



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
 PUBLIC INFORMATION OFFICE  
**RECORDED**  
 SEP 15 2022  
 BY:   
 TIME:

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff-Appellee,

**G.R. No. 254254**

Present:

PERLAS-BERNABE, S.A.J.,  
 Chairperson,  
 HERNANDO,  
 INTING,  
 GAERLAN, and  
 DIMAAMPAO, JJ.

- versus -

**XXX,<sup>1</sup>**

Accused-Appellant.

Promulgated:  
**FEB 16 2022**

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**DECISION**

**GAERLAN, J.:**

*Rape by sexual assault committed against a child twelve (12) years of age and below eighteen (18), shall be punished as Lascivious Conduct under Section 5(b), Article III of Republic Act (R.A.) No. 7610.<sup>2</sup> Likewise, the failure of an accused to object to a duplicitous Information constitutes a waiver, and thus, he/she may be convicted of as many offenses as are indicated therein, and proven during the trial.*

This resolves the appeal<sup>3</sup> filed by accused-appellant XXX, praying for the reversal of the October 2, 2019 Decision<sup>4</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 12277, which affirmed the May 16, 2018 Consolidated

<sup>1</sup> Pursuant to Supreme Court Amended Administrative Circular No. 83-2015, the personal circumstances and other information which tend to establish or compromise the identity of the victim, including the names of her family members or relatives, and the *barangay* and town where the incidents occurred, are withheld. The names of the victim and her family members or relatives are replaced with fictitious initials. Likewise, the real name of the accused-appellant is replaced with fictitious initials by reason of his relationship to the minor victim.

<sup>2</sup> Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992.

<sup>3</sup> *Rollo*, pp. 26-28.

<sup>4</sup> *Id.* at 4-24. Penned by Associate Justice Rafael Antonio M. Santos, with Associate Justices Manuel M. Barrios and Louis P. Acosta, concurring.

Decision<sup>5</sup> of the Regional Trial Court of ██████ City, Branch 69 (RTC), finding him guilty beyond reasonable doubt of the crimes of Qualified Rape by Carnal Knowledge and Qualified Rape by Sexual Assault.

### **Antecedents**

On December 11, 2015, three (3) separate Informations for the crime of Rape under Articles 266-A and 266-B of the Revised Penal Code (RPC), as amended by R.A. No. 8353<sup>6</sup> were filed against XXX. The accusatory portion of each Information reads as follows:

#### **Criminal Case No. 158506**

That sometime in 2009, in the City of ██████, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the biological father of complainant AAA, a minor 13 years old, by means of force, violence, and intimidation with lewd designs and intent to gratify his sexual desire, did, then and there willfully, unlawfully, and feloniously have sexual intercourse with said minor complainant, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.

#### **Criminal Case No. 158507**

That sometime in October 2011, in the City of ██████, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the biological father of complainant AAA, a minor 15 years old, by means of force, violence, and intimidation with lewd designs and intent to gratify his sexual desire, did, then and there willfully, unlawfully, and feloniously had sexual intercourse with said minor complainant, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.

#### **Criminal Case No. 158508**

That on or about the 06<sup>th</sup> day of March 2012 in the City of ██████, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the biological father of complainant AAA a minor 15 years old, by means of force, violence, and intimidation with lewd designs and intent to gratify his sexual desire, did, then and there willfully, unlawfully, and feloniously force said minor complainant to perform fellatio, then her father had sexual intercourse with her, against complainant AAA's will and consent, to her damage and prejudice.

<sup>5</sup> CA rollo, pp. 60-73. Rendered by Judge Elisa R. Sarmiento-Flores.

<sup>6</sup> Entitled "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES," approved on September 30, 1997.

CONTRARY TO LAW.<sup>7</sup>

When arraigned, XXX pleaded not guilty to the charges. After the pre-trial, trial on the merits ensued.<sup>8</sup>

AAA was born on March 17, 1996. She is the daughter of XXX. AAA related that XXX started raping her when she was thirteen (13) years old. He would rape her three or four times every week. She did not report the incidents, out of fear that he would kill her.<sup>9</sup>

Sometime in 2009, when AAA was thirteen (13) years old, XXX woke her up from her nap. He pulled her and removed her shorts and panty. AAA resisted, but XXX prevailed upon her. Then, XXX inserted his penis into her vagina. After the dastardly act, AAA went to the comfort room and saw blood gush out from her vagina. She was in pain. She informed her mother BBB that she has a wound in her vagina. However, XXX dismissed her claim, and said that her menstrual period had started.<sup>10</sup>

