



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 16 February 2022 which reads as follows:

“G.R. No. 251709 – (People of the Philippines v. Louie D. Capulong, Jonathan Reyes, Ma. Shayra S. Magat, Angeline Reyes and Helen S. Gamboa, accused; Ma. Shayra Magat y Serrano, accused-appellant. – This is an appeal from the Decision¹ dated September 10, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 11182 which affirmed with modifications the Joint Decision² dated April 17, 2018 of the Regional Trial Court (RTC) of ██████████, Branch 61 in Crim. Case Nos. 08-3664, 08-3665, 08-3666, 08-3667 and 08-3668 finding Ma. Shayra S. Magat (accused-appellant) guilty beyond reasonable doubt of two (2) counts of Rape through Sexual Intercourse and three (3) counts of Rape by Sexual Assault.

The accused-appellant and her co-accused were formally charged with two (2) counts of Rape through Sexual Intercourse and three (3) counts of Rape by Sexual Assault as shown in five (5) separate Informations:

Criminal Case No. 08-3664

That on or about the 27th day of October 2007, in the ██████████, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, with lewd design and taking advantage of the innocence and tender age of said minor complainant, “AAA”,³ 16 years of age, did then and there willfully, unlawfully and feloniously have carnal knowledge with said “AAA”, by means of force and intimidation and against

¹ *Rollo*, pp. 3-28; penned by Associate Justice Pedro B. Corales with Associate Justices Marlene Gonzales-Sison and Walter S. Ong, concurring.

² *CA rollo*, pp. 60-95; rendered by Assisting Judge Jesusa Mylene C. Suba-Isip.

³ *People v. Nocido*, G.R. No. 240229, June 17, 2020. Any information which may establish or compromise the identity of the victim, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

her will and consent, accused LOUIE D. CAPULONG, lying on top of the complainant and inserted his penis on (sic) her vagina, while she was placed by other accused Jonathan Reyes, Shayra S. Magat, Angeline Reyes and Helen S. Gamboa in (sic) the lavatory, held her hands and spread her legs, thereby degrading and debasing the girl's intrinsic worth and dignity as a human being and endangering her normal development.

CONTRARY TO LAW.⁴

Criminal Case No. 08-3665

That on or about the 27th day of October 2007, in the [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, with lewd design and taking advantage of the innocence and tender age of said minor complainant, "AAA", 16 years of age, did then and there willfully, unlawfully and feloniously have carnal knowledge with said "AAA", by means of force and intimidation and against her will and consent, accused JONATHAN REYES, lying on top of the said complainant and inserted his penis on (sic) her vagina, while other accused Louie D. Capulong, Shayra S. Magat, Angeline Reyes and Helen S. Gamboa held her hands and spread her legs, thereby degrading and debasing the girl's intrinsic worth and dignity as a human being and endangering her normal development.

CONTRARY TO LAW.⁵

Criminal Case No. 08-3666

That on or about the 27th day of October 2007, in the [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, with lewd design and taking advantage of the innocence and tender age of said minor complainant, "AAA", 16 years of age, did then and there willfully, unlawfully and feloniously have carnal knowledge with said "AAA", by means of force and intimidation and against her will and consent, accused SHAYRA MAGAT, inserted her finger on (sic) the vagina of said "AAA", while other accused Louie D. Capulong, Jonathan Reyes, Angeline Reyes and Helen S. Gamboa, held her hands and spread her legs, thereby degrading and debasing the girl's intrinsic worth and dignity as a human being and endangering her normal development.

CONTRARY TO LAW.⁶

Criminal Case No. 08-3667

That on or about the 27th day of October 2007, in the [REDACTED]

⁴ CA rollo, p. 61.

⁵ Id. at 61-62.

⁶ Id. at 62.

