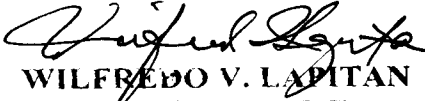




Republic of the Philippines
 Supreme Court
 Manila

CERTIFIED TRUE COPY

 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

JUL 05 2019

THIRD DIVISION

MANUEL BARALLAS RAMILO,
 Petitioner,

G.R. No. 234841

Present:


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

- versus -

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:

June 3, 2019

X----------X

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision¹ dated May 19, 2017 and the Resolution² dated September 27, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38601 which affirmed with modification the Decision³ dated April 4, 2016 of the Regional Trial Court (RTC) of Marikina City, Branch 192, finding Manuel Barallas Ramilo guilty beyond reasonable doubt of rape through sexual assault.

The antecedent facts are as follows:

¹ *Rollo*, pp. 31-51. Penned by Associate Justice Magdangal M. De Leon, with the concurrence of Associate Justices Elihu A. Ybañez and Carmelita Salandanan Manahan.

² *Id.* at 54-55.

³ *Id.* at 72-82. Penned by Judge Alice C. Gutierrez.



In an Information dated August 28, 2013, Manuel Barallas Ramilo was charged of violation of Article 266-A, paragraph 2, of the Revised Penal Code (*RPC*), the accusatory portions of which read:

That on or about the 27th day of August 2013, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat and intimidation and/or with grave abuse of parental authority did then and there willfully, unlawfully, knowingly and feloniously commit sexual abuse and lascivious conduct upon her daughter MDR MINOR-VICTIM INQ-13H-00553, a twelve (12) year old minor at the time of the commission of the offense, by then and there lying beside her then embracing her and inserting his fingers inside her vagina thereby causing serious danger to the normal growth and development of the child MDR MINOR-VICTIM INQ-13H-00553, to her damage and prejudice.

The crime is attended with the aggravating circumstance of relationship.

CONTRARY TO LAW.⁴

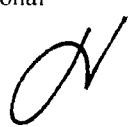
During arraignment, Manuel, assisted by counsel, pleaded not guilty to the charge. During pre-trial, the parties agreed to adopt the Report on the Preliminary Conference, for the purpose of the pre-trial conference. Subsequently, trial on the merits ensued. The prosecution presented six witnesses – private complainant AAA;⁵ private complainant's sister, BBB; the school principal of Malanday Elementary School, Lino de Guzman; the medico-legal officer, Dr. Ma. Felicidad Mercedes Aulida; and investigating officers PO1 Bernard Pah-E and PO1 Christian Bonifacio.

AAA testified that she was born on February 5, 2001, as evidenced by her Certificate of Live Birth.⁶ Her father, Manuel, was a painter while her mother, CCC, was a manicurist. She recalled that on August 27, 2013, she slept beside Manuel and her one (1) year old sister, and woke up at around 6:00 a.m. the next day. At that time, CCC was already busy downstairs. AAA was about to go downstairs with her sister when Manuel held her wrist. She knew that he was going to molest her again like what he had been doing in the past. According to AAA, she uttered to Manuel, "isusumbong

⁴ *Id.* at 32-33.

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, Providing Penalties for its Violation and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, 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*, p. 73.



ko kayo kay mama,” but the latter replied “isusumbong mo ako, papatayin kita.” Thereafter, Manuel pulled AAA and forced her to lie on the floor. He embraced her tightly and put his hand inside her shorts and panty. Then, he inserted his finger inside her vagina, moving it in and out for about five (5) minutes. When AAA’s vagina became painful, she struggled and pushed Manuel’s hand away. She stood up, went downstairs, and had breakfast. She did not tell anybody of the incident because she was scared of Manuel’s threat to kill her. In the afternoon of the same day, AAA went to school at Malanday Elementary School. When her sister BBB arrived thereat, she was called to the principal’s office. When her school principal talked to her, AAA disclosed to him the truth, that she was molested by Manuel. Thereafter, a *kagawad*, a representative from the Department of Social Welfare and Development and the police arrived. Subsequently, Manuel was apprehended. AAA was then brought to a doctor for medical examination.⁷

