



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated August 17, 2022 which reads as follows:

“G.R. No. 258291 (*People of the Philippines v. XXX*¹). — This is an appeal² assailing the February 3, 2021 Decision³ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 12567, which affirmed with modification the August 28, 2018 Decision⁴ of the Regional Trial Court (RTC) of ██████████,⁵ Branch 89, finding accused-appellant XXX guilty beyond reasonable doubt of Robbery with Rape as defined and penalized under Article 294 of the Revised Penal Code⁶ (RPC), as amended by Republic Act No. (RA) 7659.⁷

Antecedents

In an Information,⁸ accused-appellant, together with an unidentified person with alias “Ulong,” was charged with Robbery with Rape, committed as follows:

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¹ Initials were used to identify the accused-appellant pursuant to the Supreme Court Amended Administrative Circular No. 83-2015 dated September 5, 2017 entitled “Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances.”

² *Rollo*, pp. 3-6.

³ *Id.* at 9-20. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Walter S. Ong and Carlito B. Calpatura.

⁴ *Id.* at 22-33. Penned by Presiding Judge Cecilyn E. Burgos-Villavert.

⁵ Geographical location is blotted out pursuant to Supreme Court Amended Administrative Circular No. 83-2015.

⁶ Entitled “AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS.” Approved: December 8, 1930.

⁷ Entitled “AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES” Approved: December 13, 1993.

⁸ Records, pp.1-2.

That on or about the 8th day of September, 2015 in [REDACTED], Philippines, the said accused, conspiring together, confederating with other person whose true name, identity and other personal circumstances have not as yet been ascertained and mutually helping each other, with intent to gain, by means of force upon things, did then and there willfully, unlawfully and feloniously rob the residence of [AAA]⁹ located at [REDACTED], this City[,] by then and there detaching the jalousie glass, where they gained entry and once inside, took, robbed and carried away the following, to wit:

XBOX	P 12,000.00
360.....	
Fossil	5,000.00
Wristwatch.....	
Samsung Duos	1,500.00
Cellphone.....	
Digital	300.00
Clock.....	
Gold	5,000.00
Bracelet.....	

All in the total amount of P23,800.00, Philippine Currency belonging to [BBB], on the occasion of said robbery, accused by means of force and intimidation, with lewd design commit sexual assault upon [AAA], a minor, 11 year old, by inserting his penis at knife point into the mouth of said minor, all against her will and without her consent, to the damage and prejudice of the said offended parties.

CONTRARY TO LAW.¹⁰

Version of the Prosecution

The prosecution presented the minor AAA and her mother, BBB, as witnesses.¹¹ Their testimonies tended to establish the following:

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⁹ “The identity of the victim or any information which could establish or compromise her identity, 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, Providing Penalties for its Violation, 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; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and their Children, effective November 15, 2004.” (People v. Dumadag, 667 Phil. 664, 669 [2011]).

¹⁰ Records, pp. 1-2.

¹¹ Rollo, pp. 10-11.

At around 4:30 a.m. on September 8, 2015, AAA, who was sleeping at the second floor of their house, woke up when she felt someone lay down beside her.¹² Upon opening her eyes, she saw a familiar face: accused-appellant, their neighbor.¹³ Accused-appellant ordered her to remove her clothes and to stay quiet, otherwise, he will shoot her with a *sumpak* and stab her.¹⁴ He then went on top of her, kissed her lips and breasts, touched her vagina, knelt beside her, and inserted his penis into her mouth.¹⁵

Afterwards, accused-appellant stood up and dragged AAA towards the stairs.¹⁶ AAA pretended to trip on a piece of wood to alert her parents who were sleeping in another room.¹⁷ Upon hearing the noise, AAA's mother, BBB, woke up and called out her daughter.¹⁸ Accused-appellant got mad at AAA and told her that he will come back.¹⁹ He then jumped from the stairs.²⁰

When she went out of their bedroom, BBB saw her daughter crying.²¹ She sensed that there were men inside the house and upon peeking through the window, she saw "Ulong" (also a neighbor) running away and carrying their XBOX 360, followed by accused-appellant.²² She later learned that her daughter had been molested by accused-appellant and that their XBOX 360, watch, phone, digital clock, and gold bracelet were missing.²³

Version of the Defense

The defense presented accused-appellant as its lone witness.²⁴ He denied the accusations and claimed that on the morning of the incident, he was home sleeping with his wife and child.²⁵

Ruling of the Regional Trial Court

The RTC found accused-appellant guilty of the crime charged, *viz.:*

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¹² Id. at 10.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 10-11.

