



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-appellee,

G.R. No. 250128

Present:

PERLAS-BERNABE,*
LEONEN, J.,
Chairperson,
CARANDANG,
ZALAMEDA, and
MARQUEZ, JJ.

- versus -

JAY CORDIAL y BREZ,
Accused-appellant.

Promulgated:

November 24, 2021

MistdeBatt

DECISION

CARANDANG, J.:

This Court resolves an appeal¹ filed by accused Jay Cordial y Brez (Cordial) assailing the Decision² dated May 27, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09176, which affirmed with modification the Decision³ dated March 17, 2017 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 213 in Crim. Case No. MC12-14308 finding accused guilty beyond reasonable doubt of robbery with rape.

Cordial, together with Jimmy Irinco y Lagitan (Irinco), Victor Eva, Jr. y Corcoto (Eva), Marvin Apilyedo y Vililia (Apilyedo) and a certain Jane Doe, a.k.a “Gina” were charged with robbery with rape under the following Information:

That on or about the 12th day of March 2012, in the City of Mandaluyong, Philippines, a place within the

* Designated as additional Member of the Third Division.

¹ Rollo, pp. 18-19.

² Penned by Associate Justice Nina G. Antonio-Valenzuela, with the concurrence of Associate Justices Ricardo R. Rosario (now a Member of this Court) and Perpetua T. Atal-Paño; rollo, pp. 3-17.

³ Penned by Judge Carlos A. Valenzuela, CA rollo pp. 51-67.

jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding and abetting one another, by means of force and intimidation and with the use of firearms and knives, did then and there, willfully, unlawfully and feloniously enter the dwelling of, and take, rob and steal personal effects, including one (1) gold wedding ring worth Php 100,000.00, two (2) Nokia cellphones worth Php 7,000.00, two (2) laptop computers worth Php 60,000.00, cash amounting to Php 2,000.00, one (1) Blackberry Bold cellphone worth Php 35,000.00, one (1) cellphone worth Php 3,500.00, one (1) Playstation Portable Unit worth Php 12,000.00 with an estimated total worth of Php 300,000.00 belonging to, without the consent and to the damage and prejudice of their owners, [REDACTED]

[REDACTED] in the aforementioned total amount and, while the robbery was in progress, accused VICTOR EVA, JR., conspiring and confederating with the other accused, did then and there, willfully, unlawfully and feloniously insert his fingers in the vagina of [REDACTED] and accused JAY CORDIAL y BREZ mashed her breasts against her will.

CONTRARY TO LAW.⁴

Upon arraignment, all the accused pleaded not guilty. During trial however, accused Eva passed away.⁵

On March 12, 2012, around 8:00 p.m., BBB was in their living room checking his email and daily reports while his wife, CCC was watching television. AAA, DDD, and BBB's grandchildren were in their bedrooms at the second floor.⁶

The househelp, accused Gina, went out to throw garbage and left the gate open. After a few minutes, four men, namely accused Cordial, Irinco, Eva, and Apilyedo entered the house. BBB heard the dogs barking and when BBB turned, he saw Eva pointing a gun at him.⁷ Eva ordered BBB to lie on the ground face down and tied his hands. Cordial and Apilyedo approached CCC, tied her hands and covered her mouth. Irinco, who was holding a gun, took BBB's wedding ring while Cordial took BBB's laptop, cellphone, wallet, Swiss knife, and flashlight.⁸

After restraining BBB and CCC, the four accused went to the second floor. Eva and Cordial barged into a room where AAA was lying down. Eva pointed a gun at her and threatened to kill her should AAA speak. Cordial took out the packaging tape from his bag and tied AAA's hands. At the same time, Eva pulled down AAA's shorts and panties, touched AAA's vagina, and inserted his fingers inside AAA's vagina. Cordial, while tying AAA's hands,

⁴ Records, pp. 1-2.

⁵ *CA rollo*, 52.

⁶ *Id.* at 53.

⁷ *Id.* at 55.

