



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 217975

Present:

VELASCO, JR., * J.,
 BRION, *Acting Chairperson*,**
 DEL CASTILLO,
 MENDOZA, and
 LEONEN, JJ.

- versus -

Promulgated:

BERNARDINO BIALA,
 Accused-Appellant.

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DECISION

MENDOZA, J.:

This is an appeal from the November 5, 2014 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01078-MIN, which affirmed with modification the February 6, 2011 Joint Judgment² of the Regional Trial Court, Branch 20, Tacurong City, Sultan Kudarat (RTC), convicting accused-appellant Bernardino Biala (*Biala*) of Attempted Rape in Criminal Case No. 1990; of Statutory Rape in Criminal Case No. 2220; and of Qualified Rape in Criminal Case No. 2221. The CA affirmed the RTC decision in Criminal Case Nos. 2220 and 2221 but modified it in Criminal Case No. 1990 by finding Biala guilty of Acts of Lasciviousness instead of Attempted Rape.

* Per Special Order No. 2282 dated November 13, 2015.

** Per Special Order No. 2281 dated November 13, 2015.

¹ Penned by Associate Justice Edgardo A. Camello, with Associate Justices Henri Jean Paul B. Inting and Pablito A. Perez, concurring; *rollo*, pp. 3-24.

² Penned by Judge Milano M. Guerrero; *CA rollo*, pp. 48-113.

The Antecedents

Biala was charged with three (3) counts of rape that he committed against AAA³ in three (3) separate Informations, the accusatory portions of which read as follows:

Criminal Case No. 1990

That sometime in the evening of November 1999 at x x x, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the guardian of [AAA], with lewd and unchaste design and by means of force and intimidation, and with grave abuse of authority, did then and there, wilfully, unlawfully, and feloniously, lie and succeeded in having carnal knowledge of [AAA], a child under twelve (12) years old girl against her will and consent.

Criminal Case No. 2220

That following the first offense of rape that was committed by the accused in November 1999, and before the last offense of rape was committed in June 2001 against the victim in this case at x x x, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the guardian of [AAA], with lewd and unchaste design and by means of force and intimidation, and with grave abuse of authority, did then and there, wilfully, unlawfully, and feloniously, lie and succeeded in having repeated carnal knowledge of [AAA], a child under twelve (12) years old girl against her will and consent.

Contrary to law.

Criminal Case No. 2221

That sometime in June 2001 at x x x, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the guardian of [AAA], with lewd and unchaste design and by means of force and intimidation, and with grave abuse of authority, did then and there, wilfully, unlawfully, and feloniously, lie and succeeded in having carnal knowledge of [AAA], a child under twelve (12) years old girl against her will and consent.⁴

Contrary to law.

³ Per this Court's Resolution dated 19 September 2006 in A.M. No. 04-11-09-SC, as well as the Court's ruling in *People v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), pursuant to Republic Act No. 9262 or the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victims and their immediate family members other than the accused are to be withheld and fictitious initials are to be used instead. Likewise, the exact addresses of the victims are to be deleted.

⁴ Rollo, p. 4.

When arraigned, Biala pleaded not guilty to the charges against him. After pre-trial was terminated, trial on the merits followed.

Version of the Prosecution

AAA was born on December 5, 1988 as shown in her Certificate of Live Birth. In her testimony, she claimed to have been raped thrice by Biala in their house, during which times, her guardian-mother and half-sister were not around. She stated that she was raped on two successive nights in November 1999 and then once in June 2001.

The first rape incident, subject of Criminal Case No. 1990, happened at around 7:00 o'clock in the evening. AAA narrated that while she was already lying in bed inside the bedroom, Biala approached her and suddenly took off her dress. When she was about to stand up, he immediately kissed her and then removed her panty. She shouted but he punched her twice in the abdomen which made her feel dizzy and fall on the bed. Upon regaining her consciousness, AAA found herself naked and she felt pain in her vagina. She noticed that there was blood oozing from it. Finding Biala sleeping right next to her, she went to the water pump to wash up and, thereafter, to the kitchen where she slept.

The second rape incident, subject of Criminal Case No. 2220, was perpetrated on the following night. AAA recalled that she was about to sleep when Biala held her left arm, led her to the bedroom and pushed her to the bed. After Biala kissed her face for three minutes, he undressed her, forced her to spread her legs, punched her to weaken her resistance, and forcibly inserted his penis into her vagina. Biala made a push and pull movement for about ten minutes. With a gun near him, Biala threatened to kill AAA if she would tell anyone about the incident. After her ordeal, she went to the kitchen, cleaned her body and slept there.

The last rape incident, subject of Criminal Case No. 2221, took place sometime in June 2001 at around 9:00 o'clock in the evening. AAA testified that while she was looking for a shirt which Biala asked for, he suddenly pulled her dress and pushed her to the bed. He placed himself on top of her and started kissing her on the neck and lips. She pushed him away and said, "Do not do that *Tay*." Biala did not stop and, instead, undressed her and kissed her breast and abdomen. When she was totally naked, Biala inserted his penis into her vagina and made a push and pull movement. After a few minutes, Biala withdrew his penis from her vagina and kissed her breast. Later, he again inserted his penis into her vagina and made a push and pull movement, leaving her in pain. Biala threatened and warned her not to tell

anyone, otherwise, he would kill her. Terrified, AAA went out and washed herself in the kitchen. Then, she went back inside their room and cried all night.

AAA never informed anyone about Biala's bestial acts. Instead, she ran away and went to stay with their neighbor, Spouses Sotelo. While with them, she was able to muster enough courage to break her silence on how Biala sexually ravished her. After learning of what happened to her, Spouses Sotelo accompanied her to the police station to report the commission of the offense.

Dr. Efraim Collado (*Dr. Collado*) conducted a genital examination on AAA and found that she sustained a healed hymenal laceration at the 9:00 o'clock position. Dr. Collado determined that the laceration was more than 10 days old because the hymen was already healed, and that it could have been caused by one or several times of sexual intercourse.

Version of the Defense

Biala claimed that during those times when the alleged rape incidents occurred in November 1999 and in June 2001, AAA was sleeping either in his brother's house or in her grandmother's house. He bared that he and AAA's guardian mother had been living together for twenty-four (24) years but had no children of their own. They took her as their own child when she was still two (2) years old. He added that her guardian mother was actually her grandmother. When he was asked as to what could have been the reason why AAA accused him of such grave offense, Biala surmised that she was instigated by Spouses Sotelo to fabricate the charges because they had an axe to grind against him for his supposed failure to pay an indebtedness, which he denied having incurred.

Biala's common-law spouse took the witness stand and claimed that she was in Manila in November 1999 when the rape incidents allegedly took place; that she brought AAA to her grandmother in New Isabela, Tacurong City, in June 2001; that AAA did not relate anything to her about the rape incidents; that she never witnessed any of the said incidents; and that she was unsure if AAA was telling the truth.

The RTC Ruling

On February 6, 2011, the RTC rendered the Joint Judgment⁵ finding Biala guilty of Attempted Rape, Statutory Rape and Qualified Rape in Criminal Case Nos. 1990, 2220 and 2221, respectively.

In Criminal Case No. 1990, the RTC opined that Biala could not be convicted of statutory rape because the most important element of having carnal knowledge of her was not clearly and convincingly established. According to the RTC, however, Biala should be held criminally liable for attempted rape because evidence on records showed that he had performed overt acts preliminary to the consummation of the crime of rape. In Criminal Case No. 2220, the RTC was convinced of the guilt of Biala for statutory rape. It declared that the prosecution was able to prove beyond reasonable doubt that he had carnal knowledge of AAA, who was only 11 years old at that time. Finally, the RTC adjudged him guilty of qualified rape in Criminal Case No. 2221. It explained that the commission of the crime was attended by the qualifying circumstances of her minority and her relationship to him as her guardian, which circumstances were duly alleged in the Information and proven with certainty and clarity as the crime itself during the trial.

Accordingly, the RTC disposed:

WHEREFORE, upon all the foregoing considerations, the court hereby renders judgment as follows:

IN CRIMINAL CASE NO. 1990

- 1. FINDING** accused **BERNARDINO BIALA GUILTY** beyond reasonable [doubt] to the crime of Attempted Rape and **SENTENCING** him to suffer the indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day as minimum, to ten (10) years and one (1) day, as maximum; and
- 2. ORDERING** him to pay [AAA] the following:
 - 2.a. The amount of ₱50,000.00 as moral damages;
 - 2.b. The amount of ₱30,000.00 as civil indemnity;
and
 - 2.c. The amount of ₱25,000.00 as and by way of exemplary damages.

To pay the costs.

⁵ CA *rollo*, pp. 48-113. Penned by Judge Milanio M. Guerero.

