?

A: None, ma'am.

Q: Aside from you there was no one else?

A: In our house my father was there.

Q: How about your mother?

A: My mother was in her clinic and my brother and sisters were not also around at that time.

Q: To clarify, it was only you and your father inside your house?

A: Yes, sir. (sic)

Q: You said you were watching t.v. what happened?

A: He called me inside the room.

Q: Who called you inside the room?

A: My father.

Q: Did you go to that room?

A: I did not like to enter the room but he forced me to enter the room.

Q: How did he force you to enter the room?

A: He was angry and he was hurting me.

Q: How did he hurt you?

A: He slapped me.

Q: Was he able to drag you inside your parents' room?

A: He forcibly took-off my shorts but I tried to resist back and escape but he was strong.

Q: How did you try to resist?

A: I tried to shout for help at that time but he slapped me and covered my mouth.

(Witness demonstrating to the Court using her right hand covering her mouth)

Q: When he slapped you and covered your mouth and you said he removed your short pants what else did he do to you?

A: He also removed my panty.

Q: What else did he do to you?

A: He inserted his sex organ into my vagina.

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Q: You said he removed your panty and short, what else did he do to you?

A: He removed my bra.

Q: And then after that, what happened?

A: He raped me.

Q: When you said, he raped you, can you tell us, step-by-step on how he succeeded in raping you, after he removed your shorts, your panty and your bra, what happened next?

A: He held my arms because I was trying to resist him, he slapped me and inserted his penis into my vagina.

Q: How many times did he inserted (sic) his penis?

A: He inserted his penis about an hour.

Q: When he inserted his penis into your vagina, what did you feel?

A: I felt pain.

Q: Because you felt pain, what was your reaction?

A: I was crying at that time.

Q: Aside from inserting his penis into your vagina, did he do anything else to you?

A: He was holding my breasts.

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Q: On March 30, 2003, do you recall where were you at that time?

A: Also at the sala.

Q: About what time was this when you were at the sala?

A: Eight o'clock in the evening.

Q: Who were your companions in your sala at about 8:00 o'clock in the evening of March 30, 2003?

A: I was the only one together with my father.

Q: How about your mother where was she at that time?

A: She was in Naga.

Q: How about your brother and your sisters, where were they, if you know?

A: They were also in Naga.

Q: So on March 30, 2003, you said, you were in the sala, can you tell us, what happened when you were in the sala?

A: I was at the sala preparing the beddings at that time.

Q: What happened when you and your father were there?

A: He ordered me to undress myself.

Q: Did you follow him?

A: Yes, ma'am, because I am afraid of him.

Q: Again, why are you afraid of him?

A: He would kill me.

Q: After you undressed yourself, what did he do to you?

A: He inserted his penis into my vagina.

Q: Did he also undress himself?

A: Yes sir.

Q: You said that he inserted his penis into your vagina, where were you at that time and your father?

A: We were at the sala.

Q: For how long did he insert his penis to (sic) your vagina?

A: I think it took about an hour.

Q: Aside from inserting his penis to (sic) your vagina, what else did he do to you?

A: He was holding my breast and he was kissing me.

Q: After an hour your father inserting his penis into your vagina, what did you feel?

A: I felt bad because he is my biological father and he was doing such thing to me, "nababoy ako."

Q: After he finished what he was doing to you, what did he do next?

A: He dressed up and he went to sleep.

Q: What about you?

A: I just also went to sleep because I can not do anything.^[29]

In cases of offended parties who are young and immature girls, there is considerable receptivity on the part of the courts to lend credence to their testimonies, considering not only their relative vulnerability, but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to.^[30] Indeed, no woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.^[31] Hence, BBB's testimony is entitled to full faith and credence.

All the arguments and issues raised in the appellant's brief — which the Public Attorney's Office adopted instead of filing a supplemental appeal brief^[32] — have been properly addressed in full and in detail in the appealed CA decision. Appellant's denial is a self-serving defense that cannot be given greater weight than the declaration of a credible witness, like BBB, who testified on affirmative matters^[33] and positively identified her father as the perpetrator of the crimes charged.

When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts of weight, substance, or value are overlooked, misapprehended or misappreciated by the lower court which, if properly considered, would alter the result of the case.^[34] After a circumspect study of the records, the Court sees no compelling reason to depart from the foregoing principle.

As to the penalty for the crime charged in Criminal Case No. RTC 2003-0294, considering that BBB was under 12 years old when appellant threatened her with a knife, forcibly removed her shorts and panty, and inserted his finger into her vagina on April 13, 1998, the imposable penalty for acts of lasciviousness under Art. 336 of the RPC, in relation to Section 5(b), Art. III of R.A. No. 7610, is *reclusion temporal* in its medium period which ranges from Fourteen (14) years, Eight (8) months and One (1) day to Seventeen (17) years and Four (4) months. Since the perpetrator of the offense is the father of the victim, 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 said alternative aggravating circumstance, the penalty provided shall be imposed in its maximum period. This is also in consonance with Section 31(c),^[35] Art. XII of R.A. No. 7610. Accordingly, appellant should be sentenced to suffer the indeterminate penalty of Fourteen (14) years and Eight (8) months of *reclusion temporal* in its minimum period, as minimum, to Seventeen (17) years and Four (4) months of *reclusion temporal* in its medium period, as maximum. A fine in the amount of P15,000.00 should also be imposed upon appellant in accordance with Section 31(f),^[36] Art. XII of the same law. The award of civil indemnity, moral damages and exemplary damages in the amount of P30,000.00 each is reduced to P20,000.00 for civil indemnity, and to P15,000.00 each for moral and exemplary damages, in line with **Quimvel v. People**.^[37]