Next, BBB testified that she is the eldest sister of AAA. She claimed that in 2010, when AAA and their mother, CCC, visited her in her house in Pasig City, she noticed that AAA was acting differently. She was very quiet and astonished. Oftentimes, she became inattentive and would not respond immediately, as if she could not understand them. BBB shared that since she was molested by her father, Manuel, when she was nine (9) years old, she had a hunch that AAA was also abused sexually by their father, who was using prohibited drugs. As she wanted to know the truth, BBB went to AAA’s school to investigate. There, the school principal volunteered to talk to AAA who confided in him which eventually led to Manuel’s arrest. According to BBB, their mother, CCC, was angry with her at the outset when their father was arrested. At the *barangay* office, the police officer informed CCC that Manuel molested AAA and her other siblings. CCC told BBB to be the one to assist AAA in filing the case against Manuel as she was still undecided.⁸

Subsequently, Lino de Guzman stipulated in his testimony that he was the principal during the time of the incident and that BBB talked to him about the alleged abuse, which led him to ask AAA if it was true. AAA then admitted the same to him. It was also stipulated, however, that he has no personal knowledge of the incidents of the subject case. As for the testimony of prosecution witness Dr. Ma. Felicidad Mercedes Aulida, the parties dispensed with her presentation in court after stipulating that she conducted a medical examination on AAA and found no hymenal lacerations and no remarkable findings regarding her anus. She also found no injuries on her body. Similarly, the parties dispensed with the presentation of the arresting officers, PO1 Bernard Pah-E and PO1 Christian Bonifacio, after stipulating that they were the ones who arrested Manuel and that they have no personal knowledge of the incidents of the instant case.⁹

⁷ *Id.* at 33-34.

⁸ *Id.* at 35-36.

⁹ *Id.* at 36-37. Bernard was erroneously spelled as “Nernard” in the CA Decision.



Manuel denied the charges against him and claimed that no unusual incident occurred on August 27, 2013 for he was just at home with AAA, CCC, and his other children in a fifty (50)-square meter house with two (2) floors. AAA slept on the second floor with her younger sister. Manuel explained that he and CCC have seven (7) children, BBB being the eldest and AAA, the fourth child. He was a painter while his wife, CCC, was unemployed. Initially, CCC would handle their finances. But he took over when she mishandled the same. Because of their chaotic relationship, CCC would sometimes take their children to stay at her parents' house in Makati City as what she did with BBB. It was only when BBB turned nine (9) years old that they moved back to living with Manuel. According to Manuel, BBB openly manifested her disapproval of his relationship with CCC which began when he was not able to visit her during a medical operation. As for AAA, she remained in his custody ever since she was just two (2) months old. She grew up to be a kind and obedient daughter. Her behavior changed, however, in 2009 when BBB and CCC started living with them again. AAA began demanding for money, left the house at night without permission, and skipped school. She was heavily influenced by BBB, who stayed out late at night and engaged in drinking sprees with her friends in Makati City.¹⁰

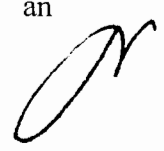
CCC testified that she had a tumultuous relationship with Manuel. They intermittently separated and reconciled. When they lived together, CCC would work as a laundrywoman who sold *balut* at night while Manuel would take care of the children. According to CCC, Manuel often physically and psychologically abused her and their children. He often threatened their lives while holding a gun, sometimes a knife, and other times a hammer. Because of this, their children despised Manuel. In fact, their eldest child, BBB, filed complaints against Manuel. AAA, who was disobedient and often left the house without permission, constantly fought with Manuel. CCC added that Manuel often disciplined AAA with a paddle, and there were times that he would kick and punch her. She affirmed that she, Manuel and all their children slept in the second floor of their house. Thus, it is easily noticeable if someone were to move. In addition, AAA slept near the stairs separate from her parents and siblings. Finally, CCC testified that on August 27, 2013, Manuel arrived home, influenced by drugs and alcohol, and inadvertently slept beside AAA.¹¹

On April 4, 2016, the RTC rendered its Decision finding Manuel guilty of the crime charged, disposing of the case as follows:

WHEREFORE, the court finds the accused, MANUEL BARALLAS RAMILO, GUILTY BEYOND REASONABLE DOUBT of Sexual Assault under Article 266-A[,] paragraph 2, of the Revised Penal Code, as amended. Considering that the crime is attended by an

¹⁰ *Id.* at 37-38.

