



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 8, 2023 which reads as follows:

“**G.R. No. 260855 (*People of the Philippines v. XXX*¹).**—This appeal² challenges the October 30, 2020 Decision³ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 11180, which affirmed with modification the April 12, 2018 Decision⁴ of the Regional Trial Court of ██████████,⁵ Branch █ in Criminal Case Nos. RTC-9028-I to RTC-9032-I. The CA found accused-appellant XXX guilty beyond reasonable doubt for the crimes of Sexual Assault under Article 266-A, paragraph 2 in relation to Section 5(b) of Republic Act No. (RA) 7610,⁶ and of Acts of Lasciviousness under Art. 336 of the Revised Penal Code (RPC) in relation to Sec. 5, par. (b) of RA 7610.⁷

The Antecedents

Accused-appellant was charged with Rape by Sexual Assault pursuant to Art. 266-A in relation to Art. 266-B of the RPC in four separate Informations,⁸ which read as follows:

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. 3-5.

³ *Id.* at 9-21. Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Ruben Reynaldo G. Roxas and Alfredo D. Ampuan.

⁴ *Rollo*, pp. 23-33. Penned by Presiding Judge Consuelo Amog-Bocar.

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

⁶ 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.

⁷ *Rollo*, pp. 20-21.

⁸ Records (Crim. Case No. RTC-9028-I), pp. 2-3; Records (Crim. Case No. RTC-9029-I), pp.2-3; Records (Crim. Case No. RTC-9030-I), pp.2-3; and Records (Crim. Case No. RTC-9032-I), pp. 2-3.

Crim. Case No. RTC-9028-I:

That in or about and sometime in the year 2014, in the evening, in [REDACTED], and within the jurisdiction of this Honorable Court, the said accused, who is the common law spouse of [BBB], mother of minor [AAA],⁹ with lewd design, did then and there willfully, unlawfully and feloniously, insert his finger into the genitalia of 9-year old [AAA], against her will and consent, and which acts of the accused, debased, degraded and demeaned the latter of her intrinsic worth and dignity, to the damage and prejudice of said minor [AAA].

CONTRARY TO LAW.¹⁰

Crim. Case No. RTC-9029-I:

That on or about the 25th day of December, 2014, in [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the common law spouse of [BBB], mother of minor [AAA], with lewd design, did then and there willfully, unlawfully and feloniously, insert his finger into the genitalia of 9-year old [AAA], against her will and consent, and which acts of the accused, debased, degraded and demeaned the latter of her intrinsic worth and dignity, to the damage and prejudice of said minor [AAA].

CONTRARY TO LAW.¹¹

Crim. Case No. RTC-9030-I:

That in or about and sometime in the year 2013 in [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the common law spouse of [BBB], mother of minor [AAA], with lewd design, did then and there willfully, unlawfully and feloniously, insert his finger into the genitalia of 8-year old [AAA], against her will and consent, and which acts of the accused, debased, degraded and demeaned the latter of her intrinsic worth and dignity, to the damage and prejudice of said minor [AAA].

CONTRARY TO LAW.¹²

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 (Crim. Case No. RTC-9028-I), p. 2.

¹¹ Records (Crim. Case No. RTC-9029-I), p. 2.

¹² Records (Crim. Case No. RTC-9030-I), p. 2.

Crim. Case No. RTC-9032-I:

That in or about and sometime in the year 2013, in the evening, in [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the common law spouse of [BBB], mother of minor [AAA], with lewd design, did then and there willfully, unlawfully and feloniously, insert his finger into the genitalia of 8-year old [AAA], against her will and consent, and which acts of the accused, debased, degraded and demeaned the latter of her intrinsic worth and dignity, to the damage and prejudice of said minor [AAA].

CONTRARY TO LAW.¹³

Accused-appellant was also charged with Acts of Lasciviousness under Art. 336 of the RPC, in relation to Sec. 5, par. (b) of RA 7610. The accusatory portion of the Information¹⁴ reads:

Crim. Case No. RTC-9031-I:

That in or about and sometime in the year 2014, in [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, did then and there willfully, unlawfully and feloniously engage and commit lascivious conduct on 9-year old [AAA], by going on top of her, and kissing her on the lips and on the neck, which act of the accused, debases, degrades and demeaned said [AAA], to the damage and prejudice of the latter.