For being a detention prisoner, his entire preventive imprisonment shall be credited in full in the service of sentence imposed on him provided that he shall abide in writing with the same disciplinary rules imposed upon convicted prisoners, otherwise with only four-fifths (4/5) thereof.

IT IS SO ORDERED.

IN CRIMINAL CASE NO. 2220

- 1. FINDING** accused **BERNARDINO BIALA GUILTY** beyond reasonable [doubt] to the crime of Statutory/Qualified Rape and **SENTENCING** him to suffer the penalty of **RECLUSION PERPETUA**; and
- 2. ORDERING** him to pay [AAA] the following:
 - 2.a. The amount of ₱50,000.00 as and by way of moral damages;
 - 2.b. The amount of ₱75,000.00 as and by way of civil indemnity; and
 - 2.c. The amount of ₱30,000.00 as and by way of exemplary damages.

To pay the costs.

Pursuant to current circular of the Supreme Court, the said accused shall be committed to the National Bilibid Prisons in Muntinlupa City.

IN CRIMINAL CASE NO. 2221

- 1. FINDING** accused **BERNARDINO BIALA GUILTY** beyond reasonable [doubt] to the crime of Qualified Rape and **SENTENCING** him to suffer the penalty of **RECLUSION PERPETUA**; and
- 2. ORDERING** him to pay AAA the following:
 - 2.a. The amount of ₱50,000.00 as and by way of moral damages;
 - 2.b. The amount of ₱75,000.00 as and by way of civil indemnity; and
 - 2.c. The amount of ₱30,000.00 as and by way of exemplary damages.

To pay the costs.

Pursuant to current circular of the Supreme Court, the said accused shall be committed to the National Bilibid Prisons in Muntinlupa City.

IT IS SO ORDERED.⁶

Not satisfied, Biala appealed the RTC Joint Judgment before the CA.

The Ruling of the CA

The CA found no cogent reason to deviate from the findings of facts and conclusions reached by the RTC. The CA gave full faith and credence to the testimony of AAA, which was corroborated by the medical findings of Dr. Collado, and found the same to be sufficient to sustain Biala's conviction for statutory rape and qualified rape. It rejected his twin defenses of denial and alibi for being flimsy and for want of material corroboration.

The CA, however, was of the view that Biala could not be convicted of attempted rape in Criminal Case No. 1990 considering that not a shred of evidence, direct or circumstantial, was adduced by the prosecution to prove that he actually commenced the act of penetrating the vagina of AAA but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, was not completed. The CA, nonetheless, found that sufficient evidence existed to support his conviction for Acts of Lasciviousness under Article 336 of the Revised Penal Code (*RPC*).⁷ It wrote that Biala's acts of undressing AAA, kissing her and removing her panty reflected lewdness and lust for her. The dispositive portion of the decision reads:

FOR THESE REASONS, the Joint Judgment dated 06 February 2011 of the Regional Trial Court, Branch 20, Tacurong City is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant Bernardino Biala is adjudged **GUILTY** beyond reasonable doubt of:

1. Statutory Rape under Article 266-A of the *Revised Penal Code* in Criminal Case No. 2220 and sentenced to suffer the penalty of *reclusion perpetua*. He is also ordered to pay [AAA] the amount of ₱50,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages.

⁶ Id. at 111-113.

⁷ Art. 336. *Acts of lasciviousness*. Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

2. Qualified Rape under Article 266-A of the *Revised Penal Code* in Criminal Case No. 2221 and sentenced to suffer the penalty of *reclusion perpetua*. He is also ordered to pay [AAA] the amount of ₱50,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages.
3. Acts of Lasciviousness under Article 336 of the *Revised Penal Code* in Criminal Case No. 1990 and sentenced to suffer the indeterminate penalty of imprisonment for six (6) months of *arresto mayor*, as minimum to four (4) years and two (2) months of *prision correccional* as maximum. He is likewise ordered to pay AAA the amount of ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱20,000.00 as exemplary damages.

In addition, interest is imposed on all damages awarded at the rate of six percent (6%) per annum from date of finality of this judgment until full payment.

SO ORDERED. ⁸

Hence, this appeal.

In its Resolution,⁹ dated July 8, 2015, the Court required both parties to file their supplemental briefs, if they so desired. Both parties, however, opted to adopt the briefs they filed before the CA as their supplemental briefs.¹⁰

The Position of the Accused

Biala insists on his innocence and essentially asserts that his guilt has not been proven beyond reasonable doubt. He contends that AAA's demeanor and conduct belied her claim that she had been raped. He questions the facility on how she was able to resume her normal life after the supposed rape incidents. He points out that her behavior of performing her usual domestic duties and activities, such as preparing breakfast for both of them and going to school, was not in accord with a woman who had been robbed of her honor.

⁸ *Rollo*, p. 23.

⁹ *Id.* at 31.

¹⁰ *Id.* at 36-37; 41-42.

Biala claims that AAA's testimony was laced with inconsistencies casting serious doubts on the veracity of her claims. He also finds fault in her delay to report the alleged rape incidents. He argues that if she was indeed sexually abused, she should have wasted no time in reporting the matter to her guardian mother, to Spouses Sotelo and/or to the police considering that she was not under his watch for the entire day. Lastly, he contends that the Information in Criminal Case No. 2220 was void for failure to state the precise date of the incident subject of the case. He contends that his constitutional right to presumption of innocence remains because there is a reasonable doubt that calls for his acquittal.

The Court's Ruling

The appeal is devoid of merit.

The RTC and the CA were one in finding that Biala had carnal knowledge of AAA, a child of tender years, in November 1999 and in June 2001. Despite his vigorous protestations, the Court agrees with the courts below that the prosecution was able to prove beyond reasonable doubt that Biala raped AAA twice.

The time-honored rule is that "the issue of credibility of witnesses is a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, xxx and absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded, which when considered would have affected the outcome of the case."¹¹ This rule finds an even more stringent application where the said findings are sustained by the CA.¹²

In the case at bench, the Court finds no compelling reason to deviate from the trial court's findings and its calibration of the credibility of the private complainant. AAA conveyed the details of her harrowing ordeals in the hands of Biala in a simple yet convincing and consistent manner. She credibly recounted how Biala forced himself on her and caused her pain when he forcibly inserted his penis into her vagina in November 1999 and in June 2001. AAA tried to resist and scream but to no avail. After the sexual assault on those two dates, Biala threatened to kill her if she would report the incident to anyone. Indeed, AAA's statements pertaining to Biala's identity

¹¹ *People v. Dominguez, Jr.*, 650 Phil. 492, 520 (2010).

¹² *People v. Cabugatan*, 544 Phil. 468, 479 (2007).

as her violator and the perverse acts he did to her were straightforward and categorical.

The Court has held time and again that the testimony of child-victim is normally given full weight and credit considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified was not true.¹³ Youth and immaturity are generally badges of truth and sincerity.¹⁴ Hence, there is neither cause nor reason to withhold credence from AAA's testimony.

In addition, AAA's testimony was corroborated by the medical findings of Dr. Collado that the healed hymenal lacerations at 9:00 o'clock notch on her private part could have been caused by the penetration of a man's penis. Dr. Collado also disclosed that her hymen was no longer intact. It has been said that when the testimony of a rape victim is consistent with the medical findings, a sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established.¹⁵ Hence, the testimony of Dr. Collado strengthens even more AAA's claim of rape.

The gravamen of the offense of rape is sexual congress with a woman by force and without consent. If the woman is under 12 years of age, proof of force is not an element, as the absence of a free consent is conclusively presumed as the law supposes that a woman below this age does not possess discernment and is incapable of giving intelligent consent to the sexual act. Conviction will therefore lie, regardless of proof of force or intimidation provided sexual intercourse is proven. Force, threat, or intimidation are not elements of statutory rape, therefore proof thereof is unnecessary.¹⁶ But if the woman is 12 years of age or over at the time she was violated, sexual intercourse must be proven and also that it was done through force, violence, intimidation or threat.¹⁷

In Criminal Case No. 2220, the fact of Biala's forcible sexual intercourse with AAA, who was 11 years old at the time of the rape incident as per her birth certificate, was proven through her testimony. In Criminal Case No. 2221, on the other hand, the prosecution was able to prove with utmost certainty that Biala had carnal knowledge of AAA, who was then 12 years old, through force and intimidation.

¹³ *Llave v. People*, 522 Phil. 340, 364 (2006).

¹⁴ *People v. Guambor*, 465 Phil. 671, 678 (2004).

¹⁵ *People v. Tormis*, 595 Phil. 589, 603 (2008).

¹⁶ *People v. Banzuela*, G.R. No. 202060, December 11, 2013, 712 SCRA 735, 753.

¹⁷ *People v. Basmayor*, 598 Phil. 194, 210 (2009).

AAA's conduct after being sexually abused by Biala, as if nothing happened, is not enough to discredit her. Victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations. It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim.¹⁸ It is inaccurate to say that there is a standard reaction or norm of behavior among rape victims because each rape situation is different and dependent on various circumstances.¹⁹ To the Court's mind, AAA tried to cope with the traumatic experience that befell her by opting not to dwell on it and live as though the rape never occurred. Moreover, considering that she was just a young girl then, and threatened to be killed if she ever talked about it, AAA simply knew no other way of dealing with it but to live the life to which she was accustomed.

Anent the alleged inconsistency in the testimony of AAA with respect to the reason why she ran away from their house after the last incident of rape, suffice it to state that the same is not fatal to the prosecution's cause. Inaccuracies and inconsistencies in a rape victim's testimony are generally expected.²⁰ It bears stressing that the inconsistency mentioned by Biala pertained to a trivial and non-consequential matter that was merely caused by the confusion when she was being questioned. The inconsistency regarding her reason for leaving their house was not even a matter relating to her ordeal. Besides, the human memory is fickle and prone to the stresses of emotions that accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness.²¹

Likewise, AAA's delay in reporting the rape incidents is insignificant and does not affect the veracity of her charges. It should be remembered that Biala threatened to kill her if she would tell anyone of the incidents. Obviously, such threat could easily intimidate her. Young as she was, the threats instilled tremendous fear in her mind. Biala was her guardian and his presence in their household was more than enough to keep her silent. In *People v. Ogarte*,²² the Court explained why a rape victim's deferral in reporting the crime does not equate to falsification of the accusation, to wit:

The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape

¹⁸ *People v. Pareja*, G.R. No. 202122, January 15, 2014, 714 SCRA 131, 153-154.

¹⁹ *People v. Saludo*, 662 Phil. 738, 759.

²⁰ *People v. Rubio*, 683 Phil. 714, 722 (2012).

²¹ *People v. Zafra*, G.R. No. 197363, June 26, 2013, <http://sc.judiciary.gov.ph/jurisprudence/2013/june2013/197363.pdf>.

²² 664 Phil. 642 (2011), citing *People v. Gecomo*, 324 Phil. 297 (1996).

never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.²³

Hence, AAA's silence or her failure to immediately disclose her ordeal does not prove that her allegations are baseless and fabricated. It is not peculiar for young girls to conceal for some time the assault on their virtues because of the rapist's threat on their lives, more so when the offender was someone whom she knew and who was living with her.²⁴

Biala argues that the Information charging him with the rape of AAA in Criminal Case No. 2220 was defective for failure to state the specific date of the commission of the offense. According to him, his conviction had no basis in law because his constitutional right to be informed of the nature and cause of the accusations against him had been violated.

The Court notes that the matter of particularity of the dates in the information was raised only for the first time on appeal. The rule is well-entrenched in this jurisdiction that objections as to matter of form or substance in the information cannot be made for the first time on appeal.²⁵ Biala failed to raise this issue before the RTC where he could have moved to quash the information or at least moved for a bill of particulars.

The argument is nonetheless specious. An information is intended to inform an accused of the accusations against him and, as such, it must embody the essential elements of the crime charged by setting forth the facts and circumstances that have a bearing on the culpability and liability of the accused, so that he can properly prepare for and undertake his defense.²⁶ It is not necessary, however, for the information to allege the date and time of the commission of the crime with exactitude, unless time is an essential ingredient of the offense.²⁷ In rape cases, the date of commission is not an essential element of rape but what is material is its occurrence,²⁸ which in this case, was sufficiently established by AAA. Thus, in a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The failure to specify the exact date or time when it was committed does not *ipso facto* make the information defective on its face.²⁹

²³ Id. at 661.

²⁴ *People v. Abulon*, 577 Phil. 428 (2011).

²⁵ *People v. Razonable*, 386 Phil. 771, 780 (2000).

²⁶ *People v. Nazareno*, 574 Phil. 175 (2011).

²⁷ *People v. Santos*, 390 Phil. 150, 161 (2000).

²⁸ *People v. Prodenciado*, G.R. No. 192232, December 10, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/december2014/192232.pdf>.

²⁹ *People v. Espejon*, 427 Phil. 672 (2002).

Also, he did not object to the presentation of the evidence by the prosecution contending that the offense was committed "following the first offense of rape that was committed by the accused in November 1999 and before the last offense of rape was committed in June 2001." On the contrary, Biala actively participated in the trial, offering denial and alibi as his defenses. Simply put, he cannot now be heard to complain that he was unable to defend himself in view of the vagueness of the recitals in the information.

Biala's defense of denial must be rejected. It could not prevail over AAA's unwavering testimony and her positive and firm identification of him as the man who had undressed her and sexually gratified himself off her. As negative evidence, it pales in comparison with a positive testimony that asserts the commission of a crime and the identification of the accused as its culprit.³⁰ The facts in this case do not present any exceptional circumstance warranting a deviation from this established rule.

The defense of alibi is likewise unavailing. In order for alibi to prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.³¹ Biala miserably failed to discharge this burden. Further, his alibi was not corroborated and substantiated by clear and convincing evidence. He could no longer hide behind the protective shield of his presumed innocence.

All told, the Court is convinced that Biala committed two (2) counts of qualified rape in Criminal Case Nos. 2220 and 2221.

For one to be convicted of qualified rape, at least one of the aggravating/qualifying circumstances mentioned in Article 266-B of the RPC, as amended, must be alleged in the information and duly proved during the trial.³² In the case at bench, the qualifying circumstance that the offender is a guardian of the victim mentioned in Article 266-B,³³ was properly alleged in the two Informations and sufficiently established during trial. Biala served as AAA's guardian from the time she was taken away

³⁰ *People v. Canares*, 599 Phil. 60, 76 (2009).

³¹ *People v. Abella*, 624 Phil. 18, 36 (2010).

³² *People v. Basmayor*, 598 Phil. 194, 211 (2009).

³³ Revised Penal Code – Art. 266-B provides in part:

xxxx

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

xxxx

1) When the victim is under eighteen (18) years of age and the offender is a xxx guardian xxx of the victim.

from her natural mother at the age of two. He spent for her kindergarten and elementary education.³⁴ She even called Biala “*Tatay*.” It was also clearly alleged that she was only 11 years old at the time of the commission of the rape in November 1999 and only 12 years old during the rape incident in June 2001. The prosecution proved her age by presenting her birth certificate which stated that she was born on December 5, 1988.

Under Article 266-B of the RPC, as amended, the impossible penalty for qualified rape is death. With the effectivity, however, of Republic Act (R.A.) No. 9346,³⁵ the imposition of the supreme penalty of death has been prohibited. Pursuant to Section 2³⁶ thereof, the penalty to be meted out against Biala shall be *reclusion perpetua*. Notwithstanding the reduction of the penalty imposed on Biala, he is not eligible for parole, following Section 3³⁷ of said law. Thus, the proper penalty to be imposed in Criminal Case Nos. 2220 and 2221 is *reclusion perpetua* without eligibility for parole.

As to the award of damages, the Court, deems it proper to increase the same in consonance with our ruling in *People v. Gambao*,³⁸ where the amounts of indemnity and damages were increased when the proper penalty for the crime committed by the accused was death but was not imposed because of the enactment of R.A. No. 9346, setting the minimum thereof, as follows: ₱100,000.00 as civil indemnity, ₱100,00.00 as moral damages and ₱100,000.00 as exemplary damages.³⁹ Accordingly, in this case, the awards of civil indemnity should be increased from ₱50,000.00 to ₱100,000.00; moral damages from ₱75,000.00 to ₱100,000.00; and exemplary damages from ₱30,000.00 to ₱100,000.00.

As regards Biala’s conviction for Acts of Lasciviousness, the Court finds no reason to disturb it. While the information in Criminal Case No. 1990 charged him with statutory rape, he can be held liable for the lesser crime of acts of lasciviousness as the latter is an offense subsumed or included in the former.⁴⁰

The elements of acts of lasciviousness, punishable under Article 336 of the RPC, are:

³⁴ See Joint Judgment, *CA rollo*, p. 103.

³⁵ An Act Prohibiting the Imposition of Death Penalty in the Philippines.

³⁶ Sec. 2. In lieu of the death penalty, the following shall be imposed.

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; xxx.

³⁷ Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

³⁸ G.R. No. 172707, October 1, 2013, 706 SCRA 508.

³⁹ *People v. Tabayan*, G.R. No. 190620, June 18, 2014, 726 SCRA 587, 607.

⁴⁰ *Perez v. Court of Appeals*, 431 Phil. 786, 797 (2000).

- (1) That the offender commits any act of lasciviousness or lewdness;
- (2) That it is done under any of the following circumstances:
 - a. By using force or intimidation; or
 - b. When the offended party is deprived of reason or otherwise unconscious; or
 - c. When the offended party is under 12 years of age; and
- (3) That the offended party is another person of either sex.⁴¹

No evidence was proffered that Biala attempted to insert his penis into AAA's sexual organ. What was clearly established was that he undressed her, an 11-year old, kissed her and, thereafter, removed her panty, which by any standards, were lewd acts. Biala even employed force and violence against her which rendered her unconscious. It is certainly morally inappropriate, indecent and lustful for him to perform such acts on a young girl while taking advantage of her vulnerability given her minority, the darkness afforded by nighttime and the fact that she was alone during the incident.

The penalty for acts of lasciviousness under Article 336 of the RPC is *prision correccional* in its full range. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty must be taken from the full range of the penalty next lower in degree, that is, *arresto mayor*, which ranges from one (1) month and one (1) day to six (6) months. Absent any modifying circumstance attendant to the crime, the maximum of the indeterminate penalty is to be taken from the medium period of *prision correccional*, ranging from two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. The Court finds that the penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, imposed by the CA against Biala in Criminal Case No. 1990, is correct.

In line with prevailing jurisprudence, the Court finds that AAA, in Criminal Case No. 1990, is entitled to the award of ₱20,000.00 as civil indemnity; ₱30,000.00 as moral damages; and ₱10,000.00 as exemplary damages.⁴²

Finally, the Court reiterates Biala's liability to pay interests at the rate of 6% *per annum* on all the monetary awards for damages from the date of the finality of this decision until fully paid.

⁴¹ *People v. Garcia*, G.R. No. 200529, September 19, 2012, 681 SCRA 465, 478-479.

⁴² *Sombilon, Jr. v. People*, 617 Phil. 187, 201 (2009); *People v. Poras*, 626 Phil. 526, 549 (2010).

WHEREFORE, the Court **MODIFIES** the November 5, 2014 Decision of the Court of Appeals in C.A-G.R. CR-HC No. 01078-MIN, as follows:

FOR THESE REASONS, the Joint Judgment dated 06 February 2011 of the Regional Trial Court, Branch 20, Tacurong City is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant Bernardino Biala is adjudged **GUILTY** beyond reasonable doubt of:

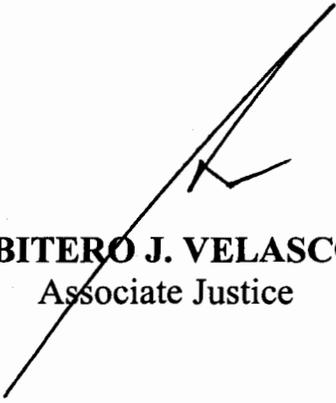
1. Qualified Rape under Article 266-A in relation to Article 266-B of the Revised Penal Code in Criminal Case No. 2220 and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is also ordered to pay AAA the amount of **₱100,000.00** as civil indemnity; **₱100,000.00** as moral damages; and **₱100,000.00** as exemplary damages.
2. Qualified Rape under Article 266-A in relation to Article 266-B of the Revised Penal Code in Criminal Case No. 2221 and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is also ordered to pay AAA the amount of **₱100,000.00** as civil indemnity; **₱100,000.00** as moral damages; and **₱100,000.00** as exemplary damages.
3. Acts of Lasciviousness under Article 336 of the Revised Penal Code in Criminal Case No. 1990 and sentenced to suffer the indeterminate penalty of imprisonment for six (6) months of *arresto mayor*, as minimum to four (4) years and two (2) months of *prision correccional* as maximum. He is also ordered to pay AAA the amount of **₱20,000.00** as civil indemnity, **₱30,000.00** as moral damages, and **₱10,000.00** as exemplary damages.

In addition, interest is imposed on all damages awarded at the rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice



ARTURO D. BRION
Associate Justice
Acting Chairperson



MARIANO C. DEL CASTILLO
Associate Justice



MARVIC M.V.F. LEONEN
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.

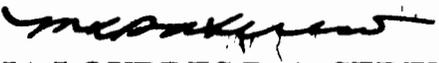


ARTURO D. BRION
Associate Justice
Acting Chairperson, Second Division

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice