



Republic of the Philippines  
Supreme Court  
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated April 19, 2022 which reads as follows:*

**“G.R. No. 252860 — PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus XXX,<sup>1</sup> accused-appellant.**

After a careful review of the records of the case, the Court affirms the Decision<sup>2</sup> dated February 21, 2020 issued by the Court of Appeals, Special Tenth Division (CA) in CA-G.R. CR-HC No. 12753 which, in turn, affirmed the Consolidated Decision<sup>3</sup> dated January 9, 2019 of Branch 26, Regional Trial Court of Sta. Cruz, Laguna (RTC). However, the Court corrects the nomenclature of the crimes in accordance with recent jurisprudence,<sup>4</sup> as follows: 1) in Criminal Case No. SC-17559, XXX (accused-appellant) is found guilty beyond reasonable doubt of the crime of Qualified Rape under Article 266-A(1) in relation to Article 266-B of the Revised Penal Code (RPC), as

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<sup>1</sup> The identity of the victim or any information which could establish or compromise his/her identity as well as those of his/her immediate family or household members, shall be withheld pursuant to R.A. No. 7610, titled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES,” approved on June 17, 1992; R.A. No. 9262, titled “AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES,” approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the “RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN” (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, titled “PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES” dated September 5, 2017.)

<sup>2</sup> *Rollo*, pp. 3-16. Penned by Associate Justice Marlene B. Gonzales-Sison, with Associate Justices Marie Christine Azcarraga Jacob and Louis P. Acosta concurring.

<sup>3</sup> *CA rollo*, pp. 44-58. Penned by Presiding Judge Mary Jean T. Cajandab.

<sup>4</sup> *People v. Tulagan*, G.R. No. 227363, March 12, 2019, 896 SCRA 307.

amended by Republic Act (R.A.) No. 8353; and 2) in Criminal Case No. SC-17563, accused-appellant is found guilty beyond reasonable doubt of the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610.

Accused-appellant insists that the story of private complainant AAA<sup>5</sup> is a mere fabrication motivated by a grudge she held against him. On the allegation of rape committed sometime in February 2014, accused-appellant argues that AAA's testimony is inconsistent with her *Kusang Loob na Salaysay* where she stated that accused-appellant inserted his penis in her anus, not in her vagina. Moreover, it would have been impossible for him to have raped AAA since her mother was in the comfort room and she could have easily shouted for help. Accused-appellant also insists that he cannot be convicted for Acts of Lasciviousness under Section 5(b) of R.A. No. 7610 since the prosecution failed to prove the elements of the crime.<sup>6</sup>

The appeal has no merit.

In order to prove the crime of rape, the following elements must be established: (1) the offender is a man; (2) the offender had carnal knowledge of a woman; and (3) such act was accomplished by any of the following means: (a) using force, threat or intimidation; (b) when the offended party is unconscious or otherwise deprived of reason; (c) by means of fraudulent machination or grave abuse of authority; or (d) when the offended party is under 12 years of age or is demented.<sup>7</sup> The prosecution must likewise prove the qualifying circumstance of minority and relationship.<sup>8</sup>

Contrary to the insistence of accused-appellant, the fact of rape has been established in this case. Based on AAA's testimony and her birth certificate, AAA was only 13 years old when accused-appellant, her father, raped her sometime in February 2014.<sup>9</sup> AAA testified that she was roused from sleep because she felt that something was being inserted in her vagina. When she looked behind her, she realized that she was naked from the waist down and accused-appellant was on top of her with his penis inside her vagina, *viz.:*

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<sup>5</sup> Supra note 1.

<sup>6</sup> CA rollo, pp. 39-41.

<sup>7</sup> *People v. Rapiz*, G.R. No. 240662, September 16, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66654>>.

<sup>8</sup> *People v. Gallano*, 755 Phil. 120 (2015).

<sup>9</sup> See rollo, p. 3.

## WITNESS

x x x x

Q What was your father doing during that time?

A “Maramdaman ko po na may ipinasok siya sa bandang pepe ko po”, maam.

## FISCAL CAASI

Q What was your exact position that time?

A I was lying face down on the bed, maam.

x x x x

Q You felt something inserted inside your vagina?

A Yes, maam.

x x x x

Q Did you notice, what was the thing that inserted into your vagina?

A His penis, maam.

Q You “niya” (*sic*), you are referring to?A My father, maam.<sup>10</sup>

AAA narrated that accused-appellant made pumping motions (“kinakayog”/“pinapasok labas”) for around 10 minutes while his penis was inside her vagina.<sup>11</sup> She explained that she remained frozen in that position and could not do anything due to fear and anger.<sup>12</sup> She was categorical and straightforward in her declaration that accused-appellant inserted his penis in her vagina, not in her anus, *viz.*:

## WITNESS:

Q In question Number 10, please read your answer to question number 10, particularly with respect to 3<sup>rd</sup> sentence?A “witness reading the third sentence of the answer in question number 10.)  
(Lumingon ako tapos nakita ko si papa na kinakayog po ako sa puwet.)

x x x x

Q You said “puwet” and a while ago you said it was in your vagina that your father inserted his penis. Which is now correct?

A Vagina is the one correct, maam.

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<sup>10</sup> Testimony of AAA, TSN dated August 31, 2016, pp. 4-5.

<sup>11</sup> Id. at 7.

<sup>12</sup> Id. at 5.

Q Your father inserted his penis into your vagina?

A Yes, maam.

Q You are very much sure of that?

A Yes, maam.

Q Why did you state in your Affidavit it was in your “puwet”?

WITNESS

A Because during that time when the police officer asked me I was so confused and I do not know what to say and I was so afraid, maam.

FISCAL CAASI

Q And at this time you know now the distinction of the “puwet” and “pepe”?

A Yes, maam.<sup>13</sup>

Clearly then, from AAA’s narration, full penile penetration of her vagina was established. The trial court found AAA’s testimony to be clear, consistent, credible and corroborated by the Medico-Legal Report dated November 17, 2014 stating that AAA had “old healed laceration 3 and 5 o’clock position rounded edge” in her hymen.<sup>14</sup> Such finding was sustained by the CA. It is a settled rule that the finding of the trial court on the credibility of a victim carries great weight and respect by reason of the trial court’s unique opportunity to observe the demeanor and sincerity of witnesses during trial.<sup>15</sup> The Court will not disturb the said finding unless it is clearly shown that certain facts or circumstances of substantial weight were overlooked by the lower courts.<sup>16</sup>

Accused-appellant argues that AAA’s story is unbelievable because if she was assaulted, she should have resisted and called for help. On this matter, it is stressed that there is no established standard of reaction for rape or sexual abuse, especially from a young victim.<sup>17</sup> Rational action cannot be expected from a child who undergoes such a traumatic experience. Besides, the lack of resistance on AAA’s part is explained by the moral ascendancy of accused-appellant over her.<sup>18</sup>

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<sup>13</sup> Id. at 7.

<sup>14</sup> CA rollo, p. 47.

<sup>15</sup> *People v. delos Santos*, G.R. No. 246585, June 17, 2020 (Unsigned Resolution).

<sup>16</sup> *People v. Sumayod*, G.R. No. 230626, March 9, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66242>>.

<sup>17</sup> See *People v. Pareja*, 724 Phil. 759, 779 (2014).

<sup>18</sup> See *People v. DDD @Adong*, G.R. No. 243583, September 3, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66336>>.

The influence accused-appellant wielded as her father rendered AAA incapable of asking for help. Likewise unconvincing is accused-appellant's absurd insistence that it would be impossible for him to have raped AAA when her mother was nearby. The presence of relatives or other people does not negate the commission of rape.<sup>19</sup> After all, "lust is no respecter of time or place."<sup>20</sup> The attempt of accused-appellant to paint his daughter as a liar who carried a grudge against him is hardly believable. A minor rape victim will not publicly accuse his/her father of rape unless it was true.<sup>21</sup> No child would lie just to put a family member to jail for the rest of his life.<sup>22</sup>

In Criminal Case No. SC-17563, the Information charged accused-appellant for the crime of Rape. However, both the RTC and the CA found that the element of carnal knowledge was missing since there was no penile penetration of AAA's vagina. Applying the variance doctrine under Section 4, in relation to Section 5 of Rule 120 of the Rules of Court, accused-appellant was convicted for the lesser crime of Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610 since such crime is necessarily included in Rape.<sup>23</sup>

Based on the evidence presented, on October 27, 2014, accused-appellant, without removing AAA's underwear and shorts, made her sit on his lap and positioned his penis directly below her vagina. Accused-appellant then pushed and pulled her in an upward and downward motion. In her testimony, AAA clarified that there was no insertion or penetration of accused-appellant's penis in her vagina, viz.:

Q So how did he insert his penis into your vagina with your short pants still on?

A I didn't see what he was doing, because he was at the back of me. He asked me to stand up and then he put his penis into my vagina, maam.

FISCAL CAASI

May I request to put the answer of the witness in vernacular.

COURT

Granted.

State again your answer.

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<sup>19</sup> *People v. DDD*, G.R. No. 233323, August 26, 2020 (Unsigned Resolution).

<sup>20</sup> *People v. CCC*, 843 Phil. 473, 485 (2018).

<sup>21</sup> See *People v. XXX*, G.R. No. 235662, July 24, 2019, 910 SCRA 394, 411.

<sup>22</sup> See *People v. Marmol*, 800 Phil. 813, 827 (2016).

<sup>23</sup> See *People v. Caoili*, 815 Phil. 839 (2017); *BBB v. People*, G.R. No. 249307, August 27, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66616>>.

## WITNESS

A “Pinatayo po niya ako, pero hindi ko po nakikita ang ginagawa niya dahil nasa likod ko po siya, nag pag upo ko po ay nilagay niya mismo ang titi niya kung saan nakapwesto ang pepe ko po, pero naka short po ako.”

Q Are you wearing panty during that time?

A Yes, maam.

Q So, with your panty and short pants still on, he managed to insert his penis into your vagina?

A Yes, maam.

Q Is that what you are telling now?

A Yes, maam.

Q How sure are you, that his penis penetrated your vagina?

A He just pointed his penis into my vagina, maam. “Hindi po niya pinasok, itinutok po niya ang titi niya sa ari ko.”<sup>24</sup>

Moreover, the prosecution failed to establish that accused-appellant had an erect penis capable of penetrating AAA’s vagina when he made her sit on his lap. Thus, there is no categorical proof of entrance or introduction, even the slightest, of accused-appellant’s penis into the labia majora or the fleshy outer lip of AAA’s vulva. For this reason, the lower courts correctly determined that the element of carnal knowledge is wanting.

Nevertheless, the Court sustains accused-appellant’s conviction for the lesser offense of lascivious conduct. The requisites for lascivious conduct under Section 5(b) 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.<sup>25</sup> The law covers both situations where a child is abused for profit or in which a child, through coercion or influence, engages in sexual intercourse or lascivious conduct.<sup>26</sup> In this case, the intentional touching, through clothing, of the genitalia of

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<sup>24</sup> Testimony of AAA, TSN dated August 31, 2016, pp. 10-11.

<sup>25</sup> *People v. Pueyo*, G.R. No. 192327, February 20, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66166>>.

<sup>26</sup> *People v. Moya*, G.R. No. 228260, June 10, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65350>>; *People v. Leyte*, G.R. No. 233547, July 7, 2020 (Unsigned Resolution).

AAA by accused-appellant using his penis for purposes of sexual gratification clearly falls under the definition of lascivious conduct under R.A. No. 7610.<sup>27</sup>

In fine, the CA correctly affirmed accused-appellant's convictions in both cases. However, the Court deems it necessary to modify the nomenclature of the crimes in accordance with *People v. Tulagan*.<sup>28</sup> Since AAA was at least 12 years old but below 18 years old when the rape was committed, the proper designation of the crime in Criminal Case No. SC-17559 is Rape under Article 266-A(1), in relation to Article 266-B of the RPC, as amended by R.A. No. 8353 and punishable by *reclusion perpetua*. Meanwhile, the nomenclature for the sexual abuse in Criminal Case No. SC-17563 should be Lascivious Conduct under Section 5 (b) of R.A. No. 7610 and punishable by *reclusion temporal* in its medium period to *reclusion perpetua*. Since accused-appellant is the father of AAA, the maximum penalty shall be imposed in accordance with Section 31 of R.A. No. 7610.<sup>29</sup> As regards the penalties and civil liabilities *ex delicto* adjudged in both cases, the same are in accordance with prevailing jurisprudence.<sup>30</sup>

**WHEREFORE**, the Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated February 21, 2020 issued by the Court of Appeals, Special Tenth Division, Manila in CA-G.R. CR-HC No. 12753. The assailed CA Decision is hereby **AFFIRMED** with **MODIFICATION** as follows:

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<sup>27</sup> The pertinent provision of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases reads:

Section 2. *Definition of Terms*. — As used in these Rules, unless the context requires otherwise —

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

<sup>28</sup> G.R. No. 227363, March 12, 2019, 896 SCRA 307.

<sup>29</sup> The pertinent provision of R.A. No. 7610 reads:

Section 31. *Common Penal Provisions*. —

x x x x

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked; x x x


<sup>30</sup> *People v. Tulagan*, supra note 27.

1. In Criminal Case No. SC-17559, accused-appellant XXX is found **GUILTY** beyond reasonable doubt of the crime of Qualified Rape under Article 266-A(1), in relation to Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. Accordingly, accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay private complainant AAA civil indemnity, moral damages and exemplary damages each in the amount of One Hundred Thousand Pesos (₱100,000.00).
  
2. In Criminal Case No. SC-17563, accused-appellant XXX is found **GUILTY** beyond reasonable doubt of the crime of Lascivious Conduct under Section 5(b) of Republic Act No. 7610. Accordingly, accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay private complainant AAA civil indemnity, moral damages and exemplary damages each in the amount of Seventy-Five Thousand Pesos (₱75,000.00). Further, he is ordered to pay a fine of Fifteen Thousand Pesos (₱15,000.00) pursuant to Section 31(f), Article XII of Republic Act No. 7610.

All awards for civil indemnity and damages shall earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

**SO ORDERED.”** *Gaerlan, J., on official leave.*

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *el/6*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

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JUL 06 2022



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Manila  
(CA-G.R. CR-HC No. 12753)

The Hon. Presiding Judge  
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(Crim. Case Nos. SC-17559 & SC-17563)

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