CONTRARY TO LAW.¹⁵

Accused-appellant pleaded not guilty for the crimes charged during arraignment.¹⁶ Joint trial of said cases ensued.¹⁷ The prosecution presented (1) AAA; (2) BBB, mother of AAA; and (3) Dr. Ronaldo Santos (Dr. Santos),¹⁸ as witnesses while the defense presented accused-appellant as its lone witness.¹⁹

Version of the Prosecution

In four separate incidents, accused-appellant, BBB's live-in partner, inserted his finger into AAA's genitalia.²⁰

The first incident transpired when AAA was 8 years old and while they were still living with accused-appellant. AAA was playing with her cousins

¹³ Records (Crim. Case No. RTC-9032-I), p. 2.

¹⁴ Records (Crim. Case No. RTC-9031-I), pp. 2-3.

¹⁵ Id. at 2.

¹⁶ *Rollo*, p. 11.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id. at 13.

²⁰ Id. at 11.

outside their house when accused-appellant asked about BBB's whereabouts. Accused-appellant invited AAA to look for BBB. When they failed to locate BBB despite hours of searching, accused-appellant brought AAA to a dark place. He put his hand inside AAA's short pants and inserted his finger into her genitalia. AAA ran away and cried because her genitalia was hurting.²¹

The second instance happened when AAA, together with her 6-year-old aunt, was sleeping inside their room. She was awakened when she felt a blanket placed on top of her and saw accused-appellant lay down beside her. Accused-appellant then inserted his finger into her genitalia. Accused-appellant threatened to kill her if she would tell anyone about it. AAA cried and told accused-appellant that she wanted to sleep beside her mother. Accused-appellant carried AAA to the room where her mother was sleeping.²²

Accused-appellant committed the same sexual abuse against AAA for the third time when the latter was watching television in their house. Accused-appellant arrived and sat beside AAA. He once again threatened to kill her if she would report about the incident. Accused-appellant then placed his hand inside AAA's short pants and inserted his finger into her genitalia. AAA cried out and told accused-appellant that she wanted to go to their previous house. Accused-appellant brought AAA to said house on board a motorcycle.²³

The fourth incident occurred while accused-appellant and AAA were travelling on board a truck to look for BBB. Accused-appellant asked AAA to sit beside him. While accused-appellant was driving, he suddenly placed his hand inside AAA's short pants and inserted his finger into her genitalia. Accused-appellant told AAA not to report, otherwise, he would kill her.²⁴

The last incident happened when AAA and her siblings were in accused-appellant's house. While she was lying on the bed, accused-appellant threatened her not to tell anyone or else he would kill her, then he suddenly went on top of her, kissed her neck and lips, and went outside the house. AAA failed to take action because she feared accused-appellant.²⁵

BBB testified that on May 24, 2015, AAA approached her and told her that accused-appellant molested her. Shocked, BBB repeatedly asked AAA who narrated in detail accused-appellant's abuses against her. AAA could not tell BBB the exact dates of said incidents. They proceeded to the police station to report the matter and file charges against accused-appellant. They subsequently went to Dr. Santos for AAA's medico-legal examination.²⁶

²¹ Id. at 11-12.

²² Id. at 12.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Id. at 12-13.

In his testimony, Dr. Santos, a medico-legal officer at Camp Conrado Yap in ██████████, found shallow healed laceration at 11:00 o'clock position on AAA's hymen. He testified that something blunt, *i.e.*, genital organ, finger, or tongue inserted to the genitalia may have caused such laceration. He concluded that there was clear evidence of a blunt penetrating trauma to the genital region which was consistent with the complaint for sexual abuse.²⁷

Version of the Defense

Accused-appellant denied the charges against him. He was BBB's former live-in partner and they resided together with BBB's children in ██████████. He averred that he could not do such accusations because he treated AAA like his own child. Accused-appellant denied: (1) that he carried AAA and transferred her beside BBB; (2) that he and AAA went to find BBB because he could not accompany AAA at that time because there were a lot of dogs and it was already night time; (3) that he inserted his finger into AAA's genitalia because he went out for net fishing and went straight home that one evening, and because AAA would always sleep and position herself beside BBB.²⁸

And as to the truck incident, BBB left AAA with accused-appellant so they stopped over at a market and bought her clothes. Then, they boarded the truck that accused-appellant was driving. They stopped and met accused-appellant's *kumpare*. While AAA was left in the truck, accused-appellant and his *kumpare* drank two bottles of liquor. After their drinking session, accused-appellant found out that AAA already left. He asked around and someone told him that AAA was brought to the police station. He claimed that he considered BBB's family like his own family so he could not have done such accusations.²⁹

Ruling of the Regional Trial Court

In a Decision³⁰ dated April 12, 2018, the trial court found accused-appellant guilty of the crimes charged. AAA's narration was credible, convincing, consistent, and full of details of her ordeal in the hands of accused-appellant. She identified accused-appellant as the perpetrator of the said crimes. Conversely, accused-appellant's defenses of alibi and denial failed to pass the litmus test so as to overturn AAA's clear and straightforward testimony.³¹

²⁷ Id. at 13.

