Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Appellee,

- versus -

PATRICIO RAYON, SR.,
Appellant.

G.R. No. 194236

Present:

CARPIO, *J.*, *Chairperson*,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JAN 30 2013

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DECISION

BRION, *J.*:

This is an appeal from the July 27, 2010 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 00582-MIN affirming *in toto* the November 19, 2007 judgment[2] of the Regional Trial Court (*RTC*), Branch 19, Cagayan de Oro City. The RTC judgment found appellant Patricio Rayon, Sr. guilty beyond reasonable doubt of violation of Section 10(a), Article VI of Republic Act (*R.A.*) No. 7610 in Criminal Case No. 2006-174, and of qualified rape in Criminal Case No. 2006-175.

The prosecution charged the appellant with violation of Section 10(a), Article VI of R.A. No. 7610 and with qualified rape in two separate informations filed before the RTC. The appellant pleaded not guilty on arraignment to both charges. Joint trial on the merits thereafter ensued.

Evidence for the Prosecution

XYZ declared on the witness stand that she and the appellant got married on March 3, 1990; they begot five (5) children, namely: AAA,

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[1] *Rollo*, pp. 3-17; penned by Associate Justice Edgardo T. Lloren, and concurred in by Associate Justice Romulo V. Borja and Associate Justice Ramon Paul L. Hernando.

[2] CA *rollo*, pp. 37-46; penned by Presiding Judge Evelyn Gamotin Nery.

XXX, YYY, Jr., BBB, and ZZZ. She stated that AAA is "mentally deficient," but could play musical instruments.[3]

XYZ recalled that when she was still pregnant with their fifth child, the appellant would bring AAA in a videoke bar without her knowledge, and they would usually return home at 1:00 a.m. Upon their return, AAA would complain of experiencing loose bowel movement, and of pain in her stomach. One time, when XYZ arrived at their house after buying rice, she saw the appellant embracing AAA and spreading her legs; the appellant then put his hand on AAA's breast, inserted his other hand inside her underwear, and touched her vagina.[4] When the appellant noticed XYZ's presence, he immediately stood up and instructed her to prepare food. XYZ felt "bad and afraid," but did not confront the appellant.[5] She instead went to the kitchen to do her chores.[6]

On December 16, 2005, BBB revealed to XYZ that the appellant had raped her. XYZ requested assistance from a municipal social worker who, in turn, told her to file a case before the police.[7]

BBB recalled that while she was in her room in December 2005, the appellant grabbed her and removed her short pants and panty; the appellant then removed his short pants, mounted her, and inserted his penis into her vagina. She felt pain, but could not shout because the appellant covered her mouth with his hands.[8] Afterwards, the appellant inserted his penis into her anus.[9] BBB disclosed the incident to XYZ who, in turn, accompanied her to the police.[10]

Dr. Agnes Cagadas, Medico-Legal Officer of the National Bureau of Investigation, stated that she examined AAA on December 23, 2005, and found a healed hymenal laceration at 7 o'clock position.[11] She also examined BBB on the same day, and found her hymen to be intact. She, however, explained that the hymen of 96% of sexually abused children remains intact.[12] Dr. Cagadas also testified that there could have been a penetration of BBB's *inter-labia*.[13]

XXX, the sister of AAA and BBB, narrated that every time the appellant came home from work, he would instruct AAA to sit on his lap;

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3 TSN, September 19, 2006, pp. 3-4.
4 TSN, September 19, 2006, pp. 5-6.
5 TSN, September 27, 2006, p. 16.
6 *Id*. at 33.
7 TSN, September 19, 2006, pp. 7-9.
8 TSN, January 16, 2007, pp. 7-9.
9 *Id*. at 10 and 21.
10 *Id*. at 11-12; see also *rollo*, p. 5.
11 TSN, October 17, 2006, pp. 3-4.
12 *Id*. at 7-9.
13 *Id*. at 13.

the appellant would also embrace AAA and touch her vagina. XXX added that the appellant allowed AAA to watch him take a bath.[14] BBB also disclosed to her that the appellant "sodomized" her, and inserted his penis into her vagina.[15]

Dr. Marlou Bagacay Sustiguer, a psychiatrist at the Northern Mindanao Medical Center, testified that she conducted a psychological test on AAA, and found her to be autistic. She declared that AAA lacked motor coordination, and had a very low intelligence quotient.[16] Dr. Sustiguer also found AAA to be incompetent to testify in court.[17]