Again, on March 6, 2012, when AAA was fifteen (15) years old, XXX tried to have sexual intercourse with her. However, AAA refused his advances. This angered XXX who shouted invectives at her. He wanted to insert his penis into her mouth but when the latter refused, he pulled her hair and forced her to open her mouth. After inserting his penis into AAA's mouth, he then inserted his penis into her anus.<sup>11</sup>

Then, on March 7, 2012, XXX again approached AAA to have sex with her but she refused as she was in pain due to her swollen "*pwerta*." XXX kicked her. Fed up, AAA left their house and stayed with her classmate. She texted her mother to meet her on March 9, 2012.<sup>12</sup>

During the meeting, AAA told her mother everything that XXX had done to her. Thereafter, AAA and her mother went to the hospital, where AAA's cervix was operated on. She was confined for five (5) days. Upon recovering, AAA went to the police station to file a complaint against XXX.<sup>13</sup>

On the other hand, XXX vehemently denied the charges leveled against him. He claimed that AAA concocted the charges out of spite, because he

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<sup>7</sup> *Rollo*, pp. 5-6.

<sup>8</sup> *Id.* at 7.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *CA rollo*, p. 62.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

disciplined her after he saw her naked with a boy at their house sometime in March 2009.<sup>14</sup>

### **Ruling of the RTC**

On May 16, 2018, the RTC rendered a Consolidated Decision<sup>15</sup> declaring XXX guilty of the separate crimes of qualified rape by carnal knowledge in Criminal Case No. 158506, and qualified rape by sexual assault in Criminal Case No. 158508.

In Criminal Case No. 158506, the RTC held that the prosecution proved all the elements of qualified rape by carnal knowledge, along with the qualifying circumstances of minority and relationship. It further noted that AAA's narration of the rape incident was consistent, candid, and straightforward.<sup>16</sup>

As for Criminal Case No. 158508, the RTC stated that the prosecution proved that XXX inserted his penis into AAA's mouth and anus against her will, thereby rendering XXX liable for qualified rape by sexual assault.<sup>17</sup> It explained that although the Information charged XXX with qualified rape by carnal knowledge, XXX may still be held liable for qualified rape by sexual assault pursuant to the variance doctrine.<sup>18</sup>

However, the RTC acquitted XXX of the charge of qualified rape in Criminal Case No. 158507, due to the prosecution's failure to prove the charge.<sup>19</sup> The RTC decreed as follows:

WHEREFORE, judgment is hereby rendered, as follows:

1. In Criminal Case No. Criminal Case No. [sic] 158506, the court finds accused **GUILTY** beyond reasonable doubt of the crime of Qualified Rape and is hereby sentenced to suffer the penalty of reclusion perpetua, without eligibility for parole. He is ordered to pay complainant civil indemnity in the amount of One Hundred Thousand Pesos (Php100,000.00), moral damages in the amount of One Hundred Thousand Pesos (Php100,000.00) and exemplary damages also in the amount of One Hundred Thousand Pesos (Php100,000.00) and interest at the rate of 6% per annum is imposed on all damages awarded from the date of finality of this judgment until fully paid;

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<sup>14</sup> Id. at 63.

<sup>15</sup> Id. at 60-73.

<sup>16</sup> Id. at 66.

<sup>17</sup> Id. at 70.

<sup>18</sup> Id. at 69.

<sup>19</sup> Id. at 67.

2. In Criminal Case No. Criminal Case No. [sic] 158507, as the prosecution failed to prove the guilt of the accused beyond reasonable doubt, the court hereby **ACQUITS** him;

3. In Criminal Case No. Criminal Case No. [sic] 158508, the court finds accused **GUILTY** beyond reasonable doubt of the crime of rape by sexual assault and is sentenced to suffer the penalty of twelve (12) years of prison mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum. He is also ordered to pay complainant the amounts of Php30,000.00 as civil indemnity, Php30,000.00 as moral damages, and Php30,000.00 as exemplary damages. Complainant is entitled to an interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.<sup>20</sup>

Aggrieved, XXX filed an appeal assailing his conviction in Criminal Case Nos. 158506 (qualified rape by carnal knowledge) and 158508 (qualified rape by sexual assault).