²⁸ Id.

²⁹ Id. at 13-14.

³⁰ Id. at 23-33.

³¹ Id. at 27-32.

The *fallo* of the Decision reads in this wise:

WHEREFORE, judgment is hereby rendered finding accused [XXX] guilty beyond reasonable doubt of four counts of rape by sexual assault under Article 266-B of the Revised Penal Code as amended by Republic Act No. 8353 in Crim. Case No. RTC-9028-I, Crim. Case No. RTC-9029-I, Crim. Case No. RTC-9030-I and Crim. Case No. RTC-9032-I and he is sentenced to suffer the penalty of *reclusion perpetua* in each case.

He is further ordered to pay private complainant civil indemnity of ₱100,000, moral damages of ₱100,000 and exemplary damages also in the amount of ₱100,000 for each count of rape.

Accused is likewise found guilty beyond reasonable doubt of the crime of acts of lasciviousness in relation to Section 5 (b) of Republic Act No. 7610 in Crim. Case No. RTC-9031-I and he is hereby sentenced to suffer the indeterminate imprisonment of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period as minimum to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* in its medium period as maximum.

He is also ordered to pay private complainant the amount ₱15,000.00 as moral damages; ₱15,000.00 as exemplary damages, ₱15,000.00 as fine and ₱20,000.00 as civil indemnity.

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

SO ORDERED.³²

Aggrieved, accused-appellant appealed³³ to the CA.

Ruling of the Court of Appeals

In its October 30, 2020 Decision,³⁴ the appellate court affirmed accused-appellant's conviction for the crimes charged. The informations filed were sufficient despite the lack of particular dates as to the commission of the crime since the same is not an essential element of the offense. Concomitantly, the prosecution proved the elements for the crimes charged based on AAA's straightforward and convincing narration of details pertaining to accused-appellant's bestial acts.³⁵

The dispositive portion of the appellate court's Decision reads:

³² Id. at 32-33.

³³ CA *rollo*, pp. 11-12.

³⁴ *Rollo*, pp. 9-21.

³⁵ Id. at 15-20.

WHEREFORE, the appeal is **DENIED**. The decision of the Regional Trial Court of [REDACTED], Branch [REDACTED] dated April 12, 2018 in Crim. Cases Nos. RTC-9028-I, [RTC-9029-I], RTC-9030-I, RTC-9031-I, and RTC-9032-I is **AFFIRMED WITH MODIFICATION**.

In Crim. Cases No. RTC-9028-I, RTC-9029-I, RTC-9030-I, RTC-9032-I, accused-appellant [XXX] is found guilty beyond reasonable doubt of the crime of Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610 and is sentenced to suffer the indeterminate penalty of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum in each of the four criminal cases. Accused-appellant is ordered to pay private complainant [AAA] the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages in each case, with legal interest of six percent (6%) *per annum* imposed on all monetary awards from the date of finality of this decision until full payment.

In Crim. Case No. RTC-9031-I, accused-appellant [XXX] is found guilty beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation [to] Section 5, paragraph (b), of Article III, of Republic Act No. 7610 and is sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* as maximum. Accused-appellant is ordered to pay private complainant [AAA] the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, with legal interest of six percent (6%) *per annum* imposed on all monetary awards from the date of finality of this decision until full payment.

SO ORDERED.³⁶

Unrelenting, accused-appellant appealed³⁷ before this Court.

In his Brief,³⁸ accused-appellant argues that his constitutional right to be informed of the nature and cause of accusation against him was violated when the informations filed did not particularly state the exact date of the commission of the crime.³⁹ Additionally, he points out that the different occasions of the alleged sexual assault should have produced several lacerations, contrary to the Initial Medico-Legal Report⁴⁰ which stated that there was a shallow healed laceration at 11 o'clock position on AAA's hymen.⁴¹ This results into moral uncertainty that only one laceration became the consequence sexual assault on different occasions.⁴²

³⁶ Id. at 20-21.

³⁷ Id. at 3-5.