⁸ *Id.* at 54.

repeatedly paused to mash AAA's breasts. AAA begged Eva and Cordial to stop. AAA convinced Eva and Cordial to stop, and in exchange she will show them their vault. Cordial then brought AAA to the first floor and shoved her beside her parents.⁹

At around 9:00 p.m., Dennis Platan (Platan), a barangay tanod, was at the [REDACTED] when a person on board a tricycle reported that there were four men at the house of BBB. Platan, along with other barangay tanods, went to the house of BBB and saw the latter on the floor, hog tied.¹⁰

Upon seeing the barangay tanods, Eva immediately ran to the second floor and escaped through the window, together with Cordial and Apilyedo. The barangay tanods were able to arrest Cordial and Apilyedo and confiscated their knives. Police Officer I Edwin Tan and Police Officer II Justiniano Pano also arrived at BBB's house. They were able to arrest Eva, who was hiding at a vacant lot behind BBB's house, and Irinco, who was hiding under the bed in the second floor.¹¹

The defense did not present any evidence.

Ruling of the Regional Trial Court

On March 17, 2017, the RTC issued a Decision finding Cordial guilty beyond reasonable doubt of robbery with rape.¹² It held that although Eva was the only one who actually committed the rape by sexual assault, Cordial was equally held guilty of rape because he was in the position to prevent or stop Eva from committing the crime of rape against AAA and yet he participated and even sexually molested AAA.¹³

As to Irinco and Apilyedo, they were only convicted of the crime of robbery because there was no evidence that they were aware that Eva and Cordial were committing the crime of rape against AAA. Thus, they could not have prevented the consummation of the same.¹⁴

The RTC appreciated the aggravating circumstance of dwelling and committed by a band as they were alleged in the Information and adequately proven during the trial, thus:

WHEREFORE, foregoing premises considered, judgment is hereby rendered as follows:

1. Accused JAY CORDIAL y BREZ is found GUILTY BEYOND REASONABLE DOUBT for the special complex crime of Robbery with Rape as defined and penalized under Article 294 of the Revised Penal Code,

⁹ Id. at 57.

¹⁰ Id.

¹¹ Id. at 57-58.

¹² Id. at 66-67.

¹³ Id. at 64.

¹⁴ Id.

as amended. He is hereby sentenced to suffer the penalty of twenty (20) years and one (1) day to forty (40) years of *reclusion perpetua* and to pay Seventy-Five Thousand Pesos (P75,000.00) as moral damages, Seventy-Five Thousand Pesos (P75,000.00) as Civil Indemnity Ex Delicto and Fifty Thousand Pesos (P50,000.00) as Exemplary Damages.

2. Accused JIMMY IRINCO y LAGITAN and MARVIN APILYEDO y VILILIA are both found GUILTY BEYOND REASONABLE DOUBT for the crime of Robbery as defined and penalized under Article 294 of the Revised Penal Code, as amended. They are hereby sentenced to suffer the penalty of imprisonment of ten (10) years of *prision mayor* in its maximum period to pay Seventy-Five Thousand Pesos (P75,000.00) as moral damages and Fifty Thousand Pesos (P50,000.00) as exemplary damages.

SO ORDERED.¹⁵

Ruling of the Court of Appeals

Only accused Cordial appealed the Decision of the RTC. On May 27, 2019, the CA affirmed with modification the RTC Decision, to wit:

We MODIFY the Decision dated 23 March 2017, of the Regional Trial Court, Branch 213, Mandaluyong City, as follows:

1. we find the appellant Jay Cordial y Brez GUILTY beyond reasonable doubt of the crime of Robbery With Rape, and sentence him to the indivisible penalty of *Reclusion Perpetua*;
2. we order the appellant Jay Cordial y Brez to pay the following sums: P100,000.00 (as civil indemnity); P100,000.00 (as moral damages); P100,000.00 (as exemplary damages) plus interest at the rate of 6% per annum from the finality of this Decision, until the award is fully satisfied.

IT IS SO ORDERED.¹⁶

Arguments of Accused-appellant

Cordial argued that there are inconsistencies in the testimonies of the prosecution witnesses that clearly impair their credibility, such as inconsistency as to the time of the robbery, inconsistency as to who untied BBB, inconsistency as to how accused-appellant entered the house, and inconsistency as to who among the accused went up the stairs first.¹⁷

¹⁵ Id. at 66-67.

¹⁶ *Rollo*, pp. 16-17.

¹⁷ *CA rollo*, pp. 41-43.

Cordial further argued that the prosecution was not able prove conspiracy. There is no evidence to show that he knew beforehand that Eva would insert his fingers inside AAA's vagina and that his act of tying AAA's hand is not evidence of his intent to facilitate the commission of the rape, but more of their original plan to rob the house. In conspiracy, the act of one is the act of all and each of the conspirators are liable for the crimes committed in furtherance of the conspiracy. Since the act done was not pursuant to the conspiracy nor was it a necessary and logical consequence of the intended crime, only the actual perpetrator is liable. As such, only Eva should be convicted of the crime robbery with rape. Cordial should not be held liable for rape.¹⁸

Issue

Whether accused Cordial can be held liable for robbery with rape.

Ruling of the Court

At the outset, it has been consistently settled that minor inconsistencies in the testimony of the victim does not automatically discredit the credibility of the witness. It should be borne in mind that minor inconsistencies are to be expected when a victim recalls harrowing and traumatic experience.¹⁹ Inconsistencies on inconsequential matters that has nothing to do on the elements of the crime cannot result in the acquittal of the accused.²⁰

In this case, Cordial argued that the testimonies of BBB and CCC were full of inconsistencies as to the time of the robbery, inconsistencies as to who untied BBB, inconsistencies as to how the accused entered the house and inconsistencies as to who among the accused went up the stairs first.

The inconsistent statements of BBB and CCC only refer to minor details that do not touch upon the elements of the crime. The exact time of the robbery or whether it was BBB who untied himself or as to whether it was the barangay officials who untied him, or whether Cordial forced the lock of the house to gain entry inside the house, or whether it was the maid who opened the gate, or whether Eva went up the 2nd floor first or whether he went up the stairs after he took BBB's laptop, wedding ring, wallet, and cellphone are inconsequential matters. The circumstances pointed out by Cordial did not prove that there was no robbery, in fact, it only strengthened the prosecution's evidence that a robbery occurred and Cordial, together with his co-accused, were the perpetrators.

**Robbery is undisputedly established
beyond reasonable doubt.**

¹⁸ Id. at 43-46.

¹⁹ *People v. Garte*, 592 Phil. 304 (2008).

²⁰ *People v. Gaduyon*, 720 Phil. 750 (2013).



To be convicted of robbery, it is necessary that the prosecution prove the following elements: (1) intent to gain; (2) unlawful taking; (3) of personal property belonging to another; and (4) with violence against or intimidation of person or force upon things.²¹

We find that the prosecution successfully proved beyond reasonable doubt the elements of the crime of robbery. In fact, the accused were all caught while the robbery was still taking place through the intervention of the neighbors, bantay bayan, and police officers.²²

Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of the asportation.²³ The intent to gain of the accused was established by the fact that when Eva was arrested, the wedding ring of BBB was recovered on the former's finger and that the belongings of the victims were recovered on the rooftop of the other house where the accused jumped to when they tried to escape.

It was also proved that the four accused entered the dwelling of the victims armed with guns and knife. They ordered BBB and CCC to lie face down and tied their hands and covered their mouths. Then on the second floor, Eva pointed his gun at AAA, threatened to kill her, then forced her to lie down and inserted his fingers inside AAA's vagina. Cordial, at the same time, tied the hands of AAA and repeatedly paused to mash her breasts. Undisputedly, the element of violence against and intimidation of the victims were duly established. The RTC and the CA correctly found that Eva, Cordial, Irinco, and Apilyedo were guilty of the crime of robbery.

The RTC and the CA however uniformly held that Eva and Cordial were guilty of the complex crime of robbery with rape while Apilyedo and Irinco were only held guilty of simple robbery in the absence of any evidence showing that Apilyedo and Irinco were aware of the lustful intent of Eva, such that they could have prevented the consummation of such intent.

Cordial argued that he should not be held guilty of robbery with rape since there is no evidence that he had prior knowledge that Eva would insert two fingers inside AAA's vagina. His act of tying AAA's hands is in furtherance of the original intent to rob and not to sexually abuse AAA. Thus, since the act done was not pursuant to the conspiracy to rob, only the actual perpetrator in this case, Eva, should be held guilty of the crime of robbery with rape.

Cordial is mistaken.

When conspiracy is established between several accused in the commission of the crime of robbery, they would all be equally culpable for

²¹ *People v. Romobio*, 820 Phil. 168, 184 (2017).

²² *CA rollo*, p. 59.

²³ *People v. Mejares*, 823 Phil. 459 (2018).



the rape committed by any one of them on the occasion of the robbery, unless anyone of them proves that he endeavored to prevent the rape.²⁴

In this case, the RTC and the CA were correct in holding Cordial also liable for the sexual abuse committed by Eva on AAA. Be it noted that when Eva removed AAA's shorts and inserted his fingers inside AAA's vagina, all these circumstances were committed in full view and in the presence of Cordial. He thus had all the opportunity to prevent the commission of the sexual assault.

Cordial, by his failure to prevent the commission of sexual assault on AAA, and even actively helped Eva for the consummation of the latter's bestial desires by tying AAA's hands, Cordial is not simply a conspirator with the sexual assault but is actually a participant in the said crime.

While Eva, who actually committed the sexual assault, passed away during the trial, his death however does not affect Cordial's liability for the crime they committed. The death of one of two or more conspirators does not prevent the conviction of the survivor or survivors, so long as the acquittal or death of a co-conspirator does not remove the basis of a charge for conspiracy, one defendant may be found guilty of the offense.²⁵ Here, even though Eva passed away, the basis for the conspiracy has not changed since Cordial still failed to prevent the commission of the sexual assault and even actively participated in consummating the said crime. As such, Cordial can still be held equally guilty of sexual assault.

Cordial, however, should be held liable for separate crimes of robbery and sexual assault.

Under Article 294, paragraph 1 of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 7659,²⁶ prescribes the penalty of *reclusion perpetua* to death when by reason of, or on the occasion of the robbery, the same was accompanied by rape. Thus, to be convicted of the special complex crime of robbery with rape, the original intent of the accused was to take, with intent to gain, the personal property of the victim, and rape was just committed on the occasion thereof.²⁷

In this case, while the original intent of all the accused was to take, with intent to gain, the personal property of the victims, and on the occasion of the robbery, Eva and Cordial, in conspiracy, committed the crime of sexual assault, Cordial cannot be convicted of the special complex crime of robbery with rape, but should be convicted of two separate and distinct crimes, robbery and sexual Assault.

²⁴ *People v. Agaton*, G.R. No. 251631, August 27, 2020.

²⁵ *People v. Go*, 730 Phil. 362, 371 (2014).

²⁶ An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as amended, Other Special Penal Laws, and For Other Purposes.

²⁷ *People v. Belmonte*, 813 Phil. 240, 246-247 (2017).

R.A. No. 7659, amending Article 294 of the RPC, was enacted on December 13, 1993. At that time, the penalty of *reclusion perpetua* to death is to be imposed when by reason or on the occasion of the robbery, rape was committed. It is to be noted that the definition of rape, at that time, under Article 335 of the RPC remained unchanged, that rape is committed by having carnal knowledge of a woman. The legislators could not have intended to include the crime of sexual assault in the definition of “rape” under Article 294 of the RPC, because at that time, acts constituting sexual assault were still considered as acts of lasciviousness.

It is only upon the enactment of R.A. No. 8353 on September 30, 1997 that the legislators expanded the traditional definition of the crime of rape to include acts of sexual assault. But the legislators never intended to redefine the traditional concept of rape. As held in the recent case of *People v. Tulagan*,²⁸ R.A. No. 8353 defined specific acts constituting acts of lasciviousness as a distinct crime of sexual assault. The law was never intended to redefine the traditional concept of rape. The Congress merely upgraded the same from a “crime against chastity” to a “crime against persons.”²⁹

In fact, under R.A. No. 8353, there was a distinction between the traditional rape and sexual assault. Carnal knowledge of the victim, through the insertion of the penis in the victim’s vagina, is penalized with *reclusion perpetua*, and in some instances, death can even be imposed. However, as provided for under Article 266-B³⁰ of the RPC, the crime of sexual assault is

²⁸ G.R. No. 227363, March 12, 2019.

