



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **September 12, 2022** which reads as follows:

“**UDK No. 16944 (Marcelo Crisostomo, Petitioner v. People of the Philippines, Respondent)**. — This Court resolves a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, filed by petitioner Marcelo Crisostomo (*Marcelo*), assailing the Decision² and the Resolution³ by the Court of Appeals in CA-G.R. CR No. 03395 affirming his conviction for the crime of rape by sexual assault.

Antecedents

Marcelo was charged with the crime of Rape by Sexual Assault under Article 266-A of the Revised Penal Code (*RPC*) in relation to Republic Act No. 7610. The information dated January 15, 2015 reads:

That on or about the 28th day of October 2014, at around 12:30 in the morning, in the [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation, insert his finger into the sex organ of one [AAA16944], 16 years old, female, against her will and without her consent; and the act of accused is detrimental to child’s development.

ACTS CONTRARY TO LAW.⁴

The following witnesses testified for the prosecution: the victim AAA16944,⁵ Police Officer 3 Ma. Junary Lazaro (*PO3 Lazaro*), Police

¹ *Rollo*, pp. 19–29.

² CA Decision, pp. 15–16. This pinpoint citation refers to the copy of this Decision uploaded to the Court of Appeals website. The September 22, 2020 Decision was penned by Associate Justice Dorothy P. Montejo-Gonzaga, and concurred in by Associate Justices Pamela Ann Abella Maxino and Lorenza Redulla Bordios of the Nineteenth Division, Court of Appeals, Cebu City.

³ Dated January 26, 2021. *Id.*

⁴ *Rollo*, p. 32.

⁵ 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 RA 7610, 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; RA 9262, entitled “AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING

Officer 2 Connie Ann Tabaosares (*PO2 Tabaosares*), a certain Anita Piñosa, and AAA16944's teacher, Deselyn Sobremesana⁶ (*Sobremesana*).⁷

The prosecution alleged that on October 27, 2014, Marian Crisostomo (*Marian*), a schoolmate and neighbor of AAA16944, invited the latter and her 10-year old niece, BBB16944,⁸ to sleep in their house at [REDACTED], [REDACTED], Guimaras. Marian told them that she had no companion at the time because her parents were at the hospital attending to her brother. She sought permission from AAA16944's elder sister, CCC16944.⁹ Upon CCC16944's consent, AAA16944 and BBB16944 went with Marian. They arrived at Marian's house around 6:00 or 7:00 p.m. A certain Marilyn joined them.¹⁰

Moments later, Marcelo arrived from the hospital together with his son, Christian Crisostomo (*Christian*). The girls went to bed past 8:00 in the evening. They slept on the mattress laid on the floor in the living room and put off the kerosene lamp before turning in. Marcelo slept with his son inside the bedroom.¹¹

Later that evening, AAA16944 noticed Marcelo going to the bathroom and then back to the bedroom several times. He passed beside AAA16944 each time that he went to the bathroom. AAA16944 fell asleep.¹²

AAA16944 awoke when she felt somebody kissing her lips. She recognized that it was Marcelo. He then inserted his finger in her genitalia and moved it up and down. AAA16944 struggled to release herself but Marcelo continued to thrust his finger in her vagina. He only stopped when AAA16944 said, "*Tiyoy, naano ka man imo ya man?* (Tiyoy, what's going on with you?)" Marcelo returned to the bedroom while AAA16944 wept and eventually fell asleep.¹³

AAA16944 got up at 5:00 a.m. the following day, October 28, 2014, and went home with BBB16944. She did not tell her mother or the other

PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, 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," dated September 5, 2017.)

⁶ Also spelled as "Sobremisana" in some parts of the *rollo* (see *rollo*, pp. 45 and 49).

⁷ *Id.* at 32.

⁸ See note 5.