³⁸ CA rollo, pp. 43-57.

³⁹ Id. at 39-41.

⁴⁰ Records (Crim. Case No. RTC-9028-I), p. 111.

⁴¹ CA rollo, pp. 41-46.

⁴² Id. at 45-46.

For its part, the People, in its Brief⁴³ argues that objections as to the form of the complaint or information, *i.e.*, failure to state the exact date of commission of the crime, cannot be raised for the first time on appeal, hence, accused-appellant already waived his right to assail said defect in the information. And even granting that it may be raised, the date of the commission of the crime is not an essential element for the prosecution thereof.⁴⁴ Finally, AAA's credible testimony clearly points to the elements of rape by sexual assault and acts of lasciviousness.⁴⁵

In fine, the sole issue before this Court is whether accused-appellant is guilty beyond reasonable doubt of the crimes charged.

Our Ruling

The appeal lacks merit.

This Court affirms the conviction of accused-appellant for the crimes of Sexual Assault under Art. 266-A, par. 2 in relation to Sec. 5(b) of RA 7610, and of Acts of Lasciviousness under Art. 336 of the RPC in relation to Sec. 5, par. (b) of RA 7610.

Jurisprudence is settled that the trial court's factual findings as well as its assessment of the witnesses' credibility are accorded great weight and respect as a rule. This finds significance in the prosecution of rape cases where the victim's testimony alone may be adequate to sustain the judgment of conviction. As elucidated in *People v. Elimancil*:⁴⁶

The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction. As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial. x x x.⁴⁷

Considering that this case does not call for the application of the exceptions, *i.e.*, the judgment was reached arbitrarily, the trial court overlooked or misapplied circumstances of substance that would alter the judgment, among others,⁴⁸ then this Court is mandated to adhere to the general rule where the trial court's findings of fact shall stand on review.

⁴³ Id. at 74-95.

⁴⁴ Id. at 84-88.

⁴⁵ Id. at 88-94.

⁴⁶ G.R. No. 234951, January 28, 2019.

⁴⁷ Id. Citations omitted.

⁴⁸ Id.

Similarly, accused-appellant's contention regarding the insufficiency of the information which allegedly violated his constitutional right to be informed of the nature and cause of accusation against him necessarily fails. This Court consistently holds that the date of commission in the crime of rape is not an essential element that needed to be specifically provided in the information. Time is not a material ingredient of rape. In *People v. ZZZ*,⁴⁹ this Court declared:

We fully agree with the appellate court's ruling that —

[A]n Information is valid as long as it distinctly states the elements of the offense and the acts or omission constitutive thereof. **The exact date of the commission of a crime is not an essential element of the crime charged. In a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The precise time of the crime has no substantial bearing on its commission. Therefore, it is not essential that it be alleged in the information with ultimate precision.**

Further, it cannot be considered that appellant was deprived of his constitutional right to be informed of the nature and cause of the accusation against him. As cited in *People v. Ibañez*, the Supreme Court previously upheld complaints and informations in prosecutions for rape which merely alleged that a rape has been committed “sometime in the month of April 1993,” for a rape which was committed in 1993; “on or about May 1998,” for a rape committed sometime in the first week of May 1998; and “sometime in the month of September 1998” for a rape committed on an evening in September 1998. Here, the allegation in the Information that appellant committed rape “sometime in the early part of 2008” was sufficient to inform appellant that he was being charged [with] rape committed against his granddaughter.

It bears emphasis that objections as to the form of the complaint or information cannot be made for the first time on appeal. If appellant found the Information insufficient, he should have moved before arraignment either for a bill of particulars, for him to be properly informed of the exact date of the alleged rape; or for the quashal of the Information, on the ground that it did not conform with the prescribed form. As appellant failed to pursue either remedy, he is deemed to have waived objection to any formal defect in the Information.⁵⁰ (Emphasis supplied)

On the substantive aspect, this Court resolves that accused-appellant indeed committed the crimes charged against him. The straightforward and credible testimony of AAA established beyond doubt that she was sexually abused in several instances, *viz.*:

10. [Tanong] – Ano ang ginawa sa iyo ni [accused-appellant]?
[Sagot] – Ginalaw po niya ako.

⁴⁹ G.R. No. 232329, April 28, 2021.

⁵⁰ Id. Citation omitted.

