



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 3, 2022 which reads as follows:*

“**G.R. No. 258743** (*People of the Philippines v. XXX*<sup>1</sup>). — On appeal<sup>2</sup> is the January 15, 2021 Decision<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 13577, which partially granted the appeal and modified the August 29, 2019 Joint Decision<sup>4</sup> of the Regional Trial Court (RTC) of [REDACTED],<sup>5</sup> Branch 31.

The CA found accused-appellant XXX (accused-appellant) guilty beyond reasonable doubt of Rape under Article 266-A(1) of the Revised Penal Code (RPC) in Criminal Case No. A-1884, and of Lascivious Conduct under Section 5 of Republic Act No. (RA) 7610<sup>6</sup> in Criminal Case No. A-1886.

**The Facts**

Accused-appellant was originally charged with two counts of Rape under Article 266-A(1) and two counts of Rape by Sexual Assault under Article 266-A(2) in four separate Informations<sup>7</sup> which state:

- over – nineteen (19) pages ...

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<sup>1</sup> 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.”

<sup>2</sup> *Rollo*, pp. 3-5.

<sup>3</sup> Id. at 8-21. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Maria Elisa Sempio Diy and Alfredo D. Ampuan.

<sup>4</sup> Id. at 30-41. Penned by Executive Judge Romeo M. Atillo, Jr.

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

<sup>6</sup> Entitled “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: June 17, 1992.

<sup>7</sup> Records, Crim. Case No. A-1884; Records, Crim. Case No. A-1885, p. 1; Records, Crim. Case No. A-1886, p. 1; Records, Crim. Case No. A-1887, p. 1.

**Criminal Case No. A-1884 (Rape):**

That on or about the 30<sup>th</sup> day of January, 2016, (1<sup>st</sup> count) in the [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat and intimidation, accused entered in the room where complainant was sleeping then bind her hands, gagged her mouth with a handkerchief did then and there willfully and feloniously have carnal knowledge of complainant, [AAA],<sup>8</sup> a minor, fourteen (14) years old, being born on August 30, 2001, against her will and consent, to the damage and prejudice of AAA.

CONTRARY TO LAW.<sup>9</sup>

**Criminal Case No. A-1885 (Rape):**

That on or about the 30<sup>th</sup> day of January, 2016, (2<sup>nd</sup> count) in the [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat and intimidation, accused entered in the room where complainant was sleeping then bind her hands, gagged her mouth with a handkerchief did then and there willfully and feloniously have carnal knowledge of complainant, [AAA], a minor, fourteen (14) years old, being born on August 30, 2001, against her will and consent, to the damage and prejudice of [AAA].

CONTRARY TO LAW.<sup>10</sup>

**Criminal Case No. A-1886 (Rape by Sexual Assault):**

That on or about the 30<sup>th</sup> day of January, 2016, (1<sup>st</sup> count) in the [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat and intimidation, accused entered in the room where complainant was sleeping then bind her hands, gagged her mouth with a handkerchief did then and there willfully and feloniously insert his

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<sup>8</sup> “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]).

<sup>9</sup> Records, Crim. Case No. A-1884, p. 1.

<sup>10</sup> Records, Crim. Case No. A-1885, p.1.

thumb into the vagina of [AAA], a minor, fourteen (14) years old, being born on August 30, 2001, against her will and consent, to the damage and prejudice of [AAA]

CONTRARY TO LAW.<sup>11</sup>

**Criminal Case No. A-1887 (Rape by Sexual Assault):**

That on or about the 30<sup>th</sup> day of January, 2016, [2<sup>nd</sup> count] in the [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat and intimidation, accused entered in the room where complainant was sleeping then bind her hands, gagged her mouth with a handkerchief did then and there willfully and feloniously insert his thumb into the vagina of [AAA], a minor, fourteen (14) years old, being born on August 30, 2001, against her will and consent, to the damage and prejudice of [AAA].

CONTRARY TO LAW.<sup>12</sup>

Accused-appellant pleaded not guilty to all charges against him.<sup>13</sup> Thereafter, joint trial ensued.

