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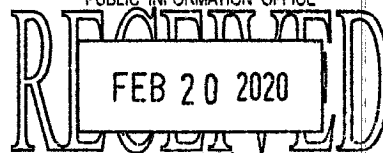


Misael Domingo C. Battung III  
Division Clerk of Court  
Third Division

Republic of the Philippines  
**Supreme Court**  
Manila

FEB 18 2020

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE



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**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 233661**

- versus -

**Present:**

**LEONEN, J., Chairperson**  
**GESMUNDO,\*\***  
**CARANDANG,**  
**LAZARO-JAVIER,\*\*\* and**  
**ZALAMEDA, JJ.**

**XXX,\***  
Accused-Appellant.

**Promulgated:**

November 6, 2019

Misael Domingo C. Battung III

X-----X

**DECISION**

**ZALAMEDA, J.:**

This is an appeal filed by accused-appellant XXX (accused-appellant) seeking to reverse and set aside the Decision<sup>1</sup> dated 21 March 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08147, which affirmed with modifications<sup>2</sup> the Amended Decision<sup>3</sup> dated 26 November 2015 rendered by Branch 5, Regional Trial Court (RTC) of Lemery, Batangas, finding him guilty of four (4) counts of lascivious conduct, as defined in Republic Act (RA) 7610, and one (1) count of rape.<sup>4</sup>

\* The identity of the victim or any information which could establish or compromise her identity, including the names of her immediate family or household members, and the *barangay* and town of the incident, are withheld pursuant to SC Amended Administrative Circular No. 83-2015. The real name of the accused-appellant is also replaced with fictitious initials by reason of his relationship to the minor victim.

\*\* On leave.

\*\*\* Designated as Additional Member of the Third Division per Special Order No. 2728; on official leave.

<sup>1</sup> *Rollo*, pp. 2-23; penned by Associate Justice Jhosep Y. Lopez, and concurred by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan.

<sup>2</sup> *Id.* at 21-22.

<sup>3</sup> *CA rollo*, pp. 69-77; penned by Acting Presiding Judge Eleuerio Larisma Bathan.

<sup>4</sup> *Rollo*, p. 6.

### Antecedents

Separate Informations were filed against accused-appellant, the accusatory portions of which read:

#### Criminal Case No. 20-2007

That on or about the 7<sup>th</sup> day of March, 2007, at about 10:00 o'clock in the evening at Barangay [REDACTED], Municipality of [REDACTED], Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, and motivated by lust and lewd design, did then and there willfully, unlawfully and feloniously commit lascivious conduct on one AAA a thirteen year old minor, the daughter of the accused, by touching her breasts, with intent to abuse, humiliate, harass or degrade said AAA and to arouse and gratify his sexual desire, which acts debased, degraded and demeaned her intrinsic worth and dignity as a human being.

Contrary to law.<sup>5</sup>

#### Criminal Case No. 32-2007

That on or about the 28<sup>th</sup> day of February, 2007, at about 11:30 o'clock in the evening at Barangay [REDACTED], Municipality of [REDACTED], Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of one AAA a thirteen (13) year old minor, accused's legitimate daughter, which acts debased, degraded or demeaned the intrinsic worth and dignity of said AAA, as a human being.

Contrary to law.<sup>6</sup>

#### Criminal Case No. 33-2007

That on or about the 6<sup>th</sup> day of January, 2005, at about 7:30 o'clock in the evening at Barangay [REDACTED], Municipality of [REDACTED], Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, and motivated by lust and lewd design, did then and there willfully, unlawfully and feloniously commit lascivious conduct on one AAA a (sic.) eleven (11) year old minor, the daughter of the accused, by embracing her and touching her breasts, with intent to abuse, humiliate, harass or degrade said AAA and to arouse and gratify his

<sup>5</sup> Records (Crim. Case No. 20-2007), p. 1.