11. T – Ano ang ibig mong sabihin na ginalaw?
S – **[Ipinasok] po niya ang daliri niya sa pepe ko.**
12. T – Kailan at saan ka ginalaw ni [accused-appellant]?
S – Palagi pong gabi niya ginagawa. Hindi ko po matandaan kung ano ang mga araw. Sa iba't ibang lugar po.
13. T – Ilang beses kang ginalaw ni [accused-appellant]?
S – Maraming beses po.
14. T – Ilang taon ka noong una kang ginalaw ni [accused-appellant]?
S – Noong eight (8) [years] old pa po ako.
15. T – Saan ang unang pangyayari?
S – Sa [REDACTED] po.
16. T – Maari mo bang ikwento sa akin ang ginawa sa iyo ni [accused-appellant]?
S – Gabi na po nang nakikipaglaro ako sa mga pinsan ko sa taas ng bahay namin. Bigla akong tinanong ni tito [accused-appellant] kung nasan daw si mama ko? Sinabi ko na hindi ko alam tapos niyaya niya ako na hanapin daw namin si mama ko.
17. T – Ano ang ginawa mo?
S – Sumunod po ako kay tito [accused-appellant] at hinanap namin si mama ko sa [REDACTED].
- x x x x
19. T – Ano pa ang sumunod na nangyari?
S – x x x. Habang hinahanap pa namin si mama ko ay dinala ako sa dilim ni tito [accused-appellant]. **Pagdating sa dilim ay huminto kami at bigla niyang ipinasok ang kamay niya sa short pants ko at tinusok niya ng daliri niya ang pepe ko saka siya naghubad ng damit.**
20. T – Ano ang ginawa mo?
S – Umiyak po ako dahil masakit ang pepe ko tapos mabilis na akong tumakbo palayo. Hinabol niya ako pero hindi niya ako naabutan.
21. T – Ano pa ang sumunod na ginawa sa iyo ni [accused-appellant]?
S – x x x. Natutulog ako sa kwarto naming kasama ko si tita ko na kapatid ni mama ko. Nagising ako dahil naramdaman ko na may nagkumot sa akin at nakita ko si tito [accused-appellant]. Humiga siya sa tabi ko. Sinabihan niya ako na patayin daw niya ako pag nagsumbong ako kahit kanino. **Habang nakahiga kami ay ipinasok niya ang daliri niya sa pepe ko.**
- x x x x
24. T – Ano pa ang ginawa sa iyo ni [accused-appellant]?
S – x x x. Habang mag-isa akong nanunuod ng TV sa loob ng bahay, dumating si tito [accused-appellant]. Lumapit siya sa akin tapos bigla siyang tumabi sa akin. Sinabihan niya ako na patayin daw

niya ako pag magsubmbong ako. **Pagkatapos niyang sabihin iyon ay ipinasok niya ang kamay niya sa short pants ko saka niya tinusok ng daliri niya ang pepe ko.**

x x x x

26. T – Ano pa ang sumunod na ginawa sa iyo ni [accused-appellant]?
S – x x x. Sinabi niya na hindi naman siya matulog doon sa kama kaya sumunod na po ako. Nang nakahiga na ako sa may kama, sinabi niya sa akin na huwag daw ako magsubmbong kasi papatayin niya ako. **Bigla na siyang pumatong sa akin at hinalik halikan niya ako sa labi at sa leeg pagkatapos ay lumabas na siya ng bahay.**

x x x x

28. T – Ano pa ang sumunod na ginawa sa iyo ni [accused-appellant]?
S – x x x. Nanunuod po ako ng TV mag-isa sa sala, lumapit sa akin si tito [accused-appellant] at sinabi niya sa akin na hanapin daw namin si mama ko dahil nasa [REDACTED] daw po siya. Sumunod naman po ako sa kaniya kahit takot na takot ako. Sumakay kami sa truck papunta daw kami sa [REDACTED]. Siya po ang nagdrive at pinaupo niya ako sa tabi niya. **Habang basa byahe kami ay bigla niyang ipinasok ang kamay sa short pants ko. Tinusok-tusok niya ang pepe ko tapos sinabi niya na huwag daw ako magsubmbong dahil papatayin niya daw ako.**⁵¹
(Emphases supplied)

It cannot be gainsaid from AAA's narration that accused-appellant took advantage of her tender age and sexually abused her by inserting his finger into her vagina in several instances. Consequently, accused-appellant's argument, that one hymenal laceration at 11 o'clock position would have rendered several occasions of sexual abuse improbable, is of no moment. Settled in a plethora of cases is the doctrine that the absence of hymenal laceration does not negate the occurrence of rape because a hymen could still be intact despite history of sexual abuse or intercourse based on medical studies.⁵²

*People v. Bay-od*⁵³ expounded that there may be other reasons why there is absence of injuries or lacerations in a rape victim's hymen:

Moreover, in *People v. Pamintuan*, We recognized that the absence of injuries in a rape victim's hymen could also be attributed to a variety of factors that do not at all discount the fact that rape has been committed. As *Pamintuan* observed:

⁵¹ Records (Crim. Case No. RTC-9028-I), pp. 9-10.

⁵² *People v. Bay-od*, G.R. No. 238176, January 14, 2019.

⁵³ *Id.*

The presence or absence of injuries would depend on different factors, such as the forcefulness of the insertion, the size of the object inserted, the method by which the injury was caused, the changes occurring in a female child's body, and the length of healing time, if indeed injuries were caused. Thus, the fact that AAA did not sustain any injury in her sex organ does not *ipso facto* mean that she was not raped.⁵⁴ (Emphasis supplied)

Following said pronouncements, this Court resolves to affirm accused-appellant's conviction for the crimes charged. Correspondingly, the appellate court correctly used the proper designation of the offenses and properly determined the penalty to be imposed pursuant to *People v. Tulagan (Tulagan)*.⁵⁵

Tersely, *Tulagan*⁵⁶ set forth the guidelines in the proper designation of the crimes and imposable penalty in relation to sexual assault and acts of lasciviousness committed against minors. If the victim is under 12 years old, as AAA's age was when the offenses were committed, the sexual abuse committed shall be designated as "Sexual Assault under Article 266-A (2) of the RPC in relation to Section 5 (b) of R.A. No. 7610: [and the penalty to be imposed is] *reclusion temporal* in its medium period."⁵⁷ As for acts of lasciviousness, the proper designation is "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of R.A. No. 7610: [and the penalty to be imposed] is *reclusion temporal* in its medium period."⁵⁸ The appellate court accurately observed *Tulagan*'s guidelines in setting the penalty and the amounts for civil indemnity, moral damages and exemplary damages at the rate of ₱50,000.00 each.⁵⁹

Noteworthy, the divergent penalties set forth in the appellate court's decision may be justified by the surrounding aggravating circumstances attendant to each case. In the case of Sexual Assault, the appellate court appreciated the aggravating circumstances of minority and relationship. On the other hand, said circumstances were not considered in the case of Acts of Lasciviousness since they were not sufficiently alleged in the information for Crim. Case No. RTC-9031-I.⁶⁰ Pursuant to *People v. Jugueta*,⁶¹ ordinary or qualifying aggravating circumstances shall be stated in the complaint or information with due regard to the constitutional right of an accused to be informed of the nature of the allegation against him or her.

⁵⁴ Id. Citations omitted.

⁵⁵ 849 Phil. 197, 383-385 (2019).

⁵⁶ Id.

⁵⁷ Id. at 384-385.

⁵⁸ Id. at 383-384.

⁵⁹ Id. at 396.

⁶⁰ Records (Crim. Case No. RTC-9031-I), p. 2.

⁶¹ 783 Phil. 806, 831 (2016).


Finally, as initially awarded by the trial court, the fine in the amount of ₱15,000.00 shall be reinstated following Section 31 (f), Article XII⁶² of RA 7610.⁶³ This amount, not being a civil liability, is excluded from the computation of legal interest.

WHEREFORE, the appeal is **DISMISSED**. The October 30, 2020 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 11180 is **AFFIRMED with MODIFICATION** in that a fine in the amount of ₱15,000.00 is imposed.

The Office of the Solicitor General's Manifestation (in lieu of supplemental brief), pursuant to the Resolution dated October 17, 2022, is **NOTED**; and it is required to **SUBMIT**, within five (5) days from notice hereof, an electronic copy in PDF file of the signed manifestation in lieu of supplemental brief, pursuant to the Resolution dated February 22, 2022 in A.M. Nos. 10-3-7-SC and 11-9-4-SC.

SO ORDERED." *Rosario, J., on official leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *gelle*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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FEB 17 2023

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

Court of Appeals (x)
Manila
(CA-G.R. CR-HC No. 11180)

The Hon. Presiding Judge
Regional Trial Court, Branch 71
Iba, 2201 Zambales
(Crim. Case Nos. RTC-9028-I
to RTC-9032-I)

⁶² 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.

⁶³ *People v. VVV*, G.R. No. 230222, June 22, 2020.

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