██████████, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, with lewd design and taking advantage of the innocence and tender age of said minor complainant, "AAA", 16 years of age, did then and there willfully, unlawfully and feloniously have carnal knowledge with said "AAA", by means of force and intimidation and against her will and consent, accused ANGELINE REYES, inserted her finger on (sic) the vagina of said "AAA", while other accused Louie D. Capulong, Jonathan Reyes, Shayra S. Magat and Helen S. Gamboa, held her hands and spread her legs, thereby degrading and debasing the girl's intrinsic worth and dignity as a human being and endangering her normal development.

CONTRARY TO LAW.⁷

Criminal Case No. 08-3668

That on or about the 27th day of October 2007, in the ██████████ ██████████, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, with lewd design and taking advantage of the innocence and tender age of said minor complainant, "AAA", 16 years of age, did then and there willfully, unlawfully and feloniously have carnal knowledge with said "AAA", by means of force and intimidation and against her will and consent, accused HELEN S. GAMBOA, inserted her finger on (sic) the vagina of said "AAA", while other accused Louie D. Capulong, Jonathan Reyes, Shayra S. Magat and Angeline Reyes, held her hands and spread her legs, thereby degrading and debasing the girl's intrinsic worth and dignity as a human being and endangering her normal development.

CONTRARY TO LAW.⁸

During the arraignment on January 20, 2012, only accused-appellant was present while her co-accused Louie D. Capulong (Louie), Jonathan Reyes (Jonathan), Helen S. Gamboa (Helen), and Angeline Reyes (Angeline) were at large. Hence, accused-appellant, with the assistance of a public attorney and after each of the Informations were read and the consequences of a plea were explained, entered a plea of *not guilty* to the charges against her.⁹

The Facts

Version of the prosecution

The prosecution alleged that AAA was born in 1991 and that she was 16 years old at the time the crimes were committed.¹⁰

⁷ Id.

⁸ Id.

⁹ Id. at 63.

¹⁰ *Rollo*, p. 8.

On October 27, 2007, at around 10 o'clock in the evening, AAA was in a store located at [REDACTED], Pampanga. She was talking with her friends when accused-appellant approached and invited her to drink. She agreed and they proceeded to accused-appellant's house. Thereat, AAA saw accused Jonathan Reyes, Louie Capulong, Helen Gamboa, Angeline Reyes, and Rommel Suing (Rommel) already drinking Emperador.¹¹

AAA joined them and after consuming two to three glasses of the liquor handed to her, she felt dizzy.¹²

Later, accused-appellant with her co-accused Jonathan, Louie, Helen, Angeline, and Rommel, brought AAA at the back of an abandoned house near the house of accused-appellant. AAA was laid down on the ground and soon after, accused-appellant and the others left her and Jonathan. Thereafter, Jonathan removed her shorts and underwear and inserted his penis into her vagina. She struggled but Jonathan, who was too strong for her, held her hands.¹³

After a while, accused-appellant, Louie, Helen, and Angeline returned. This time, Louie attempted to mount AAA but she tried to kick him. Her efforts were futile as they were many and she felt dizzy and weak, thus, she just shut her eyes during her ordeal. Louie was having a hard time penetrating her, thus, he asked the others for help to lift AAA up. They carried her and put her on top of Louie. Accused-appellant, Angeline, and Helen held her waist and pushed her up and down towards the body of Louie while one of them was holding Louie's penis. Afterwards, accused-appellant and her co-accused made AAA lie down on the sink and Louie positioned himself on top of her. Two (2) of the accused held her legs and one (1) of them flashed a lighter at AAA's vagina.¹⁴

Thereafter, the bestial acts did not stop as accused-appellant, Helen, and Angeline alternately inserted their fingers into AAA's vagina.¹⁵

AAA was left on the sink. Rommel went in, wrapped her with a blanket, and helped her dress up. He also accompanied AAA to her brother's house in [REDACTED]. AAA deliberately did not tell her brother about what transpired for fear of being harmed. She instead ended her vacation and went home to [REDACTED].¹⁶

As soon as she arrived home, her brother called their grandmother and

¹¹ Id.