### **Ruling of the CA**

The CA affirmed XXX's conviction in its October 2, 2019 Decision.<sup>21</sup> It stated that the prosecution established all the elements of qualified rape by carnal knowledge and qualified rape by sexual assault. It found AAA's testimony to be credible, positive, and straightforward, and rejected XXX's denial as unworthy of credence.<sup>22</sup>

As for Criminal Case No. 158508 (qualified rape by sexual assault), the CA conceded that the prosecution erroneously charged XXX with two separate crimes. However, it stressed that XXX may no longer question the defective Information, considering that he failed to timely contest it and even actively participated during the trial. The CA clarified that XXX was rightly convicted of qualified rape by sexual assault, not pursuant to the variance doctrine, but rather, due to his failure to question the duplicitous Information before the trial.<sup>23</sup>

Moreover, the CA stated that there was no violation of XXX's right to be informed of the nature and cause of the accusation against him considering that all the elements constituting the crimes charged were sufficiently set forth in the Information.<sup>24</sup>

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<sup>20</sup> Id. at 72-73.

<sup>21</sup> *Rollo*, pp. 4-24.

<sup>22</sup> Id. at 22.

<sup>23</sup> Id. at 13.

<sup>24</sup> Id. at 12-13.

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Finally, the CA modified the amount of damages awarded in Criminal Case No. 158508, by increasing the award of civil indemnity, moral damages and exemplary damages from ₱30,000.00 each to ₱100,000.00.

The dispositive portion of the CA ruling reads:

**WHEREFORE**, the appeal is hereby **DENIED**. The judgment of conviction of accused-appellant XXX in the assailed *Consolidated Decision* dated May 16, 2018 of the Regional Trial Court, Branch 69 of ██████ City in Criminal Case Nos. 158506 and 158508 is hereby **AFFIRMED**, with the following **MODIFICATIONS** with respect to the penalty for damages imposed in Criminal Case No. 158508 for Qualified Rape By Sexual Assault:

- (1) Civil Indemnity is increased from Php30,000.00 to Php100,000.00;
- (2) Moral damages is increased from Php30,000.00 to Php100,000.00;
- (3) Exemplary damages is increased from Php30,000.00 to Php100,000.00.

All monetary awards are subject to legal interest at the rate of six percent (6%) *per annum* from the time of finality of this decision until fully paid.

**SO ORDERED.**<sup>25</sup>

Aggrieved, XXX filed a Notice of Appeal and Compliance<sup>26</sup> with the CA.

### Issues

The main issues in the instant case are whether or not XXX is guilty beyond reasonable doubt of (i) qualified rape by carnal knowledge in Criminal Case No. 158506; and (ii) qualified rape by sexual assault in Criminal Case No. 158508.

Both parties filed separate Manifestations<sup>27</sup> indicating that they are adopting the Briefs<sup>28</sup> they filed in the CA, in lieu of their Supplemental Briefs before the Court.

Seeking his exoneration from the charges, XXX laments that the RTC erred in convicting him of qualified rape by sexual assault in Criminal Case

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<sup>25</sup> Id. at 23.

<sup>26</sup> Id. at 26-28.

<sup>27</sup> Id. at 34-36; 39-40.

<sup>28</sup> CA *rollo*, pp. 40-56; 75-94.

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No. 158508 despite the defective Information.<sup>29</sup> He argues that the Information in Criminal Case No. 158508 is duplicitous as it alleged the commission of two separate crimes, namely, forcing AAA to perform fellatio and coercing her to have sexual intercourse. He further urges that contrary to the RTC's ruling, rape by sexual assault is not necessarily included in rape by carnal knowledge.<sup>30</sup> Hence, he may not be convicted of qualified rape by sexual assault pursuant to the variance doctrine.<sup>31</sup>

Likewise, XXX claims that the prosecution failed to establish his guilt for the crimes charged against him. He questions AAA's credibility, as well as her failure to report the incident or to seek help from her mother. He alleges that her story defies reason and is incredible.<sup>32</sup>

Furthermore, XXX points out that AAA's Medical Certificate failed to corroborate her claim that he inserted his penis into her anus. Likewise, said Medical Certificate failed to indicate the presence of any external signs of physical injuries, thereby belying AAA's claim that he kicked her during the alleged rape incident on March 6, 2012.<sup>33</sup>