¹⁶ Id. at 11.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

²⁴ Id. at 11.

²⁵ Id. at 11-12.

WHEREFORE, premises considered, the Court finds accused [XXX] **GUILTY** beyond reasonable doubt of the crime of Robbery with Rape and is hereby sentenced to suffer the penalty of *reclusion perpetua*, without eligibility [for] parole. Accused is likewise directed to pay [AAA] the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages, all at the interest rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

SO ORDERED.²⁶

The trial court held that all the elements of the Robbery with Rape are present;²⁷ that AAA's testimony is credible;²⁸ that since accused-appellant lived near AAA's house, his defenses of denial and alibi both fail;²⁹ that the aggravating circumstance of dwelling was present;³⁰ and that AAA is entitled to damages.³¹

Hence, accused-appellant's appeal before the CA.³²

Ruling of the Court of Appeals

The appellate court affirmed the conviction but for a different crime, *i.e.*, Sexual Assault under Article 266-A (2) of the RPC in relation to Section 5 (b) of RA 7610,³³ otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, *viz.*:

WHEREFORE, premises considered, the appeal is hereby **DENIED**. The Decision dated 28 August 2018 of the Regional Trial Court of [REDACTED], Branch 89 in Criminal Case No. [REDACTED]-15-08255-CR is **AFFIRMED** with **MODIFICATION** in that accused-appellant [XXX] is hereby found **GUILTY** beyond reasonable doubt of the crime of Sexual Assault under Article 266-A (2) of the Revised Penal Code in relation to Section 5 (b) of Republic Act No. 7610. Consequently, the accused-appellant is sentenced to suffer the indeterminate 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. The accused-appellant is ordered to pay [AAA] the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P50,000.00 as exemplary damages.

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²⁶ Id. at 33.

²⁷ Id. at 24-31.

²⁸ Id. at 31.

²⁹ Id. at 31-32.

³⁰ Id. at 32.

³¹ Id. at 32-33.

³² CA *rollo*, p. 12.

³³ Entitled "SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT, REPUBLIC ACT NO. 7610." Approved: June 17, 1992.

Legal interest of six percent (6%) per annum is imposed on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.³⁴

The CA held that the prosecution was unable to establish Robbery since BBB merely pointed to “Ulong” (not accused-appellant) who took the XBOX 360;³⁵ that there was nothing on record to prove conspiracy regarding the supposed taking;³⁶ that there was no overt act on the part of accused-appellant which would indicate intent to commit Robbery;³⁷ that no missing item was recovered from him;³⁸ but that nevertheless, the prosecution was able to prove the crime of Sexual Assault through AAA’s testimony.³⁹

Thus, this appeal.⁴⁰

Issue

Did the appellate court err in convicting accused-appellant of Sexual Assault under Article 266-A (2) of the RPC in relation to Section 5 (b) of RA 7610?

Our Ruling

The appeal lacks merit.

Accused-appellant cannot be convicted of Robbery with Rape

The special complex crime of Robbery with Rape is penalized under Article 294 of the RPC, as amended by RA 7659, viz.:

*Art. 294. Robbery with violence against or intimidation of persons — Penalties. — Any person guilty of robbery **with the use of violence against or intimidation** of any person shall suffer:*

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³⁴ *Rollo*, p. 19.

³⁵ *Id.* at 13-15.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 15-19.

⁴⁰ *Id.* at 3-6.

1. The penalty of *reclusion perpetua* to death, when by reason or on the occasion of the robbery, the crime of homicide shall have been committed, **or when the robbery shall have been accompanied by rape** or intentional mutilation or arson. (Emphasis supplied)

The crime contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another, and Rape was committed on the occasion thereof or as an accompanying crime.⁴¹ Its elements are (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the Robbery is accompanied by Rape,⁴² which is understood to be in its traditional concept.⁴³

Here, accused-appellant cannot be convicted of Robbery with Rape for the following reasons:

First, there is nothing on record to show that the original intent of accused-appellant was to take the personal property of the family. As previously held by the Court, the true intent of the accused in Robbery with Rape must be to take, with intent to gain, the property of another, and Rape must be committed only as an accompanying crime.⁴⁴

Second, the element of taking the property with violence or intimidation is lacking. While AAA's testimony shows that she was sexually abused by accused-appellant through the use of force and intimidation, there is no evidence to indicate that the taking of the missing items was done with violence or intimidation, either against BBB or AAA. Again, for a successful prosecution of Robbery with Rape, the element of taking the personal property with violence or intimidation against persons must be present.⁴⁵

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⁴¹ *People v. Spinilla*, G.R. No. 224922, October 14, 2020, citing *People v. Bongos*, 824 Phil. 1004, 1012 (2018).