<sup>6</sup> Records (Crim. Case No. 32-2007), p. 1.



sexual desire, which acts debased, degraded and demeaned her intrinsic worth and dignity as a human being.

Contrary to law.<sup>7</sup>

#### Criminal Case No. 34-2007

That on or about the 12<sup>th</sup> day of June, 2005, at about 8:00 o'clock in the evening, at Barangay [REDACTED], Municipality of [REDACTED], Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, and motivated by lust and lewd design, did then and there willfully, unlawfully and feloniously commit lascivious conduct on one AAA a twelve (12) year old minor, the daughter of the accused, by embracing her and touching her breasts, with intent to abuse, humiliate, harass or degrade said AAA and to arouse and gratify his sexual desire, which acts debased, degraded and demeaned her intrinsic worth and dignity as a human being.

Contrary to law.<sup>8</sup>

#### Criminal Case No. 35-2007

That on or about the 20<sup>th</sup> day of August, 2005, at about 9:00 o'clock in the evening at Barangay [REDACTED], Municipality of [REDACTED], Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, and motivated by lust and lewd design, did then and there willfully, unlawfully and feloniously commit lascivious conduct on one AAA a twelve (12) year old minor, the daughter of the accused, by touching her breasts, with intent to abuse, humiliate, harass or degrade said AAA and to arouse and gratify his sexual desire, which acts debased, degraded and demeaned her intrinsic worth and dignity as a human being.

Contrary to law.<sup>9</sup>

Upon arraignment, accused-appellant pleaded not guilty to the charges against him. After pre-trial, trial on the merits ensued.

#### Version of the Prosecution

The prosecution's version of the facts and its evidence were summarized in this manner:

<sup>7</sup> Records (Crim. Case No. 33-2007), p. 1.

<sup>8</sup> Records (Crim. Case No. 34-2007), p. 1.

<sup>9</sup> Records (Crim. Case No. 35-2007), p. 1.



The prosecution presented AAA, the private complainant as its lone witness. Stripped of non-essentials, AAA testified that on January 6, 2005, she was at the house of her cousin, Ate Brenda, watching television. While she was watching television, the accused, her father, came and called her. AAA approached her father who then brought her to the bathroom of her Ate Brenda's house. While inside, the accused embraced AAA and touched her breast. Thereafter, the accused gave her twenty pesos (P20.00) with a warning not to tell anybody what he did. The accused then left.

On June 12, 2005 at around 8:00 o'clock in the evening, AAA was at home taking a bath when the accused suddenly appeared. The accused covered her mouth and warned her not to tell anybody what he is doing to her. The accused then touched her private part and her breast. Subsequently, the accused warned her again then left.

On August 20, 2005, AAA was at the back of their house watching over her five year old brother who was then taking a dump. The accused, her father, suddenly appeared. The accused ordered her sibling to go inside the house. The accused then embraced her and touched her breast and then leave (sic).

On February 28, 2007, at around 9:00 o'clock in the evening, AAA was sleeping at their house together with her other siblings. She was awakened when someone touched her shoulders. It turned out to be his (sic) father, the accused. The latter then put off the light, removed his pants and underwear. The accused then held AAA's hands and forcibly removed her shorts and panty. AAA was then forced to lie down and the accused inserted his penis into AAA's vagina and started pumping. The accused then warned her not to tell anybody of what happened. After satisfying himself, the accused left and AAA cried.

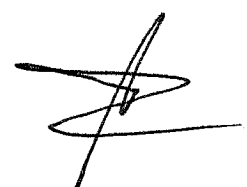
On March 7, 2007 at about 10:00 o'clock in the evening, AAA was home. The accused again fondled with AAA's breast. This time, however, AAA's mother saw it saw (sic) the latter confronted the accused. But the accused just left. After this incident, AAA told her aunt about what her father did to her so her aunt reported the matter to their barangay captain who accompanied them to the police station. X x x<sup>10</sup>

### Version of the Defense

For his defense, accused-appellant offered his denial and alibi, to wit:

10. Accused XXX, who was a porter at the Lemery Public Market, worked from 6:00 o'clock in the evening until 2:00 o'clock in

<sup>10</sup> Records (Criminal Case No. 20-2007), p. 314.



the afternoon of the following day. Hence, on the days that he allegedly molested and raped AAA, he was, in fact, at the market, carrying fruits and vegetables with his brother.

11. With regard to the place where he allegedly molested and raped her (sic) daughter, XXX never went to the house of BBB. Also, he is a father of seven (7) children, and together with his wife, they lived in the house of his wife's cousin starting November 2006 until he was arrested (sic) in 2007. The house is measured about five (5) meters by four (4) meters and had one small bedroom. Inside the bedroom are old clothes, containers and fruit boxes. Since this could not accommodate all of XXX's family members, he sleeps outside the room, while his wife and children slept inside.<sup>11</sup>

### Ruling of the RTC

After trial, the RTC rendered its amended decision disposing all the criminal cases filed as follows:

**WHEREFORE**, premises considered, this Court renders the following judgment:

1. In Criminal Case No. 20-2007 for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of ten (10) years and one (1) day of *prision mayor* as minimum to 20 years of *reclusion temporal* as maximum, and is ordered to pay AAA the amount of Twenty Thousand Pesos (P20,000.00) as civil indemnity with a rate of 6% per annum from the time of finality of this judgment;
2. In Criminal Case No. 32-2007 for rape, accused, XXX is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and is ordered to pay AAA the amount of Seventy Five Thousand Pesos (P75,000.00) as civil indemnity and Seventy Five Thousand Pesos (P75,000.00) as moral damages, both with interest at the rate of 6% per annum from the date of finality of this judgment[;]
3. In Criminal Case No. 33-2007 for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of ten (10) years and one (1) day of *prision mayor* as minimum to 20 years of *reclusion temporal* as maximum, and is ordered to pay AAA the amount of Twenty Thousand

<sup>11</sup> CA rollo, p. 49, the PAO replaced the name of the victim with fictitious initials.



Pesos (P20,000.00) as civil indemnity with a rate of 6% per annum from the time of finality of this judgment;

4. In Criminal Case No. 34-2007 for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of ten (10) years and one (1) day of *prision mayor* as minimum to 20 years of *reclusion temporal* as maximum, and is ordered to pay AAA the amount of Twenty Thousand Pesos (P20,000.00) as civil indemnity with a rate of 6% per annum from the time of finality of this judgment; and
5. In Criminal Case No. 35-2007 for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of ten (10) years and one (1) day of *prision mayor* as minimum to 20 years of *reclusion temporal* as maximum, and is ordered to pay AAA the amount of Twenty Thousand Pesos (P20,000.00) as civil indemnity with a rate of 6% per annum from the time of finality of this judgment.

**SO ORDERED.**<sup>12</sup>

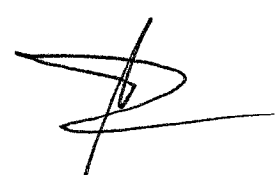
The RTC found AAA's testimony to be clear, convincing, and without any indication that it was rehearsed or coached. The trial court also observed that AAA had no ill motive to implicate accused-appellant for a crime he did not commit. Further, the RTC was more predisposed to believe AAA's testimony being a young and immature female victim who, despite her vulnerability and the potential embarrassment she was to suffer afterwards, still chose to testify. Finally, the RTC ruled that accused-appellant's uncorroborated denial and alibi cannot overcome the victim's positive testimony.<sup>13</sup>

Adamant on proving his innocence, accused-appellant filed his appeal before the CA, imputing the following errors on the trial court's part:

I. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS

<sup>12</sup> Records (Crim. Case No. 20-2007), p. 318-319; the RTC replaced the name of the victim with fictitious initials.