On the other hand, the People of the Philippines, through the Office of the Solicitor General (OSG), counters that the prosecution proved XXX's guilt beyond reasonable doubt for the crimes of qualified rape by carnal knowledge and qualified rape by sexual assault.<sup>34</sup> It avers that AAA concretely detailed how XXX defiled her.<sup>35</sup> Also, AAA's minority and her relationship with XXX were established from her Certificate of Live Birth.<sup>36</sup> Moreover, the OSG clarifies that a medical certificate and a medical examination of the victim are not indispensable in a prosecution for rape.<sup>37</sup>

The OSG further asserts that it is too late for XXX to question the allegedly duplicitous Information. His failure to raise an objection and file a motion to quash before entering his plea constituted a waiver of his right to assail the duplicitous Information in Criminal Case No. 158508.<sup>38</sup> Due to his failure to object to the Information, he may be charged for all offenses asserted therein and proved during the trial.<sup>39</sup>

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<sup>29</sup> Id. at 42.

<sup>30</sup> Id. at 49.

<sup>31</sup> Id. at 50.

<sup>32</sup> Id. at 53.

<sup>33</sup> Id. at 54-55.

<sup>34</sup> Id. at 82.

<sup>35</sup> Id. at 87.

<sup>36</sup> Id. at 83.

<sup>37</sup> Id. at 91.

<sup>38</sup> Id. at 90.

<sup>39</sup> Id. at 91.

## Ruling of the Court

*The appeal is denied for lack of merit.*

***XXX is guilty beyond reasonable doubt of Qualified Rape in Criminal Case No. 158506.***

Article 266-A of the RPC, as amended by R.A. No. 8353<sup>40</sup> defines the crime of rape 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.

Notably, Article 266-A paragraph 1 refers to rape through sexual intercourse, also known as "organ rape" or "penile rape."<sup>41</sup> The central element in rape through sexual intercourse is carnal knowledge, which must be proven beyond reasonable doubt.<sup>42</sup> On the other hand, Article 266-A paragraph 2 refers to rape by sexual assault, also called "instrument or object rape," or "gender-free rape."<sup>43</sup> The act must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1.<sup>44</sup>

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<sup>40</sup> Otherwise known as "The Anti-Rape Law of 1997."

<sup>41</sup> *People v. Pareja*, 724 Phil. 759, 781 (2014), citing *People v. Abulon*, 557 Phil. 428, 452-453 (2007).

<sup>42</sup> *Id.* at 782, citing *People v. Soria*, 698 Phil. 676, 687 (2012).

<sup>43</sup> *Id.*, citing *People v. Abulon*, *supra*.

<sup>44</sup> *Id.*, citing *People v. Soria*, *supra*.



In the case at bar, the prosecution proved XXX's guilt beyond reasonable doubt for qualified rape through sexual intercourse as charged in Criminal Case No. 158506. AAA narrated the sordid details of the sexual abuse she suffered in XXX's hands. The linchpin of her testimony was that he raped her by inserting his penis into her vagina despite her struggles and protests:

ACP Alcaraz

- Q: Naalala mo ba kung kailan ka niya ginahasa?  
A: Hindi ko na po matandaan kung kailan yun, 13 years old lang po ako nun eh.
- Q: 13 years old ka lang nun, nung sinumulang ka niyang gahasain?  
A: Opo.
- Q: Anong ginawa niya sayo nung sinabi mong ginahasa ka?  
A: Nung araw po na yun tulog po ako nun e.
- Q: Tulog ka, anong oras ba yun?  
A: Alas 2:00 po.
- Q: Alas 2:00 ng hapon?  
A: Opo.
- Q: Tapos nung tulog ka anong ginawa niya sayo?  
A: Hinihila niya po ako nun.
- Q: **Hinila ka niya, pagkatapos kang hilahin?**  
A: **Hinubad niya po ying short ko at tsaka yung panty.**
- Q: **Tapos?**  
A: **Lumalaban po ako sa kanya pero wala po akong nagawa.**
- Q: **Tapos anong ginawa niya kahit lumaban ka?**  
A: **Ginalaw niya pa rin po ako.**
- Q: **Nung sinabi mong ginalaw ka, pano talaga ang ginawa niya sayo?**  
A: **Pinasok niya po yung ari niya sa ari ko po.**
- Q: Pinasok niya yung ari niya sa ari mo, pagkatapos niyang gawin yun ano na ang sumunod na naygyari?  
A: Tapos pumunta na po ako ng CR nun.
- Q: Pumunta ka ng CR, ano naramdaman mo pagkatapos?  
A: Marami pong dugong lumabas sa ari ko po.
- Q: Maraming dugo ang lumabas sa ari mo, pagkatapos, masakit ba?  
A: Masakit po.