⁹ *Id.*

¹⁰ *Rollo*, p. 33.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

members of the family about the sexual abuse as she feared that they might attack Marcelo.¹⁴

When she reached her school, AAA16944 confided to her teacher, Sobremesana, that Marcelo had raped her. Sobremesana observed that AAA16944 was in tears. She referred her to the school's guidance counsellor, Myrna Gania. AAA16944's former adviser, Arnen Rivera, contacted PO2 Tabaosares to report the rape incident.¹⁵

Consequently, a team of police officers from [REDACTED] Municipal Police Station went to [REDACTED] where AAA16944 was. PO3 Lazaro of the Women and Child Protection Desk (*WCPD*) PNCO, interviewed AAA16944 to verify the report. Thereafter, the police, together with AAA16944, proceeded to the house of Marcelo. AAA16944 positively identified Marcelo as the perpetrator of the crime. As a result, the police arrested him.

PO3 Lazaro, in coordination with the Municipal Social Worker, took AAA16944's sworn statement at the police station. PO3 Lazaro observed that AAA16944 kept crying during the interview.¹⁶

Upon referral by the police, AAA16944 underwent medical examination at Western Visayas Medical Center (*WVMC*). AAA16944 told the court that she suffered so much fear and anxiety because of the rape. The prosecution submitted to the court the Certificate of Live Birth of AAA16944 showing that she was born on May 5, 1998. Hence, she was only 16 years old at the time of the commission of the felony.¹⁷

On the other hand, the defense evidence consisted of the testimonies of Marcelo, his daughter Marian, and his wife Linda Crisostomo (*Linda*).¹⁸ Marcelo insisted that he did not commit the acts imputed to him. He said that he slept in his house in the evening of October 27, 2014. He was in the bedroom with his son, Christian. He got up at 1:00 in the morning of October 28, 2014. He went straight to the seashore to source fish ("*tangab*") for his dried fish business. He went home after two hours, or around 3:00 a.m.¹⁹

Marcelo suspected that AAA16944's family bore an old grudge against him, moving them to file the instant case against him. To negate AAA16944's allegation that she has been raped, Marcelo cited the doctor's findings during

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 34.

¹⁸ *Id.*

¹⁹ *Id.*

her medical examination at WVMC which stated that the external genitalia had no evident injury at the time of examination.²⁰

Marian, who slept on the same bed as AAA16944 at the time of the alleged incident stated that she, AAA16944 and their companions, BBB16944 and Marilyn, were all asleep the whole night of October 27, 2014. Contrary to AAA16944's allegation, she alleged that nothing untoward happened that evening.²¹

Linda corroborated Marcelo's testimony. She stated that AAA16944 slept in their house in the evening of October 27, 2014. She laid between BBB16944 and Marian on the mattress that was on the floor of the living room. Linda went to bed at 11:00 in the evening, after everyone had turned in. She slept lightly that night because she was waiting for the *tangab*. She did not notice any unusual incident during that night.²²

Linda woke up at 5:30 a.m. of the following day and immediately prepared breakfast. She woke AAA16944 up so that she could go home. Linda did not notice anything unusual with the latter at the time.²³

In its Decision,²⁴ the Branch 65, Regional Trial Court, [REDACTED], Guimaras found Marcelo guilty beyond reasonable doubt for the crime of Rape by Sexual Assault in relation to Republic Act No. 7610. Its dispositive portion stated as follows:

IN VIEW WHEREOF, the court finds accused Marcelo Crisostomo **GUILTY** beyond reasonable doubt of Rape by Sexual Assault. He is sentenced to an indeterminate penalty of six (6) years of *prision correccional*[,] as minimum[,], to eight (8) years and one (1) day of *prision mayor*[,] as maximum. He is ordered to **PAY** the victim, AAA, civil indemnity in the amount of ₱50,000.00 and moral damages likewise in the amount of ₱50,000.00. Said amounts shall earn legal interest of 6% *per annum* from the finality of the judgment until the same are fully paid.

SO ORDERED.²⁵ (Emphasis in the original)

Aggrieved, Marcelo filed an appeal with the Court of Appeals. In its Decision dated September 22, 2020, the Court of Appeals affirmed the judgment of the trial court, with a modification on the penalty pursuant to jurisprudence. Its dispositive portion stated thus:

²⁰ *Id.*

²¹ *Id.* at 34-35.

²² *Id.* at 35.

²³ *Id.*

²⁴ *Id.* at 32-39. The March 28, 2018 Decision was penned by Presiding Judge Abigail M. Dris-Villanueva.

²⁵ *Id.* at 39.

WHEREFORE, premises considered, the Appeal is DENIED. The Decision dated March 28, 2018 of the Regional Trial Court, 6th Judicial Region, Branch 65, ██████, Guimaras, in Criminal Case No. 15-2016, finding the accused-appellant guilty beyond reasonable doubt for the crime of Rape by Sexual Assault is **AFFIRMED** with **MODIFICATION** to the effect that the accused-appellant is sentenced to suffer the penalty of 8 years and 1 day of *prision mayor*, as minimum, to 20 years of *reclusion temporal*, as maximum. All other impositions of monetary awards are affirmed.

SO ORDERED.²⁶ (Emphasis in the original)

Hence, this recourse. Marcelo, through private counsel, filed a Petition for Review on *Certiorari* on May 10, 2021. He asserted that there was no evidence to prove that he used force and intimidation in kissing AAA16944 and inserting his finger into her vagina. Marcelo likewise argues that the allegations of AAA16944 were not part of the *res gestae*. Finally, the instant petition repleads that AAA16944 was not able to positively identify her alleged assailant.

Issue

Whether the Court of Appeals erred in affirming the conviction of Marcelo for rape by Sexual Assault under Article 266-A of the RPC.

This Court's Ruling

At the outset, We note that the petition suffers from several procedural defects, namely: (a) the failure to pay docket and lawful fees pursuant to Rule 45 of the Rules of Court, considering that the check for PHP 4,530.00 was returned to the sender for being stale; (b) the lack of proof of service to the Court of Appeals which rendered the Decision being assailed; (c) the lack of a duplicate original or a certified true copy of the assailed Court of Appeals Decision dated September 22, 2020; (d) the lack of a verified statement of the material date of receipt of the assailed Court of Appeals Decision and filing of the motion for reconsideration with the Court of Appeals; (e) failure by counsel Atty. Roel B. Dapiton to pay his updated IBP membership dues; (f) failure by counsel to indicate his contact details pursuant to the *En Banc* Resolution dated July 10, 2007 in A.M. 07-6-5-SC; and (g) according to the Judicial Records Office, the lack of a CD and an e-mailed soft-copy of the pleading.

Indeed, Marcelo's failure to attach a copy of the assailed Court of Appeals Decision hampers this Court's opportunity to review the same. Nevertheless, a review of the allegations of Marcelo would show the absence

²⁶ CA Decision, pp. 15-16. This pinpoint citation refers to the copy of this Decision uploaded to the Court of Appeals website.

of any reversible error that would warrant the exercise of this Court's discretionary appellate jurisdiction.

Marcelo raises substantially factual arguments in claiming that his identity was not sufficiently proven and, granting that it was, his actions were not imbued with force and intimidation.

Established is the rule that this Court is not a trier of facts. As held in *People v. Tulagan (Tulagan)*:²⁷

Factual findings of the trial court carry great weight and respect due to the unique opportunity afforded to them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. Said rule finds an even more stringent application where the said findings are sustained by the CA, as in the instant case.²⁸ (Citation omitted)

In this case, the Court of Appeals found that it is readily apparent that AAA16944 resisted when Marcelo assaulted her. She tried to wake her niece, attempted to scream, and struggled to get out of the situation.²⁹ These acts clearly indicate that she was harassed and did not participate voluntarily. AAA16944 likewise testified that she was afraid of Marcelo because of his physique, age, and built. In fact, AAA16944 narrated that she had a hard time trying to scream when Marcelo put his weight on top of her.³⁰

In any case, jurisprudence recognizes that force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other which can establish moral ascendancy.³¹ Here, Marcelo is the father of AAA16944's friend, and already serves as an uncle figure to her. It is not difficult to think that Marcelo exercised such moral ascendancy over AAA16944 that is tantamount to force and intimidation.

As to the identity of the Marcelo, the Court of Appeals had already sufficiently resolved the same by stating that AAA16944 saw Marcelo's face due to the light from the neighboring houses. Furthermore, AAA16944 was very familiar with Marcelo since he was her neighbor and the father of her friend. She did not hesitate to call him "*Tiyoy*", translating to "uncle", when

²⁷ G.R. No. 227363, March 12, 2019 [Per J. Peralta, *En Banc*].

²⁸ *Id.*

²⁹ CA Decision, pp. 11–12. This pinpoint citation refers to the copy of this Decision uploaded to the Court of Appeals website.

³⁰ *Id.*

³¹ *People v. Ubiña*, 554 Phil. 199, 209 (2007). (Citations omitted)

she was being molested. Marcelo was the only adult male inside the house at that time.³²

Finally, while Marcelo disputes AAA16944's actions as part of the *res gestae*, his petition does not give any sufficient explanation. It simply defines the elements of *res gestae* yet does not demonstrate why AAA16944's actions and statements to Ms. Sobremesana is unqualified to be part of the *res gestae*.

As stated by this Court in the case of *People v. XXX*:³³

[I]n resolving rape cases, the primary consideration is almost always given to the credibility of AAA16944's testimony. When the latter's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party[.]³⁴

There being no showing that the trial court and Court of Appeals overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance, their factual findings and the weight given to AAA16944's testimony will no longer be disturbed.

Article 266-A of the RPC defines when and how the felony of rape by sexual assault is committed, to wit:

Article 266-A. Rape: When And How Committed. Rape is committed –

....

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.

Given the case of *Tulagan*, however, where this Court discussed specific cases of sexual assault and acts of lasciviousness on minors, We modify the nomenclature of the crime committed by Marcelo to Lascivious Conduct under Section 5 (b) of Republic Act No. 7610, thus:

Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5 (b) of R.A.

³² CA Decision, p. 10. This pinpoint citation refers to the copy of this Decision uploaded to the Court of Appeals website.

³³ G.R. No. 230981, July 15, 2020 [Per J. Inting, Second Division].

³⁴ *Id.* (Citation omitted)

No. 7610” with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC. It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as “Sexual Assault under paragraph 2, Article 266-A of the RPC” with the imposable penalty of *prision mayor*.³⁵ (Emphasis supplied)

In this case, AAA16944 was 16 years old at the time of the commission of the felony. The felony committed by Marcelo is thus designated Lascivious Conduct under Section 5 (b) of Republic Act No. 7610. This is consistent with the fact that the term “lascivious conduct” was given a specific definition in the Implementing Rules and Regulations of Republic Act No. 7610 as “the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.”

We agree with Court of Appeals that the penalty under Section 5 (b) of Republic Act No. 7610, in lieu of the penalty in Article 266-B of the RPC, is controlling, thus:

In the case of *Tulagan*, the penalty for Rape by Sexual Assault in Relation to R.A. No. 7610 committed against a minor of 12 years old or over but below 18 years old is *reclusion temporal* in its medium period to *reclusion perpetua*. Therefore, in the absence of any mitigating or aggravating circumstance, the proper imposable penalty is *reclusion temporal* in its maximum period, the medium of the penalty prescribed by the law. Notwithstanding that R.A. No. 7610 is a special law, the accused-appellant may enjoy the benefits of the Indeterminate Sentence Law. Since the penalty provided in R.A. No. 7610 is taken from the range of penalties in the Revised Penal Code, it is covered by the first clause of Section 1 of the Indeterminate Sentence Law. Thus, the accused-appellant is entitled to a maximum term which should be within the range of the proper imposable penalty of *reclusion temporal* in its maximum period (ranging from 17 years, 4 months and 1 day to 20 years) and a minimum term to be taken within the range of the penalty next lower to that prescribed by the law: *prision mayor* in its medium period to *reclusion temporal* in its minimum period (ranging from 8 years and 1 day to 14 years and 8 months).³⁶

The basis of the computation of penalty is consistent with the similar recent case of *Encinares v. People*.³⁷ Nonetheless, We modify the penalty ultimately imposed by the Court of Appeals. A perusal of the circumstances of the case merits the imposition of penalty of ten (10) years and one (1) day

³⁵ *People v. Tulagan*, *supra* note 25. (Citation omitted)

³⁶ CA Decision, pp. 14–15. This pinpoint citation refers to the copy of this Decision uploaded to the Court of Appeals website.

³⁷ G.R. No. 252267, January 11, 2021 [Per J. Perlas-Bernabe, Second Division].

of *prision mayor* as minimum to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as maximum.

Finally, the Court of Appeals, citing *Tulagan*, correctly held that AAA16944 is entitled to a civil indemnity in the amount of PHP 50,000.00 and moral damages in the amount of PHP 50,000.00. We add, however: (1) the award of exemplary damages in the amount of PHP 50,000.00, following the guidelines as laid out in *Tulagan*; and (2) a fine of PHP 15,000.00 pursuant to Section 31 (f), Article XII of Republic Act No. 7610.

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

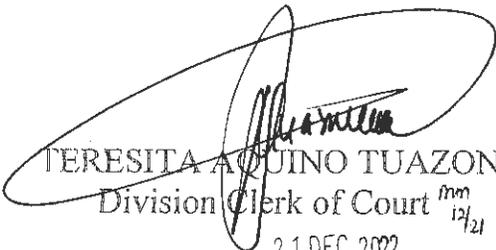
FOR THESE REASONS, the petition is **DENIED**. The Decision dated September 22, 2020 and the Resolution dated January 26, 2021 of the Court of Appeals in CA-G.R. CR No. 03395 are **AFFIRMED** with **MODIFICATION** as to the nomenclature of the crime committed by petitioner Marcelo Crisostomo, as to the penalty imposed, and as to the monetary awards.

Petitioner Marcelo Crisostomo is found guilty beyond reasonable doubt for Lascivious Conduct under Article 5 (b) of Republic Act No. 7610. He is sentenced to suffer the indeterminate penalty of imprisonment of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. He is ordered to pay AAA16944 a fine of PHP 15,000.00, as well as civil indemnity in the amount of PHP 50,000.00, moral damages in the amount of PHP 50,000.00, and exemplary damages in the amount of PHP 50,000.00.

All monetary awards for damages shall earn an interest rate of 6% per annum to be computed from the finality of the judgment until fully paid.

SO ORDERED." (*Leonen, J., on official leave*)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court ^{mm}_{12/21}
21 DEC 2022

* Per Special Order No. 2909 dated September 9, 2022.

ARUNGAYAN AND DAPITON LAW OFFICE (reg)
(Atty. Pacifer Victorino C. Ticao)
Counsel for Petitioner
3rd Floor, Tibiao Bakery Building
Jalandoni St. corner Ma. Clara Avenue
Iloilo City

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

MARCELO CRISOSTOMO (reg)
Petitioner
Brgy. M. Chavez, San Lorenzo
5048 Guimaras

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 65
Jordan, 5045 Guimaras
(Crim. Case No. 15-2016)

COURT OF APPEALS (reg)
Visayas Station
Cebu City
CA-G.R. CEB-CR No. 03395

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

Please notify the Court of any change in your address.
UDK-16944. 9/12/2022(202)URES(o) 