



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 232071

Present:

- versus -

PERALTA, J., *Chairperson,*
LEONEN,
REYES, A., JR.,
HERNANDO, and
INTING, JJ.

Promulgated:

BBB,

Accused-Appellant.

July 10, 2019

X-----*[Signature]*-----X

DECISION

PERALTA, J.:

For consideration of the Court is the appeal of the Decision¹ dated February 9, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01441-MIN which affirmed, with modification, the Joint Judgment² dated August 27, 2015 of the Regional Trial Court (RTC) of ████████ City, Misamis Oriental, finding accused-appellant BBB guilty beyond reasonable doubt of two (2) counts of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code (RPC), in relation to Republic Act (R.A.) No. 7610, as amended by R.A. No. 8353, otherwise known as the *Anti-Rape Law of 1997* and two (2) counts of child abuse in violation of Section 10, in relation to Section 3, of R.A. No. 7610.

The antecedent facts are as follows.

¹ Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño, concurring; *rollo*, pp. 3-28.

² Penned by Judge Giovanni Alfred H. Navarro; CA *rollo*, pp. 0044-0067.

In four (4) separate Informations, BBB was charged with two (2) counts of rape under Article 266-A, paragraph 1(a) of the RPC, in relation to R.A. No. 7610, and two (2) counts of child abuse in violation of Section 10, in relation to Section 3, of R.A. No. 7610, the accusatory portions of which read:

Criminal Case No. 2012-4969

That sometime on April 17, 2012, at more or less 9:00 o'clock in the evening, in XXX, ██████ City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the grandfather of the victim, by means of force, violence and intimidation, did then and there [willfully], unlawfully, and feloniously have carnal knowledge with (sic) [AAA], 16 years old, minor, by inserting his penis into the latter's vagina and have (sic) sexual intercourse for the first occasion, against her will and without her consent. With the aggravating circumstances of that (sic) the victim is under eighteen (18) years of age and the offender is a grandfather of the said victim within the third degree of consanguinity; and minority.

Contrary to and in violation of Article 266-A, paragraph 1(a) of the Revised Penal Code, in relation to R.A. 7610, as amended by R.A. 8353, otherwise known as the Anti-Rape Law of 1997."

Criminal Case No. 2012-4970

That sometime on June 10, 2012, at more or less 10:00 o'clock in the morning, in XXX, ██████ City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the grandfather of the victim, by means of force, violence and intimidation, did then and there [willfully], unlawfully, and feloniously have carnal knowledge with (sic) [AAA], 16 years old, minor, by inserting his penis into the latter's vagina and have (sic) sexual intercourse for the second occasion, against her will and without her consent. With the aggravating circumstances of that (sic) the victim is under eighteen (18) years of age and the offender is a grandfather of the said victim within the third degree of consanguinity; and minority.

Contrary to and in violation of Article 266-A, paragraph 1(a) of the Revised Penal Code, in relation to R.A. 7610, as amended by R.A. 8353, otherwise known as the Anti-Rape Law of 1997.

Criminal Case No. 2012-4972

That sometime on July 20, 2012, at around 10:00 o'clock in the evening, more or less in XXX, ██████ City, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the grandfather of the private offended party and a relative within the third civil (sic) by consanguinity, and taking undue advantage of the victim's minority, with violence and intimidation, did then and there, knowingly, unlawfully and criminally sexually molest private offended minor (sic) [AAA] who is sixteen years (sic) (16) years old and a minor, by removing her clothes, and caressing her breasts,

sucking her nipples, and touching the other parts of her body, against her will, thereby debasing, degrading and demeaning the intrinsic worth and dignity of the private offended minor, as child and which acts are detrimental and prejudicial to her development as a normal human being, to the damage and prejudice of the said victim as may be allowed by law. (sic)

Contrary to law and in violation of Section 10, in relation to Section 3 of Republic Act 7610.