Evidence for the Defense

The appellant confirmed that XYZ is his wife, and that the alleged victims are their daughters. He claimed that XYZ falsely accused him of raping AAA because he disallowed her to have an American "pen pal." He further maintained that AAA was usually in their neighbor's house when he comes home from work. The appellant also denied BBB's allegation that he sodomized her.[18]

On cross-examination, the appellant confirmed that AAA is a "special child." He also maintained that he is close to his two daughters.[19]

The RTC and the CA Rulings

In its judgment of November 19, 2007, the RTC found the appellant guilty beyond reasonable doubt of violating Section 10(a), Article VI of R.A. No. 7610 in Criminal Case No. 2006-174, and sentenced him to an indeterminate penalty of five (5) years, four (4) months and twenty-one (21) days, *as minimum*, to six (6) years, *as maximum*.

In Criminal Case No. 2006-175, the RTC found the appellant guilty beyond reasonable doubt of qualified rape under Article 266-A, in relation with Article 266-B, of the Revised Penal Code, as amended, and sentenced him to suffer the penalty of *reclusion perpetua* without eligibility for parole. It also ordered him to pay BBB the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

On appeal, the CA affirmed the RTC Judgment *in toto*. The CA held that BBB narrated in detail how the appellant had raped her; and that it was

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14 TSN, October 25, 2006, pp. 4-8.
15 *Id.* at 12, 24 and 30.
16 TSN, January 30, 2007, p. 2.
17 *Id.* at 3-5.
18 TSN, May 21, 2007, pp. 1-3.
19 *Id.* at 6-7.

inconceivable for an eight-year old child to fabricate a story against her own father if there was no truth to her allegation. It also gave weight to Dr. Cagadas' finding that the appellant's penis penetrated the *labia minora* of BBB's vagina.

The CA likewise ruled that the prosecution provided sufficient evidence to prove that the appellant sexually abused AAA. It held that XYZ, BBB and XXX all testified that they witnessed the appellant's lustful caressing of AAA's breasts and vagina.

Finally, the CA disregarded the appellant's defense of denial as this defense cannot be accorded evidentiary weight greater than the declaration of credible witnesses testifying on affirmative matters.

THE COURT'S RULING

We resolve to affirm with modification the July 27, 2010 decision of the CA in CA-G.R. CR-HC No. 00582-MIN, as follows:

In **Criminal Case No. 2006-174**, we find the appellant guilty beyond reasonable doubt of violation of Section 5(b) of R.A. No. 7610, and sentence him to suffer the penalty of *reclusion perpetua*. He is ordered to pay AAA ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages; and to pay a ₱15,000.00 fine.

In **Criminal Case No. 2006-175**, we increase the amounts of the awarded civil indemnity and moral damages from ₱50,000.00 to ₱75,000.00, respectively. We also order the appellant to further pay BBB ₱30,000.00 as exemplary damages.

Sufficiency of Prosecution Evidence

a. In Criminal Case No. 2006-174

XYZ positively identified the appellant as the person who embraced AAA and spread her legs; who held AAA's breast; and who placed his hand inside the latter's underwear sometime in 2002. XYZ's testimony was corroborated by the testimony of her daughter XXX who declared that the appellant would embrace AAA and touch her vagina whenever the appellant came home from work. Notably, Dr. Cagadas found a healed hymenal laceration at 7 o'clock position on AAA's private part.

The RTC found XYZ's and XXX's testimonies credible and convincing. The CA affirmed this finding. It is settled that "the Court will

not disturb the findings of the trial court on the credibility of witnesses, as it was in the better position to observe their candor and behavior on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court; it had the unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is entitled to respect unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case."[20]

b. In Criminal Case No. 2006-175

BBB positively identified the appellant as the person who grabbed her and removed her short pants and panty while she was in her room; and who thereafter inserted his penis into her vagina.

We stress the lower court observation that BBB, who was just nine years old when she testified, spoke in a clear, spontaneous and straightforward manner. She never wavered in identifying the appellant despite the defense's grueling cross-examination. As the lower courts did, we find her testimony credible. A young girl would not concoct a sordid tale of a crime as serious as rape at the hands of her very own father, allow the examination of her private part, and subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice.[21] We see no plausible reason why AAA would testify against her own father, imputing to him the grave crime of rape, if this crime did not happen.

Moreover, Dr. Cagadas concluded that there had been penetration of BBB's female organ, possibly in the *inter-labia*. While Dr. Cagadas found BBB's hymen to be intact, she nevertheless wrote in her Medico-Legal Report on BBB that "[a] finding of normal hymen does not prove nor disprove sexual abuse[.][22]" She also testified that the hymen of 96% of sexually abused children remains intact. As we explained in *People v. Capt. Llanto*:[23]

> [T]he strength and dilability of the hymen varies from one woman to another such that it may be so elastic as to stretch without laceration during intercourse, or on the other hand, may be so resistant that its surgical removal is necessary before intercourse can ensue. In some cases even, the hymen is still intact even after the woman has given birth. [citations omitted]

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20 *People v. Matunhay*, G.R. No. 178274, March 5, 2010, 614 SCRA 307, 316.
21 See *People v. Pandapatan*, G.R. No. 173050, April 13, 2007, 521 SCRA 304, 324.
22 CA *rollo*, p. 51.
23 443 Phil. 580, 594 (2003), citing *People v. Aguinaldo*, 375 Phil. 295 (1999).

At any rate, Dr. Cagadas' finding is merely corroborative; it is not indispensable in a prosecution for rape.

The Appellant's Defenses

We are unconvinced by the appellant's defense that XYZ falsely accused her of having raped AAA because he disallowed her to have an American "pen pal." It is unnatural for a parent to use her daughter as an engine of malice, especially if doing so would subject her to embarrassment and even stigma. We find it hard to comprehend that a mother would sacrifice her own daughter and present her to be the subject of a public trial if she, in fact, had not been motivated by an honest desire to have the culprit punished.

As regards the allegation of BBB that she had been raped by the appellant, the latter merely denied this charge. However, the appellant did not present any evidence to show that BBB had any ill motive to testify against him. In fact, he declared that BBB has been close to him. This Court has consistently held that where no evidence exists to show any convincing reason or improper motive for a witness to falsely testify against an accused, the testimony deserves faith and credit. Moreover, the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.

The Crimes Committed

a. In Criminal Case No. 2006-174

The courts *a quo* found the appellant guilty beyond reasonable doubt of violation of Section 10(a), Article VI of R.A. No. 7610 which provides:

> Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. -
>
> (a) Any person who shall commit any other acts of **child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development** including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. [emphasis and italics ours]

This "provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, *i.e.*, (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development."[24] We stress that Section 10 refers to acts of child abuse **other than child prostitution and other**

[24] See *Araneta v. People*, G.R. No. 174205, June 27, 2008, 556 SCRA 323, 333-334.

sexual abuse under Section 5, attempt to commit child prostitution under Section 6, child trafficking under Section 7, attempt to commit child trafficking under Section 8, and obscene publications and indecent shows under Section 9.

The Information in Criminal Case No. 2006-174 charged the appellant with violation of Section 10(a), Article VI of R.A. No. 7610. The body of the Information, however, alleged that the appellant *sexually molested AAA; kissed her; mashed her breasts; fondled her; and forcibly opened her legs*. These acts, to our mind, described acts punishable under Section 5(b) of the same law, which reads:

> 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:
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> x x x x
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> (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 victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.] [italics ours]

Sexual abuse under Section 5(b) of R.A. No. 7610 has three elements: (1) the accused commits an 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 is below 18 years old.[25]

Corrolarily, Section 2(g) and (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases reads:

> (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;
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> (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

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[25] See *People v. Fragante*, G.R. No. 182521, February 9, 2011, 642 SCRA 566, 584.

> 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.

In *People v. Montinola*,[26] "the Court held that a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of an adult."

In the present case, all the elements of violation of Section 5(b), Article III of R.A. 7610 have been established. *First*, the appellant embraced AAA, parted her legs, touched her breasts, inserted his hand inside the victim's underwear, and touched her vagina. *Second*, the appellant used his moral ascendancy over her daughter in order to perpetrate his lascivious conduct. *Finally*, AAA was below 18 years of age at the time of the incident, based on her birth certificate and on her mother's testimony.

There is no dearth of jurisprudence holding that the appellant's acts in the present case amounted to a violation of 5(b), Article III of R.A. No. 7610. In *People v. Sumingwa*,[27] the Court found the appellant therein guilty of four (4) counts of acts of lasciviousness under Section 5(b) of R.A. No. 7610 for rubbing his penis against the victim's vagina, fondling her breasts, and forcing her to hold his penis. In *Navarrete v. People*,[28] the Court affirmed the therein accused's conviction for acts of lasciviousness in relation to Section 5(b) of R.A. No. 7610 for poking the victim's vagina with a cotton bud. In *People v. Candaza*,[29] the Court also affirmed the therein accused's conviction for acts of lasciviousness under Section 5(b) of R.A. No. 7610 for kissing the lips, mashing the breasts, and licking the vagina of the victim. Similarly, in *Amployo v. People*,[30] the Court found the appellant guilty of violation of Section 5(b) of R.A. No. 7610 for touching the victim's breasts.

We stress that "[t]he character of the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, xxx but by the recital of the ultimate facts and circumstances in the complaint or information."[31] The averments in the information against the appellant in Criminal Case No. 2006-174 clearly make out a charge for violation of Section 5(b), Article III of R.A. No. 7610.[32]

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[26] G.R. No. 178061, January 31, 2008, 543 SCRA 412, 431, citing *Navarrete v. People*, G.R. No. 147913, January 31, 2007, 513 SCRA 509, 522.

[27] G.R. No. 183619, October 13, 2009, 603 SCRA 638.

[28] *Supra* note 26.

[29] 524 Phil. 589 (2006).

[30] 496 Phil. 747 (2005).

[31] See *Olivarez v. Court of Appeals*, 503 Phil. 421, 439 (2005).

[32] See also *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643.

b. In Criminal Case No. 2006-175

For a charge of rape to prosper under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was **under twelve years of age** or was demented.

Carnal knowledge of a woman below twelve (12) years of age is statutory rape. In the present case, the prosecution established that the appellant had carnal knowledge of his eight-year old daughter, BBB, in December 2005. Article 266-B, paragraph 6(1), however, qualifies the rape by a father of his daughter who is below 18 years of age. The presence of the qualifying circumstances of minority and relationship raises the crime of statutory rape to qualified rape. Simply put, under the circumstances obtaining in this case, qualified rape is statutory rape in its qualified form.[33] The CA was therefore correct in affirming the appellant's conviction for qualified rape.

The Proper Penalties and Civil Indemnities

a. In Criminal Case No. 2006-174

Section 5(b), Article III of Republic Act No. 7610 prescribes the penalty of *reclusion temporal* in its medium period to *reclusion perpetua.*[34] We consider the alternative circumstance of relationship under Article 15 of the Revised Penal Code against the appellant, since it has been established that the appellant is AAA's father. Since there is an aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period, that is, *reclusion perpetua.* Besides, Section 31 of R.A. No. 7610 expressly provides that the penalty provided herein shall be imposed in its maximum period when the perpetrator is, among others, the parent of the victim.

In line with prevailing jurisprudence, we order the appellant to pay AAA the following amounts: ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages; and he is also ordered to pay a ₱15,000.00 fine.[35]

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[33] See *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742, 756.

[34] The records show that AAA was 15 years old at the time of the commission of the offense.

[35] See *People v. Leonardo*, G.R. No. 181036, July 6, 2010, 624 SCRA 166, 204-205; and *Flordeliz v. People*, G.R. No. 186441, March 3, 2010, 614 SCRA 225, 243.

b. In Criminal Case No. 2006-175

Under Article 266-B of the Revised Penal Code, the death penalty shall be imposed when the victim is **below 18 years of age** and the offender is a **parent**, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. Nonetheless, we cannot impose the death penalty in view of R.A. No. 9346, entitled "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*." Pursuant to this law, we affirm the trial and appellate courts' imposition of the penalty of *reclusion perpetua* without eligibility for parole.

We increase the amounts of the awarded civil indemnity and moral damages from ₱50,000.00 to ₱75,000.00, respectively, as these amounts are proper when the circumstances surrounding the crime warrant the imposition of death were it not for the abolition of the death penalty by R.A. No. 9346. We likewise order the appellant to pay BBB ₱30,000.00 as exemplary damages to conform to prevailing jurisprudence.[36]

WHEREFORE, in light of all the foregoing, we **AFFIRM** the July 27, 2010 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00582-MIN with the following **MODIFICATIONS**:

I. *In Criminal Case No. 2006-174*:

(a) the appellant is found guilty of violation of Section 5(b), Article III of R.A. No. 7610;

(b) he is sentenced to suffer the penalty of *reclusion perpetua*; and

(c) he is ordered to pay AAA the following amounts: ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, ₱15,000.00 as exemplary damages, and ₱15,000.00 as fine.

II. *In Criminal Case No. 2006-175:*

(a) the amount of civil indemnity is increased from ₱50,000.00 to ₱75,000.00;

(b) the amount of moral damages is increased from ₱50,000.00 to ₱75,000.00; and

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36 *People v. Sumingwa*, *supra* note 27 at 652-653.

(c) the appellant is further ordered to pay BBB ₱30,000.00 as exemplary damages.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice