



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 202838

Present:

SERENO, C. J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

- versus -

Promulgated:

JULITO GERANDROY,
Accused-Appellant.

SEP 17 2014

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DECISION

"Childhood should be carefree, playing in the sun; not living a nightmare in the darkness of the soul."

— Dave Pelzer, *A Child Called "It"*

PEREZ, J.:

This is an appeal filed by herein accused Julito Gerandoy (Gerandoy) from the Decision¹ of the Court of Appeals, modifying the decision of conviction rendered by the Regional Trial Court of Surigao City and finding the accused guilty of two counts of Acts of Lasciviousness in relation to Section 5(b) of Republic Act No. 7610 or "*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*."

¹ Penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Edgardo A. Camello and Zenaida T. Galapate-Laguilles, concurring. CA rollo, pp. 84-108.

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The Facts

Before the Regional Trial Court of Surigao City, Gerandoy was charged with two counts of the crime of rape under Article 266-A, paragraph 1 in relation to Article 266-B of the Revised Penal Code.

Criminal Case No. 6624

That on or about the 16th day of December, 2001 in the City of Surigao, Philippines and within the jurisdiction of this Honorable Court, the above named-accused, by means of force[,] threats, violence, and intimidation and with the use of deadly weapon and then and there willfully, unlawfully and feloniously have sexual intercourse with AAA,² a 13 year old girl, [his] own daughter without the consent and against the will of the latter, to her damage and prejudice of in such sum as may be allowed by law.

Contrary to law Article 266-A paragraph 1 in relation to Article 266-B of the Revised Penal Code, with the qualifying circumstance of relationship, the victim being the daughter of the accused and aggravating circumstance of use of deadly weapon.³

Criminal Case No. 6625

That on or about the 7th day of December, 2001 in the City of Surigao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force[,] threats, violence, and intimidation and then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a 13 year old girl, [his] own daughter without the consent and against the will of the latter, to her damage and prejudice of in such sum as may be allowed by law.

Contrary to law Article 266-A paragraph 1 in relation to Article 266-B of the Revised Penal Code, with the qualifying circumstance of relationship, the victim being the daughter of the accused.⁴

When arraigned on 17 February 2004, he pleaded not guilty to the offenses charged.⁵

² 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. 04-10-11-SC dated 19 October 2004.

³ Records, Volume I, p. 1.

⁴ Records, Volume II, p. 1.

⁵ Records, Volume I, p. 47; Records, Volume II, p. 27.

Version of the Prosecution

The victim, AAA, then 13-years-old at the time of the commission of rape, narrated that her father, accused Gerandoy, raped her on two (2) occasions on 7 and 16 December 2001. She recalled that the first rape was committed on or about 12:00 a.m. of 7 December 2001 at their house. She narrated that while she was sleeping with her brothers and sisters in one of the two rooms inside their house, she was awakened when Gerandoy entered the room and hugged her. The accused then forced her to lie down despite her resistance. She tried to stand up but the accused held her waist. He then kissed her cheeks and tore her dress with a knife. She kept on resisting the assault of the accused but the latter told her that he would kill them all if she would not consent to his advances. AAA told him that she was her daughter and his acts were sinful. The accused stabbed and boxed her stomach. She lost her consciousness. After she became conscious, she was already undressed and noticed that her vagina was bleeding while the accused was lying beside her. She cried and went away to the farm and reported the incident to the elder sister⁶ of her mother, CCC (Aunt CCC).⁷

The second incident of rape happened on 16 December 2001 at around 11:00 p.m. AAA recalled that she was sleeping in a room she shared with her brothers and sisters when awakened by Gerandoy. Gerandoy then touched her face and told her that he will rape her again. She pleaded him to stop but her father continued to touch her body. AAA resisted but her father held her arms and forced her to lie down. She kept on resisting but Gerandoy held a knife at her waist and warned that he could easily stab her. He slapped her and warned further that he would kill all members of their family including himself if she would keep on resisting. Gerandoy told her not to resist anymore as her two older sisters have already been molested by him. She was then undressed and Gerandoy mounted her. He touched and sucked her nipple and kissed her lips. After that, AAA went again to her aunt and told her what happened.⁸