¹² Id.

¹³ Id. at 9.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

told her about his sister's sex video circulating. He wanted to confirm if it was true that AAA was the person in that video. Hence, her grandmother confronted her, it was then that she told her tale. They went to the barangay hall of [REDACTED] and to the police station in [REDACTED] to file a case against accused-appellant and the others.¹⁷

Version of the defense

Accused-appellant denied any involvement in the rape cases. She claimed that at around 9:30 in the evening of October 27, 2007, she and her co-accused were in a drinking spree in their neighbor's house. Later that night, AAA's group arrived. Accused-appellant saw AAA and her boyfriend seemingly arguing. She invited them to join the drinking spree. AAA sat beside Louie and accused-appellant offered her a beer. Accused-appellant alleged that she later left to buy some ice and her companions made AAA drink some more.¹⁸

Accused-appellant averred that after sometime, accused-appellant went home and just slept because her mother arrived and got angry with her. The next day, accused-appellant saw AAA in front of their house looking for Louie. According to accused-appellant, AAA asked her about a sex scandal, which she had no idea about.¹⁹

A *barangay tanod* also came to accused-appellant's house, looked for Louie and asked about the drinking spree. She told them that she went home early and had no knowledge of the rape incident.²⁰

Accused-appellant also said that she never saw her co-accused again. She also averred that she has no idea why AAA implicated her in the rape cases.²¹

The RTC Ruling

In a Joint Decision²² dated April 17, 2018, the RTC found accused-appellant guilty beyond reasonable doubt of two (2) counts of Rape through Sexual Intercourse and three (3) counts of Rape by Sexual Assault. It held that the elements of Rape through Sexual Intercourse and Rape by Sexual Assault were proven beyond reasonable doubt.²³

¹⁷ Id. at 10.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² CA *rollo*, pp. 60-95.

²³ Id. at 69.

The RTC gave credence to AAA's testimony and ruled that accused-appellant and his co-accused conspired with each other to sexually abuse AAA.²⁴ Also, accused-appellant's defense of denial, according to the RTC, was refuted by the positive identification by private complainant AAA.²⁵

The decretal portion of its ruling states:

WHEREFORE, premises considered, finding accused Ma. Shayra S. Magat **guilty** beyond reasonable doubt of two (2) counts of rape as defined and penalized under Article 266-A, paragraph 1 of the Revised Penal Code as amended by Republic Act No. 8353 with the qualifying circumstance of minority of victim AAA in Crim. Cases Nos. 08-3664 and 08-3665, she is hereby sentenced to suffer the penalty of *reclusion perpetua* in each case.

In Criminal Cases Nos. 08-3666, 08-3667 and 08-3668 accused Ma. Shayra Magat is hereby found **guilty** beyond reasonable doubt of *rape through sexual assault* as defined and penalized under Article 266-A, paragraph 2 of the same Code, as amended, with the qualifying circumstance of minority of victim AAA and hereby sentences said accused to suffer the indeterminate penalty of eight (8) years, eight (8) months and one (1) day of *prision mayor*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum, in each case.

Accused Magat is also ordered to jointly and severally pay the victim civil indemnity in the amount of Php50,000.00 (each in Crim. Cases Nos. 08-3664 and 08-3665) as well as Php30,000.00 (each in Crim. Cases Nos. 08-3666, 08-3667 and 08-3668), and also moral damages as well as exemplary damages in the amount of Php50,000.00 (each in Crim. Case Nos. 08-3664 and 08-3665), and also moral damages well as exemplary damages in the amount of Php30,000.00 (each in Crim. Cases Nos. 08-3666, 08-3667 and 08-3668), all with interest at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.²⁶

The CA Ruling

Aggrieved, the accused-appellant filed a Notice of Appeal²⁷ which was given due course by the RTC in its Joint Order dated May 18, 2018.²⁸

In her Brief,²⁹ accused-appellant averred that the prosecution failed to establish the elements of the crimes charged and also the alleged conspiracy. She also questioned the credibility of the testimony of AAA and the trial

²⁴ Id. at 90.