¹¹ *Id.* at 38-39.



aggravating circumstance of relationship, the accused is hereby sentenced to suffer an indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. Further, consistent with jurisprudence, the accused is ORDERED TO PAY civil indemnity of FIFTY THOUSAND PESOS (Php50,000.00), moral damages of FIFTY THOUSAND PESOS (Php50,000.00), and exemplary damages of THIRTY THOUSAND PESOS (Php30,000.00).

SO ORDERED.¹²

The RTC found that AAA positively and categorically stated that Manuel, who is her own biological father, inserted his finger into her vagina, and it was painful. She gave a direct and straightforward narration of her ordeal in the hands of her father. Moreover, the trial court also found that Manuel's defense of denial could not prevail over AAA's direct, positive, and categorical assertion. It was not persuaded by Manuel's flimsy statement that AAA was merely influenced by her sister, BBB, who allegedly has a grudge on him. Furthermore, the physical finding that AAA did not sustain any injury or hymenal laceration does not impair the prosecution's case.¹³

In a Decision dated May 19, 2017, the CA affirmed with modification the RTC Decision ordering Manuel to pay six percent (6%) interest *per annum* on all the amounts awarded reckoned from the date of finality of the judgment until the damages are fully paid. According to the appellate court, there is no reason to overturn the trial court's finding that AAA's testimony deserves full credence in view of the settled doctrine that when the offended party is of tender age and immature, courts are inclined to give credit to her testimony for youth and immaturity are generally badges of truth and sincerity. Like the RTC, moreover, the CA also held that proof of hymenal laceration is not an element of rape.¹⁴ Thus, the imposition of the penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, by the RTC was in order, in view of the fact that the sexual assault was committed against a child by her father, which is appreciated as an aggravating circumstance of relationship, pursuant to Article 266-B¹⁵ of the RPC.

Aggrieved by the CA's denial of his motion for reconsideration, Manuel filed the instant petition on December 7, 2017 invoking the following argument:

¹² *Id.* at 82.

¹³ *Id.* at 39-40.

¹⁴ *Id.* at 42-48.

¹⁵ Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

X X X X

Reclusion temporal shall be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE PETITIONER'S CONVICTION FOR RAPE UNDER ARTICLE 266-A OF THE REVISED PENAL CODE NOTWITHSTANDING THE UNCORROBORATED AND INCREDULOUS TESTIMONY OF THE PRIVATE COMPLAINANT.¹⁶

According to Manuel, the charge against him was not proven beyond reasonable doubt. From the testimonies heard during trial, it is clear that AAA was a disobedient child who would always leave the house without permission causing Manuel to reprimand her. It is also clear that AAA was heavily influenced by BBB who openly despised their father. This shows motive on the part of AAA to fabricate the charges against Manuel. In fact, AAA and BBB both previously filed criminal and child abuse charges against him in the past. Manuel further insists on his innocence of the crime charged due to the fact that there were no findings of any hymenal lacerations, injuries, or other signs of sexual abuse during the medical examination of AAA. Hence, this physical evidence should prevail over the testimonies presented by the prosecution. Thus, while denial may be generally looked upon with disfavor, it cannot be the basis for his conviction.

After a careful review of the records of this case, the Court finds no cogent reason to reverse the rulings of the RTC and the CA finding Manuel guilty of the acts charged against him. In view of the circumstances of the instant case, however, a modification of the penalty imposed, the damages awarded, and the nomenclature of the offense committed is in order. Thus, instead of rape through sexual assault under Article 266-A, paragraph 2, of the RPC, Manuel should be held liable for Lascivious Conduct under Section 5(b),¹⁷ Article III of Republic Act (R.A.) No. 7610.

In *Dimakuta v. People*,¹⁸ the Court held 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 Article 266-A, paragraph 2 of the RPC, which is

¹⁶ *Rollo*, p. 19.

¹⁷ Section 5(b), Article III of R.A. No. 7610 provides:

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 of 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.

¹⁸ 771 Phil. 641 (2015).

punishable by *prision mayor*, the offender should be liable for violation of Section 5(b), Article 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 Article 266-A, paragraph 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (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 affording special protection and stronger deterrence against child abuse, R.A. No. 7610 is a special law which should clearly prevail over R.A. No. 8353, which is a mere general law amending the RPC. In *People v. Chingh*,¹⁹ 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 [a] 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.'"²⁰

It is undisputed that at the time of the commission of the lascivious act, AAA was twelve (12) years old. Thus, based on the above discussion, Section 5(b), Article III of R.A. No. 7610 finds application herein. The provision states:

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 [subjected] 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[.] (Emphasis ours.)

¹⁹ 661 Phil. 208 (2011).

²⁰ *Id.* at 222-223.

To achieve uniformity in designating the proper offense, moreover, the Court, in *People v. Caoili*,²¹ prescribed the following 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: (1) The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty; (2) If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period; and (3) If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older, but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.²²

In our recent pronouncement, *People v. Salvador Tulagan*,²³ the Court further held that based on the *Caoili*²⁴ guidelines, it is only when the victim of the lascivious conduct is eighteen (18) years old and above that such crime would be designated as "Acts of Lasciviousness under Article 336 of the RPC" with the imposable penalty of *prision correccional*. Thus, considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta*²⁵ and *Caoili*,²⁶ it was ruled that on the one hand, if the acts constituting sexual assault are committed against a victim under twelve (12) years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5(b) of R.A. No. 7610," and no longer "Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of R.A. No. 7610," because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336, but by Article 266-A(2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.

However, before an accused can be held criminally liable for lascivious conduct under Section 5(b), Article III of R.A. No. 7610, the Court held in *Quimvel v. People*²⁷ that the requisites of acts of lasciviousness

²¹ G.R. Nos. 196342 and 196848, August 8, 2017, 835 SCRA 107.

²² *Id.* at 153-154.

²³ G.R. No. 227363, March 21, 2019.

²⁴ *Supra* note 21.

²⁵ *Supra* note 18.

²⁶ *Supra* note 21.

²⁷ G.R. No. 214497, April 18, 2017, 823 SCRA 192.

as penalized under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5(b), Article III of R.A. No. 7610, namely:

1. That the offender commits any act of lasciviousness or lewdness;
2. That it is 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; x x x
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.]²⁸ (Citation omitted.)

A review of the evidence presented by the prosecution reveals that the elements enumerated above were sufficiently established. *First*, through the credible testimony of AAA, the prosecution was able to show that Manuel committed lascivious conduct against AAA when he forced her to lie on the floor, embraced her tightly, put his hand inside her shorts and panty, and inserted his finger inside her vagina, moving it in and out for about five (5) minutes. As the trial court observed, AAA was able to narrate in detail how each of the incidents was done to her by her very own father, *viz.*:

Q: So, noong August 27, 2013, mga alas-6:00 ng umaga, nasaan ka noon?

A: Nasa bahay po.

Q: Anong ginagawa mo noong mga oras na iyon?

A: Gising na po kami noon, babangon na po kami. Yung mama ko po nasa baba nag-aasikaso po, tapos kasama ko po si [baby] girl at saka po yung papa ko. Bababa na po sana kami hinawakan po kami sa kamay.

Q: Ngayon ang sabi mo nasa baba si mama mo. So, may taas yung bahay ninyo?

A: Opo.

Q: So, sino yung nandoon sa itaas noong panahon na yon?

A: Si papa po, ako at saka si baby girl po.



- Q: Ang sabi mo kagigising mo lang. So, saan kayo natulog?
A: Sa sahig po.
- Q: So, sino ang kasama mong gumising noong oras na 'yon?
A: Si papa po at saka yung kapatid kong maliit si baby girl po.
- Q: Ilang taon si baby girl?
A: One (1) year old po.
- Q: So, magkatabi kayo ni papa mo matulog?
A: Opo.
- Q: At si baby girl?
A: Opo.
- Q: Nung sinabing hinawakan yung kamay mo ni papa mo, ano iyon nakahiga ka parin o nakatayo ka na?
A: Nakatayo na po.
- Q: **So, anong kamay ang hinawakan niya sa 'yo'?**
A: **Yung kaliwa po.**
- Q: Paano niya hinawakan?
A: **Ginanito po ng mahigpit.**

x x x x

SR. ASST. CITY PROS. ONTALAN:

- Q: Noong hinawakan ng papa mo yung wrist mo, nasaan na si baby girl?

WITNESS:

- A: Pababa na po pero nakaupo lang po doon sa hagdan.
- Q: Pagkatapos hawakan ni papa mo yung wrist mo, anong sumunod na na[n]gyari?
A: **Sabi ko po 'isusumbong ko kayo kay mama[.]'**
- Q: So sinabi mo kay papa mo iyon?

COURT INTERPRETER:

The witness is nodding.

SR. ASST. CITY PROS. ONTALAN:

- Q: Anong sinabi ng papa mo sa iyo nung sinabi mong isusumbong mo siya kay mama mo?

WITNESS:

- A: **"Isusumbong mo ako, papatayin kita."**
- Q: Bakit mo nasabi sa kanya na isusumbong mo siya kay mama?
A: **Kasi babastusin niya po ako ulit.**
- Q: Iyon bang sinasabi mong babastusin, yung binanggit mo kanina na ginawa niya sa'yo noon pa?
A: Opo.

Q: Pagkatapos na may sinabi sa iyo ang papa mo ano ang sumunod na nangyari?

A: **Hinila niya po ako pahiga.**

Q: Saan ka niya pinahiga?

A: **Doon sa may sahig po sa higaan namin.**

Q: Yung hinihigaan ninyo?

A: Opo.

Q: Tapos nasaan siya noong hinila ka niya pahiga?

A: Nasa likod ko po.

Q: Tapos anong ginawa niya?

A: **Niyakap po ako ng mahigpit.**

Q: So, kung nasa likod mo siya, niyakap ka niya sa likod ng mahigpit?

A: Opo.

Q: Bakit mo sinabing mahigpit yung yakap?

A: **Parang ayaw po ako pakawalan.**

Q: So, anong parte ng katawan mo ang niyakap niya?

A: Yung dito ko po.

COURT INTERPRETER:

The witness is pointing to her upper arm.

SR. ASST. CITY PROS. ONTALAN:

Q: Pagkatapos ka niyang niyakap, ano pang nangyari?

WITNESS:

A: **Yung kamay niya po pinasok na niya po sa short at panty ko po.**

Q: Anong suot mo noon?

A: Maluwag pong short.

Q: **Tapos saan niya ipinasok yung kamay niya, sa ibabaw ng short o sa ilalim ng short?**

A: **Sa ilalim po ng short.**

Q: **Tapos sa loob din ng panty mo?**

A: **Opo.**

Q: **Noong nasa [loob] na ng panty mo yung kamay niya, anong nangyari doon?**

A: **Tinusok-tusok nya po yung pepe ko.**

Q: **Anong ibig sabihin mo na tinus[o]k-tusok, nilabas pasok niya yung daliri sa ari mo?**

A: **Opo.**

Q: **Sa butas ng ari mo?**

A: **Opo.**

Q: **Anong naramdaman mo nung ginagawa niya iyon?**

A: **Masakit po.**

- Q: **Gaano katagal niya ginawa iyon?**
 A: **Mga five (5) minutes po.**
- Q: **Five (5) minutes na labas masok yung daliri niya?**
 A: **Opo.**
- Q: **Ano ang ginawa mo nung ginagawa niya iyon?**
 A: **Nasasaktan po, tapos hinawakan ko po yung kamay niya tapos tinulak ko po, tapos [bumaba] na po ako, tapos nag-almusal.**
- Q: **So after five (5) minutes pumiglas ka at tumayo ka na?**
 A: **Opo.**
- Q: **Tapos nag-almusal ka na?**
 A: **Opo.**
- Q: **Iniwang mo siya doon sa taas dahil bumaba ka na?**
 A: **Opo.²⁹ (Emphasis ours.)**

It is clear from the foregoing account that Manuel molested his daughter, AAA, and even threatened to kill her should she tell anyone about the incident. These acts constitute sexual abuse and lascivious conduct as defined in the rules and regulations of R.A. No. 7610, known as the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, which pertinently provide:

Section 2. Definition of Terms. — As used in these Rules, unless the context requires otherwise —

x x x x

(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[.]

Second, in *Quimvel*,³⁰ we ruled that "'force and intimidation' is said to be subsumed under 'coercion and influence' and such terms are even used synonymously. 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

²⁹ *Rollo*, pp. 44-47.

³⁰ *Supra* note 27.

well as from jurisprudence which defines 'intimidation' as 'unlawful coercion; extortion; duress; putting in fear.'³¹ It is clear from the testimony of AAA that Manuel employed force, intimidation, coercion, and influence upon her when he hugged her tightly and even threatened to kill her should she tell anyone of his lascivious acts.

Third, "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."³² In *Tulagan*,³³ we explained that on the one hand, the phrase "children exploited in prostitution" contemplates four (4) scenarios: (a) a child, whether male or female who, for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child who, for money, profit or any other consideration, indulges in sexual intercourse; (c) a child, whether male or female, who, due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulges in sexual intercourse.

The term "other sexual abuse," on the other hand, is construed in relation to the definitions of "child abuse" under Section 3, Article I of R.A. No. 7610 and of "sexual abuse" under Section 2(g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*. In the former provision, "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters. In the latter provision, "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.³⁴

It cannot be denied from the facts of the case that AAA was subjected to sexual abuse under the foregoing definitions. She is clearly a child who, due to the coercion or influence of Manuel, indulged in lascivious conduct. In fact, it must be stressed that Manuel is the father of AAA. As such, he has moral ascendancy over his minor daughter. Settled is the rule that in cases where rape is committed by a relative, such as a father, stepfather, uncle, or common law spouse, moral influence or ascendancy takes the place of "force and intimidation" as an essential element of rape.

Fourth, as previously mentioned, it is undisputed that AAA was only twelve (12) years old at the time of the commission of the offense.³⁵ Under

³¹ *People v. Raul Macapagal*, G.R. No. 218574, November 22, 2017; citations omitted.

³² *Id.*; citation omitted.

³³ *Supra* note 23.

³⁴ *Id.*

³⁵ *Rollo*, p. 73.

Section 3(a) of R.A. No. 7610, the term "children" refers to persons below eighteen (18) years of age or those over, but 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 view of the presence of all the elements of the crime, Manuel should be convicted of Lascivious Conduct under Section 5(b), Article III of R.A. No. 7610. As duly found by the trial court and affirmed by the appellate court, AAA positively and categorically stated that Manuel, her own biological father, inserted his finger into her vagina, and it was painful. She gave a direct and straightforward narration of her ordeal in his hands. In a long line of cases, this Court has given full weight and credit to the testimonies of child victims, considering that their youth and immaturity are generally badges of truth and sincerity. Indeed, leeway should be given to witnesses who are minors, especially when they are relating past incidents of abuse.³⁶

Manuel, however, insists that AAA clearly had motive to fabricate the charges against him because, as shown by the testimonies heard during trial, AAA was a disobedient child who would always leave the house without permission causing Manuel to reprimand her. She was also heavily influenced by BBB who openly despised their father. The Court is unconvinced. Settled is the rule that ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused.³⁷

As for Manuel's contention that the absence of any finding of hymenal lacerations, injuries, or other signs of sexual abuse during the medical examination of AAA undeniably proves his innocence, case law dictates that the medical report on AAA is only corroborative of the finding of rape. "The absence of fresh external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape, hymenal laceration and like vaginal injuries not being x x x an element of the crime of rape. What is more, the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict."³⁸

Indeed, "[w]hen 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,

³⁶ *People v. Caoili*, *supra* note 21, at 139.