Criminal Case No. 2012-4973

That sometime on July 21, 2012, at around 12:00 noon, more or less in XXX, ██████ City, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the grandfather of the private offended party and a relative within the third civil (sic) by consanguinity, and taking undue advantage of the victim's minority, with violence and intimidation, did then and there, knowingly, unlawfully and criminally sexually molest private offended minor (sic) [AAA] who is sixteen years (sic) (16) years old and a minor, by removing her clothes, and caressing her breasts, sucking her nipples, and touching the other parts of her body, against her will, thereby debasing, degrading and demeaning the intrinsic worth and dignity of the private offended minor, as child and which acts are detrimental and prejudicial to her development as a normal human being, to the damage and prejudice of the said victim as may be allowed by law. (sic)

Contrary to law and in violation of Section 10, in relation to Section 3 of Republic Act 7610.³

On September 11, 2012, BBB was arraigned and pleaded not guilty to the charges filed against him. Subsequently, trial on the merits ensued. The prosecution presented victim AAA⁴ and Dr. Marlene K. Coronado as witnesses.

It was established by the prosecution that AAA was born out of wedlock on June 29, 1996. After the death of her father, her mother remarried. Consequently, AAA was left to be raised by her maternal grandparents – grandfather BBB and grandmother CCC at ██████ City.

At about 9 o'clock in the evening of April 17, 2012, while CCC was on vacation in Cebu, AAA was awakened when BBB came close to her.

³ Rollo pp. 5-7.

⁴ 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.

AAA was lying on the bed when BBB kissed her lips, mounted her and pulled up her sleeveless shirt. He, thereafter, kissed her stomach up to her neck, squeezed her breasts, and kissed her nipples. As BBB threatened AAA that he will not send her to school anymore if she will not let him use her, he removed her short pants and underwear and removed his as well. Then, he sat on her, inserted his finger in her organ many times, and thereafter inserted his penis in her vagina. After satisfying his lust, BBB went back to sleep with AAA's 2-year-old nephew between them.⁵

On June 10, 2012, CCC was sewing clothes at the living room with only a cabinet dividing it from the sleeping area. At 10 o'clock in the morning of said day, AAA was looking after her sleeping nephew on the hammock at the sleeping area with BBB. BBB then asked AAA to sit on his lap, but AAA refused. Despite this, BBB pulled her close to him, removed her short pants and underwear, and made her sit on his penis while he was seated upright. After having coitus with AAA, BBB put his pants back on.⁶

On July 20, 2012, at around 10 o'clock in the evening, while CCC was sewing clothes at a *nipa* hut right outside their house, AAA was left again with BBB and her nephew in the sleeping area. BBB then touched AAA's breasts, raised her sleeveless shirt while she was lying down and kissed her nipples. BBB, thereafter, went outside the house while AAA went to the kitchen.⁷

On July 21, 2012, while AAA was cooking lunch, BBB hugged her from behind, inserted his hand in her shirt, and squeezed her breasts. BBB, thereafter, walked away. AAA did not shout as she was scared of her grandfather. After lunch of the same day, AAA went to her aunt, DDD, to tell her what happened. Consequently, DDD brought AAA to the Barangay Kagawad, YYY, to seek for help. BBB was immediately arrested and was detained at ██████████ City Police Station. The next day, AAA was brought to Misamis Oriental Provincial Hospital in ██████████ City for medical examination conducted by Dra. Marlene K. Coronado who found that AAA's genitalia showed an old laceration at 3 o'clock and that her hymen was no longer intact.⁸

For its part, the defense presented the lone testimony of BBB who denied the accusations against him. According to BBB, it was only him and AAA's nephew who were in the house in the evening of April 17, 2012. His wife, CCC, was then in Cebu while AAA was in ██████████ City. He said that AAA left in the morning of April 15, 2012 to look for a job and returned only on April 24, 2012. Pacaña further testified that he could not have sexually molested AAA on June 10, 2012 and July 20, 2012 because there

⁵ Rollo, p. 4.