Q: Mahapdi ba?

A: Opo.<sup>45</sup> (Emphasis supplied)

Verily, XXX is liable for qualified rape. He forcibly inserted his penis into AAA's vagina, despite her protests. AAA's minority at the time of the rape incident, as well as her relationship with XXX, were established through her Certificate of Live Birth.<sup>46</sup>

***XXX is guilty of Lascivious Conduct under Section 5(b), Article III of R.A. No. 7610 in Criminal Case No. 158508.***

With respect to the finding of rape through sexual assault under paragraph 2 of Article 266-A, there is a need to modify the nomenclature of the crime, its corresponding penalty, and the award of damages.

In the seminal case of *People v. Tulagan*<sup>47</sup> (*Tulagan*), the Court clarified that in the crime of rape by sexual assault, if the victim is 12 years old and below 18 years old, or at least 18 years old under special circumstances, instead of convicting the accused of rape by sexual assault, the proper crime should be lascivious conduct under Section 5(b), Article III of R.A. No. 7610, with the corresponding penalty of *reclusion temporal* in its medium period to *reclusion perpetua*.<sup>48</sup>

Relatedly, Section 5(b), Article III of R.A. No. 7610 provides:

**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

<sup>45</sup> *Rollo*, pp. 16-18.

<sup>46</sup> *Id.* at 19.

<sup>47</sup> G.R. No. 227363, March 12, 2019.

<sup>48</sup> *People v. VVV*, G.R. No. 230222, June 22, 2020.

lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period[.]

x x x x

Notably, the Implementing Rules and Regulations of R.A. No. 7610, defines lascivious conduct as:

Section 2. *Definition of Terms.* – x x x

x x x x

(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;

x x x x

Likewise, in *Tulagan*<sup>49</sup> the Court expounded on the meaning of the phrase “children exploited in prostitution,” as follows:

The phrase “children exploited in prostitution,” on the one hand, contemplates four scenarios: (a) a child, whether male or female who, for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child who, for money, profit or any other consideration, indulges in sexual intercourse; **(c) a child, whether male or female, who, due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct;** and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulges in sexual intercourse.<sup>50</sup> (Emphasis supplied)

Markedly, the terms “coercion or influence” are broad enough to cover any acts of force or intimidation.<sup>51</sup>

In this case, XXX forcibly inserted his penis into AAA’s mouth to arouse and gratify his sexual desire, when the latter was fifteen (15) years old. AAA related the details of the harrowing ordeal she suffered in the hands of her father:

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<sup>49</sup> *People v. Tulagan*, supra note 49.

<sup>50</sup> *Id.*

<sup>51</sup> *See Id.*

ACP Alcaraz

Q: Meron ka ring binanggit dito sa salaysay mo na may ginawa ulit sayo si Papa mo nung March 6, 2012, maari mo bang sabihin sa court kung ano ang ginawa sayo ng Papa mo noong March 6, 2012?

A: Minura po ako ni Papa nun.

Q: Bakit ka niya minura?

A: Kasi nga ayaw ko na siyang pagbigyan nun e.

Q: Anong sinabi niya sayo?

A: Minura niya po ako ang sabi niya po may lalaki na daw ako.

Q: May lalaki ka na kaya ayaw mo na siyang pagbigyan?

A: Opo.

Q: Pinilit ka pa din ba niya?

A: Opo.

Q: Nagalaw ka rin niya, anong pinagawa niya sayo nung time na yun?

A: Pinasubo niya po yung ari niya sa akin.

**Q: Pagkatapos niyang ipasubo, anong nangyari?**

**A: Nung ayaw ko pong isubo sinabunutan niya po ako.**

**Q: Sinabunutan ka kasi ayaw mong isubo? So pinilit kang isubo mo?**

**A: Opo.**

Q: Pagkatapos mong isubo, pinasok pa rin ba niya yung ari niya?

A: Pinasok po.

