



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 190348

Present:

- versus -

CARPIO, *Chairperson,*
VELASCO, JR.,
DEL CASTILLO,
MENDOZA, *and*
LEONEN, *JJ.*

NILO COLENTAVA,
Accused-Appellant.

Promulgated:

FEB 09 2015

X

[Signature] X

RESOLUTION

DEL CASTILLO, *J.:*

On appeal is the May 29, 2009 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00760, which affirmed with modification the April 23, 2007 Joint Judgment² of the Regional Trial Court (RTC) of Bayawan City, Negros Oriental, Branch 63 in Criminal Cases Nos. 205, 206, and 207. The RTC found appellant Nilo Colentava (appellant) guilty beyond reasonable doubt of three counts of qualified rape and sentenced him to suffer imprisonment of *reclusion perpetua* and to pay the victim “AAA”³ ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages in each case.

[Signature]

* Per Special Order No. 1910 dated January 12, 2015.

¹ CA *rollo*, pp. 86-103; penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Rodil V. Zalameda and Florito S. Macalino.

² Records, Vol. I, pp. 110-130; penned by Judge Orlando C. Velasco.

³ Pursuant to Republic Act No. 9262, otherwise known as the “Anti-Violence Against Women and Their Children Act of 2004” and its implementing rules, the real name of the victim, together with that of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. (*People v. Cabalquinto*, 533 Phil. 703, 709 (2006)).

Factual Antecedents

Appellant was charged with qualified rape defined and penalized under paragraph (1) of Article 266-A of the Revised Penal Code (RPC), in relation to paragraph (1) of Article 266-B thereof, in three separate Informations, *viz*:

Crim. Case No. 205

That on or about June 2003, in the City of Bayawan, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of intimidation, did then and there willfully, unlawfully and feloniously lie and succeeded in having carnal knowledge [of] “AAA,” his daughter, a minor, sixteen (16) years old, against her will.

Contrary to Article 266-A, in relation to Paragraph 1 of Article 266-B of the Revised Penal Code.⁴

Crim. Case No. 206

That on or about the 29th day of July 2003, in the City of Bayawan, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of intimidation, did then and there willfully, unlawfully and feloniously lie and succeeded in having carnal knowledge [of] “AAA,” his daughter, a minor, sixteen (16) years old, against her will.

Contrary to Article 266-A, in relation to Paragraph 1 of Article 266-B of the Revised Penal Code.⁵

Crim. Case No. 207

That on or about the 4th day of August 2003, in the City of Bayawan, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of intimidation, did then and there willfully, unlawfully and feloniously lie and succeeded in having carnal knowledge [of] “AAA,” his daughter, a minor, sixteen (16) years old, against her will.

Contrary to Article 266-A, in relation to Paragraph 1 of Article 266-B of the Revised Penal Code.⁶

Upon arraignment on April 19, 2004, appellant, assisted by counsel *de parte*, entered a plea of not guilty to each charge. After pre-trial was terminated, trial on the merits followed.

⁴ Records, Vol. I, p. 2.

⁵ Records, Vol. II, p. 2.

⁶ Records, Vol. III, p. 2

Version of the Prosecution

According to the prosecution's evidence, "AAA," who was born on February 3, 1987, was 16 years old when the alleged incidents of rape were committed against her by her own father, the appellant in this case, in the months of June, July, and August in the year 2003. Its version of the incidents is as follows:

When "AAA" was just eight months old, her parents left her to the care and custody of her grandmother "BBB," who is appellant's mother. They lived in Brgy. Tayawan, Bayawan City, Negros Oriental. In 2002, appellant returned to Brgy. Tayawan and stayed in a house at Sitio Baco,⁷ which is near "BBB's" house in Tayawan.

Sometime in June 2003, "BBB" instructed "AAA" to go to her father in Sitio Baco. Upon arriving thereat at 5:00 p.m., "AAA" did the household chores.⁸ Once done, "AAA" ate dinner by herself since appellant at that time was still out. Afterwards, she went to sleep.

At around 10:00 in the evening, "AAA" was roused from her sleep by appellant who ordered her to open the main door for him. "AAA" noticed that appellant was drunk.⁹ After opening the door, "AAA" went back to her room, but appellant followed her and lay down beside her. He started kissing and hugging "AAA." Thereafter, he pointed his .357 magnum pistol at her and took off her clothes.¹⁰ Appellant then positioned himself on top of "AAA" and inserted his penis into her vagina. Once satiated, he threatened "AAA" not to tell "BBB" or else he would kill her.¹¹ Out of fear, "AAA" kept to her herself what appellant did to her.