During trial, AAA clarified that she reported the first incident of rape to her aunt one month after it happened. She reported the second incident three months after. She explained that the delay was due to her fear that her father would make real his warning and continuing threats that he would kill them all. When asked why she reported the incidents to her aunt instead of her mother, she answered that she did tell her mother about what happened

⁶ Testimony of BBB, TSN, 30 May 2006, p. 14.

⁷ Testimony of AAA, TSN, 31 May 2004, pp. 9-12; Testimony of AAA, TSN, 26 September 2007, p. 11.

⁸ Testimony of AAA, TSN, 31 May 2004, pp. 12-19.

but the she was told to keep quiet about them because it was embarrassing. She reported the incident to the police on 2003 and was medically examined on 3 September 2003.⁹

The prosecution likewise presented Dr. Josephine Del Carmen (Dr. Del Carmen), the medico-legal expert who examined AAA on 3 September 2003. In lieu of her testimony in open court, the prosecution and defense stipulated on the genuineness and due execution as well as the authenticity of her findings.

Aside from the testimony of AAA and stipulation of facts relating to the medical examination on the victim, the prosecution likewise offered as evidence the Certificate of Live Birth of the victim to prove that she was a minor when the two incidents of rape were committed and the medical certificate¹⁰ issued by Dr. Del Carmen.

Version of the Defense

On 30 September 2004, AAA executed an Affidavit of Desistance¹¹ that she was no longer pursuing her case against her father. However, the court issued an order on 30 August 2005 ordering the continuance of the case to determine the voluntariness of the execution of the affidavit.¹²

Aside from the affidavit, the defense presented its first witness BBB, the mother of the victim and wife of the accused. She denied that her daughter AAA was raped on 7 December 2001 as the victim was not in their house when the alleged incident happened. BBB, controverting the earlier statement of AAA, said that she was in their house on 7 December 2001 and was feeding her infant child during that time.¹³

Likewise, she denied that AAA was raped on 16 December 2001. BBB testified that AAA left their house at around 8:00 p.m. to attend a Christmas party with her friends. AAA did not return and stayed in her Aunt CCC's house. BBB further said that it was unlikely that the accused would be able to rape AAA as he was in the farm on that date and time and arrived home at 7:00 a.m. the day after. Upon learning that AAA did not return home, the accused scolded and beat her with a broom. As a result, AAA

⁹ Id. at 26-33.

¹⁰ Records, Vol. II, p. 18.

¹¹ Records, Vol. I, p. 85.

¹² Id. at 87.

¹³ Testimony of BBB, TSN, 30 May 2006, pp. 4-17.

went away and since then stayed in her aunt's house. She also identified the affidavit of desistance of AAA. She said that her daughter told her that the charges of rape against Gerandoy were not true.¹⁴

On her cross-examination, BBB denied that she was working as a house helper when the alleged incidents of rape happened. She gave conflicting answers on how many children she has and the year when AAA was born.¹⁵

On 26 September 2007, AAA was again called to the witness stand to testify on the voluntariness of the affidavit of desistance she executed on 30 September 2004.¹⁶

On her cross-examination, she testified that pity for her father prompted her desistance. She expressed her apprehension that nobody would take care of her other siblings if the case against her father would push through. She confirmed that her Aunt CCC convinced her to file a rape case against her father. When asked by the court to confirm her reason why she was desisting, she again answered that she pitied her father.¹⁷