³⁷ *Id.* at 138.

³⁸ *People v. Llanas, Jr.*, 636 Phil. 611, 624 (2010); citations omitted.



misapprehended or misappreciated by the lower court which, if properly considered, would alter the result of the case. After a circumspect study of the records, the Court sees no compelling reason to depart from the foregoing principle.”³⁹

As for the penalty for the crime charged herein, considering that AAA was more than twelve (12) years old, but less than eighteen (18) years old when Manuel threatened to kill her should she tell anyone of his lascivious advances, forcibly placed his hand inside her shorts and underwear, and inserted his finger into her vagina, moving it in and out for about five (5) minutes, the imposable penalty is *reclusion temporal*, in its medium period, to *reclusion perpetua*. 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, *i.e.*, *reclusion perpetua*. This is also in consonance with Section 31(c),⁴⁰ Article XII of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the parent of the victim. Moreover, Manuel should be ordered to pay the victim, AAA, civil indemnity, moral damages and exemplary damages in the amount of ₱75,000.00 each, pursuant to *People v. Jugueta*⁴¹ and *People v. Salvador Tulagan*,⁴² with interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid, and a fine in the amount of ₱15,000.00, pursuant to Section 31(f),⁴³ Article XII of R.A. No. 7610.

WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Decision dated May 19, 2017 and Resolution dated September 27, 2017 of the Court of Appeals are **AFFIRMED** with **MODIFICATION**. Manuel Barallas Ramilo is guilty of Lascivious Conduct under Section 5(b), Article III of Republic Act No. 7610, and is sentenced to suffer the penalty of *reclusion perpetua* and to pay a fine of ₱15,000.00. He is further ordered to pay the victim, AAA, civil indemnity, moral damages and exemplary damages, each in the amount of ₱75,000.00.

³⁹ *People v. Raul Macapagal*, *supra* note 31; citation omitted.

⁴⁰ Sec. 31. Common Penal Provisions. —

x x x x

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked.

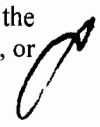
⁴¹ 783 Phil. 806 (2016).

⁴² *Supra* note 23.

⁴³ Sec. 31. Common Penal Provisions. —

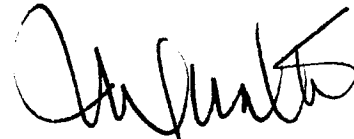
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(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter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



The fine, civil indemnity and damages so imposed are subject to interest at the rate of six percent (6%) *per annum* 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

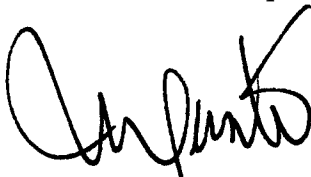

ANDRES B. REYES, JR.
 Associate Justice


RAMON PAUL L. HERNANDO
 Associate Justice


HENRI JEAN PAUL B. INTING
 Associate Justice

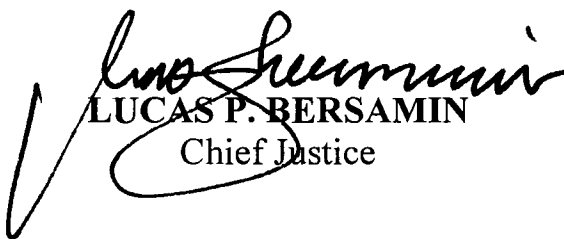
ATTESTATION

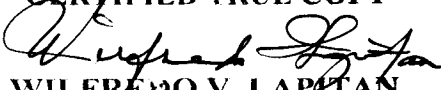
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


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

CERTIFIED TRUE COPY

WILFREDO V. LAPATAN
 Division Clerk of Court
 Third Division

JUL 05 2019