About a month later or on July 29, 2003, "AAA" was again at home with appellant in Sitio Baco. After they finished dinner, "AAA" went up to her room to rest. Appellant followed and lay down beside her. He embraced and kissed "AAA" and took off her clothes. He then inserted his penis into "AAA's" vagina.¹² When done, appellant pointed his pistol at "AAA" and threatened to kill her and "BBB" if she would disclose her ordeal to anyone.

On August 21, 2003, appellant once more entered "AAA's" room after they finished supper. He lay down beside "AAA," hugged and kissed her and slowly removed her clothes. Afterwards, he positioned himself on top of "AAA" and

⁷ TSN, July 6, 2004, p. 6.

⁸ Id. at 7.

⁹ Id. at 9.

¹⁰ Id. at 10.

¹¹ Id. at 12.

¹² Id. at 14.

inserted his penis into her vagina.¹³ After having intercourse with “AAA,” appellant again brought out his pistol, pointed it at “AAA,” and sternly reminded her not to tell her grandmother, otherwise he would kill them both.

It was only after the third rape incident that “AAA” finally mustered the courage to reveal to her grandmother what had happened. As a result, her grandmother disallowed her to return to appellant’s house and instead sent her to her aunt in Kabankalan. However, she went back to her grandmother’s house so she could continue her schooling.

On September 11, 2003, “AAA,” together with two friends, reported the rape incidents to the Department of Social Welfare and Development. There, she was asked if she wanted her father to be arrested. When she replied in the affirmative, she was subjected to a medical examination.

Dr. Edalin L. Dacula (Dr. Dacula), the City Health Officer of Bayawan City who conducted the medical examination on “AAA” on September 11, 2003, issued a Medico Legal Report showing that “AAA’s” vaginal orifice is open with healed lacerations at 3:00 and 12:00 o’clock positions.¹⁴ According to Dr. Dacula, these lacerations were caused by previous sexual intercourse.¹⁵

Version of the Defense

Appellant denied the accusations of rape against him. He claimed that he had been staying in Manila since 1990 for work. It was only in May of 2003 that he again saw “AAA” when he returned to Bayawan City, Negros Oriental. He was prompted to come home because he received a letter from “BBB” informing him that his daughter was frequently out with her friends and at times even failed to go home.¹⁶

When appellant confronted “AAA” about her ways, the latter got furious and exclaimed that appellant does not have the right to scold her because he was never present when she was growing up.¹⁷ Appellant was shocked by “AAA’s” actuation that he held her hair and slapped her.¹⁸ After a while, appellant entered “AAA’s” room and tried to apologize for hurting her. However, they had another argument prompting appellant to again lay his hands on her.

¹³ Id. at 17.

¹⁴ TSN, August 17, 2004, p. 15.

¹⁵ Id. at 16.

¹⁶ TSN, January 14, 2005, pp. 5-6.

¹⁷ Id. at 6.

¹⁸ Id. at 7.

“CCC,” the older brother of “AAA,” testified that he resided with appellant from June to August of 2003 at Sitio Baco. He claimed that during that time, “AAA” never lived with them because she stayed with their grandmother in Tayawan proper.¹⁹ He also testified that at that time, “AAA” had a boyfriend named Jovito Sulpot with whom “AAA” exchanged love letters.²⁰ The said letters, however, were already burned.²¹

“BBB,” for her part, confirmed that “AAA” lived with her in Brgy. Tayawan since she was born. When asked during trial if there was ever a time when the appellant stayed and slept with “AAA,” “BBB” answered in the negative.²² “BBB” claimed that appellant lived in a different house located in Sitio Baco since he was working on their land there. She testified that the distance between appellant’s house in Sitio Baco and her house in Tayawan is about 1½ kilometers and could be traversed in 45 minutes by foot.²³

Ruling of the Regional Trial Court

In a Joint Judgment²⁴ dated April 23, 2007, the RTC found appellant guilty as charged, viz:

WHEREFORE, the prosecution having proved the guilt of the accused beyond reasonable doubt of the crime of Rape defined and penalized under Article 266-A in relation to paragraph 1 of Article 266-B of the Revised Penal Code, accused NILO COLENTAVA is CONVICTED of triple rape and sentenced to triple Reclusion Perpetua. He is hereby ordered to pay complainant [AAA], for each count, the sum of Seventy Five Thousand Pesos (Php75,000.00) or a total of Two Hundred Twenty Five Thousand Pesos (Php225,000.00) as civil indemnity; Fifty Thousand Pesos (Php50,000.00) for each count or a total of One Hundred Fifty Thousand Pesos (Php150,000.00) as moral damages; and Twenty Five Thousand Pesos (Php25,000.00) each or a total of Seventy Five Thousand Pesos (Php75,000.00) as exemplary damages.