**Version of the Prosecution**

The prosecution offered to present the testimonies of: (1) AAA, private complainant, (2) BBB, AAA's grandfather, and (3) Dr. Paola Angela Asunto (Dr. Asunto), Medical Officer III, Department of OB-Gyne, [REDACTED] Medical Center. However, the testimonies of BBB and Dr. Asunto were dispensed with after the defense admitted the estimated expenses incurred by AAA,<sup>14</sup> the existence and veracity of the Medico-Legal Certificate,<sup>15</sup> and the complete and healed hymenal lacerations mentioned therein.<sup>16</sup> AAA's testimony was summarized as follows:

She was only 14 years old<sup>17</sup> when the incident happened. In the early morning of January 30, 2016, after their dance presentation in school, AAA and her friends walked home. They chanced upon accused-appellant at a store having a drinking spree with his peers. After AAA parted ways with her friends, she continued to walk to her

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<sup>11</sup> Records, Crim. Case No. A-1886, p. 1.

<sup>12</sup> Records, Crim. Case No. A-1887, p. 1.

<sup>13</sup> Records, Crim. Case No. A-1884, p. 26.

<sup>14</sup> Records, Crim. Case No. A-1884, p. 73.

<sup>15</sup> Id. at 9.

<sup>16</sup> Id. at 39.

<sup>17</sup> Id. at 8.

grandfather's house where she was staying, at [REDACTED]. Accused-appellant followed AAA and told her to wait for him. Instead of heeding accused-appellant, AAA continued to walk fast as it was already late. She also observed that accused -appellant was drunk at that time.<sup>18</sup>

However, accused-appellant caught up with AAA upon reaching the rice mill (kiskisan). Accused-appellant then invited AAA to sleep in their house which she declined. However, accused-appellant forcibly pulled AAA towards his house and threatened to kill her if she screams. Once inside, accused-appellant told AAA to sleep in his sister's bed which she did.<sup>19</sup>

Afterwards, AAA felt somebody sat on the bed whom she recognized as accused-appellant because of the illumination coming from the moonlight and the fact that there was no other person in that house except for the two of them.<sup>20</sup>

Thereafter, accused-appellant tied her hands at her back and gagged her mouth with a handkerchief and told her not to make noise. Accused-appellant forced AAA to lie down on the bed. When accused-appellant started to remove her pants, she kicked him on the abdomen. Despite that, he succeeded in removing her pants. He lifted her upper garments and bra above her breast then sucked her nipples while he removed his shorts and brief. He immediately went on top of her and inserted his penis inside her vagina twice. He then inserted his middle finger inside her vagina. Private complainant cried but accused-appellant told her not to make any noise, otherwise, he would kill her.<sup>21</sup>

Thereafter, accused-appellant untied AAA's hands. He repeatedly warned that he would kill her and her family if she would report the incident. Accused-appellant then laid down the bed. When AAA saw that accused-appellant was already asleep, she put on her clothes, sneaked out of the house, and went home.<sup>22</sup>

AAA immediately called her mother and informed her about the incident. Her mother came down from [REDACTED] City and accompanied AAA to the police station to report the incident. They were then

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<sup>18</sup> *Rollo*, p. 12.

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

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 12-13.

<sup>22</sup> *Id.* at 13.

referred to the Department of Social Welfare and Development. Dr. Asunto conducted a medical examination and issued a medical certificate.<sup>23</sup>

### Version of the Defense

The defense presented four witnesses: (1) YYY; (2) ZZZ; (3) VVV; and (4) accused-appellant.

The testimony of YYY was dispensed with after the prosecution admitted the following: (1) that he owned a store near ██████████ ██████████ Elementary School; (2) that on the night of January 29, 2016, accused-appellant and his father were at the store drinking with several others until around 5:00 a.m. of January 30, 2016; and (3) that accused-appellant and his father left the store at about 5:00 a.m. of January 30, 2016.<sup>24</sup>

ZZZ testified that accused-appellant is her brother-in-law. She stated that she was staying at the house of her mother-in-law (VVV) together with accused-appellant, SSS, TTT, QQQ, RRR, and PPP, all surnamed ██████████. On January 29, 2016 at around 7:00 p.m., they went to ██████████ High School, ██████████ ██████████ to watch Dominic's school program which lasted until 10:00 p.m. Thereafter, they went home and immediately went to sleep. At around midnight, VVV arrived. ZZZ, her husband, their child, and VVV were the only occupants of the house at that time.<sup>25</sup>

Their house had no bedroom and only had two doors, the front door which was made of wood and the back door which was made of galvanized iron sheet with vault rock. Furthermore, their kitchen was located outside.<sup>26</sup>

Meanwhile, VVV testified that in the evening of January 29, 2016, she attended the school activity of her youngest child at ██████████ High School. She was with her son, UUU, ZZZ, and her grandchild. She stayed in the school until around 1:00 a.m. Thereafter, she went home. ZZZ, her husband, and her grandchildren were already asleep when she arrived at their house. Meanwhile, accused-appellant and his father were at a nearby store having a drinking spree.<sup>27</sup>

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<sup>23</sup> Records, Crim. Case No. A-1884, p. 9.

<sup>24</sup> Id. at 116.

<sup>25</sup> *Rollo*, p. 14.

<sup>26</sup> Id.

<sup>27</sup> Id.

VVV stated that their house is approximately 14 by 16 feet. It had no bedroom and it had only three beds where her son and the latter's family sleep.

Accused-appellant denied the accusations against him. He testified that he was staying with his parents and siblings at their house in [REDACTED]. He knew AAA who was residing at [REDACTED], [REDACTED], which is about one kilometer away from their house.

In the evening of January 29, 2016, he attended his brother's school program at [REDACTED] High School together with his mother, father, siblings, and his brother's children. He did not stay there long. After watching, he went to the nearby store to wait for his father while the latter was having a drinking spree. He came home with his father in the morning of January 30, 2016. He denied accosting AAA and dragging her to their house. He did not know of any reason why AAA would accuse him of rape.<sup>28</sup>

### **Ruling of the Regional Trial Court**

In a Joint Decision<sup>29</sup> dated August 29, 2019, the RTC found accused-appellant guilty beyond reasonable doubt of two counts of Rape under Article 266-A(1), and two counts of Rape by Sexual Assault under Article 266-A(2) of the RPC.

The dispositive portion of the RTC Decision reads:

**WHEREFORE**, premises considered, judgment is hereby rendered, finding the accused [XXX], **GUILTY** beyond reasonable doubt for two (2) counts of Rape in Criminal Cases Nos. A-1884 and A-1885, and he is hereby sentenced to suffer the penalty of *reclusion perpetua* for each count without eligibility of parole and for each count of Rape, he is hereby ordered to pay private complainant ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages on the two (2) counts. 'AAA' 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.

And in Criminal Case Nos. A-1886 and A-1887, **GUILTY** beyond reasonable doubt for two (2) counts of Rape by Sexual Assault under paragraph 2, Article 266-A, and he is hereby

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<sup>28</sup> Id. at 14-15.

<sup>29</sup> Id. at 30-41.

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 in each case. He is also ordered to pay 'AAA' the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages. 'AAA' 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."**

Aggrieved, accused-appellant appealed<sup>30</sup> to the CA.

### **Ruling of the Court of Appeals**

On January 15, 2021, the CA partially granted the appeal and modified RTC Decision,<sup>31</sup> viz.:

**WHEREFORE**, the instant appeal is **PARTIALLY GRANTED**. Accordingly, the August 29, 2019 Joint Decision of the Regional Trial Court of [REDACTED], Branch 31, is **MODIFIED** as follows:

1. In Criminal Case No. A-1884, accused-appellant [XXX] is found GUILTY beyond reasonable doubt of the crime of rape defined under paragraph 1, Article 266-A of the Revised Penal Code, and is sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the private complainant the amounts of **₱75,000.00** as civil indemnity, **₱75,000.00** as moral damages and **₱75,000.00** as exemplary damages.