<sup>13</sup> *Rollo*, pp. 6-7.



FAVOR AND INCREDIBILITY OF THE PRIVATE  
COMPLAINANT'S TESTIMONY.

II. THE COURT A QUO GRAVELY ERRED IN NOT GIVING  
CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF  
DENIAL.<sup>14</sup>

### **Ruling of the CA**

On 21 March 2017, the CA promulgated its Decision, the  
dispositive portion of which reads:

**WHEREFORE**, premises considered, the appeal is **DENIED**.  
The assailed Amended Decision dated 26 November 2015 of the  
Regional Trial Court Lemery, Batangas Branch 5 in Criminal Case Nos.  
20-2007, 32-2007, 33-2007, 34-2007, and 35-2007 is **AFFIRMED**  
with **MODIFICATIONS** viz:


1. In **Criminal Case No. 20-2007** for lascivious conduct,  
accused, XXX is hereby found guilty beyond reasonable doubt of  
committing acts of lasciviousness as defined under Section 5(b), Article  
III of Republic Act No. 7610 in relation to Section 2(h) of its  
Implementing Rules and Regulations. As such, he is hereby sentenced  
to suffer the penalty of twenty (20) years and one (1) day as minimum  
to forty (40) years as maximum, and is ordered to pay AAA the  
following amounts: (1) P15,000.00 as fine, (2) P20,000.00 as civil  
indemnity, (3) P15,000.00 as moral damages, and (4) P15,000.00 as  
exemplary damages with a rate of 6% per annum from the time of  
finality of this judgment;

2. In **Criminal Case No. 32-2007** for qualified rape,  
accused, XXX is hereby found guilty beyond reasonable doubt of  
committing qualified rape as defined under Article 335 of the Revised  
Penal Code. As such, he is hereby sentenced to suffer the penalty of  
*reclusion perpetua* without eligibility for parole, and is ordered to pay  
AAA the following amounts: (a) P100,000.00 as civil indemnity; (b)  
P100,000.00 as moral damages; and (c) P50,000.00 as exemplary  
damages with interest at the rate of 6% per annum from the time of  
finality of this judgment;

3. In **Criminal Case No. 33-2007** for lascivious conduct,  
accused, XXX is hereby found guilty beyond reasonable doubt of  
committing acts of lasciviousness as defined under Article 336  
of the Revised Penal Code, in relation to Section 5(b), Article III of  
Republic Act No. 7610 in relation to Section 2(h) of its Implementing  
Rules and Regulations. As such, he is hereby sentenced to suffer the  
penalty of sixteen (16) years five (5) months and eleven (11) days as  
minimum to seventeen (17) years and four (4) months as maximum and

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<sup>14</sup> *Id.* at 9.



is ordered to pay AAA the following amounts: (1) ₱15,000.00 as fine, (2) ₱20,000.00 as civil indemnity, (3) ₱15,000.00 as moral damages, and (4) ₱15,000.00 as exemplary damages with a rate of 6% per annum from the time of finality of this judgment;

4. In **Criminal Case No. 34-2007** for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt of committing acts of lasciviousness as defined under Section 5(b), Article III of Republic Act No. 7610 in relation to Section 2(h) of its Implementing Rules and Regulations. As such, he is hereby sentenced to suffer the penalty of twenty (20) years and one (1) day as minimum to forty (40) years as maximum, and is ordered to pay AAA the following amounts: (1) ₱15,000.00 as fine, (2) ₱20,000.00 as civil indemnity, (3) ₱15,000.00 as moral damages, and (4) ₱15,000.00 as exemplary damages with a rate of 6% per annum from the time of finality of this judgment; and

5. In **Criminal Case No. 35-2007** for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt of committing acts of lasciviousness as defined under Section 5(b), Article III of Republic Act No. 7610 in relation to Section 2(h) of its Implementing Rules and Regulations. As such, he is hereby sentenced to suffer the penalty of twenty (20) years and one (1) day as minimum to forty (40) years as maximum, and is ordered to pay AAA the following amounts: (1) ₱15,000.00 as fine, (2) ₱20,000.00 as civil indemnity, (3) ₱15,000.00 as moral damages, and (4) ₱15,000.00 as exemplary damages with a rate of 6% per annum from the time of finality of this judgment.