²⁵ Id. at 92.

²⁶ Id. at 94-95.

²⁷ Id. at 14.

²⁸ Id. at 15.

²⁹ Id. at 37-57.

court's not giving weight to her denial.³⁰

On the other hand, the plaintiff-appellee, through the Office of the Solicitor General (OSG), argued that the lone testimony of the private complainant is sufficient to convict accused-appellant.³¹ The elements of the crimes charged were adequately established by the direct testimony of AAA.³²

The CA affirmed the ruling of the RTC and held that the elements of the crimes charged were sufficiently established and that there is no reason to doubt the testimony of AAA.³³ The finding that conspiracy was attendant during the commission of the crimes was also affirmed. The penalties and damages, however, were modified to conform to recent jurisprudence, thus:

WHEREFORE, the instant appeal is **DENIED**. The April 17, 2018 Joint Decision of the Regional Trial Court, Branch 61, ██████████ in Criminal Case Nos. 08-3664 to 08-3668 is hereby **AFFIRMED** with **MODIFICATIONS**. Judgment is hereby rendered as follows:

1. In Criminal Case Nos. 08-3664 and 08-3665, accused-appellant Ma. Shayra S. Magat is found guilty of rape and sentenced to suffer the penalty of *reclusion perpetua* for each count of rape. She is ordered to pay private complainant AAA P75,000.00 civil indemnity, P75,000.00 moral damages, and P75,000.00 exemplary damages for each count of rape.

2. In Criminal Cases Nos. 08-3666 to 08-3668, Ma. Shayra S. Magat is found guilty of rape by sexual assault defined under paragraph 2 of Article 266-A of the Revised Penal Code and hereby sentenced to suffer the penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum, for each count of rape. x x x

All awarded damages shall earn 6% interest *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.³⁴

Hence, this appeal before this Court.³⁵

Both the OSG and the accused-appellant, in their respective Manifestations, declared that they will no longer file any supplemental brief.³⁶

³⁰ Id. at 47-48.

³¹ Id. at 111.

³² Id. at 107.

³³ *Rollo*, p. 14.

³⁴ Id. at 26-27.

³⁵ Id. at 29-30.

³⁶ Id. at 39-41 and 45-47.

The Issue

Whether the accused-appellant was correctly convicted of two (2) counts of Rape through Sexual Intercourse and three (3) counts of Rape by Sexual Assault.

The Court's Ruling

The appeal lacks merit. However, there are modifications as regards the nomenclature, the penalty, and the damages to be awarded for the crime charged in Criminal Cases Nos. 08-3666, 08-3667, and 08-3668.

Rape through Sexual Intercourse

To begin with, under Article 266-A of the Revised Penal Code (RPC), as amended, the crime of Rape is committed as follows:

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

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

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

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.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. (Emphasis Ours)

The elements of rape through sexual intercourse are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.³⁷

In this case, AAA, on the witness stand, honestly and sincerely narrated

³⁷ See *People v. Tubillo*, 811 Phil. 525, 532 (2017).

her traumatic experience.³⁸

Q After you consumed about two (2) or three (3) glasses of brandy, according to you, you felt dizzy?

A Yes, ma'am.

Q What happened next after you felt dizzy?

A They brought me to the back of the house, ma'am.

Q Who brought you at the back of the house?

A All of them, ma'am.

Q And who are you referring (sic) as "silang lahat?"

A Louie D. Capulong, Jonathan Reyes, Angeline Reyes and Helen Gamboa and Shayra Magat was (sic) holding my hand, ma'am.

x x x x

Q After you were brought to the abandoned house, what happened next?

A They laid me down, ma'am.

x x x x

Q After you were laid down on the ground, what happened next?

A The five (5) of them left. Louie, Shayrah, Angeline, Helen, and Rommel left, leaving Jonathan with me, ma'am.

x x x x

Q When Jonathan was left with you, what happened?

A He removed my shorts, ma'am.

Q By the way, what were you wearing that time?

A Shorts and t-shirt, ma'am.

Q What was your reaction when Jonathan removed your shorts?

A I was not on my right senses then due to extreme dizziness, ma'am.

Q So did you put up any resistance or struggle?

A I struggled, ma'am.

Q What happened when you struggled while Jonathan was removing your shorts?

A Jonathan held my hands, ma'am.

x x x x

Q After you[r] hands were held up by Jonathan, what happened next?

A He inserted his penis in to (sic) my vagina, ma'am.

³⁸ CA rollo, p. 91.

X X X X

Q Were you not struggling while he was inserting his penis into your vagina?

A I was struggling but he was so strong for me to resist, ma'am.

Q While he was inserting his penis into your vagina for some time, what happened next?

A Louie, Angeline, Helen, and Shayra arrived, ma'am.

Q What happened next when Louie, Shayra, Angeline and Helen arrived?

A Then Louie went on top of me, ma'am.

X X X X

Q Louie succeeded and went on top of you as well?

A No, ma'am, nahhirapan po siya nagpatulong po siya kina Shayra.

X X X X

Q What do you mean when you say "nahhirapan si Louie"?

A Because I was kicking him, ma'am.

Q And so what if you are kicking him?

A Then he asked help from Shayra and they transferred me to another place, ma'am.

Q What help, if any, did Louie asked (sic) from Shayra and others?

A Louie asked their assistance to lift me up and transferred me to the sink, ma'am.

Q And after you were placed or transferred from the sink, what happened next?

A They carried me and put me on top of Louie while they were holding my hips and pushing me up and down towards the body of Louie, ma'am.

X X X X

Q Can you please describe to us the participation of each one of them, Shayra, Angeline and Helen?

A The three (3) of them were holding my hips or waist and [one] of them was holding the penis of Louie, but I could not recall who was holding the penis of Louie and they were pushing me up and down towards the body of Louie, ma'am.

Q For how long have they been doing that on you?

A Two to three minutes, ma'am.

X X X X

- Q** After Shayra, Angeline and Helen assisted in pushing you towards the body of Louie, what happened next?
- A** They made me lie down on the sink and this time it was Louie who went on top of me, ma'am.
- Q** When Louie was on top of you, what happened?
- A** The two (2) of them were holding my legs and one of them was holding a lighter flashing it on my vagina, ma'am. Before Louie inserted his penis into my vagina, alternately they were inserting their fingers into my vagina.
- Q** Do you know who were these persons inserting their fingers into your vagina?
- A** Shayra, Angeline and Helen, ma'am.
- Q** Shayra, Angeline and Helen inserted their respective fingers into your vagina before Louie went on top of you?
- A** After Louie inserted his penis into my vagina, that was the time when Angeline, Shayra and Helen alternately inserted their fingers into my vagina, ma'am.
- Q** After Shayra, Angeline and Helen inserted their fingers into your vagina, what happened next?
- A** They left me, ma'am.³⁹ (Emphasis supplied)

From the testimony of AAA, two (2) counts of Rape through Sexual Intercourse were consummated. The acts of Jonathan and Louie of inserting their penises into AAA's vagina consummated the two (2) counts of Rape through Sexual Intercourse.

Accused-appellant claimed that it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking and that force or intimidation was actually employed in perpetrating the crime.⁴⁰

This Court totally agrees that it is the prosecution's duty to prove beyond reasonable doubt the elements of the crimes charged. After all, it is the prosecution's task to establish the guilt of an accused, rely on the strength of its own evidence, and not bank on the weakness of the defense of an accused.⁴¹

Evidently, however, the element of force as the means employed in perpetrating the crimes was also established. AAA testified how she struggled, despite her dizziness, when Jonathan removed her shorts and inserted his penis into her vagina. Her strength was, however, futile in comparison to Jonathan's. In the same vein, AAA resisted Louie's advances when she started

³⁹ *Rollo*, pp. 15-19.

⁴⁰ *CA rollo*, p. 49.

⁴¹ See *Daayata v. People*, 807 Phil. 102, 104 (2017).

kicking and punching him. The force was employed not just by Louie but by Helen, Shayra, and Angeline as well when they held AAA's waist and pushed her up and down towards the body of Louie. We agree with the CA that although AAA's efforts were ultimately ineffective, these demonstrated her attempts to resist the force employed by accused-appellant and her co-accused.⁴²

Lascivious Conduct under
Section 5 (b), Article III of
Republic Act (R.A.) No. 7610

Anent the three (3) counts of Rape by Sexual Assault, modifications as to nomenclature, penalty, and damages are necessary.

In *Encinares v. People*,⁴³ this Court enunciated –

Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment, whether assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. (Citation omitted)

Moreover, in *People v. Tulagan*,⁴⁴ this Court also ruled –

Third, if the charge against the accused where the victim is 12 years old or below 18 is sexual assault under paragraph 2, Article 266-A of the RPC, then it may happen that the elements thereof are the same as that of lascivious conduct under Section 5 (b) of R.A. No. 7610, because the term "lascivious conduct" includes introduction of any object into the genitalia, anus or mouth of any person. In this regard, We held in *Dimakuta* that in instances where a "lascivious conduct" committed against a child is covered by R.A. No. 7610 and the act is likewise covered by sexual assault under paragraph 2, Article 266-A of the RPC [punishable by *prision mayor*], **the offender should be held liable for violation of Section 5 (b) of R.A. No. 7610 [punishable by *reclusion temporal medium*], consistent with the declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development.**⁴⁵
x x x (Emphasis supplied, citations omitted)

Verily, the three (3) counts of Rape by Sexual Assault could and should be modified in nomenclature as Lascivious Conduct under Section 5 (b) of R.A. No. 7610. The said provision states:

⁴² *Rollo*, p. 20.

⁴³ G.R. No. 252267, January 11, 2021.

⁴⁴ G.R. No. 227363, March 12, 2019.

⁴⁵ *Id.*

Section 5. *Child Prostitution and Other Sexual Abuse*. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

x x x x

(b) **Those who commit the act of sexual intercourse or lascivious conduct with a child** exploited in prostitution or **subject to other sexual abuse**; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

x x x x (Emphasis supplied.)

Accordingly, the elements of Sexual Abuse under Section 5, Article III of R.A. No. 7610 are:

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.⁴⁶

Further, Lascivious Conduct is defined in Section 2(h) of the Implementing Rules and Regulations (IRR) of R.A. No. 7610 as:

The intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or **the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.** (Emphasis supplied)

Clearly, the act of the accused-appellant, as well as that of Helen and Angeline, of inserting her finger into AAA's vagina against a child who was then 16 years old constitutes a Lascivious Conduct contemplated under Section 5(b), Article III of R.A. No. 7610.

⁴⁶ *Capueta v. People*, G.R. No. 240145, September 14, 2020 citing *Monroy v. People*, G.R. No. 235799, July 29, 2019..

Considering the modification of accused-appellant's conviction, a change in the impossible penalty, as well as the awards of damages and fine, is in order.⁴⁷

In *Encinares v. People*,⁴⁸ this Court explained the impossible penalty for a violation of Section 5 (b) of R.A. No. 7610 –

The prescribed penalty for violation of Section 5 (b) of RA 7610 is reclusion temporal in its medium period to *reclusion perpetua*. In the absence of mitigating or aggravating circumstances, the maximum term of the sentence shall be taken from the medium period of the prescribed penalty. Moreover, notwithstanding the fact that RA 7610 is a special law, petitioner may still enjoy the benefits of the Indeterminate Sentence Law. In applying its provisions, the minimum term shall be taken from within the range of the penalty next lower in degree, which is *prision mayor* in its medium period to reclusion temporal in its minimum period. Thus, petitioner is sentenced to suffer the indeterminate penalty of imprisonment of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, for violation of Section 5 (b) of RA 7610.⁴⁹

Similarly, there being no other circumstances, aggravating or mitigating, to be considered in this case, the indeterminate penalty of imprisonment of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, for violation of Section 5(b) of R.A. No. 7610 is hereby imposed upon accused-appellant for each count of Lascivious Conduct.