On the other hand, in Criminal Case Nos. RTC 2003-0295 and RTC 2003-0296, the imposable penalty for the two (2) counts of qualified rape under Art. 266-A(1)(d), in relation to Art. 266-B(1) of the RPC, is death. However, in view of R.A. No. 9346^[38] and A.M. No. 15-08-02-SC,^[39] the CA properly sustained the RTC in imposing the penalty of *reclusion perpetua* without eligibility for parole *in lieu* of death. In light of recent jurisprudence^[40] where it was held that in cases of qualified rape where the imposable penalty is death but the same is reduced to *reclusion perpetua* because of R.A. No. 9346, the award of civil indemnity, moral damages and exemplary damages should be increased from P75,000.00 to P100,000.00.^[41]

WHEREFORE, premises considered, the appeal is **DISMISSED**, and the Decision dated August 8, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05495 is **AFFIRMED** with **MODIFICATION**:

1. In Criminal Case No. RTC-2003-0294, appellant Raul Macapagal y Manalo is guilty of one (1) count of **acts of lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b), Article III of R.A. No. 7610**, and is sentenced to suffer Fourteen (14) years and Eight (8) months of *reclusion temporal* minimum, as minimum, to Seventeen (17) years and Four (4) months of *reclusion temporal* medium, as maximum, in view of the presence of the alternative aggravating circumstance of relationship. He is, likewise, ordered to pay the victim civil indemnity in the amount of P20,000.00, as well as moral damages, exemplary damages and fine in the amount of P15,000.00 each.
2. In Criminal Case Nos. RTC-2003-0295 and RTC-2003-0296, appellant is guilty of two (2) counts of **qualified rape**, and is sentenced for each count to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is also ordered to pay the victim civil

indemnity, moral damages and exemplary damages in the amount of P100,000.00 each for both counts of qualified rape.

All damages awarded shall incur legal interest at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, and Caguioa, JJ., concur.
Reyes, Jr., J., on wellness leave.

[1] Penned by Associate Justice Sesonando E. Villon, with Associate Justices Florito S. Macalino and Leoncia R. Dimagiba, concurring; *rollo*, pp. 2-31.

[2] Penned by Presiding Judge Erwin Virgilio P. Ferrer; *CA rollo*, pp. 50-63.

[3] Article 266-A. *Rape, When and How Committed. — Rape is committed —*

1) By a man who shall have carnal knowledge of a woman ...:

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- 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.

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.

xxxx

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

xxxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) 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 victim;

xxxx

[4] An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and For Other Purposes.

[5] The identity of the victim or any information to 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, 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"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

[6] *Rollo*, pp. 36-37.

[7] *Records*, p. 52.

[8] *CA rollo*, p. 40.

[9] *Id.* at 63.

[10] *Rollo*, pp. 30-31.

[11] Art. 336. *Acts of lasciviousness*. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

[12] Section 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:

xxxx

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.

[13] Article 266-A. *Rape, When and How Committed*. — *Rape is committed* —

x x x

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.

[14] G.R. No. 206513, October 20, 2015, 733 SCRA 228.

[15] See Separate Concurring Opinion of Justice Diosdado M. Peralta in *Quimvel v. People*, G.R No. 214497, April 18, 2017.

[16] 661 Phil. 208, 224 (2011).

[17] G.R. Nos 196342 and 196848, August 8, 2017.

[18] Records, p. 52; Date of Birth: September 12, 1986.

[19] *Supra*.

[20] [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.

[21] *Quimvel v. People*, *supra* note 15.

[22] *Id.* (Citations omitted)

[23] *Olivarez v. Court of Appeals*, 503 Phil. 421, 432 (2005).

[24] R.A. No. 7610, Section 3.

[25] TSN, July 28, 2004, pp. 6-8.

[26] ART. 266-A. *Rape, When and How Committed*. — *Rape is committed* — 1. By a man who shall have carnal knowledge of a woman under any of 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.

If committed by a parent against his child under eighteen (18) years of age, the rape is qualified under paragraph 1, Article 266-B of the same Code, viz.:

[27] ART. 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

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The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

- 1. 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.

xxxx

[28] *People v. Lagbo*, G.R. No. 207535, February 10, 2016, 784 SCRA 1, 11 (2016), citing *People v. Colentava*, 753 Phil. 361, 372-373 (2015); and *People v. Candellada*, 713 Phil. 623, 635 (2013).

[29] TSN, July 28, 2004, pp. 10-17.

[30] *People v. Sumarago*, 466 Phil. 956, 978 (2004).

[31] *Id.*

[32] *Rollo*, p. 46.

[33] *People of the Philippines v. Felipe Bugho y Rompal*, G.R. No. 208360, April 6, 2016.

[34] *People v. Tuboro*, G.R. No. 220023, August 8, 2016.

[35] Section 31. *Common Penal Provisions*. —

xxxx

(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.

[36] Section. 31. *Common Penal Provisions*.—

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(f) A fine to be imposed 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.

[37] *Supra* note 15.

[38] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Enacted on 24 June 2006. Section 3 of R.A. No. 9346 states:

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

[39] Guidelines For the Proper Use of the Phrase "Without Eligibility For Parole" in Indivisible Penalties dated August 4, 2015; II (2) When the circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification "without eligibility for parole" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

[40] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[41] *People v. Aycardo*, G.R. No. 218114, June 5, 2017.



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