**SO ORDERED.**<sup>15</sup>

The CA found no error on the RTC's part when it ruled that all the elements of sexual abuse under Section 5(b), Article III of RA 7610 were present.<sup>16</sup> The CA explained that the prosecution was able to establish: 1) that on several occasions, accused-appellant touched AAA's breast and private parts to satisfy his sexual desires; 2) accused-appellant's relationship to AAA; and 3) AAA's minority and coverage under the provisions of RA No. 7610.<sup>17</sup> The CA did not believe accused-appellant's alibi, saying his defense lacked corroboration. As such, it could not overcome AAA's positive identification that he was the perpetrator.<sup>18</sup>

Anent the charge of qualified rape through force and intimidation, the CA ruled that the "[a]ccused-appellant's moral ascendancy and influence over AAA was sufficient to instill fear and intimidation in her

<sup>15</sup> *Id.* at 20-22.

<sup>16</sup> *Id.* at 13.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 14.





mind.”<sup>19</sup> The CA also ruled that the testimony of the physician who examined AAA was merely corroborative, and therefore, dispensable in a prosecution for rape.<sup>20</sup>

### Issue

The Court is now called upon to decide whether accused-appellant's guilt for the crimes charged was beyond reasonable doubt.

Accused-appellant insists on his innocence before Us by invoking the same arguments he raised before the appellate court.<sup>21</sup> In particular, accused-appellant challenges the credibility of AAA's testimony. He asserts that during the alleged commission of the crime, he was working as a porter at the Lemery Public Market. Accused-appellant also relies heavily on the alleged physical impossibility of committing the offenses charged, considering the size and configuration of their house and the positions the whole household takes when they go to sleep. He explained that due to the cramped space they are living in, it is impossible for him to rape AAA without her mother and siblings hearing it; accused-appellant also considers as fatal the prosecution's failure to present in evidence the testimony of the physician who medically checked AAA.<sup>22</sup>

### Ruling of the Court

We sustain accused-appellant's conviction. Nevertheless, while the Court agrees with the legal conclusion reached by the CA, We deem it proper to clarify and simplify the nomenclature of the offense of lascivious conduct committed, as well as modify the penalty imposed upon accused-appellant, and the amount of damages awarded to AAA.

*AAA's credible testimony  
outweighs accused-appellant's  
defenses of denial and alibi*

The Court accords the trial court's factual determination utmost respect especially when the CA affirms the same. It is settled that trial

<sup>19</sup> *Id.* at 18.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 31-35, 41-43; the accused and the State both manifested that they would no longer file their respective briefs, and would adopt the briefs they filed before the CA.

<sup>22</sup> *Id.* at 52-53.



courts are better hoisted to observe the demeanor and deportment of witnesses on the stand, making their assessment of a witness's credibility far superior to that of appellate tribunals.<sup>23</sup> Thus:

To begin with, the accused assails the factual findings of the RTC, including its assessment of the worth of the witnesses who testified in the trial. We cannot, however, contradict the factual findings, especially because the CA, as the reviewing tribunal, affirmed them. Such findings are now entitled to great weight and respect, if not conclusiveness, for we accept that the trial court was in the best position as the original trier of the facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions of the events that made up the occurrences constituting the ingredients of the offenses charged. The direct appreciation of testimonial demeanor during examination, veracity, sincerity and candor was foremost the trial court's domain, not that of a reviewing court that had no similar access to the witnesses at the time they testified. Without the accused persuasively demonstrating that the RTC and the CA overlooked a material fact that otherwise would change the outcome, or misappreciated a circumstance of consequence in their assessment of the credibility of the witnesses and of their respective versions, the Court has no ground by which to reverse their uniform findings as to the facts.<sup>24</sup>

The Court is persuaded that both the RTC and the CA correctly appreciated the pieces of evidence presented here. Thus, their factual findings are upheld. More important, the weight given to AAA's testimony is consistent with the long standing doctrine of upholding the credibility of a child rape victim so long as there is no evidence suggesting the possibility of her being actuated by ill motive to falsely testify against the accused.<sup>25</sup> No such ill motive was attributed to AAA. During the accused's direct testimony, he testified:

Q Mr. Witness, can you think of any reason why your child accused you for having molested her despite the fact that you have not done anything wrong as you have testified?

A None ma'am.<sup>26</sup>

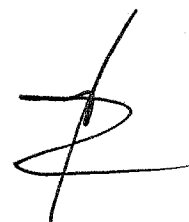
Surely, on cross-examination, AAA testified about accused-appellant's usual working schedule. However, there is nothing in her

<sup>23</sup> See *Cruz v. People*, G.R. No. 166441, 08 October 2014, 737 SCRA 567.

<sup>24</sup> *People v. Taguibuya*, G.R. No. 180497, 05 October 2011, 658 SCRA 685.

<sup>25</sup> *People v. Taguilid*, G.R. No. 181544, 11 April 2012, 669 SCRA 341.

<sup>26</sup> TSN dated 21 April 2010, p. 1.



testimony that removes accused-appellant from the dates and times the crimes were committed. In Our view, AAA's testimony indicates frequency: that her father "most of the time" goes to work at six o'clock in the evening and returns home at two o'clock in the afternoon of the following day.<sup>27</sup> Certainly, this is not a categorical and unequivocal statement attesting to accused-appellant's absence in their home during the dates and times the crimes were committed.

We also cannot give merit to accused-appellant's defense of denial and alibi. Unsubstantiated by clear and convincing evidence, denials are negative defenses, which cannot be given greater evidentiary weight than a credible witness's positive and affirmative testimony.<sup>28</sup> Aside from accused-appellant himself, no other witness was introduced to corroborate his presence at the Lemery Public Market during the commission of the crimes. To be sure, accused-appellant's testimony alone should be considered self-serving and insufficient to secure an acquittal. As regards the prosecution's failure to present the medico-legal officer as witness, the CA was correct that expert testimony is merely corroborative and not essential to conviction.<sup>29</sup>

*The simplified nomenclature of the lascivious conduct committed by accused-appellant*

To avoid confusion and to conform with Our ruling in *People v. Tulagan*,<sup>30</sup> We find it necessary to simplify and improve the nomenclature used by the CA in describing the offense of lascivious conduct committed by accused-appellant. As explained in *Tulagan*:

**Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5 (b) of R.A. No. 7610" with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC. It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor*. (Emphasis supplied)**

<sup>27</sup> TSN dated 10 February 2009, p. 9.

<sup>28</sup> See *People v. Adajar*, G.R. No. 231306, 17 June 2019.

<sup>29</sup> *People v. Cabilida, Jr.*, G.R. No. 222964, 11 July 2018.

<sup>30</sup> G.R. No. 227363, 12 March 2019.



With regard to acts of lasciviousness committed against children under twelve (12) years of age, *Tulagan* elucidates:

x x x The same reason holds true with respect to acts of lasciviousness or lascivious conduct when the offended party is less than 12 years old or is demented. **Even if such party consents to the lascivious conduct, the crime is always statutory acts of lasciviousness. The offender will be prosecuted under Article 336 of the RPC, but the penalty is provided for under Section 5 (b) of R.A. No. 7610.** (Emphasis supplied)

Considering the foregoing, accused-appellant is found guilty of the following:

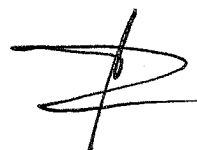
- (1) In **Criminal Cases Nos. 20-2007, 34-2007, and 35-2007** – Lascivious conduct under Section 5(b) of RA 7610; and,
- (2) In **Criminal Case No. 33-2007** – Acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of RA 7610.