As to the amount of civil indemnity, moral damages, and exemplary damages awarded to AAA for each of the three (3) counts of Lascivious Conduct under Section 5(b) of R.A. No. 7610, the same shall be modified to conform to recent jurisprudence,⁵⁰ the victim, AAA, being a child below eighteen (18) years of age and the penalty imposed being within the range of *reclusion temporal* medium, the same shall be increased to ₱50,000.00 each.⁵¹ In addition, pursuant to Section 31(f), Article XII of R.A. No. 7610,⁵² the accused-appellant is also ordered to pay a fine in the amount of ₱15,000.00 for each count of Lascivious Conduct.

Conspiracy

⁴⁷ See *Encinares v. People*, supra note 43.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ See *People v. Tuiagan*, supra note 44.

⁵¹ See *Encinares v. People*, supra.

⁵² Section 31. Common Penal Provisions. –

x x x x

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

Accused-appellant alleged that the trial court erred in its finding that accused-appellant conspired with Jonathan, Louie, Angeline, and Helen. She claimed that the trial court merely heavily relied to the incredible and inconsistent testimony of AAA in concluding that she and the others conspired to sexually abuse AAA.⁵³

Over time, this Court has reiterated that the assessment of the credibility of witnesses is a task most properly within the domain of trial courts⁵⁴ and its findings of fact are accorded great weight and respect.⁵⁵ In *People v. Ivero*,⁵⁶ this Court again belabored the time-honored principle that –

Factual findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. Said rule finds an even more stringent application where the said findings are sustained by the CA, as in the instant case:

Time and again, we have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.⁵⁷ (Citations omitted)

⁵³ CA rollo, p. 54.

⁵⁴ *People v. Gerola*, 813 Phil. 1055 (2017).

⁵⁵ Id. at 1063.

⁵⁶ G.R. No. 236301, November 3, 2020.

⁵⁷ Id.

As stated, the exception to this rule is when the trial court overlooked certain facts of substance and value which if considered will affect the result of the case. Here, a review of the records showed that no such error was committed by the trial court in deciding the cases.

In truth, the actions of the accused-appellant and her co-accused showed unquestionable conspiracy to commit the crimes against AAA. Their actions from the time accused-appellant invited AAA to their drinking spree; her co-accused making AAA drink until she was dizzy and weakened; bringing AAA to an abandoned house and leaving her with Jonathan to have carnal knowledge of her; returning and helping Louie by holding AAA's waist and pushing her up and down towards Louie's body and even holding his penis and flashing a lighter to enable him to penetrate her; and inserting their fingers alternately, speak clearly of conspiracy.

In *People v. Manzanilla*,⁵⁸ this Court explained -

An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.

In a conspiracy, a person is guilty as co-principal when he or she performs an overt act, that is, either "by actively participating in the actual commission of the crime, by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy."⁵⁹ x x x (Citations omitted)

Corollarily, the finding of conspiracy in this case only means one thing, all the conspirators are equally liable as the act of one is the act of all.⁶⁰

Prosecution's evidence

Accused-appellant argued that the non-presentation of the purported sex video was suspicious, as the same could have cemented the prosecution's case.⁶¹

This Court begs to disagree.

⁵⁸ G.R. No. 235787, June 8, 2020.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *CA rollo*, p. 54.