Finally, the defense presented the accused as its last witness. In his direct examination, he denied the charges of rape filed against him as he was not present in their house at the time the alleged incidents happened. He testified that from 15 December 2011, he was in the farm harvesting coconuts for *copra* and only arrived at their house in the evening of 19 December 2001. He learned that his daughter AAA was not there. He was told by BBB that AAA did not return home since 15 December 2001 after attending a party with her boyfriend. He later confronted AAA about this but AAA answered back. Mad about AAA's response, he beat his daughter with a broom. After that, she ran away to her Aunt CCC's house. He mentioned that CCC and her husband held grudges against him as he did not allow them to join in the harvesting of coconuts.¹⁸

In his cross-examination, only few questions were asked by the prosecution. Gerandoy confirmed that he was in the farm from 15-19 December 2001 and did not go home to sleep in their house. He also stated

¹⁴ Id. at 4-21.

¹⁵ Id. at 22-29.

¹⁶ Testimony of AAA, TSN, 26 September 2007, pp. 3-10.

¹⁷ Id. at 10-16.

¹⁸ Testimony of Gerandoy, TSN, 19 November 2007, pp. 4-15.

that he became angry with AAA about what her daughter did on 15 December 2001.¹⁹

Upon resting their case, the defense offered the affidavit of desistance of AAA as documentary evidence.

The Ruling of the Trial Court

The trial court on 13 February 2009 found Gerandoy guilty beyond reasonable doubt for each count of rape and imposed upon him the penalty of *reclusion perpetua* with all the accessory penalties and civil indemnities.²⁰ The dispositive portion reads:

WHEREFORE, for Criminal Cases Nos. 6624 and 6625, the Court hereby finds the accused JULITO GERANDUY, **GUILTY** beyond reasonable doubt as *principal* for the two counts of rape committed respectively on December 7, 2001 and December 16, 2001, as may be defined and penalized under Article 266-A and 266-B of the Revised Penal Code in relation to Republic Act No. 9346.

This Court hereby sentences accused JULITO GERANDUY **FOR EACH COUNT OF RAPE** to suffer the penalty of RECLUSION PERPETUA together with all the accessory penalties provided for by law; to indemnify the victim AAA the amount of SEVENTY FIVE THOUSAND (P75,000.00) PESOS; another sum of SEVENTY FIVE THOUSAND (P75,000.00) PESOS as moral damages; and to pay the costs.

In the service of his sentence accused shall be credited with the full period of his preventive imprisonment pursuant to Article 29 of the Revised Penal Code as amended by [Republic Act No.] 6127.

Let commitment order [BE ISSUED] for the transfer of the accused from the City Jail BJMP, Silop, Surigao City to the Bureau of Corrections, Muntinlupa, pursuant to Circular 4-92 of the Supreme Court of the Philippines dated April 20, 1992 regarding the transfer of National Prisoners to the Bureau of Corrections in Muntinlupa City.²¹

In its ruling, the trial court found credible the first testimony given by AAA being spontaneous and worthy of credibility. It did not give weight to the affidavit of desistance as it was based on pity. Similarly, the court set aside the argument of the accused that it was impossible for the victim to be

¹⁹ Id. at 15-16.

²⁰ CA *rollo*, pp. 37-47.

²¹ Id. at 47.

sexually abused inside a small room. Jurisprudential rulings have been consistent that rape need not be committed in isolated places.

The Ruling of the Court of Appeals

On 29 November 2011, the appellate court modified the ruling of the trial court. The dispositive portion reads:

IN LIGHT OF ALL THE FOREGOING, the Court hereby **MODIFIES** the assailed Decision dated February 13, 2009 of the Regional Trial Court, Branch 29, Surigao City in Criminal Case No[s]. 6624 and 6625. The Accused-Appellant Julito Gerandoy is found **GUILTY** of two counts of Acts of Lasciviousness in relation with Section 5(b) of Republic Act No. 7610 or Child Prostitution and Other Sexual Abuse and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay a fine of P15,000.00 and to indemnify AAA P20,000.00 as civil indemnity, P15,000.00 as moral damages, and P15,000.00 as exemplary damages for each count, plus legal interest on all damages awarded at the rate of six percent (6%) from the date of finality of this decision until fully paid.²²

It ruled that the two counts of rape have not been sufficiently established by the prosecution with moral certainty but nevertheless still found the accused liable for acts of lasciviousness in relation with Section 5 (b) of Republic Act No. 7610. It found credible the testimony of AAA that the accused hugged, kissed her lips and nipples, caressed her body and touched her breasts. The appellate court dismissed the argument that it is highly unlikely that the victim would be sexually abused in a small room surrounded by her own siblings.

Our Ruling

After a careful review of the evidence, we affirm with modification the ruling of the Court of Appeals.

Primarily, accused relies on arguments initially raised in his Supplemental Brief filed before the Court of Appeals. The accused reiterates denial of the commission of the crime, relying on the affidavit of desistance. The accused assigns as error that the appellate court did not give credit to the affidavit since it truthfully narrated his non-liability, and pointed to revenge as the reason for the filing of the charges. Further, it

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Id. at 107.

emphasizes the inconsistencies made by AAA during her testimony thus eroding her credibility. Finally, in his last effort to discredit the victim, the accused asserts that the filing of the case after the lapse of two years from the commission of the alleged crime indicates ill-motive on the part of the victim.

We find no merit in the appeal.

Article 266-A of the Revised Penal Code as amended by Republic Act No. 8353 describes how 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).

Rape is qualified if the victim is under eighteen (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.²³

Upon review, we find the positive and credible testimony of AAA sufficient to convict the accused of the crime of rape.

The pertinent portion of her testimony is quoted as follows:

Q: After that when he hugged you what happened next?

A: He forced me to lie down.

Q: Then did you lie down?

A: I resisted, sir.

Q: When you resisted what happened next?

A: I tried to stand up but he held me.

Q: Then what did he do next after he held you?

²³

Revised Penal Code, Article 266-B.

A: He was still holding me.

Q: In what part of your body was held by him?

A: My waist, sir.

Q: Then after he held your waist what did he do next?

A: He kissed me.

Q: What part of your body was kissed by him?

A: At my [cheek].

Q: Only at your [cheek]?

A: Yes, sir.

Q: After he kissed you in your [cheek], what happened next?

A: He forced me to lie down, sir.

Q: Then he was able to let you lie down?

A: Yes, sir.

Q: After that what happened next?

A: He tried to undress me but I resisted.

Q: What happened next after that?

A: He tore my dress.

Q: What did he use in tearing your dress?

A: Knife, sir.

Q: After tearing your dress what happened next?

A: He told me that if I will not consent he will kill us all.

Q: In your understanding what was your consent – what was to be your consent about?

A: That I cannot permit him to touch me.

x x x x

Q: Then what happened next after that?

A: I kept on resisting, sir.

Q: And after you have been resisting, what happened next?

A: Then he told me again if I will not consent.

Q: What was your reply?

A: I told him that “I will not consent because you are my father and I am your daughter and it is against the law of God.

Q: Then what did he do when you said those statements?

A: I kept on crying and told him that I will not consent.

Q: After that - after you were crying what happened next?

A: I kept on crying and the knife was kept on pointing at my waist and kept on telling me to give in and if I will not give in he will kill me.

Q: What happened next?

A: He stabbed because I keep on resisting.

Q: Were you wounded when he stabbed you?

A: Yes, sir, only a small wound.

Q: After stabbing you and inflicted you with a small wound, what happened next?

A: I kept on crying and he kept on telling me that I will give in to him and I kept on pleading to him that I am his daughter and then he boxed my stomach.

Q: After boxing you, what happened next?

A: I lost my consciousness.

Q: And after you regain your consciousness what happened?

A: I was already undressed, I have no underwear. I have no more short pants.

Q: But did you notice in yourself after you regain your consciousness?

A: When I regained my consciousness he was at my side and I noticed that there were blood on my vagina, sir.²⁴ (Emphasis ours).