⁴² *People v. Coritana*, G.R. No. 209584, March 3, 2021, citing *People v. Romobio*, 820 Phil. 168, 184 (2017).

⁴³ See *People v. Barrera*, G.R. No. 230549, December 1, 2020, where the Court held that the penalty for Robbery with Rape, which is *reclusion perpetua* to death, cannot be imposed when the Rape was committed through Sexual Assault considering that upon the passage of Republic Act No. 7659, Rape was limited only to instances of organ penetration.

⁴⁴ *Id.*, citing *People v. Romobio*, 820 Phil. 168, 184-185 (2017).

⁴⁵ See *People v. Coritana*, *supra*.

Third, the prosecution failed to establish conspiracy to rob between accused-appellant and “Ulong.” It must be remembered that it was “Ulong,” not accused-appellant, who was seen by BBB carrying the XBOX 360. Thus, before accused-appellant could be held liable for the supposed taking, the prosecution must first prove that he conspired with “Ulong” to rob the family. The prosecution must show that accused-appellant performed an overt act in pursuance or in furtherance of the conspiracy, which may consist of active participation in the actual commission of the crime itself, or of moral assistance to “Ulong” by moving him to execute or implement the criminal plan.⁴⁶

However, the prosecution failed to point to any overt act on the part of accused-appellant evincing his intent to take the XBOX 360 and the rest of the missing items. Neither were these items recovered from him. Hence, he cannot be held liable for the supposed taking. It must be stressed that mere presence at the crime scene does not in itself amount to conspiracy.⁴⁷ There must be an overt act in pursuance or in furtherance of the conspiracy.⁴⁸

Fourth, the penalty for Robbery with Rape, which is *reclusion perpetua* to death, cannot be imposed on accused-appellant considering that the Rape of AAA was committed through Sexual Assault and not by Sexual Intercourse. As held in *People v. Barrera*,⁴⁹ the penalty for Robbery with Rape cannot be imposed when the Rape was committed through Sexual Assault considering that upon the passage of RA 7659, Rape was limited only to instances of organ penetration, *viz.*:

In the same vein, following legislative intent in the passage of R.A. No. 7659, the penalty of *reclusion perpetua* to death for the special complex crime of robbery and rape should be limited to instances when rape is accomplished through sexual intercourse or “organ penetration.” The penalty should not be unduly extended to cover sexual assault considering that the acts punishable under such mode were not yet recognized as “Rape” but as “Acts of Lasciviousness” at the time the severe penalty of death was imposed. All the more, to repeat for the sake of emphasis, as even after the inclusion of sexual assault in the

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⁴⁶ See *People v. Salga*, 836 Phil. 1188, 1206 (2018), citing *Ladonga v. People*, 492 Phil. 60, 71 (2005).

⁴⁷ Id. at 1209, citing *People v. Vda. de Ramos*, 451 Phil. 214, 226 (2003).

⁴⁸ Id. at 1206, citing *Ladonga v. People*, supra.

⁴⁹ Supra.

definition of rape by R.A. No. 8353, Congress deliberations show that the law never intended to redefine the traditional concept of rape. Rather, the law merely expanded the definition of the crime of rape, with the intent of maintaining the existing distinction between the two modes of commission.

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The Court cannot simply presume that with the passage of R.A. No. 8353, rape as a component of the special complex crime of robbery with rape includes sexual assault. With respect to penal statutes, the Court cannot rest on mere deductions. Likewise, “it is not enough to say that the legislature intended to make a certain act an offense.” The penal statute must clearly and specifically express that intent. In order for an accused to be convicted under a penal statute, the latter must definitively encompass and declare as criminal the accused’s act prior to its commission. “Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment.”

In the case at bar, R.A. No. 7659, insofar as it imposes the penalty of *reclusion perpetua* to death for the special complex crime of robbery with rape, is bereft of any statement to suggest that it contemplates any and all forms of rape which may subsequently be defined. Thus, the law which imposes a harsher penalty should not be extended to include sexual assault, which was recognized as rape only after its passage.⁵⁰ (Citations omitted, emphasis supplied)

Nevertheless, accused-appellant must be held liable for molesting AAA.

Accused-appellant is guilty of Sexual Assault under Article 266-A (2) of the RPC in relation to Section 5 (b) of RA 7610

Under Article 266-A (2) of the RPC, as amended, Rape may be committed as follows:

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

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⁵⁰ Id.

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.

The gravamen of the crime is the insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice.⁵¹

Here, as correctly determined by the appellate court, the prosecution was able to show that accused-appellant inserted his penis into AAA's mouth. AAA categorically testified that on the early morning of the incident, accused-appellant went on top of her, kissed her lips and breasts, touched her vagina, knelt beside her, and inserted his penis into her mouth.⁵² It is settled that testimonies of child victims, such as AAA who was only 11 years old when she was molested and 12 when she testified, deserve full weight and credence,⁵³ especially since her testimony is natural, convincing, and consistent with human nature.⁵⁴

On the other hand, as against AAA's categorical, straightforward, and spontaneous testimony, all accused-appellant could offer is bare denial and alibi. He did not even allege that he was so far away from AAA's house that he could not have committed the crime. The Court has repeatedly held that alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant.⁵⁵ Absent any shred of evidence to corroborate his defense, his denial and alibi must be rejected.

Penalty and damages

In *People v. Tulagan*,⁵⁶ the Court held that when the acts constituting Sexual Assault are committed against a victim under 12 years of age, as in here, the nomenclature of the offense is "Sexual

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⁵¹ *People v. XXX*, G.R. No. 240750, June 21, 2021, citing *Pielago v. People*, 706 Phil. 460, 471 (2013).

⁵² TSN, June 6, 2016, pp. 9-10.

⁵³ *People v. XXX*, G.R. No. 218277, November 9, 2020, citing *People v. Salaver*, 839 Phil. 90, 103 (2018).

⁵⁴ See *People v. Pascua*, 462 Phil. 245, 252 (2003), citing *People v. Biong*, 450 Phil. 432, 446 (2003).

⁵⁵ See *People v. BBB*, G.R. No. 248023, June 17, 2020, citing *People v. Batalla*, G.R. No. 234323, January 7, 2019.

⁵⁶ G.R. No. 227363, March 12, 2019.

Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5 (b) of R.A. No. 7610.”⁵⁷ The penalty for the crime is *reclusion temporal* in its medium period.⁵⁸

In determining the imposable penalty, the aggravating circumstance of dwelling, which was alleged in the Information, should be appreciated since the offense of Sexual Assault was committed in the dwelling of the offended party, and the latter has not given any provocation.⁵⁹ This warrants the imposition of the penalty prescribed in its maximum period.⁶⁰ Hence, applying the Indeterminate Sentence Law,⁶¹ the maximum term should be anywhere within the maximum period of *reclusion temporal* medium or 16 years, 5 months and 10 days to 17 years and 4 months, and the minimum term within the range of 12 years and 1 day to 14 years and 8 months.⁶²

As for the damages, accused-appellant should pay AAA civil indemnity, moral damages, and exemplary damages of ₱50,000.00 each pursuant to *People v. Tulagan*.⁶³ Further, accused-appellant should pay the fine of ₱15,000.00 pursuant to Section 31 (f), Article XII of RA 7610.⁶⁴

WHEREFORE, the appeal is **DISMISSED**. The February 3, 2021 Decision of the Court of Appeals in CA-G.R. CR-HC No. 12567 is **AFFIRMED** with the **MODIFICATION** that accused-appellant **XXX** is **SENTENCED** to suffer the indeterminate penalty of 14 years and eight months, as minimum, 17 years and 4 months, as maximum. He is also **ORDERED** to pay AAA civil indemnity, moral damages, and exemplary damages of ₱50,000.00 each, with interest at the rate of 6% per *annum* from the date of finality of this Resolution until fully paid, and to pay the fine of ₱15,000.00.

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⁵⁷ Id.

⁵⁸ RA 7610, Art. III, Sec. 5 (b).

⁵⁹ *People v. Barrera*, supra note 43 (citations omitted).

⁶⁰ REVISED PENAL CODE, Art. 64 (3).

⁶¹ Entitled “AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES.” Approved: December 5, 1933.

⁶² REVISED PENAL CODE, Art. 64 (1). See also *People v. Barrera*, supra note 43 (citations omitted).

⁶³ Supra.

⁶⁴ See *People v. Pueyo*, G.R. No. 192327, February 26, 2020 (citations omitted).

The Office of the Solicitor General’s manifestation in lieu of supplemental brief, pursuant to the Resolution dated March 9, 2022; and the accused-appellant’s manifestation (in lieu of supplemental brief), pursuant to the Resolution dated March 9, 2022, are both **NOTED.**

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
nsas

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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(CA-G.R. CR-HC No. 12567)

XXX
Accused-Appellant
c/o The Director General
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The Hon. Presiding Judge
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