On the other hand, accused-appellant was correctly convicted of Qualified Rape in Criminal Case No. 32-2007.

*The correct penalties to be imposed upon accused-appellant, and the correct amount of damages to be awarded to AAA*

We also need to correct the penalties imposed by the CA. Under Articles 64 and 65 of the RPC, the presence of an aggravating circumstance warrants the imposition of the penalty prescribed by law in its maximum period.<sup>31</sup> The imposable penalty for lascivious conduct

<sup>31</sup> ARTICLE 64. *Rules for the Application of Penalties Which Contain Three Periods.* — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:  
1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.



under Section 5(b) of RA 7610 is *reclusion temporal* medium to *reclusion perpetua*. Since the aggravating circumstance of relationship was duly proven, without any mitigating circumstance to offset it, the maximum penalty of *reclusion perpetua* should be imposed in Criminal Case Nos. 20-2007, 34-2007, and 35-2007. Also, there is no need to qualify *reclusion perpetua* with the phrase, “without eligibility for parole,” because, under A.M. No. 15-08-02-SC, in cases where the death penalty is not warranted, it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole.<sup>32</sup> In the same vein, the penalty of *reclusion perpetua* meted in Criminal Case No. 32-2007 was correctly qualified with the phrase, “without eligibility for parole,” since Article 266-B imposes the penalty of death for Qualified Rape.

The penalty meted in Criminal Case No. 33-2007 also needs calibration. Section 5(b) of RA 7610 imposes the penalty of *reclusion temporal* medium when the victim of lascivious conduct is under twelve (12) years of age. Since the aggravating circumstance of relationship was correctly applied, the penalty should be imposed in its maximum period. We then divide *reclusion temporal* medium to three equal periods to get its maximum. Thus:

Minimum	Medium	Maximum
14 years, 8 months and 1 day to 15 years, 6 months and 20 days	15 years, 6 months and 21 days to 16 years, 5 months and 10 days	16 years, five months and 11 days to 17 years and 4 months

For purposes of applying the Indeterminate Sentence Law (ISLaw), the maximum term should be within the range of the maximum period of

2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.
3. When only an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.
4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.
5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.
6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.
7. Within the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime.

ARTICLE 65. *Rule in Cases in Which the Penalty is Not Composed of Three Periods.* — In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.

<sup>32</sup> See *People v. Moya*, G.R. No. 228260, 10 June 2019.

imposable penalty. Thus, the CA correctly pegged the maximum term at seventeen (17) years and four (4) months' imprisonment. However, the CA provided for the minimum term of sixteen (16) years, five (5) months and eleven (11) days, which is still within the range of the maximum period of *reclusion temporal* medium. This is incorrect. Section 1 of the ISLaw, as amended, provides:

SEC. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, **the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty** next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (Emphasis and underscoring supplied)

Here, while the penalty was provided by a special law, its technical nomenclature was taken from the RPC. Thus, the determination of the indeterminate sentence should be based on the rules applied for offenses punishable under the RPC.<sup>33</sup>

In this case, the minimum term should be taken from the penalty next lower to *reclusion temporal* medium, which is *reclusion temporal* minimum. *Reclusion temporal* minimum has a period of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Pursuant to Article 64, paragraph 7 of the RPC and considering the gravity of offense committed, We deem it proper to impose as minimum term, imprisonment of fourteen (14) years and eight (8) months, which is the maximum of said penalty.<sup>34</sup>

Finally, We resolve to increase the damages awarded to the victim to conform to our pronouncement in *People v. Tulagan*<sup>35</sup> and *People v. Panes*.<sup>36</sup> Thus:

<sup>33</sup> *Peralta v. People*, G.R. No. 221991, 30 August 2017, 838 SCRA 350.