Finally, the entire records of these cases are hereby directed transmitted to the Court of Appeals Visayas, Cebu City for automatic review as these cases involve the imposition of the capital punishment.

SO ORDERED.²⁵

¹⁹ TSN, February 20, 2006, pp. 6-7.

²⁰ Id. at 7.

²¹ Id. at 13-15.

²² TSN, August 29, 2006, pp. 7-8.

²³ Id. at 7.

²⁴ Records, Vol. I, pp. 110-130.

²⁵ Id. at 130.

Ruling of the Court of Appeals

On appeal, the CA affirmed with modification the RTC's conviction of appellant in a Decision²⁶ dated May 29, 2009, thus:

WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED with MODIFICATION. Appellant NILO COLENTAVA is found GUILTY beyond reasonable doubt of three (3) counts of qualified rape and is sentenced to suffer the penalty of *reclusion perpetua* for each count without eligibility of parole and for each count of rape; he is hereby ordered to pay private complainant ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages on the three (3) counts. Costs against appellant.

SO ORDERED.²⁷

Hence, the present appeal.

Assignment of Errors

Appellant submits the following assignment of errors:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THREE (3) COUNTS OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.²⁸

THE PRIVATE COMPLAINANT'S ACTUATIONS AFTER THE INCIDENTS NEGATE THE POSSIBILITY OF RAPE.²⁹

THE PROSECUTION UTTERLY FAILED TO PROVE THE ELEMENT OF INTIMIDATION.³⁰

Appellant argues that the charges against him should not have been given credence because "AAA's" narration of the events leading to the alleged rape were vague and highly improbable. The surrounding circumstances leading to the alleged three incidents of rape were all the same which is highly unusual and contrary to common experience. Appellant also contends that "AAA's" conduct after the alleged rape incidents is questionable. Appellant argues that if he indeed raped "AAA," then the latter should have avoided returning to his house at Sitio Baco after the alleged first incident of rape. Appellant also suggests that the normal thing to do on the part of "AAA" was to report the rape to her grandmother

²⁶ CA *rollo*, pp. 86-103.

²⁷ Id. at 101-102.

²⁸ Id. at 23.

²⁹ *Rollo*, p. 35.

³⁰ Id. at 37.

which she failed to do. Appellant likewise posits that the prosecution failed to rebut his allegation that “AAA” was mad at him because he chastised her due to her improper ways. According to appellant, this could have been the reason why “AAA” pressed charges against him.

Appellant further argues that the prosecution failed to prove the attendance of intimidation in the commission of the crimes.

Our Ruling

The appeal is without merit.

At the outset, we note that in his brief³¹ filed with the CA, appellant challenged “AAA’s” credibility by highlighting the discrepancy between her testimony and the allegation in the Information in Criminal Case No. 207 as to the date of the commission of the third rape. “AAA” asserted that the third rape happened on August 21, 2003, while the Information stated that it occurred on August 4, 2003. In debunking appellant’s argument, the CA held:

The alleged inconsistency in the date of the third rape is trivial and forgivable, since a victim of rape cannot possibly give an exacting detail for each of the previous incidents as these may just be but mere fragments of a prolonged and continuing nightmare, a bad experience she might even be struggling to forget. Verily, the exact date of rape is not an essential element of the crime, and the mere failure to give a precise date, let alone an incorrect estimate, will not discredit the testimony of the victim.³²

While this Court agrees with the CA that the exact date of the commission of rape is not an essential element of said crime, it cannot, however, convince itself that “AAA” committed any inconsistencies in declaring that the third rape occurred on August 21, 2003. From the time “AAA” executed her sworn Affidavit³³ dated September 16, 2003 up to the time she took the witness stand on July 6, 2004,³⁴ “AAA” never wavered and has consistently declared that her father ravished her for the third time on August 21, 2003. On the other hand, it is obvious that the mistake was a mere typographical error committed by the prosecution in the preparation of the Information dated February 9, 2004. Ideally, said Information should have been consistent on every detail with “AAA’s” earlier sworn Affidavit. In any case, an Information is valid as long as it distinctly states the elements of the offense and the acts or omissions constitutive thereof. It is not necessary to state therein the precise date the offense was committed, except when

³¹ CA *rollo*, pp. 14-29.

³² Id. at 99.

³³ Records, Vol. III, unpaginated; Id. Vol. II, pp. 6-7.

³⁴ TSN, July 6, 2006, pp. 2, 15, and 16.

it is a material ingredient of the offense.³⁵ And as earlier mentioned, in rape cases the date or time of commission of the offense is not an essential ingredient of said crime.³⁶ “In fact, the precise time when the rape takes place has no substantial bearing on its commission.”³⁷

The prosecution was able to establish all the elements of qualified rape.

Rape under paragraph 1, Article 266-A of the RPC is committed as follows:

ART. 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.

If committed by a parent against his child under 18 years of age, the rape is qualified under paragraph 1, Article 266-B of the same code, viz:

ART. 266-B. *Penalties.* - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

X X X X

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/ qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

The elements therefore of qualified rape are: “(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [18] years of age at the time of the rape; (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.”³⁸

³⁵ RULES OF COURT, Rule 110, Section 11.

³⁶ *People v. Magbanua*, 377 Phil. 750, 763 (1999).

³⁷ *Id.*

³⁸ *People v. Buclao*, G.R. No. 208173, June 11, 2014.

“In this case, both the trial court and the [CA] found that the prosecution was able to sufficiently establish all the elements of qualified rape. This Court sees no reason to depart from the findings of the lower courts.”³⁹ “AAA’s” testimony on her harrowing experience in the hands of appellant was found by the lower courts to be positive, straightforward, categorical and steadfast. Moreover, the evidence on record established that “AAA” was just 16 years old when appellant, her own father, had carnal knowledge of her. Clearly, all the elements of qualified rape are present in this case.

*“AAA’s” credibility must be upheld and
her testimony accorded credence*

“AAA’s” narration of her ordeal was clear and consistent, thus:

On the first incident of rape in June 2003:

Q: And what did he do to you, Miss Witness?

A: He [lay down] beside me.

Q: So when your father [lay down] beside you, Miss Witness, what happened next?

A: He hug[ged] me.

Q: And what else, Miss Witness?

A: He kissed my face.

Q: And what else, Ms. witness, if there were other things done by your father?

A: That’s the time he rape[d] me.

x x x x

COURT:

You said your father rape[d] you, how did he do it?

A: He pointed to me his [.]357 and he [took] off my short pants.

x x x x

PROS. BALBUENA:

Q: After your father remove[d] your panty, what did [he] do next?

A: He also remove[d] his short[s] and brief.

Q: And after he remove[d] his short[s] and brief, what did he do?

A: He positioned himself on top of me.

Q: And when he positioned [himself] on top of you, what did he do?

A: He let his [*iyaha*] enter [my private part].

³⁹ Id.

COURT:

What do you mean by “iyaha”?

A: His penis. He let his private part [enter my private part].

x x x x

COURT:

How did he rape you?

A: He let his private organ enter my private organ.

Q: After he rape[d] you, what did he do?

A: He warn[ed] me not to tell it to my grandmother.

Q: Did you tell your grandmother, Ms. Witness?

A: No.

Q: Why, Miss witness?

A: He is going to kill us if I am going to divulge the matter.⁴⁰

On the second incident of rape on July 29, 2003:

Q: Will you kindly tell us how your father rape[d] you on July 29, 2003, Miss witness?

A: He remove[d] my short[s] and panty. He also remove[d] his brief and short[s] then he positioned himself on top of me and then he let his private part enter my private part.

Q: After his private part enter[ed] into your private part[,] what happened next, Miss witness?

A: He pointed to me his gun again and he warned me not to divulge it again to my grandmother.

Q: Did you not divulge it to your grandmother, Miss witness?

A: No, I did not divulge.

Q: Why, Miss witness?

A: Because he is going to kill us if I am going to divulge it to my grandmother.⁴¹

On the third incident of rape on August 21, 2003:

Q: Can you recall, Miss witness, where were you on August 21, 2003 at 5:00 o'clock in the afternoon?

A: Yes.

Q: Where were you, Miss witness?

A: Also at Sitio Baco.

⁴⁰ TSN, July 6, 2004, pp. 9-12.

⁴¹ Id. at 14.

Q: Where particularly in Sitio Baco?

A: [In] the house where [I] live[d] together with my father.

X X X X

Q: And when your father entered again your room, what did your father do?

A: He lay down beside me.

Q: And when your father lay down beside you, what did you do if any, Miss witness?

A: He remove[d] again my short[s] and panty.

Q: And after he remove[d your] short[s] and panty, what did he do?

A: He remove[d] his shorts and brief.

Q: And after your father remove[d] his short[s] and brief, what [did] he do next?

A: He positioned himself on top of me.

Q: And when your father positioned himself on top of you, what did he do?

A: He again let his private part enter my private part.

Q: And after his private part enter[ed] into your private [part], what happened next?

A: Again, he pointed to me his gun and warned me again not to divulge it to my grandmother.⁴²

It must also be noted that “AAA” cried at some point while giving her testimony.

Given the foregoing, and considering that both the trial court and the CA found “AAA” a credible witness, the Court affirms their assessment of “AAA’s” credibility. The evaluation of the trial court judge from the viewpoint of having observed the witness on the stand, coupled by the fact that the CA affirmed the finding of the trial court, is binding on the court unless it can be shown that facts and circumstances have been overlooked or misinterpreted which, if considered, would affect the disposition of the case in a different manner. The Court finds none in this case.

Moreover, it is noteworthy that “AAA” was a minor at the time she was raped. The Court has been consistent in giving credence to testimonies of child-victims especially in sensitive cases of rape. In *People v. Garcia*,⁴³ it was held that:

Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed.

⁴² Id. at 15-17.

⁴³ G.R. No. 200529, September 19, 2012, 681 SCRA 465.

When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.⁴⁴

The Court thus upholds the credibility of "AAA" and accords credence to her testimony.

Appellant's defenses of denial and improper motive fail to persuade.

Appellant denies the rape charges against him and imputes improper motive upon "AAA." He claims that "AAA" filed the case because he chastised and slapped her in a fit of anger. Appellant's contention, however, is far from being persuasive.

The Court has ruled that a young girl's revelation that she had been raped cannot be easily labeled as a mere concoction. In *People v. Melivo*,⁴⁵ it was held that:

It takes much more for a sixteen year old lass to fabricate a story of rape, have her private parts examined, subject herself to the indignity of a public trial and endure a lifetime of ridicule. Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman to concoct a story which would put her own father for the most of his remaining life to jail and drag herself and the rest of her family to a lifetime of shame.

It must be added that the defenses of denial and improper motive can only prosper when substantiated by clear and convincing evidence. There being no such evidence in this case, the said defenses are no more than self-serving assertions that deserve no weight in law. Certainly, they cannot prevail over "AAA's" positive and categorical testimony. Thus, appellant's defenses of denial and imputation of improper motive fail to persuade.

"AAA's" conduct after the rape incidents does not negate the fact that she was raped; Intimidation is attendant in the

⁴⁴ Id. at 477-478.

⁴⁵ 323 Phil. 412, 427-428 (1996).

commission of the crimes of qualified rape.

Appellant insists that “AAA’s” conduct after the alleged rape belies her claim that she was sexually molested. He maintains that “AAA’s” act of remaining silent and of even returning to his house in Sitio Baco after the first alleged rape are not the natural reactions of a rape victim. Also, appellant concludes that the delay in reporting the rape charges casts serious doubt on the truthfulness thereof.

Appellant’s arguments deserve scant consideration. It has been held that while “the conduct of the victim immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of the charge of rape, it is not accurate to say that there is a typical reaction or norm of behavior among rape victims, as not every victim can be expected to act conformably with the usual expectation of mankind and there is no standard behavioral response when one is confronted with a strange or startling experience, each situation being different and dependent on the various circumstances prevailing in each case.”⁴⁶

Moreover, “AAA” was able to satisfactorily explain her reason for still going back to his father’s house in Sitio Baco despite the occurrence of the first incident of rape. This was aptly mentioned by the CA in its assailed Decision, *viz*:

It was explained by appellee that the reason why she was there at the house of [her] father was because it was her grandmother who commanded her to go to Baco. The testimony of appellee during the cross-examination is worth mentioning, *viz*:

Q: After the first incident why did you still stay at your house in Baco?

A: Because if I will not go there, my father will go to Tayawan and he will “maoy”.

Q: Will you elaborate what is “maoy?”

A: He will go wild in Tayawan.

Court: Go mad you referred to?

A: Yes.

ATTY. MIRAFLOR:

Q: How did you know this?

A: Because he was there in Tayawan.

Q: You sacrifice[d] yourself [by staying] with your father in Baco even if something had happened to you x x x so that your father will not “maoy” in Tayawan?

⁴⁶ *People v. Saludo*, G.R. No. 178406, April 6, 2011, 647 SCRA 374, 394.

A: Because [it was] my grandmother [who] actually command[s] me [to] go home to Baco[, otherwise, it is] my father [who] will go to them and hurt them.

Q: When was that?

A: In the year 2003.

Q: And when your grandmother forced you to go back to Baco, did you not tell your grandmother what [happened] to you?

A: No.⁴⁷

Also, it cannot be reasonably expected that “AAA” would hastily report the rape to her grandmother or to the authorities considering that appellant threatened to kill her and her grandmother should she divulge the incident. “AAA” was justified in thinking that appellant would make good his threat considering that he has a gun which he even poked at “AAA” everytime he would warn her against telling others of the rape. Indeed, failure to immediately disclose the rape does not warrant the conclusion that the victim was not raped especially in this case where a minor was threatened at gunpoint.

This, thus, brings the Court to appellant’s contention that intimidation was not established in this case, of which this Court is unconvinced. To recall, “AAA” had unequivocally stated in her testimony that appellant, during the first incident, pointed his .357 gun at her before raping her. During the succeeding rape incidents, appellant used the same gun to threaten her should she reveal her defilement to her grandmother or to anyone. Verily, the element of intimidation was sufficiently established. At any rate, even assuming that the prosecution failed to establish the presence of intimidation, the same would not alter the outcome of this case. “Settled is the rule that in incestuous rape, the father’s moral ascendancy and influence over his daughter substitutes for violence and intimidation.”⁴⁸

All told, the Court affirms the lower court’s conviction of appellant for three counts of qualified rape.

Penalty

Under Article 266-B of the RPC, the death penalty shall be imposed when the victim of rape is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim. The death penalty cannot, however, be imposed in view of Republic Act No. 9346.⁴⁹ In lieu of the death penalty, the penalty of *reclusion perpetua* without eligibility for parole shall

⁴⁷ CA rollo, pp. 97-98.

⁴⁸ *People v. Baun*, 584 Phil. 560, 573(2008).

⁴⁹ “An Act Prohibiting the Imposition of the Death Penalty in the Philippines.”

be imposed. Hence, the Court finds proper the penalty imposed by the CA upon appellant which is *reclusion perpetua* without eligibility of parole in each of the three counts of qualified rape.

Awards of Damages

The CA's awards of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages, for each count of qualified rape must however be modified. Pursuant to *People v. Gambao*,⁵⁰ we hold that "AAA" is entitled to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages, for each count of qualified rape.

Finally, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.⁵¹

WHEREFORE, the Decision dated May 29, 2009 of the Court of Appeals in CA-GR. CR-H.C. No. 00760 finding appellant Nilo Colentava guilty of three counts of qualified rape and sentencing him to suffer the penalty of *reclusion perpetua* without eligibility for parole for each count is **AFFIRMED with the following MODIFICATIONS**:

(1) Appellant Nilo Colentava is ordered to pay the victim "AAA" ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, for each count of qualified rape;

(2) All damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this resolution until fully paid.

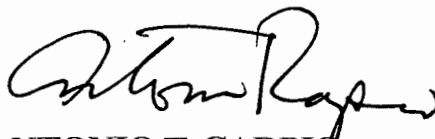
SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

⁵⁰ G.R. No. 172707, October 1, 2013, 706 SCRA 508, 535.

⁵¹ *People v. Vitero*, G.R. No. 175327, April 3, 2013, 695 SCRA 54, 69.

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice
Chairperson



PRESBITERO J. VELASCO, JR.

Associate Justice



JOSE CATRAL MENDOZA

Associate Justice



MARVIC M.V. F. LEONEN

Associate Justice

ATTESTATION

I attest 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.



ANTONIO T. CARPIO

Associate Justice
Chairperson



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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