Q: Saan niya pinasok?

A: Sa puwet po.<sup>52</sup> (Emphasis supplied)

Certainly, XXX's act of forcibly inserting his penis into AAA's mouth constitutes lascivious conduct, punishable under Section 5(b), Article III of R.A. No. 7610. AAA, who was then a child, was subjected to lascivious conduct through the coercion and influence of her very own father. Her age and relationship with XXX were established through her Certificate of Live Birth. Accordingly, instead of rape through sexual assault under paragraph 2, Article 266-A of the RPC, XXX should be held liable for Lascivious Conduct under Section 5(b), Article III of R.A. No. 7610. Indeed, both the recital in the Information and the evidence presented by the prosecution provide for a case that can be prosecuted and penalized as Lascivious Conduct under Section 5(b), Article III of R.A. No. 7610.

***XXX waived his right to question the Information in Criminal Case No.***

<sup>52</sup> Rollo, pp. 18-19.

***158508, and thus, may be convicted of all the crimes charged and proven.***

A reading of the Information in Criminal Case No. 158508 shows that XXX was charged with two distinct offenses – inserting his penis into AAA’s mouth, and having carnal knowledge of her. This duplicitous Information transgresses Section 13, Rule 110 of the Rules of Criminal Procedure, which ordains that “[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.”<sup>53</sup>

Parenthetically, Section 3(f), Rule 117<sup>54</sup> of the Rules of Criminal Procedure allows the accused to move for the quashal of an information that charges more than one offense. The objection must be made at any time before the accused enters his/her plea.<sup>55</sup> Otherwise, the accused is deemed to have waived the ground for objection.<sup>56</sup>

The records reveal that XXX failed to timely interpose an objection against the duplicitous Information. He simply entered his plea of not guilty during his arraignment, without questioning the defective Information, and even actively participated throughout the trial.

On this score, Section 3, Rule 120 of the Rules of Criminal Procedure states that “[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.”<sup>57</sup>

To stress, the Information charges XXX with willfully, unlawfully, and feloniously forcing AAA to perform fellatio on him.<sup>58</sup> Likewise, the prosecution proved beyond reasonable doubt that XXX indeed forcibly inserted his penis into AAA’s mouth despite the latter’s struggle and protest. Furthermore, as discussed, such egregious act constitutes lascivious conduct

<sup>53</sup> RULES OF CRIMINAL PROCEDURE, Rule 110, Section 13.

<sup>54</sup> Section 3. *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:

x x x x

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

x x x x (RULES OF CRIMINAL PROCEDURE, Rule 117).

<sup>55</sup> Section 1. *Time to move to quash.* — At any time before entering his plea, the accused may move to quash the complaint or information. (RULES OF CRIMINAL PROCEDURE, Rule 117).

<sup>56</sup> Section 9. *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule. (RULES OF CRIMINAL PROCEDURE, Rule 117).

<sup>57</sup> RULES OF CRIMINAL PROCEDURE, Rule 120, Section 3.

<sup>58</sup> *Rollo*, p. 6.

under Section 5(b), Article III of R.A. No. 7610. Therefore, XXX shall be convicted of lascivious conduct under Section 5(b), Article III of R.A. No. 7610.

To clarify, the RTC erred in applying the variance doctrine<sup>59</sup> to convict XXX of rape by sexual assault. It is jurisprudentially settled that rape by sexual assault is not included in the crime of rape by carnal knowledge, considering that the modes of committing said crimes are utterly different.<sup>60</sup> Besides, the Information properly charged XXX with acts constituting rape by sexual assault, which was also proven during the trial. Thus, it is stressed that XXX is rightfully convicted of lascivious conduct under Section 5(b), Article III of R.A. No. 7610 on the basis Section 3, Rule 120 of the Rules of Court.

***The alleged lacuna in AAA's Medical Certificate, and her failure to immediately report the incident do not tarnish her credibility.***

In *People v. Zafra*,<sup>61</sup> and *People v. Austria*,<sup>62</sup> the Court stressed that the absence of external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape. The primary consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape. Rather, the victim's testimony alone, if credible, is sufficient to convict.<sup>63</sup>

Relatedly, in *People v. Ramos*,<sup>64</sup> the Court declared that, in view of the peculiar nature of rape cases, a conviction often rests solely on the basis of the offended party's testimony as long as it is credible, natural, convincing, and consistent with human nature and the normal course of things.<sup>65</sup>

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<sup>59</sup> Section 4. *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved. (4a)

Section 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter. (RULE OF CRIMINAL PROCEDURE, Rule 120).

<sup>60</sup> See *People v. Pareja*, supra note 41, *People v. Abulon*, supra note 41.

<sup>61</sup> 712 Phil. 559 (2013), citing *People v. Arnan*, 295 Phil. 915 (1993).

<sup>62</sup> 820 Phil. 747 (2017).

<sup>63</sup> Id. at 767, citing *People v. Araojo*, 616 Phil. 275, 288 (2009).

<sup>64</sup> 838 Phil. 797 (2018).

<sup>65</sup> Id. at 809, citing *People v. Baraoil*, 690 Phil. 368, 375 (2012); *People v. Magayon*, 640 Phil. 121, 136 (2010); *People v. Corpuz*, 517 Phil. 622, 632-633 (2006).

Likewise, in *People v. Agudo*,<sup>66</sup> it was stressed that the fact of rape and the identity of the perpetrator may be proven through the lone, uncorroborated testimony of the victim, which is the most important proof of the commission of rape.<sup>67</sup> Similarly, in *People v. Udtohan*,<sup>68</sup> it was emphasized that “[t]he revelation of an innocent child whose chastity was abused deserves full credence.”<sup>69</sup>

It further bears stressing that AAA’s failure to immediately report the incident to her mother does not destroy her credibility. Although the conduct of the victim immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of the charge, it is not correct to expect a typical reaction or norm of behavior among rape victims.<sup>70</sup> The workings of the human mind when placed under emotional stress is unpredictable.<sup>71</sup> Not every victim can be expected to act with reason or conformably with the usual expectation of mankind.<sup>72</sup> Thus, it is unfair to expect a rational reaction from AAA, a minor, who was confronted with a startling and traumatic experience. AAA further explained that she was cowed into silence out of fear that XXX would kill her.<sup>73</sup>

Equally important, the trial court and the CA regarded AAA’s testimony as credible and unequivocal. These factual findings regarding AAA’s credibility are accorded great weight and respect, and shall not be disturbed on appeal considering that the trial court had the full opportunity to directly observe the victim’s demeanor, conduct, and manner of testifying.<sup>74</sup>

Pitted against the prosecution’s strong evidence, XXX’s denial falters. Mere denial, sans any strong evidence to support it, may not overcome the positive declaration of the child-victim who has positively identified her assailant.<sup>75</sup>

Neither is the Court convinced that AAA created a trumped-up charge out of spite. In *People v. Austria*,<sup>76</sup> it was held that not even the most ungrateful and resentful daughter would accuse her own father, unless the accusation against him is true.<sup>77</sup>

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<sup>66</sup> 810 Phil. 918 (2017).

<sup>67</sup> Id. at 930, citing *People v. Barberan, et al.*, 788 Phil. 103, 111-112 (2016) and *People v. Amistoso*, 701 Phil. 345, 363 (2013).

<sup>68</sup> 815 Phil. 449 (2017).

<sup>69</sup> Id. at 463, citing *People v. Baraga*, 735 Phil. 466, 471-472 (2014).

<sup>70</sup> See *People v. Zafra*, supra note 61 at 572, citing *People v. Saludo*, 662 Phil. 738, 758-759 (2011).

<sup>71</sup> *People v. Paras*, 735 Phil. 193, 202 (2014), citing *Sison v. People*, 682 Phil. 608, 625 (2012).

<sup>72</sup> See *People v. Zafra*, supra, citing *People v. Saludo*, supra.

<sup>73</sup> *Rollo*, p. 7.

<sup>74</sup> See *People v. Bosi*, 689 Phil. 66, 73-74 (2012).

<sup>75</sup> See *People v. Udtohan*, supra at 465, citing *People v. Amaro*, 739 Phil. 170, 178 (2014).

<sup>76</sup> Supra note 62.

<sup>77</sup> Id. at 766-767, citing *People v. Venturina*, 694 Phil. 646, 655 (2012).

In the same vein, in *People v. Descartin, Jr.*<sup>78</sup> the Court articulated that:

[I]t is unthinkable for a daughter to accuse her own father, to submit herself for examination of her most intimate parts, put her life to public scrutiny and expose herself, along with her family, to shame, pity or even ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life, had she really not been aggrieved.<sup>79</sup>

Thus, the Court believes that AAA was impelled by a sense of justice in filing the charges against XXX.

