



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 208761

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

ROLANDO BARAGA y ARCILLA,
Accused-Appellant.

Promulgated:

JUN 04 2014

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RESOLUTION

REYES, J.:

On appeal is the Decision¹ dated May 14, 2013 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05304, which affirmed with modifications the Consolidated Decision² dated April 26, 2011 issued by the Regional Trial Court (RTC) of Las Piñas City, Branch 254 in Criminal Case Nos. 07-0685, 07-0861, 07-0862, 07-0863, and 07-0864.

In five separate Informations, accused-appellant Rolando Baraga y Arcilla (Baraga) was charged with three (3) counts of acts of lasciviousness under Section 5(b), Article III of Republic Act (R.A.) No. 7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, and two (2) counts of rape under Article 266-A of

¹ Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes, concurring; *rollo*, pp. 2-18.

² Issued by Presiding Judge Gloria Butay Aglugub; CA *rollo*, pp. 33-47.

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the Revised Penal Code (RPC), as amended, committed upon the person of his daughter, AAA,³ who was then still a minor. Upon arraignment, Baraga pled not guilty to the crimes charged. After pre-trial conference, a joint trial on the merits ensued.

The prosecution alleged that Baraga committed his initial lascivious conduct towards AAA on April 2, 2007, 11 days before her 12th birthday. It appears that Baraga and AAA's mother are no longer living together. On said date, AAA was at their house when Baraga sat beside her and touched her vagina. AAA relayed her ordeal to her grandmother who then confronted Baraga about the incident.

On the night of August 8, 2007, while AAA and her siblings were sleeping, Baraga approached AAA, held her thigh, and touched her vagina. He then told her not to make any noise. He then brought her to a corner of the room where he removed AAA's shorts and made her sit on his lap. Baraga then inserted his penis into AAA's vagina.

On August 15, 2007, at around 9:00 p.m., Baraga went on top of AAA who was then already sleeping with her other siblings. Baraga then removed AAA's shorts and underwear, removed his clothes, and inserted his penis into AAA's vagina.

On August 19, 2007, while AAA was at home, Baraga again touched AAA's vagina. At that time, AAA's siblings were out playing. Thereafter, AAA had the opportunity to visit her uncle's place. She then relayed to her uncle what her father did to her. Thereupon, AAA's uncle forbade her to return to their house. The matter was subsequently reported to the Women and Children Protection Desk of the Las Piñas City Police Station. Upon medical examination by the Philippine National Police Crime Laboratory, it was discovered that AAA's hymen had a "shallow healed laceration," which evidences a blunt force penetrating trauma on AAA's hymen.

Baraga denied the allegations against him, asserting that he never touched AAA's vagina nor had carnal knowledge of her. He claimed that he could not have committed the charges against him during the said dates as he was then busy with his work. He alleged that it was a certain Veronica Cruz (Cruz) who influenced AAA to concoct the charges against him. That Cruz wanted to get back at him since he filed a suit against her for demolishing his house.

³ The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of their immediate family or household members, shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]), and A.M. No. 04-11-09-SC dated September 19, 2006.

On April 26, 2011, the RTC rendered a Consolidated Decision, which found Baraga guilty beyond reasonable doubt of two (2) counts of acts of lasciviousness under Section 5(b), Article III of R.A. No. 7610 in Criminal Case Nos. 07-0685 and 07-0864 and two (2) counts of rape in Criminal Case Nos. 07-0861 and 07-0862. However, Baraga was acquitted of the charge of acts of lasciviousness in Criminal Case No. 07-0863 for failure of the prosecution to prove his guilt therefor.

For each count of acts of lasciviousness, the RTC imposed upon Baraga the indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum, and ordered him to pay AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Further, the RTC imposed upon Baraga the penalty of *reclusion perpetua* for each count of rape and ordered him to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

On appeal, the CA affirmed the RTC's disquisition albeit with a modification on the penalty imposed. As regards the charge of acts of lasciviousness in Criminal Case No. 07-0685, inasmuch as AAA was already 12 years old when the acts alleged therein were committed by Baraga, the CA, applying Article 336 of the RPC, imposed the penalty of six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum.

On the charge of acts of lasciviousness in Criminal Case No. 07-0864, since AAA was merely 11 years old at the time Baraga committed the acts alleged therein, the CA applied Section 5(b) of R.A. No. 7610 and meted the indeterminate penalty of imprisonment ranging from thirteen (13) years, nine (9) months, and eleven (11) days of *reclusion temporal*, as minimum, to sixteen (16) years, five (5) months, and ten (10) days of *reclusion temporal*, as maximum. Further, the CA modified the accessory penalty on the two (2) counts of acts of lasciviousness as follows: (a) fine of ₱15,000.00; (b) civil indemnity of ₱20,000.00; (c) moral damages of ₱15,000.00; and (d) exemplary damages of ₱15,000.00. On the charge of rape in Criminal Case Nos. 07-0861 and 07-0862, the CA, while affirming the penalty imposed by the RTC, clarified that the same is meted without eligibility of parole.

On appeal to this Court, Baraga maintains that the RTC erred in convicting him since the prosecution failed to prove his guilt of the crimes charged. He faults the RTC for relying entirely on the testimony of AAA notwithstanding that the same is marred by uncertainties and improbabilities.

The appeal is without merit.

It is well-settled that, in a criminal case, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record. It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that this Court will re-calibrate and evaluate the factual findings of the court below.⁴ The Court sees no reason to depart from the foregoing rule.

Criminal Cases Nos. 07-0861 and 07-0862

Article 266-A of the RPC pertinently provides that:

Article 266-A. *Rape, When and How Committed.* – Rape is committed –

1. By a man who **shall have carnal knowledge** of a woman under any of the following circumstances:

- a. **Through force, threat or intimidation;**
- b. When the offended party is deprived of reason or is otherwise unconscious;
- c. By means of fraudulent machination or grave abuse of authority;
- d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (Emphasis ours)

Under Article 266-B of the RPC, the felony of rape is qualified when the victim is under 18 years of age and the offender is, *inter alia*, a parent.

As aptly ruled by the lower courts, the prosecution was able to establish Baraga's guilt for two (2) counts of qualified rape under Article 266-A, in relation to Article 266-B, of the RPC. After a thorough examination of AAA's testimony, the Court finds that it is spontaneous, clear, candid, and free from serious contradictions. AAA testified that Baraga, on August 8 and 15, 2007, succeeded in having carnal knowledge with her, and, thus, being AAA's father, is presumed to have employed force and/or intimidation.⁵ AAA was only 12 years old at the time when Baraga consummated his bestial acts. The Court maintains that testimonies of rape victims who are young and of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credence.⁶

⁴ See *Seguritan v. People*, G.R. No. 172896, April 19, 2010, 618 SCRA 406.

⁵ See *People v. Amistoso*, G.R. No. 201447, January 9, 2013, 688 SCRA 376.

⁶ *People v. Publico*, G.R. No. 183569, April 13, 2011, 648 SCRA 734.

Against AAA's testimony, Baraga was only able to proffer the defense of denial and *alibi*. The Court has time and time again ruled that denial and *alibi* are inherently weak defenses as these are self-serving.

In view of the foregoing, the lower courts correctly imposed upon Baraga the penalty of *reclusion perpetua* without the eligibility of parole, in lieu of the death penalty, pursuant to R.A. No. 9346,⁷ and ordered him to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

Criminal Case Nos. 07-0685 and 07-0864

The Information⁸ in Criminal Case No. 07-0864 charged Baraga with the crime of acts of lasciviousness, in relation to Section 5(b), Article III of R.A. No. 7610, committed against AAA when she was only 11 years old. On the other hand, the Information⁹ in Criminal Case No. 07-0685 charged Baraga with the crime of sexual abuse under Section 5(b), Article III of R.A. No. 7610 committed against AAA when she was already 12 years old.

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

Sec. 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) yeas of age shall be *reclusion temporal* in its medium period; and

x x x x

⁷ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

⁸ CA *rollo*, p. 54.

⁹ Id. at 50.

Sexual abuse under Section 5(b), Article III 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.¹⁰

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.¹¹ On the other hand, a child is deemed subjected to “other sexual abuse” when he or she indulges in lascivious conduct under the coercion or influence of any adult.¹²

A perusal of the records of this case shows that the prosecution was able to establish Baraga’s criminal liability under Section 5(b), Article III of R.A. No. 7610. *First*, Baraga, on two instances, *i.e.*, on April 2, 2007 and on August 19, 2007, intentionally touched AAA’s vagina. *Second*, Baraga used his moral ascendancy and influence over his daughter AAA to consummate his lascivious design. *Third*, AAA was less than 18 years of age when the said incidents happened.

Under Section 5, Article III, of R.A. No. 7610, the offender shall be punished with the penalty of *reclusion temporal* in its medium period to *reclusion perpetua*. However, when the victim of the sexual abuse is under 12 years old, the imposable penalty shall be *reclusion temporal* in its medium period.

In Criminal Case No. 07-0864, since AAA was only 11 years old when the lascivious conduct alleged therein was committed by Baraga, the imposable penalty, as aptly pointed out by the CA, is *reclusion temporal* in its medium period, that is from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, and taking the alternative circumstance of relationship as an aggravating circumstance, the CA did not err in imposing upon Baraga the indeterminate penalty of imprisonment ranging from thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal*, as minimum, to sixteen (16) years, five (5) months and ten (10) days of *reclusion temporal*, as maximum.

¹⁰ See *Navarrete v. People*, 542 Phil. 496, 510 (2007).

¹¹ Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

¹² See *Navarrete v. People*, supra note 10, at 511; *Olivarez v. Court of Appeals*, 503 Phil. 421, 432 (2005); *People v. Optana*, 404 Phil. 316 (2001); *People v. Larin*, 357 Phil. 987 (1998).

In Criminal Case No. 07-0685, the Court finds that the CA erred in applying the provisions of Article 336 of the RPC. The CA applied Article 336 of the RPC on the sole ground that AAA was already 12 years old at the time the lascivious conduct alleged therein was perpetrated by Baraga. It bears stressing that the Information in Criminal Case No. 07-0685 specifically charged Baraga for violation of Section 5(b), Article III of R.A. No. 7610. Thus, the CA should have applied the provisions of Section 5(b), Article III of R.A. No. 7610, and imposed upon Baraga the prescribed penalty therein for sexual abuse.

The penalty for sexual abuse performed on a child under 18 years old but over 12 years old under Section 5(b) of R.A. No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. The Court likewise considers the alternative circumstance of relationship against Baraga as an aggravating circumstance. Since there is an aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period, *i.e.*, *reclusion perpetua*. Besides, Section 31 of R.A. No. 7610 expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the parent of the victim.¹³

The Court finds no error in the accessory penalties imposed by the CA upon Baraga in Criminal Case Nos. 07-0685 and 07-0864. In line with prevailing jurisprudence,¹⁴ Baraga is liable to pay AAA the amounts of ₱15,000.00 as fine, ₱20,000.00 as civil indemnity, and ₱15,000.00 as moral damages. In view of the presence of the aggravating circumstance of relationship, the amount of ₱15,000.00 as exemplary damages is also appropriate.¹⁵

In addition, and in conformity with current policy, the Court imposes interest on all monetary awards for damages at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.¹⁶

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby **DENIED**. The Decision dated May 14, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 05304 is hereby **AFFIRMED with MODIFICATION** in that Rolando Baraga y Arcilla, in Criminal Case No. 07-0685, is found guilty of violation of Section 5(b), Article III of R.A. No. 7610 and is sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay interest on all monetary awards for damages at the

¹³ See *People v. Rayon, Sr.*, G.R. No. 194236, January 30, 2013, 689 SCRA 745, 761.

¹⁴ See *People v. Lomaque*, G.R. No. 189297, June 5, 2013, 697 SCRA 383; *People v. Rayon, Sr.*, *id.*; *Garingarao v. People*, G.R. No. 192760, July 20, 2011, 654 SCRA 243; *People v. Fragante*, G.R. No. 182521, February 9, 2011, 642 SCRA 566.

¹⁵ See *People v. Bonaagua*, G.R. No. 188897, June 6, 2011, 650 SCRA 620.


¹⁶ *People v. Veloso*, G.R. No. 188849, February 13, 2013, 690 SCRA 586.


rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully satisfied.

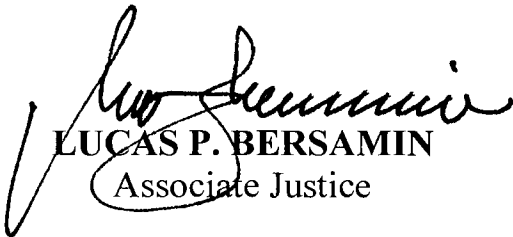
SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

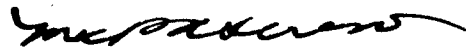

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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