⁶ *Id.*

⁷ *Id.* at 5.

⁸ *Id.*

were several persons in the house and that he and CCC were busy taking turns with the sewing. As for the July 21, 2012 incident, BBB alleged that he was not at home the entire day since he left for the Iglesia ni Cristo Church at 5:00 a.m. and went home at 5:00 p.m.⁹

On August 27, 2015, the RTC rendered its Joint Judgment finding BBB guilty of the crimes charged, the dispositive portion of which provides:

WHEREFORE, premises considered, judgment is hereby rendered, the Court finds accused, [BBB], GUILTY beyond reasonable doubt of two (2) counts of qualified rape and two (2) counts of sexual abuse under Section 5(b), Article III, of Republic Act No. 7610.

In Criminal Case No. 2012-4969, he is hereby sentenced him (sic) to suffer the penalty of *reclusion perpetua* without the benefit of parole, and to pay [AAA] P75,000.00 as civil indemnity; P75,000.00 as moral damages; and P30,000.00 as exemplary damages.

In Criminal Case No. 2012-4970, he is hereby sentenced him (sic) to suffer the penalty of *reclusion perpetua* without the benefit of parole, and to pay [AAA] P75,000.00 as civil indemnity; P75,000.00 as moral damages; and P30,000.00 as exemplary damages.

In Criminal Case No. 2012-4972, he is hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to eighteen (18) years of *reclusion temporal*, as maximum; to pay a fine of P15,000.00; and to pay [AAA] P20,000.00 as civil indemnity and P15,000.00 as moral damages.

In Criminal Case No. 2012-4973, he is hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to eighteen (18) years of *reclusion temporal*, as maximum; to pay a fine of P15,000.00; and to pay [AAA] P20,000.00 as civil indemnity and P15,000.00 as moral damages.

In the service of his sentences, the accused is hereby credited with the full time during which he has undergone preventive imprisonment, provided that he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.¹⁰

In its Decision dated February 9, 2017, the CA affirmed, with modification, the RTC ruling, and disposed of the case as follows:

WHEREFORE, the Joint Judgment dated 27 August 2015 issued by Branch 27 of the Regional Trial Court, [REDACTED] in Criminal Cases Nos. 2012-4969 (for Rape), 2012-4970 (for Rape), 2012-4972 (for Child Abuse) and 2012-4973 (for Child Abuse) is hereby AFFIRMED with MODIFICATION.

⁹ CA rollo, p. 0050.

¹⁰ Id. at 0066-0067.

In Criminal Cases Nos. 2012-4969 and 2012-4970, the awards of civil indemnity *ex delicto*, moral and exemplary damages against AAA are hereby increased to Php100,000.00 each in both cases.

In Criminal Cases Nos. 2012-4972 and 2012-4973, the accused-appellant [BBB] is hereby sentenced to suffer the penalty of *reclusion perpetua*, without eligibility of parole, in both cases. He is likewise ordered to pay the private offended party [AAA], in both cases, as follows: P15,000.00 as fine, P20,000.00 as civil indemnity, P15,000.00 as moral damages and P15,000.00 as exemplary damages.

The accused-appellant [BBB] is further ordered to pay interest on all damages awarded at the rate of 6% *per annum* from finality of this decision until fully paid.

SO ORDERED.¹¹

Now before Us, BBB manifested that he would no longer file a Supplemental Brief as he has exhaustively discussed the assigned errors in his Appellant's Brief.¹² The Office of the Solicitor General (*OSG*) similarly manifested that it had already discussed its arguments in its Appellee's Brief.¹³ BBB insists that AAA's credibility as a witness is objectionable considering that she failed to immediately disclose to her aunt, DDD, whom she usually confides in, the alleged sexual assaults committed by him. He added that her contradicting testimonies failed to overturn the constitutional presumption of innocence in his favor. Thus, the judgment should be reversed.

After a careful review of the records of this case, however, the Court finds no cogent reason to reverse the ruling of the CA. Time and again, the Court has ruled that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the CA.¹⁴ To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Accordingly, in resolving rape cases, the primordial or single most important consideration is almost always given to the credibility of the victim's testimony. When the victim's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can

¹¹ *Rollo*, pp. 27-28.

¹² *Id.* at 57-58.

¹³ *Id.* at 38.

¹⁴ *People v. Talib-og*, G.R. No. 238112, December 5, 2018.

be given regarding the matter is the testimony of the offended party. A rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her.¹⁵

Here, BBB contends that he should be acquitted since AAA's testimony contains inconsistencies and contradictions. But as We have consistently ruled, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone. Inaccuracies and inconsistencies in her testimony are generally expected. Thus, such fact, alone, cannot automatically result in an accused's acquittal.¹⁶

BBB further assails AAA's credibility on the fact that she failed to immediately report to her aunt the incidents she accuses him of doing and that she waited until July 21, 2012, or the fourth alleged molestation, before she finally sought help. The argument hardly persuades. Settled is the rule that delay in reporting an incident of rape due to death threat cannot be taken against the victim because the charge of rape is rendered doubtful only if the delay is unreasonable and unexplained.¹⁷ To the Court, there is nothing unreasonable nor unexplained with the delay in AAA's disclosure. First of all, the alleged delay between the first incident to the last incident, which is also the same day she sought the help of her aunt, is a mere three (3)-month period. Second of all, AAA was terrified. At the time she was sexually molested by her own grandfather, she was only a minor. Worse, BBB constantly threatened her should she reveal the horrific acts he was doing to her.

Thus, AAA's direct, positive and categorical testimony, absent any ill-motive, necessarily prevails over BBB's defense of denial. Like alibi, denial is an inherently weak and easily fabricated defense. It is a self-serving negative evidence that cannot be given greater weight than the stronger and more trustworthy affirmative testimony of a credible witness.¹⁸ While BBB denied the charges against him, he failed to produce any material and competent evidence to controvert the same and justify an acquittal.

Therefore, in Criminal Cases Nos. 2012-4969 and 2012-4970, We sustain BBB's conviction of qualified rape defined under Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC. Under said Article 266-A, paragraph 1(a), the crime of rape may be 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 otherwise unconscious; (c) By means of fraudulent machination or grave abuse of authority; and (d) When the

¹⁵ *People v. Galagati*, 788 Phil. 670, 684-685 (2016).

¹⁶ *People v. Perez*, 783 Phil. 187, 197-198 (2016).

¹⁷ *People v. Galagati*, *supra* note 15, at 687.

¹⁸ *Id.* at 688.

offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. Pursuant to Article 266-B, paragraph 1, moreover, the 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. Thus, the elements of the offense charged are that: (a) the victim is a female over 12 years but under 18 years of age; (b) 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; and (c) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.¹⁹

In this relation, We have consistently held that in rape committed by a close kin, moral ascendancy takes the place of violence and intimidation. This is due to the fact that force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other.²⁰ Indeed, a rape victim's actions are oftentimes overwhelmed by fear rather than reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies the terror because the perpetrator is the person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and degree of fear.²¹

In the instant case, it is undisputed that AAA was only fifteen (15) years old when she was raped by BBB, first on April 17, 2012, and second, on June 10, 2010, as evidenced by the Certification issued by the Office of the Local Civil Registry of ██████ City. It is also undisputed that BBB is the grandfather of AAA, who sexually assaulted his own grandchild by inserting his penis inside her vagina. On the first sexual congress on April 17, 2012, AAA was steadfast and consistent in her testimony, to wit:

Q (Deputy City Prosecutor): Now, kindly tell this Honorable Court what transpired when you woke up at around 9:00 o'clock in the evening?

A: When I was lying down and I felt asleep he came near me.

Q: Who is this "he" you are referring to?

A: AAA. [BBB herein].



¹⁹ *Id.* at 686.

²⁰ *People v. Ubiña*, 554 Phil. 199, 209 (2007).

²¹ *People v. Paculba*, 628 Phil. 662, 675-676 (2010).

Q: Now, when he went near you, what did he do, if any?

A: He kissed my lips.

Q: After that, what else did he do, if any?

A: Then he opened my clothes and he was on top.

Q: By the way, what was your attire at that time?

A: Sleeveless.

Q: Now, when he pulled up your sleeveless, what else did he do, if any?

A: He kissed my stomach going towards the neck.

Q: After he kissed your neck, what did he do to your breasts, if any?

A: He squeezed my breasts.

Q: And then after he squeezed your breasts, what else did he do to your nipples?

A: Then he kissed my nipples.

Q: Now, after he kissed your nipples, what did he tell you then?

A: He told me that if I will not let him use me he will not let me continue schooling.

Q: Now, after he told you that, what did he do then?

A: He removed my shorts and panty and he also removed [his] shorts.

Q: Was he wearing brief at that time?

A: No.

Q: Now, after he took his short pants, what did he do then?

A: He sat on me and then he fingered [me] many times.

Q: Can you elaborate "he fingered [me] many times." What part of your body did he finger many times?

A: My organ.

Q: You said that he fingered your organ. What part of your body that he fingered?

A: My vagina.

Q: Now, after he fingered your vagina many times, what else did he do?

A: Then he inserted his penis.

Q: He inserted his penis in what part of your body?

A: In my vagina.

Deputy City Prosecutor: I would like to put on record, Your Honor, please that the witness is shading (sic) tears.

Court: The Court would like to ask the witness.



When you say he fingered, do you mean to say that he fingered your vagina?

A: Yes, Your Honor.

Deputy City Prosecutor: Now, when he inserted his penis to your vagina, what else did he do?

A: Then he pushed and pulled.

Q: Now, what did you feel to your vagina?

A: Painful.

Q: What did you observe, if any, to your vagina?

A: It was painful and there is something fluid that came out.

Q: Now, I noticed [AAA] that you did not shout when this incident occurred. Can you tell this Honorable Court why you did not shout?

A: Because I was afraid of my "lolo."

Q: When he inserted his penis you did not shout?

A: No.

Q: Why?

A: Because I was really afraid of my "lolo" so I did not shout.

Q: Now, after he inserted the penis, and made the push and pull position, what happened next?

A: Then he went back to where he was sleeping and me, I went back to sleep.

x x x x

Q: (Deputy City Prosecutor): Now, while on this particular time 10:00 o'clock in the morning of June 10, 2012, kindly tell this Honorable Court what were your Nanay or grandmother CCC doing at that time?

A: (AAA): She was sewing.

Q: How about you, what were you doing at that time?

A: Watching the baby.

Q: How did you watch this child?

A: Let him sleep and put him on the hammock.

Q: The same nephew in the other case?

A: Yes, Sir.

Q: Now, while you were watching your nephew at that time, what did your grandfather tell you, if any?

A: He said, sit down on my lap.

Q: What was your attire at that time?

A: Also sleeveless.



Q: Now, when you were asked by your grandfather to sit on his lap, what was his position, is he standing? Or sitting?

A: Sitting down.

Q: What was his attire at that time?

A: Shirt with sleeves.

X X X X X X

Q: Now, when your "lolo" asked you to sit on his lap, what was your response?

A: I said, "no."

Q: When you refused to sit what did he do to you?

A: He pulled me and removed my pants.

X X X X X X

Q: Now, when your grandfather removed your short pants, what did he do to your panty, if any?

A: He also removed.

Q: At the time that he removed his short pants[,] what was his position, was he standing or sitting?

A: Sitting.

Q: Sitting on the chair or on the floor?

A: On the floor.

Q: Now, after your grandfather removed his short pants, what else did he do?

A: He inserted his penis into my vagina.

Court (to the witness): So what was your position at that time?

A: I was also sitting.

Q (Deputy City Prosecutor): You are sitting in what part of the body of your grandfather, if any?

A: His thighs.

Court (asking the witness): And while in this position the penis of your Tatay was already inserted into your vagina?

A: Yes, Your Honor.

Q: So in other words, you sat on your grandfather's penis?

A: Yes, Your Honor.

Q (Deputy City Prosecutor): Now, after he inserted his penis in that position, what else did he do?

A: Then he put his shorts back on.

Court (to the witness): While in that position, did he make a push and pull movement?

A: Yes, made the push and pull for a long time.²²

²² Rollo, pp. 11-17.

Time and again, the Court has held that in rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis. The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and their behavior in court. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule finds an even more stringent application where the said findings are sustained by the CA.²³

In view of the foregoing, We rule that the prosecution satisfactorily proved beyond reasonable doubt that BBB had carnal knowledge of his own granddaughter, AAA, and that he was correctly convicted of qualified rape under Article 266-A, paragraph 1(a), in relation to Article 266-B of the RPC. As the grandfather of his victim, AAA, he succeeded in satisfying his incestuous desires not only through his threats and intimidation, but also because of his moral ascendancy over his minor grandchild. Thus, the courts below were correct in imposing the penalty of *reclusion perpetua* for each count of rape, without eligibility for parole, pursuant to A.M. No. 15-08-02-SC,²⁴ and in lieu of death, because of its suspension under Republic Act No. 9346.²⁵ As to the award of damages, the CA was correct in modifying the

²³ *People v. Navasero*, G.R. No. 234240, February 6, 2019.

²⁴ Section II of A.M. No. 15-08-02-SC Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, August 4, 2015 provides:

In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "without eligibility for parole":

(1) x x x; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "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.

35.RPC, Article 266-B:

Art. 266-B, Penalty. x x x

x x x x

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[.]

²⁵ Article 266-B of the Revised Penal Code provides:

Art. 266-B. Penalty. x x x

x x x x

RTC's ruling such that BBB is now ordered to pay, for each count of rape, civil indemnity in the amount of ₱100,000.00, moral damages in the amount of ₱100,000.00, and exemplary damages in the amount of ₱100,000.00, pursuant to *People v. Jugueta*,²⁶ as well as a six percent (6%) interest *per annum* on all the amounts awarded reckoned from the date of finality of this Decision until the damages are fully paid.²⁷

With respect to Criminal Cases Nos. 2012-4974 and 2012-4973, We likewise sustain the rulings of the courts below finding BBB liable under Section 5(b), Article III of R.A. No. 7610 for his lascivious conduct committed against AAA, who was only sixteen (16) years old at the time. The elements of sexual abuse under Section 5(b) of R.A. No. 7610 are: (1) The accused commits the act of sexual intercourse or lascivious conduct; (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) The child, whether male or female, is below 18 years of age.²⁸ At the trial, AAA clearly and unequivocally narrated how BBB sexually abused her on July 20, 2012 and July 21, 2012 by forcefully mashing her breasts and kissing her nipples. She recounted the harrowing experience in the hands of her own grandfather as follows:

Q (Deputy City Prosecutor): Now, [AAA], we are now discussing the third and fourth cases. Could you recall, [AAA], where were you on July 20, 2012, at 10:00 o'clock in the evening?

A: I was at home, Sir.

Q: You are referring to your house situated at XXX, [REDACTED] City?

A: Yes, Sir.

Q: May we know who were with you at that time at your house?

A: My Tatay, my Nanay, my nephew, and me, Sir.

Q: The same Nanay your grandmother, CCC?

A: Yes, Sir.

Q: Now, at that particular time, where was your Nanay or grandmother CCC?

A: Sewing, Sir.

Q: She was sewing where?

A: In our *nipa* hut at the front, Sir.

Q: How far is this *nipa* hut from your house?

A: It's near, Sir.

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[.]

²⁶ 783 Phil. 806 (2016).

²⁷ *People v. Navasero*, *supra* note 23.

²⁸ *People v. Caoili*, G.R. Nos. 196342 & 196848, August 8, 2017, 835 SCRA 107, 145

Q: Now, at that time, what were you doing then?

A: I was [lying] down. Sir.

Q: While you were [lying] down, kindly tell this [Honorable] Court what did your grandfather do? If any.

A: He touched my breast and raised my clothes, Sir.

Q: After your grandfather raised your clothes, what did he do to your breasts? If any.

A: He kissed my nipples, Sir.

Court: What was your upper garment at that time?

A: Sleeveless, Your Honor.

Court: Is that a t-shirt?

A: T-shirt, your honor.

Court: What was your lower garment at that time?

A: Short, your honor.

Court: Please proceed, Fiscal.

Deputy City Prosecutor: Before your Tatay or grandfather kissed your nipples, what did he do first to your breast?

A: He was touching them, Sir.

Q: After that, he kissed your nipples?

A: Yes, Sir.

Q: How many times [did] your Tatay [kiss] your nipples?

A: Many times, Sir.

Q: Now, at that time that your grandfather touched your breasts and kissed your nipples, what did you do?

A: I was just silent, Sir.

Q: Now, kindly tell this Honorable Court why did you keep silent and you did not shout?

A: I did not shout because I was afraid that somebody else might know, Sir.

Q: Particularly, your grandmother?

A: Yes, Sir.

Q: Now, at that time that your grandfather touched your breasts and kissed your nipples, were you afraid?

A: Afraid, Sir.

Q: After he kissed your nipples, where did he go then?

A: Then he went away, Sir.

Q: How about you?

A: I went to the place where we cooked food, Sir.²⁹

²⁹ Rollo, pp. 20-23. (Underscoring omitted)



Q: On the following day, [AAA], we are now referring to Criminal Case No. 2012-4973. Kindly tell this Court what did you do during lunchtime on July 21, 2012?

A: I was cooking lunch, Sir.

Q: While you were cooking lunch, where was your grandmother at that time?

A: She was sewing, sir.

Q: Where?

A: Also in that *nipa* hut, Sir.

Q: While you were cooking at that time, what did your grandfather do then?

A: He inserted his hands inside my breasts (sic) and squeezed my breasts and then he walked away, Sir.

Q: What was your attire then?

A: T-shirt, Sir.

Q: How about the lower portion?

A: Also shorts, Sir.

Q: At the time that your grandfather touched your breasts, what was his position? At the front or at the back of you?

A: At the back, Sir.

Q: Now, how many times did your grandfather touched (sic) your breasts?

A: Many times, Sir.

Q: After that, he left?

A: After that, he went away, Sir.

Q: What did you do at that time when your grandfather was still mashing your breasts?

A: Then I went to my Aunt DDD, Sir.

Q: Before that? My question is at the time that your grandfather touched your breasts, what did you do? Did you shout or not?

A: I did not shout, Sir.

Q: Why did you not shout?

A: Because I was afraid, Sir.

Q: You were afraid by (sic) your Lolo?

A: Yes, Sir.³⁰

In view of the foregoing account, it is evident that the elements of lascivious conduct under Section 5(b) of R.A. No. 7610 were sufficiently established. The Section provides:

³⁰ *Id.* at 23-24. (Underscoring omitted)

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:

x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the [victim] 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; x x x

In addition, the Court notes that the perverse actuations committed by BBB against AAA likewise constitutes lascivious conduct defined by Section 2(g) and (h) of the rules implementing R.A. 7610, to wit:

(g) "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;

(h) "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.³¹

Thus, We sustain the findings of the trial and appellate courts that on two (2) consecutive days from July 20, 2012 to July 21, 2012, BBB sexually abused his own granddaughter by mashing her breasts and kissing her nipples multiple times and, thereafter, nonchalantly walking away as if nothing had happened. In the course of her testimony, AAA revealed that she did not immediately tell anyone of the incidents because she was afraid of her grandfather who was making threats on her. It is, therefore, clear that BBB succeeded in coercing AAA to engage in lascivious conduct. Not only did he scare her with consistent threats should she disclose his bestiality, he evidently used his moral influence and ascendancy as her grandfather who was exercising parental authority over her. To repeat, it is doctrinal that moral influence or ascendancy takes the place of violence and intimidation.

³¹ Emphasis ours.

Clearly, therefore, the elements of the offenses charged against BBB are present in this case.

Pursuant to Our pronouncement in *People v. Tulagan*³² and *People v. Caoili*,³³ however, the nomenclature of the offense shall be designated as “Lascivious conduct under Section 5(b) of R.A. No. 7610.” As for the penalty imposed, We affirm the ruling of the CA that the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* provided by Section 5(b) of R.A. No. 7610 should be applied in its maximum period in view of the aggravating circumstance of relationship, BBB being the grandfather of AAA. In *Caoili*, We held that in crimes against chastity, such as acts of lasciviousness, relationship is always aggravating. Thus, in view of the presence of this aggravating circumstance and absence of any mitigating circumstance, the penalty shall be applied in its maximum period, which is *reclusion perpetua*.³⁴ This is in consonance with Section 31(c)³⁵ of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is the ascendant of the victim. The Court, however, notes that there is no need to qualify the sentence of *reclusion perpetua* with the phrase “without eligibility for parole,” as held by the appellate court. This is pursuant to the A.M. No. 15-08-02-SC,³⁶ in cases where death penalty is not warranted, such as this case, it being understood that convicted persons penalized with an indivisible penalty are not eligible for parole.

With respect to the amount of damages, the Court modifies the CA ruling and therefore orders BBB to pay AAA, for each count, civil indemnity in the amount of ₱75,000.00, moral damages in the amount of ₱75,000.00, and exemplary damages in the amount of ₱75,000.00, pursuant to our ruling in *Tulagan*,³⁷ with interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid. In addition, he is further ordered to pay a fine in the amount of ₱15,000.00, pursuant to Section 31(f) 96³⁸ of R.A. No. 7610.³⁹

³² *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

³³ *People v. Caoili*, *supra* note 28.

³⁴ *Id.*

³⁵ Section 31(c) of R.A. No. 7610 provides:
Article XII, Section 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 x

³⁶ *Supra* note 24.

³⁷ *Supra* note 31.

³⁸ Section 31 (f) 96 of R.A. No. 7610 provides:
Article XII, Section 31. *Common Penal Provisions.* —
x x x x

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

³⁹ *People v. Caoili*, *supra* note 28.

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Joint Judgment dated August 27, 2015 of the Regional Trial Court of [REDACTED], Misamis Oriental, in Criminal Cases Nos. 2012-4969-70 and 2012-4972-73, as affirmed by the Decision dated February 9, 2017 of the Court of Appeals in CA-G.R. CR HC No. 01441-MIN, is **AFFIRMED** with **MODIFICATIONS**. We find accused-appellant BBB guilty beyond reasonable doubt:

1. In Criminal Cases Nos. 2012-4969 and 2012-4970, of Qualified Rape under Article 266-A(1), in relation to Article 266-B, of the Revised Penal Code, and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole on each count. Appellant is **ORDERED** to **PAY** AAA on each count the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.
2. In Criminal Cases Nos. 2012-4972 and 2012-4973, of Lascivious Conduct under Section 5(b) of Republic Act No. 7610 and is sentenced to suffer the penalty of *reclusion perpetua*, and to pay a fine of ₱15,000.00 for each count. Appellant is further **ORDERED** to **PAY** AAA on each count 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.




DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice



ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


ATTESTATION

I attest 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
Associate Justice
Chairperson, Third Division

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.


LUCAS P. BERSAMIN
Chief Justice