***Damages and Penalty for Qualified Rape in Criminal Case No. 158506, and for Lascivious Conduct in Criminal Case No. 158508.***

Article 266-B, as amended by R.A. No. 8353, provides that the death penalty shall be imposed if the victim of rape is under eighteen (18) years of age and the offender is a parent of the victim. However, R.A. No. 9346,<sup>80</sup> has prohibited the imposition of the death penalty. Accordingly, the RTC correctly imposed the penalty of *reclusion perpetua* without eligibility for parole.<sup>81</sup> Likewise, the RTC rightfully ordered the payment of civil indemnity, moral damages, and exemplary damages of ₱100,000.00 each.<sup>82</sup>

Anent XXX's conviction for Lascivious Conduct under Section 5(b), Article III of R.A. No. 7610, considering that AAA was more than 12 years old but less than 18 years old at the time of the incident, the imposable penalty is *reclusion temporal*, in its medium period, to *reclusion perpetua*. The crime is aggravated by relationship, as it was alleged in the Information and proven during the trial that XXX is AAA's father. There being no mitigating circumstance to offset the aggravating circumstance, the penalty provided shall be imposed in its maximum period, *i.e.*, *reclusion perpetua*. This is likewise in conformity with Section 31(c), Article XII of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, among others, the parent of the victim.

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<sup>78</sup> 810 Phil. 881 (2017).

<sup>79</sup> Id. at 892.

<sup>80</sup> Entitled "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES," approved on June 24, 2006.

<sup>81</sup> *People v. Udtohan*, supra note 68 at 466.

<sup>82</sup> *People v. Jugueta*, 783 Phil. 806 (2016).




Furthermore, in Criminal Case No. 158508, XXX is ordered to pay AAA civil indemnity, moral damages, and exemplary damages, each in the amount of ₱75,000.00. In addition, XXX shall pay a fine of ₱15,000.00, as mandated under Section 31(f), Article XII of R.A. No. 7610.<sup>83</sup>

Finally, all amounts adjudged against XXX shall be subject to a legal interest of six percent (6%) *per annum* from the date of finality of the judgment until full payment.


**WHEREFORE**, premises considered, the appeal is **DENIED for lack of merit**. The assailed October 2, 2019 Decision of the Court of Appeals in CA-G.R. CR-HC No. 12277 is hereby **AFFIRMED with the MODIFICATION** that in Criminal Case No. 158508, XXX is declared **GUILTY** beyond reasonable doubt of Lascivious Conduct under Section 5(b), Article III of Republic Act No. 7610, and is sentenced to suffer the penalty of *reclusion perpetua*. He is **ORDERED to PAY** the victim AAA, (i) ₱75,000.00 as civil indemnity; (ii) ₱75,000.00 as moral damages; (iii) ₱75,000.00 as exemplary damages; and (iv) a fine of ₱15,000.00.

All monetary awards are subject to a legal interest of six percent (6%) *per annum*, reckoned from the finality of the Court's Decision until full payment.


**SO ORDERED.**


  
**SAMUEL H. GAERLAN**  
Associate Justice

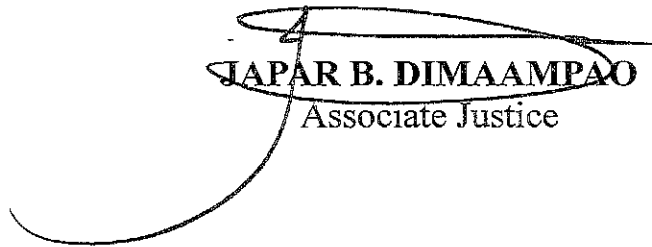
WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

<sup>83</sup> See *People v. VVV*, G.R. No. 230222, June 22, 2020.


  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

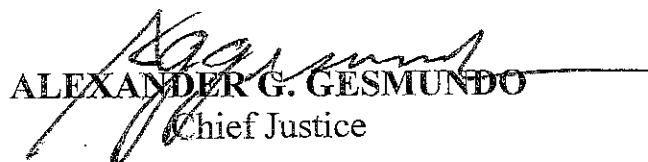
**ATTESTATION**

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.

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice