



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 22, 2023** which reads as follows:*

“**G.R. No. 254812 (People of the Philippines v. XXX)**. — After review of the records of the case, this Court resolves to **DISMISS** the present appeal for failure to sufficiently show that the Court of Appeals (CA) committed any reversible error in affirming the conviction of accused-appellant.

In this case, the prosecution’s evidence sufficiently showed that accused-appellant assaulted the private complainant AAA,<sup>1</sup> then 11 years old,<sup>2</sup> on 23 September 2009, while she was on her way to school. Accused-appellant, private complainant’s neighbor, blocked her path and kissed her on the lips. He then pulled down her pants and underwear down to her ankles, touched her vagina, and then inserted two of his fingers into her vagina.<sup>3</sup>

While the insertion of accused-appellant’s finger into AAA’s vagina constitutes the crime of Sexual Assault, he cannot be convicted of the same. The Information in this case failed to allege such circumstance and merely charged accused-appellant “with kissing [AAA] and touching her private parts.” Since private complainant was under 12 years of age at the time of the commission of the crime, the alleged acts in the Information constituted as one for Acts of Lasciviousness under Article 336 of the Revised Penal Code.<sup>4</sup>

Nevertheless, private complainant’s testimony proved the commission of the crime of Statutory Rape committed on 11 October 2009. Her narration established that while she was doing laundry at the creek, accused-appellant grabbed her, took her to an isolated spot, undressed her, and inserted his penis

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<sup>1</sup> The identity of the victim or any information which could establish or compromise her identity, including the names of her immediate family or household members, and the *barangay* and town of the incident, are also withheld pursuant to SC Amended Administrative Circular No. 83-2015.

<sup>2</sup> *Records*, p. 81; see also Exhibit “A”, records, p.1, which shows the date of birth of private complainant, stated as 18 December 1997.

<sup>3</sup> *Rollo*, p. 9.

<sup>4</sup> Entitled: “AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS.” Approved: 08 December 1930.

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in her vagina. Clearly, having carnal knowledge of an 11-year-old girl is Statutory Rape.

While this Court agrees with the factual findings of the lower courts, there is a need to modify the nomenclature of the crime committed in Criminal Case No. 09-12-3311, as well as its consequent penalties and awards for damages.

The proper nomenclature of the crime committed by accused-appellant is Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5 (b), Article III of Republic Act No. (RA) 7610,<sup>5</sup> pursuant to *People v. Tulagan*.<sup>6</sup> The penalty for the same is *reclusion temporal* in its medium period, or 14 years, 8 months and 1 day to 17 years and 4 months.

Applying the Indeterminate Sentence Law,<sup>7</sup> there being no aggravating or mitigating circumstance, the maximum term of the sentence to be imposed shall be taken from the medium period of *reclusion temporal* medium, which ranges from 15 years, 6 months, and 21 days to 16 years, 5 months, and 9 days. On the other hand, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, that is *reclusion temporal* minimum, which ranges from 12 years and 1 day to 14 years and 8 months. Thus, the penalty must be modified to 12 years and one day of *reclusion temporal* in its minimum period as minimum, to 15 years, 6 months, and 21 days of *reclusion temporal* in its medium period as maximum.

In addition to the fine imposed by the CA, the award of civil indemnity and moral damages should each be increased to ₱50,000.00. Further, an award of exemplary damages must also be made in the amount of ₱50,000.00. All monetary awards shall be subject to a legal interest of six percent (6%) per *annum* computed from the finality of this Resolution until full payment.<sup>8</sup>

Meanwhile, in Criminal Case No. 09-12-3313, We find that the CA correctly imposed against accused-appellant the penalty of *reclusion perpetua* and the monetary awards are in accord with prevailing jurisprudence.

**WHEREFORE**, the instant appeal is **DISMISSED**. The Decision dated 23 July 2020 of the Court of Appeals in CA-G.R. CR-HC No. 02876 is **AFFIRMED with MODIFICATION** as follows:

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<sup>5</sup> Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES." Approved: 17 June 1992.

<sup>6</sup> G.R. No. 227363, 12 March 2019.

<sup>7</sup> ACT NO. 4103. Entitled "AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES." Approved: 19 June 1965.

<sup>8</sup> See *Joaquin v. People*, G.R. No. 244570, 17 February 2021.

1. In Criminal Case No. 09-12-3311, 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 (b), Article III of Republic Act No. 7610 and is sentenced to an indeterminate penalty of 12 years and one day of *reclusion temporal* in its minimum period as minimum, to 15 years, 6 months and 21 days of *reclusion temporal* in its medium period as maximum. He is further **ORDERED** to **PAY** AAA ₱15,000.00 as fine; ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages.
2. In Criminal Case No. 09-12-3313, accused-appellant XXX is found **GUILTY** beyond reasonable doubt of the crime of Statutory Rape and is sentenced to *reclusion perpetua*. He is **ORDERED** to **PAY** private complainant AAA ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages.

The total monetary awards, except for the fine, shall earn six percent (6%) interest per *annum* from finality of this Resolution until fully paid.

**SO ORDERED.”** *Marquez, J., on official business.*

**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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**APR 26 2023**

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

Court of Appeals  
6000 Cebu City  
CA-G.R. CR-HC No. 02876)

The Hon. Presiding Judge  
Regional Trial Court, Branch 25  
Maasin City, 6600 Southern Leyte  
(Crim. Case Nos. 09-12-3311 & 3313)

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XXX  
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The Superintendent  
Leyte Regional Prison  
Abuyog, 6510 Southern Leyte

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