2. In Criminal Case No. A-1885, accused-appellant [XXX] is ACQUITTED of the crime charged.

3. In Criminal Case No. A-1886, accused-appellant [XXX] is found GUILTY beyond reasonable doubt of the crime of **Lascivious Conduct under Sec. 5 (b) of R.A. No. 7610**, and is sentenced to suffer the indeterminate penalty of imprisonment ranging from **eight (8) 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**, and to indemnify the private complainant the amounts of **₱50,000.00** as civil indemnity, **₱50,000.00** as moral damages and **₱50,000.00** as exemplary damages.

4. In Criminal Case No. A-1887, accused-appellant [XXX] is ACQUITTED of the crime charged.

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<sup>30</sup> CA rollo, pp. 17-18.

<sup>31</sup> Rollo, p. 27.

5. All damages awarded shall earn interest of six percent (6%) per *annum* from the date of finality of this Decision until fully paid.

**SO ORDERED.**<sup>32</sup>

Unrelenting, accused-appellant filed a notice of appeal.<sup>33</sup>

### **Issues**

1. Whether AAA's testimony was credible, probable and convincing as to warrant the accused-appellant's conviction for the crimes of Rape through sexual intercourse under Articles 266-A(1)(A) and Lascivious Conduct under Sec. 5 (b) of RA 7610;
2. Whether the elements for the crimes of Rape through sexual intercourse and Lascivious Conduct were proven; and
3. Whether the penalty imposed by the CA was correct.

### **Our Ruling**

**AAA's testimony is credible,  
probable and convincing**

There is no merit in accused-appellant's argument that AAA's testimony was incredible and inconsistent because she failed to give a detailed and coherent narration as to how she was accosted by accused-appellant and dragged to the latter's house.<sup>34</sup>

During AAA's lengthy cross-examination,<sup>35</sup> she recalled that she went home in the company of her friends after the school program ended at around 1:00 a.m. of January 30, 2016. After she parted with her classmates and while walking home alone, she realized that she had the keys to the lock of their school. She decided to go back to the school to hand over the keys to her classmate, CCC. She reached the school at 2:00 a.m. She and CCC then left the school at 2:10 a.m. It was at this time that accused-appellant followed and accosted her.<sup>36</sup>

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<sup>32</sup> Id. at 27-28.

<sup>33</sup> Id. at 3.

<sup>34</sup> Id. at 18.

<sup>35</sup> TSN, April 26, 2017, pp. 2-25.

<sup>36</sup> Id. at 15-23

Next, accused-appellant faults AAA for failing to disclose that she actually returned to the school after she already reached her house. According to accused-appellant, this contradicted her testimony on direct examination that after she parted with her schoolmates, accused-appellant followed her home and dragged her to the latter's house.<sup>37</sup>

We find this contention without merit. As correctly observed by the CA, AAA cannot be faulted for omitting the details in her testimony on direct examination. She was merely answering the questions of the public prosecutor. There was no opportunity for her to reveal the foregoing details during her direct examination as she was never asked about it. Neither can the public prosecutor be faulted for not eliciting such information because those were unnecessary details and were immaterial to the commission of the crime.<sup>38</sup>

Third, accused-appellant claims that it was incredible and contrary to human experience that AAA, being a minor and female, would go back to the school alone in the wee hours of the morning.<sup>39</sup>

We find nothing incredible or unnatural in AAA's admission that she returned to school alone in the wee hours of the morning. She satisfactorily explained that she had to go back to school to hand over the school keys to her classmate. While it might have been reckless to go back alone, the same cannot be said to be unnatural nor contrary to human experience.<sup>40</sup>

Fourth, accused-appellant labels as incredible the fact that AAA was unable to overcome accused-appellant's advances, considering that he was then intoxicated.<sup>41</sup>

To recall, AAA testified that when accused-appellant dragged her towards the latter's house, she tried her best to resist and struggled to remove his hand. However, she was not able to free her hands because accused-appellant threatened to kill her.<sup>42</sup>

Fifth, accused-appellant avers that it was incredible for AAA not to scream for help while she was being sexually abused.<sup>43</sup>

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<sup>37</sup> *Rollo*, p. 18.

<sup>38</sup> *Id.* at 11.

<sup>39</sup> *Id.* at 18.

<sup>40</sup> TSN, April 26, 2017, p. 18.

<sup>41</sup> *Rollo*, p. 18.

<sup>42</sup> TSN, December 14, 2016, p. 7.

<sup>43</sup> *Rollo*, p. 18.

This argument fails to convince. AAA was only 14 years old and accused-appellant was her uncle.<sup>44</sup> Besides, AAA explained that accused-appellant tied her hands with a rope and gagged her mouth. Moreover, accused-appellant threatened to kill her if she makes any noise.<sup>45</sup> Not every rape victim can be expected to act conformably to the usual expectations of everyone. Some may shout; some may faint; and some may be shocked into insensibility; while others may openly welcome the intrusion.<sup>46</sup>

The settled rule is that the trial court's determination of witness credibility will not be disturbed on appeal unless significant matters have been overlooked. Such determination is treated with respect, as the trial court has the opportunity to observe the witnesses' demeanor during trial. Its findings assume even greater weight when they are affirmed by the CA.<sup>47</sup>

In *People vs. Penilla*,<sup>48</sup> the Court adhered to the doctrine which states that:

[T]he matter of evaluating the credibility of witnesses depends largely on the assessment of the trial court. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.<sup>49</sup>

Moreover, full credence is accorded the testimony of a rape victim who has shown no ill motive to testify against the accused.<sup>50</sup> A woman will not expose herself to the humiliation of a rape trial, with its attendant publicity and the morbid curiosity it will arouse, unless she has been truly wronged and seeks atonement for her abuse.<sup>51</sup>

Accused-appellant failed to impute any ill motive on the part of the victim as to why she charged him with grave offenses, especially since they were relatives. On the contrary, he merely offered the

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<sup>44</sup> Id. at 12.

<sup>45</sup> TSN, February 7, 2017, pp. 3-4.

<sup>46</sup> *People v. Madeo*, 617 Phil. 638, 654 (2009).

<sup>47</sup> *People v. Diu*, 708 Phil. 218, 232 (2013).

<sup>48</sup> 707 Phil. 130 (2013).

<sup>49</sup> Id. at 148.

<sup>50</sup> *People v. Cañada*, 323 Phil. 340, 348 (1996), citing *People v. Matamorosa*, 301 Phil. 517, 524 (1994), citing *People v. Palicte*, 299 Phil. 576, 577 (1994), and *People v. Cabilao*, 285 Phil. 815, 525 (1992).

<sup>51</sup> *People v. Cañada*, supra, citing *People v. Salomon*, 299 Phil. 419-429, 426 (1994), *People v. Grefiel*, 290 Phil. 77, 92 (1992), *People v. Dabon*, 290-A Phil. 449, 457 (1992), *People v. De Guzman*, 290-A Phil. 552, 558 (1992), citing *People v. Pasco*, 260 Phil. 245, 255-256 (1990), *People v. Yambao*, 271 Phil. 601, 607 (1991), *People v. Patilan*, 274 Phil. 634, 648 (1991), *People v. Vinas*, 279 Phil. 788, 794 (1991), *People v. Rosell*, 260 Phil. 734, 739 (1990); *People v. Albarillo*, 266 Phil. 122, 131 (1990), *People v. Camasis*, 267 Phil. 686, 694-695 (1990).



defense of bare denial. Jurisprudence is replete of cases holding that denial and alibi are weak defenses, which cannot prevail against positive identification. A categorical and consistent positive identification which is not accompanied by ill motive on the part of the eyewitness prevails over mere denial. Such denial, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It cannot be given a greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.<sup>52</sup>

**The elements for the crimes of Rape through sexual intercourse and Lascivious Conduct under Articles 266-A(1)(A) and Sec. 5 (b) of RA 7610 are proven**

Article 266-A of the RPC provides:

Art. 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 is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

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, or any instrument or object, into the genital or anal orifice of another person.

The elements cited above were established by the testimony of private complainant. Thus:

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<sup>52</sup> *Quimvel v. People*, 808 Phil. 889, 932 (2017).

Q: You testified earlier that the accused in this case dragged you to their house and then thereafter he tied your hands behind your back, what did he use to tie your hands?

A: A rope [used] to tie carabao, sir.

Q: And after tying your hands behind your back, what did he do next or what happened?

A: He gagged my mouth using a handkerchief, sir.

Q: And after putting or gagging your mouth with handkerchief, what transpired next, what did he do next?

A: He keep on telling me not to make any noise, sir.

Q: And what were you doing at that time while you were tied, you were gagged, and you were being threatened not to make any noise?

A: During those times I was seated and then he just suddenly forced me to lie down, sir.

Q: Lie down where?

A: On the bed, sir.

Q: And after he forced you to lie down on the bed, what did he do next?

A: He removed my jogger pants, sir.

Q: And what did you do when he removed your jogger pants?

A: I was kicking him, sir?

Q: And what happened while you were kicking?

A: He succeeded in removing my jogger pants and he lifted my upper garments and my bra, sir.

Q: And after he removed your pants and lifted your upper garments and bra, what did he do next?

A: He inserted his penis on my vagina, sir.

x x x x

Q: And when he inserted his penis in your vagina, what did you do?

A: I cried, sir.

Q: And after he inserted his penis in your vagina, what did he do?

A: He kept on telling me not to make any noise and he threatened me that if I will make a noise he will kill me.

Q: And for about how many seconds or minutes did he insert his penis on your vagina?

A: Two (2) minutes, sir.

Q: And while he was on top of you threatening you with his penis inserting in your vagina, what was he doing?

A: After inserting his penis twice, he was not contented and he inserted his middle finger.

Q: And after he inserted his middle finger, what happened?

A: When he was about to finish and slowly he removed his middle finger in my vagina and he lay beside me on the bed, sir.

Q: What did you feel when he inserted his penis and his finger in your private part?

A: It was painful, sir.<sup>53</sup>

Clearly, accused-appellant had carnal knowledge of AAA and sexually molested her by inserting his finger inside her vagina. These sexual abuses were committed through intimidation and evidently against the will or without the consent of private complainant. The latter clearly stated that accused-appellant tied her hands and gagged her mouth with a handkerchief. She resisted by kicking the accused-appellant, but to no avail. Moreover, the accused-appellant threatened to kill her if she disclosed the incident.<sup>54</sup>

It is a well-settled ruled that “[t]he force used in the commission of rape need not be overpowering or absolutely irresistible. A rape victim has no burden to prove that she did all within her power to resist the force and intimidation employed upon her. Resistance is not an element of rape. What is essential is simply that the force employed was sufficient to enable the offender to consummate the lewd purpose which he had in mind.”<sup>55</sup> Neither will the victim’s failure to flee and scream imply consent to the bestial act. This is especially true in the case of young, innocent, and immature girls, like the victim here, who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat. On the same vein, intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party.<sup>56</sup>

The private complainant’s account of her defilement was corroborated by the medico-legal certificate showing that she had hymenal “complete laceration at 4, 7 o’clock position[s].”<sup>57</sup>

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<sup>53</sup> TSN, February 7, 2017, pp. 2-4.

<sup>54</sup> *Rollo*, p. 10.

<sup>55</sup> *People v. Ramos*, 838 Phil. 797, 810 (2018).

<sup>56</sup> *Quimvel v. People*, supra at 940.

<sup>57</sup> Records, Crim. Case No. A-1884, p. 9.

The Court has held that “hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. And when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.”<sup>58</sup>

The CA correctly convicted accused-appellant of one count of Rape and of one count of Lascivious Conduct under Section 5(b) of RA 7610.<sup>59</sup> The CA pointed out that after having sexual intercourse with AAA, accused-appellant inserted his finger inside her vagina, which amounted to another sexual assault on the victim. This is because not only did it involve a separate and distinct act, it appeared that he was prompted by a second wave of sexual impulse.

The proper nomenclature of the second sexual assault is **Lascivious Conduct under Section 5 (b) of RA 7610** as the act of insertion of a finger inside the victim’s private organ also constitutes a violation of Section 5(b) of RA 7610, which provides:

Section 5. *Child Prostitution and Other Sexual Abuse.* –

x x x x

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 (sic) and Article 336 of Act No. 3815, as amended, the Revised Penal Code (RPC), 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; x x x

In *People vs. Tulagan*,<sup>60</sup> the Court ruled that Section 5(b) of RA 7610 punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child,

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<sup>58</sup> *People v. Ronquillo*, 818 Phil. 641, 651 (2017)

<sup>59</sup> Entitled “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.

<sup>60</sup> G.R. No. 227363, March 12, 2019.

through coercion, intimidation, or influence, engages in sexual intercourse or lascivious conduct. Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children.

Moreover, in *People vs. Dagsa*,<sup>61</sup> the Court cited paragraph (h) Section 2 of the Implementing Rules and Regulations (IRR) of RA 7610 which defines lascivious conduct as a crime committed through the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others. Thus, the act of inserting one's finger inside the genitalia of the victim constitutes lascivious conduct under the aforesaid IRR of RA 7610.<sup>62</sup>

**The penalty imposed by the CA is modified**

The Court laid down the following guidelines for determining the nomenclature of the crime committed and the corresponding penalty depending on the age of the minor victim:

1. If the victim is less than twelve (12) years old, the crime committed is **Sexual Assault under Article 266-A (2) of the Revised Penal Code (RPC) in relation to Section 5 (b) of R.A. No. 7610**; and the penalty is *reclusion temporal in its medium period*.

2. If the victim is twelve (12) years old or below eighteen (18) years old or 18 years old or above under special circumstances,<sup>63</sup> the crime committed is **Lascivious Conduct under Section 5 (b) of R.A. No. 7610**; and the penalty is *reclusion temporal in its medium period to reclusion perpetua*.<sup>64</sup>

As correctly found by the CA, since the victim was 14 years old at the time of the commission of the crime, the proper nomenclature of the second crime is **Lascivious Conduct under Section 5 (b) of RA 7610**. The imposable penalty of **Lascivious Conduct under**

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<sup>61</sup> 824 Phil. 704, 721 (2018).

<sup>62</sup> *People v. Tulagan*, supra.

<sup>63</sup> The "children" refers to a person below eighteen (18) years of age **or those over but are unable to fully take care of themselves or protect themselves** from abuse, neglect, cruelty, exploitation, or discrimination **because of a physical or mental disability or condition**. (Section 3 (a), R.A. No. 7610)

<sup>64</sup> *People v. Tulagan*, supra.

**Section 5 (b) of RA 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*.**<sup>65</sup> The Indeterminate Sentence Law is applicable because *reclusion perpetua* is merely used as the maximum period consisting of a range starting from *reclusion temporal*, medium period, a divisible penalty.<sup>66</sup>

In *Beleta v. People*,<sup>67</sup> the Court ruled that:

The penalty for the offense of Lascivious Conduct under Section 5 (b), Article III of RA 7610 is *reclusion temporal* medium to *reclusion perpetua*. Applying the Indeterminate Sentence Law, the proper penalty for Lascivious Conduct is *prision mayor* medium to *reclusion temporal* minimum, as the minimum term, to *reclusion temporal* maximum, as the maximum term, if none of the circumstances under Section 31 of RA 7610 are present and there are no modifying circumstances attending the commission of the offense. Thus, the indeterminate penalty of imprisonment imposed by the lower courts against petitioner for a period of fourteen (14) years and eight (8) months, as minimum, to twenty (20) years, as maximum, is within the range provided by law.

As to the damages, the Court deems it proper to award exemplary damages in the amount of P50,000.00, in addition to the awards of civil indemnity and moral damages at P50,000.00 each, in accordance with *People v. Tulagan*. The Court also affirms the imposition of the fine of P15,000.00 against petitioner pursuant to Section 31 (f), Article XII of RA 7610 which provides:

## ARTICLE XII

### Common Penal Provisions

#### 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.

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<sup>65</sup> See *Beleta v. People*, G.R. 256849, November 15, 2021.

<sup>66</sup> *People v. Tulagan*, supra note 60.

<sup>67</sup> *Supra*.

In *People v. Abadies*, the Court explained that the above provision “allows the imposition of a fine subject to the discretion of the court, provided that it is to be 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.” The Court further stated that the provision is in accord with Article 39 of the Convention on the Rights of the Child, to which the Philippines became a party on August 21, 1990, which mandates states parties to ensure the physical and psychological recovery and social reintegration of abused and exploited children in an environment which fosters their self-respect and human dignity.<sup>68</sup> (Citations omitted)

Petitioner should be meted the indeterminate penalty of *prision mayor* in its medium period to *reclusion temporal* in its minimum period as minimum, to *reclusion temporal* in its medium period to *reclusion perpetua* as maximum. There being no modifying circumstances, the proper imposable penalty is 12 years, five months and 10 days as minimum, to 20 years, of *reclusion temporal*, as maximum.

Accordingly, the penalty imposed by the CA for Lascivious Conduct under Section 5(b) of RA 7610 should be modified. The awards of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, and the imposition of six percent (6%) interest per *annum* are in conformity with prevailing jurisprudence.<sup>69</sup> In addition, a fine in the amount of ₱15,000.00 for the rehabilitation of the child-victim pursuant to Section 31 (f), Article XII of RA 7610.

As regards the crime of Rape through sexual intercourse, the CA correctly imposed the penalty of *reclusion perpetua* and deleted the phrase “without eligibility for parole” pursuant to Section II of A.M. No. 15-08-02-SC.<sup>70</sup> The awards of ₱75,000.00 as moral damages, ₱75,000.00 as civil indemnity, and ₱75,000.00 as exemplary damages are likewise in accordance with prevailing jurisprudence.<sup>71</sup>

**WHEREFORE**, the appeal is **DISMISSED**. The assailed January 15, 2021 Decision by the Court of Appeals in CA-G.R. CR No. 13577 is **AFFIRMED with MODIFICATIONS**.

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<sup>68</sup> Supra.

<sup>69</sup> *People v. Tulagan*, supra note 54.

<sup>70</sup> GUIDELINES FOR THE PROPER USE OF THE PHRASE “WITHOUT ELIGIBILITY FOR PAROLE” IN INDIVISIBLE PENALTIES. Dated August 4, 2015.

<sup>71</sup> *People v. Sequisabal*, G.R. No. 240424, March 18, 2021.

In Criminal Case No. A-1884, accused-appellant XXX is found **GUILTY** beyond reasonable doubt of the crime of Rape through sexual intercourse defined under paragraph 1, Article 266-A of the Revised Penal Code, and is sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the private complainant the amounts of **₱75,000.00** as civil indemnity, **₱75,000.00** as moral damages and **₱75,000.00** as exemplary damages.

In Criminal Case No. A-1886, accused-appellant XXX is found **GUILTY** beyond reasonable doubt of the crime of **Lascivious Conduct under Sec. 5 (b) of R.A. No. 7610**, and is sentenced to suffer the indeterminate penalty of imprisonment ranging from 12 years, five months and 10 days, as minimum, to 20 years of *reclusion temporal*, as maximum, and to indemnify the private complainant the amounts of **₱50,000.00** as civil indemnity, **₱50,000.00** as moral damages and **₱50,000.00** as exemplary damages. He is also ordered to **PAY** a fine of **₱15,000.00**.

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

The accused-appellant's manifestation (in lieu of supplemental brief), pursuant to the Resolution dated April 27, 2022; and the letter dated June 9, 2022 of CSO4 Cesar T. Grecia, Chief Admin, Inmate Documents and Processing Division, Bureau of Corrections, Muntinlupa City, in compliance with the Resolution dated April 27, 2022, informing the Court that the accused-appellant was received for confinement in the Institution on November 15, 2019, are both **NOTED**; and the filing of the Office of the Solicitor General's supplemental brief as required in the Resolution dated April 27, 2022 is **DISPENSED WITH**.

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

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

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

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AUG 17 2022

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The Solicitor General  
134 Amorsolo Street, Legaspi Village  
1229 Makati City

Court of Appeals (x)  
Manila  
(CA-G.R. CR-HC No. 13577)

The Hon. Presiding Judge  
Regional Trial Court, Branch 31  
Agoo, 2504 La Union  
(Crim. Case Nos. A-1884 to A-1887)

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