The prosecution has the prerogative to choose the evidence or the witnesses it wishes to present. It has the discretion as to how it should present its case.⁶² No law or rule requires the corroboration of the testimony of a single witness in a rape case.⁶³ After all, it is a settled rule that rape may be proven by the sole and uncorroborated testimony of the offended party, provided that her testimony is clear, positive, and probable.⁶⁴ The testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable.⁶⁵

Accused-appellant's denial

Accused-appellant denied any involvement in the crimes attributed to her. Her alibi was that she went home early from the drinking spree and just slept because her mother arrived and got angry with her.⁶⁶

In *People v. Colorado*,⁶⁷ this Court held –

x x x x

By jurisprudence, denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the appellant and his involvement in the crime attributed to him. Moreover, for the defense of *alibi* to prosper, two requisites must concur: first, the appellant was at a different place at the time the crime was committed; and second, it was physically impossible for him to be at the crime scene at the time of its commission. x x x⁶⁸

Here, the defense failed to present strong evidence to support accused-appellant's denial and alibi and to overcome the positive identification of accused-appellant by AAA. Truth be told, the two (2) requisites for alibi to prosper were not established as it was not physically impossible for accused-appellant to be at the crime scene at the time of the commission of the crime. Notably, the abandoned house where the crimes were committed was just behind the house of accused-appellant.⁶⁹ Although her mother corroborated her alibi, the Court, like the courts *a quo*, cannot give credence to the testimony of accused-appellant's mother who naturally wants to exculpate her daughter of the charges against her.⁷⁰

⁶² *Tanenggee v. People*, 712 Phil. 310, 331 (2013).

⁶³ *People v. Pareja*, 724 Phil. 759, 776 (2014).

⁶⁴ See *People v. Nocado*, G.R. No. 240229, June 17, 2020.

⁶⁵ *Id.*

⁶⁶ *Rollo*, p. 10.

⁶⁷ 698 Phil. 833 (2012).

⁶⁸ *Id.* at 844-845.

⁶⁹ *Rollo*, p. 21.

⁷⁰ *Id.*

All things considered, this Court finds no error on the part of the courts *a quo* in according AAA's testimony full weight and credence. Her testimony, being categorical and clearly supported with the other evidence on record, establishes the guilt of the accused-appellant for all the crimes charged against her.⁷¹ The unsubstantiated denial and alibi of accused-appellant certainly failed against the testimony of AAA.

WHEREFORE, the Decision dated September 10, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 11182 is **AFFIRMED** with the following **MODIFICATIONS**:

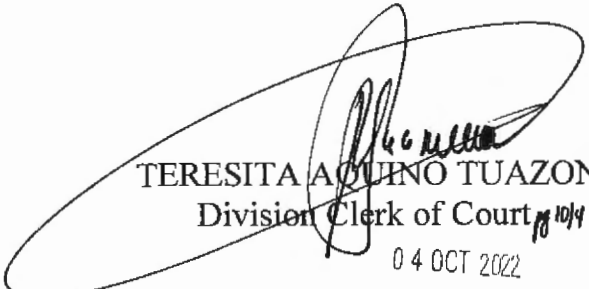
In Criminal Cases Nos. 08-3666, 08-3667, and 08-3668, the Court finds the accused-appellant Ma. Shayra Magat *v* Serrano **GUILTY** beyond reasonable doubt of three (3) counts of Lascivious Conduct under Section 5(b) of Republic Act No. 7610, and hereby sentences her to suffer an indeterminate penalty of imprisonment of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, for each count of Lascivious Conduct. She is likewise **ORDERED to PAY** AAA the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, for each count of Lascivious Conduct.

Accused-appellant is also hereby **ORDERED to PAY** a fine in the amount of ₱15,000.00 for each count of Lascivious Conduct.

All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the time of finality of this Resolution until fully paid.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
04 OCT 2022

⁷¹ *People v. Bay-od*, G.R. No. 238176, January 14, 2019.

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*with a copy of the CA Decision dated September 10, 2019
Please notify the Court of any change in your address.
GR251709. 2/16/2022(234)URES(m) *10/4*