It is evident from the testimony of AAA that all the elements of rape were established. The prosecution was able to prove that on 7 December 2001, the accused Gerandoy entered the room where AAA was sleeping with her siblings and through the use of force, threat, intimidation and deadly weapon, succeeded in having carnal knowledge with the victim against her will.

The appellate court lowered the crime from rape to acts of lasciviousness upon finding that the testimony of the victim was incomplete to constitute all the elements of rape. It concluded that:

AAA's testimony that her vagina was bloodied when she woke up, absent even of a testimony that she felt pain in the said area due to lacerations of her genitals, can be construed and interpreted to mean various other things, some of which are inconsistent with rape. A bloodied vagina could not only mean forceful penetration but it could also be a result of a menstrual discharge, among others. Thus the stark absence in the testimony of AAA that she felt pain in her genitalia or even

²⁴ Testimony of AAA, TSN, 31 May 2004, pp. 7-11.

infinitesimal soreness or at the very least a corroborating testimony of a doctor or medical practitioner, who examined AAA immediately after the incident, that there were fresh lacerations in her vagina, which was caused by insertion of the penis in the vagina or even a conclusion that a blunt object entered the same, is constitutive of an obvious failure to positively establish that the crime of rape was committed on December 7, 2001.²⁵

We do not agree.

Despite the absence in AAA's testimony that there was actual carnal knowledge considering that she lost consciousness before that, circumstances indicate that the bloodied vagina was a result of insertion of the accused's penis to the vagina of the victim.

Direct evidence is not the only means of proving rape beyond reasonable doubt.²⁶ Even without direct evidence, the accused may be convicted on the basis of circumstantial evidence, provided the proven circumstances constitute an unbroken chain leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.²⁷

To prove conviction based on circumstantial evidence, there was more than one circumstance; the facts from which the inferences were derived were proved; and the combination of all the circumstances was such as to produce a conviction beyond reasonable doubt. What was essential was that the unbroken chain of the established circumstances led to no other logical conclusion except the appellant's guilt.²⁸

In *People v. Lupac*,²⁹ the Court convicted the accused of the crime of rape even in the absence of direct testimonial evidence from the victim that the accused had an actual carnal knowledge of her. It rejected the argument of the accused that the victim, being then asleep and unconscious, could not reliably attest to his supposed deed. The Court found the accused guilty of raping the victim while the latter was sleeping and unconscious based on the following circumstances:

²⁵ CA rollo, pp. 97-98.

²⁶ *People v. Lupac*, G.R. No. 182230, 19 September 2012, 681 SCRA 390, 399.

²⁷ *Diega v. Court of Appeals*, G.R. Nos. 173510 and 174099, 15 March 2010, 615 SCRA 399, 407-408.

²⁸ *People v. Lupac*, supra note 26 at 399-400.

²⁹ Id.

x x x (a) when AAA went to take her afternoon nap, the only person inside the house with her was Lupac; (b) about an hour into her sleep, she woke up to find herself already stripped naked as to expose her private parts; (c) she immediately felt her body aching and her vaginal region hurting upon her regaining consciousness; (d) all doors and windows were locked from within the house, with only her and the brief-clad Lupac inside the house; (e) he exhibited a remorseful demeanor in unilaterally seeking her forgiveness (*Pasensiya ka na* AAA), even spontaneously explaining that he did not really intend to do "that" to her, showing his realization of the gravity of the crime he had just committed against her; (f) her spontaneous, unhesitating and immediate denunciation of the rape to Tita Terry and her mother (*hindot* being the term she used); and (g) the medico-legal findings about her congested vestibule within the *labia minora*, deep fresh bleeding laceration at 9 o'clock position in the hymen, and abraded and U-shaped posterior fourchette proved the recency of infliction of her vaginal injuries.³⁰

Similarly, we find the accused guilty of the crime of rape based on the following unbroken circumstances. *First*, the accused entered the room where AAA was sleeping and forced her to lie down. *Second*, AAA resisted but the accused continued to kiss her. *Third*, the accused succeeded in undressing her by tearing her clothes with a knife despite her resistance. *Fourth*, he pointed his knife in her waist and threatened to kill her. *Fifth*, due to AAA's continued resistance, he stabbed and boxed her stomach causing AAA to lose consciousness. *Sixth*, upon regaining her consciousness, AAA was already undressed and her vagina was already bleeding while the accused was lying at her side.

Clearly, conviction is proper. Combining in an unbroken chain the proven circumstances, there can be no other logical conclusion than that AAA was raped by appellant.

On the other hand, we agree with the appellate court that there was only an act of lasciviousness on 16 December 2001.

On that day, a similar fate befell AAA at around 11:00 p.m. when the accused sexually abused the victim. We find credible AAA's testimony that the accused entered the small room where the victim was sleeping and pawed her body. The accused threatened to kill all the members of their family in case of resistance and even told the victim not to resist as he had already molested her other siblings. Thereafter, the accused undressed AAA

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Id. at 400.

and forced her to lie down. He then mounted himself on top of AAA, touched and sucked her nipple and kissed her on her lips.³¹

Lascivious conduct is defined as 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 the 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.³²

The elements of sexual abuse³³ are the following:

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.³⁴

It is deemed that a child is sexually abused under Section 5(b) of Republic Act No. 7610, **when he or she is subjected to other lascivious conduct under the coercion or influence of any adult**. There must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will.³⁵

In *Roallos v. People*,³⁶ the Court found Roallos guilty of acts of lasciviousness in relation to Sec. 5(b) of Republic Act No. 7610, when he placed his right hand on the victim's right shoulder, slid his hand towards the victim's both breasts and mashed them and kissed the victim's right cheek.

Likewise in *Garingarao v. People*, the Court found Garingarao guilty of acts of lasciviousness when he, under the pretext of examining the victim

³¹ Testimony of AAA, TSN, 31 May 2004, pp. 12-19.

³² Implementing Rules and Regulations of Republic Act No. 7610, Article XIII, Section 2(h).

³³ Republic Act No. 7610, 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.

³⁴ *Garingarao v. People*, G.R. No. 192760, 20 July 2011, 654 SCRA 243, 253-254 citing *Olivarez v. Court of Appeals*, 503 Phil. 421 (2005).

³⁵ *Garingarao v. People*, id. at 254-255 citing *Olivarez v. Court of Appeals*, id.; *People v. Abello*, G.R. No. 151952, 25 March 2009, 582 SCRA 378, 395.

³⁶ G.R. No. 198389, 11 December 2013.

as a hospital's nurse, lifted the latter's bra and touched her left breast. He further pressed the stethoscope to her stomach, touched her two nipples and slid his finger inside the victim's private part.

In this case, the prosecution established that Gerandoy again entered the room where AAA was sleeping and performed lascivious acts against her. Despite AAA's objection, Gerandoy touched parts of her body. He continued his sexual advances by undressing AAA and forced her to lie down. He kissed AAA's lips, mounted himself on top of her and touched and sucked AAA's nipple.

The accused also tried to raise doubt on the victim's credibility due to the presence of other people inside the small room when the lascivious acts were committed. He advances his theory that there is no way that the victim's siblings, who were sleeping on the same room, would fail to notice that the accused entered the room, boxed, threatened and stabbed the victim and be successful in raping and performing lascivious acts against her.

We are unconvinced.

As repeatedly held by this Court, "*Lust is no respecter of time and place.*"³⁷ Neither the crampedness of the room, nor the presence of other people therein, nor the high risk of being caught, has been held sufficient and effective obstacle to deter the commission of rape.³⁸ In the case of *People v. Alarcon*,³⁹ the accused argued that rape could not have committed when the victim's siblings were by her side was dismissed by the court. Isolation is not a determinative factor to rule on whether a rape was committed or not and there is no rule that a woman can only be raped in seclusion.⁴⁰ It can be committed, discreetly or indiscreetly, even in a room full of family members sleeping side by side. It has been ruled that rape is not rendered impossible simply because the siblings of the victim who were with her in that small room were not awakened during its commission.⁴¹

Also, if rape can be committed inside a small room with occupants sleeping side by side, it is likewise not impossible for the accused to commit

³⁷ *People v. Lomaque*, G.R. No. 189297, 5 June 2013; *People v. Montesa*, 592 Phil. 681, 704 (2008).

³⁸ *People v. Pangilinan*, 547 Phil. 260, 286 (2007) citing *People v. Tonyacao*, G.R. Nos. 134531-32, 7 July 2004, 433 SCRA 513, 530.

³⁹ 546 Phil. 601, 610-611 (2007).

⁴⁰ *People v. Pangilinan*, supra note 38 at 286 citing *People v. Layugan*, G.R. Nos. 130493-98, 28 April 2004, 428 SCRA 98, 114.

⁴¹ *People v. Alarcon*, supra note 39 at 610-611.

acts of lasciviousness or other sexual abuses against the victim in a similar setting even if her siblings were sleeping with her.

The accused also attributes error on the part of the Court of Appeals when it failed to consider the affidavit of desistance as evidence of his non-liability. He finds fault in the appellate court's failure to consider the contents of the affidavit of desistance his theory being that the affidavit was executed not only out of pity but for other reasons mentioned in the affidavit.

An affidavit of desistance is generally looked upon with disfavor by Courts. In so many cases, retractions are generally unreliable and considered as an afterthought.⁴² As held in *People v. Junio*.⁴³

x x x The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process of having the [appellant] arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, [the rape victim] would suddenly turn around and declare that [a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.⁴⁴

Upon this principle, we find that the courts below correctly favored AAA's testimony in open court over the affidavit of desistance. The statement that it was executed out of pity for her father is only an additional reason why the desistance would not suffice to acquit accused. It cannot affect the conclusion that he raped and sexually abused his daughter.

We also dismiss the argument that the delay in filing the complaint indicates the innocence of the accused. Likewise without merit is the accused's contention that the victim was only persuaded by her aunt to file a case as an act of revenge.

At the outset, we recognize that the filing of complaint for rape and sexual abuse against one's own parent is a difficult act. Indeed, it is not really the publicity of trial that traumatizes. The nightmare that was the act is for life.

⁴² *People v. Zafre*, G.R. No. 197363, 26 June 2013.

⁴³ G.R. No. 110990, 28 October 1994, 237 SCRA 826.

⁴⁴ Id. at 834; *People v. Alcazar*, G.R. No. 186494, 15 September 2010, 630 SCRA 622, 635.

Delay of two years on the part of AAA in filing a case does not necessarily result to a doubt in her credibility. It must be emphasized that victims of rape and sexual abuse, especially minors, react differently to the same set of circumstances. The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may have a passive or reactive response or settle into insensibility.⁴⁵

Further, the delay on the part of the victim in relating her ordeal from her own father was understandable. He is her parent and her confusion and fear are logical under the circumstances. It was established during trial that aside from the use of a knife to enfeeble her resistance, the accused likewise threatened to kill her and all the members of their family including himself if she would keep fighting off the horror. To make the matters worse, her own mother even expressed sympathy for the husband over the child. Her mother's expression that it was embarrassing to relate her sad plight aggravated the fear already sowed inside the minor victim. The delay in filing a case, clearly, was explained.⁴⁶

Penalties and Civil Indemnities

Criminal Case No. 6624

The penalty prescribed under Section 5(b) of Republic Act No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. However, the penalty provided under this Act 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.⁴⁷

We likewise impose the payment of the following amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, ₱15,000.00 as exemplary damages and ₱15,000.00 as fine with six percent (6%) interest from finality of judgment until fully paid.⁴⁸

⁴⁵ *People v. Leonardo*, G.R. No. 181036, 6 July 2010, 624 SCRA 166, 197-198 citing *People v. Suarez*, 496 Phil. 231, 243-244 (2005).

⁴⁶ *People v. Leonardo*, id. at 198; *People v. Suarez*, id. at 244.

⁴⁷ Republic Act No. 7610, Section 31.

⁴⁸ *People v. Rayon, Jr.*, G.R. No. 194236, 30 January 2013; *Roallos v. People*, supra note 36 citing *Garingarao v. People*, supra note 34 at 255-256.

Criminal Case No. 6625

The penalty prescribed for qualified rape is death. Under Article 266-B, death penalty shall also be imposed if the crime of rape is committed by a parent against his child under eighteen (18) years of age. However, in view of Republic Act No. 9346, the penalty of *reclusion perpetua* without the eligibility of parole⁴⁹ shall be imposed in lieu of the imposition of death penalty.⁵⁰

Following the new jurisprudential ruling of *People v. Gambao*⁵¹ on damages, we increase the amounts of indemnity and damages to be imposed as follows: ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; and ₱100,000.00 as exemplary damages.⁵² In addition, we impose six percent (6%) interest from finality of judgment until fully paid.⁵³

WHEREFORE, the appeal is **DENIED**. The 29 November 2011 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00709 modifying the judgment of conviction dated 13 February 2009 of the Regional Trial Court, Branch 29 of Surigao City is hereby **AFFIRMED with the following MODIFICATIONS**:

I. In Criminal Case No. 6624:

(a) Finding the accused-appellant guilty of acts of lasciviousness in relation to Section 5(b), Article III of Republic Act No. 7610;

(b) Sentencing the accused-appellant to suffer the penalty of *reclusion perpetua*; and

(c) Ordering the accused-appellant to pay AAA the following amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages,

⁴⁹ Resolution No. 24-4-10, RULE 2.2. *Disqualifications for Parole* - Pursuant to Section 2 of Act No. 4103, as amended, otherwise known as the "Indeterminate Sentence Law," parole shall not be granted to the following inmates:

x x x x

i. Those convicted of offenses punished with *reclusion perpetua*, or whose sentences were reduced to *reclusion perpetua* by reason of Republic Act No. 9346 enacted on June 24, 2006, amending Republic Act No. 7659 dated 1 January 2004 as cited in *People v. Manicat*, id.

⁵⁰ *An Act Prohibiting the Imposition of Death Penalty in the Philippines*.

⁵¹ G.R. No. 172707, 1 October 2013.

⁵² Id.

⁵³ *Roallos v. People*, supra note 36 citing *People v. Veloso*, G.R. No. 188849, 13 February 2013, 690 SCRA 586, 600.

₱15,000.00 as exemplary damages and ₱15,000.00 as fine with six percent (6%) interest from finality of judgment until fully paid.

II. In Criminal Case No. 6625:

(a) Finding the accused-appellant guilty of qualified rape in violation of Art. 266-A paragraph 1 in relation to Article 266-B of the Revised Penal Code;


(b) Sentencing the accused-appellant to suffer the penalty of *reclusion perpetua* without the eligibility of parole; and

(c) Ordering the accused-appellant to pay AAA the following amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages with six percent (6%) interest from finality of judgment until fully paid.

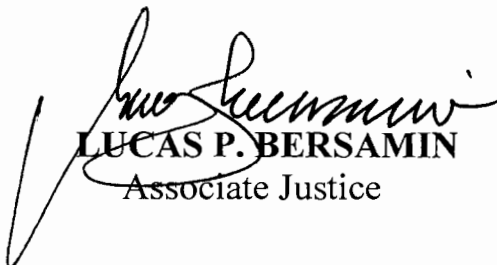
SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

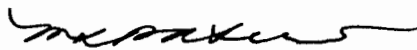

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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