<sup>34</sup> *Supra* at note 28.

<sup>35</sup> *Supra* at note 30.

<sup>36</sup> Provides for the amount of damages for convictions of Qualified Rape; G.R. No. 215730, 11 September 2017.



Criminal Case No.	Nature of Damages Awarded	From	To
20-2007	Civil indemnity	P20,000.00	P75,000.00
	Moral damages	P15,000.00	P75,000.00
	Exemplary damages	P15,000.00	P75,000.00
32-2007	Civil indemnity	P100,000.00	P100,000.00
	Moral damages	P100,000.00	P100,000.00
	Exemplary damages	P50,000.00	P100,000.00
33-2007	Civil indemnity	P20,000.00	P50,000.00
	Moral damages	P15,000.00	P50,000.00
	Exemplary damages	P15,000.00	P50,000.00
34-2007	Civil indemnity	P20,000.00	P75,000.00
	Moral damages	P15,000.00	P75,000.00
	Exemplary damages	P15,000.00	P75,000.00
35-2007	Civil indemnity	P20,000.00	P75,000.00
	Moral damages	P15,000.00	P75,000.00
	Exemplary damages	P15,000.00	P75,000.00

To mirror *Tulagan*, accused-appellant's liability to pay fine is hereby deleted. Nevertheless, a legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this decision until they are fully paid.

**WHEREFORE**, the appeal is hereby **DENIED**. The Amended Decision of the Regional Trial Court in Criminal Case Nos. 20-2007, 32-2007, 33-2007, 34-2007, and 35-2007, as affirmed by the Court of Appeals in CA-G.R. CR-H.C. No. 08147, is **AFFIRMED** with further **MODIFICATIONS**. We find accused-appellant XXX **GUILTY** beyond reasonable doubt of the following:

1. **Lascivious Conduct under Section 5(b) of RA 7610** in Criminal Case No. 20-2007, and is sentenced to suffer *reclusion perpetua*. Accused-appellant is **ORDERED** to **PAY** AAA the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary



damages;

2. **Qualified Rape** in Criminal Case No. 32-2007, and is sentenced to suffer *reclusion perpetua* without eligibility for parole. Accused-appellant is ORDERED to PAY AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages;
3. **Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of RA 7610** in Criminal Case No. 33-2007, and is sentenced to suffer an indeterminate sentence of fourteen (14) years and eight months of *reclusion temporal* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. Accused-appellant is ORDERED to PAY AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages;
4. **Lascivious Conduct under Section 5(b) of RA 7610** in Criminal Case No. 34-2007, and is sentenced to suffer *reclusion perpetua*. Accused-appellant is ORDERED to PAY AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages; and,
5. **Lascivious Conduct under Section 5(b) of RA 7610** in Criminal Case No. 35-2007, and is sentenced to suffer *reclusion perpetua*. Accused-appellant is ORDERED to PAY AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this decision until fully paid.

**SO ORDERED.**

  
**RODIL N. ZALAMEDA**  
Associate Justice



**WE CONCUR:**



**MARVIC M.V.F. LEONEN**

Associate Justice  
Chairperson

**(On Leave)**

**ALEXANDER G. GESMUNDO**

Associate Justice



**ROSMARI B. CARANDANG**

Associate Justice

**(On official leave)**

**AMY C. LAZARO-JAVIER**

Associate Justice

**ATTESTATION**

I attest that the conclusion 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.




**MARVIC M.V.F. LEONEN**

Associate Justice  
Chairperson



**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



**DIOSDADO M. PERALTA**  
Chief Justice

**CERTIFIED TRUE COPY**

*Mis DC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court  
Third Division

FEB 18 2020