²⁹ Id.

³⁰ **Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.** Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death. When by reason or on the occasion of the rape, the victim has become insane, the penalty shall become reclusion perpetua to death. **When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.** **When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.** The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;
 2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;
 3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;
 4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;
 5) When the victim is a child below seven (7) years old;
 6) When the offender knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;
 7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;
 8) When by reason or on the occasion of the rape, the victim has suffered permanent physical

punishable only by *prision mayor*. The only instance where *reclusion perpetua* is imposed in sexual assault is when in the occasion of the same a homicide is committed. Thus, it is clear that the legislators never intended to treat rape through sexual intercourse and sexual assault on equal footing. Sexual assault should be treated less severely than rape through sexual intercourse owing to the fact that the latter may lead to unwarranted procreation, an outcome not possible in sexual assault.³¹ As such, it cannot be allowed that the penalty of *reclusion perpetua* will be imposed when a robbery was committed and on the occasion thereof, sexual assault was committed.

As similarly held in the landmark case of *People v. Barrera*,³² to wit:

In the same vein, following legislative intent in the passage of R.A. No. 7659, the penalty of *reclusion perpetua* to death for the special complex crime of robbery and rape should be limited to instances when rape is accomplished through sexual intercourse or “organ penetration”. The penalty should not be unduly extended to cover sexual assault considering that the acts punishable under such mode were not yet recognized as “Rape” but as “Acts of Lasciviousness” at the time the severe penalty of death was imposed. All the more, to repeat for the sake of emphasis, as even after the inclusion of Sexual Assault in the definition of rape by R.A. No. 8353, Congress deliberations show that the law never intended to redefine the traditional concept of rape. Rather, the law merely expanded the definition of the crime of rape, with the intent of maintaining the existing distinction between the two modes of commission.

Robbery with rape, which the legislature only intended to cover the traditional concept of rape, is a special complex crime. A special complex crime, or a composite crime, is composed of two or more crimes that the law treats as a single indivisible and unique offense for being the product of a single criminal impulse.³³ It is the law and the intention behind it that creates a special complex crime. To reiterate, at the time R.A. 7659 was enacted, Congress did not intend to include the act of inserting a finger or a tongue inside the victim’s vagina or inserting the penis of the accused inside the

mutilation or disability;
 9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and
 10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.
Rape under paragraph 2 of the next preceding article shall be punished by prision mayor. Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prision mayor to reclusion temporal. When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion temporal.
When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion temporal to reclusion perpetua.
When by reason or on the occasion of the rape, homicide is committed, the penalty shall be reclusion perpetua.
 Reclusion temporal shall be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article. (Emphasis supplied)

³¹ *People v. Barrera*, G.R. No. 230549, December 1, 2020.

³² Id.

³³ *People v. Villaflores*, 685 Phil. 595, 610 (2012).

victim's mouth as rape that would be complexed with robbery. Thus, without the law defining what constitutes a special complex crime of robbery with sexual assault or that robbery is a necessary means to commit the crime of sexual assault, the court cannot punish Cordial of the said crime.

Thus, it would be unduly stretching the coverage of Article 294, paragraph 1 of the RPC to cover the crime of sexual assault. The law is clear that to be convicted of the special complex crime, the robbery must be accompanied by rape, which covers only carnal knowledge. This Court would be traversing judicial legislation if it reads into the law the crime of sexual assault, which clearly is not the intention of the legislature. The Court cannot simply presume that with the passage of R.A. No. 8353, rape as a component of the special complex crime of robbery with rape includes sexual assault. With respect to penal statutes, the Court cannot rest on mere deductions. The penal statute must clearly and specifically express that intent. In order for an accused to be convicted under a penal statute, the latter must clearly and definitively encompass and declare as criminal the accused's act prior to its commission.³⁴

Additionally, Cordial can also be convicted of a separate crime of acts of lasciviousness.

The elements of acts of lasciviousness are (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done under any of the following circumstances: (i) through force, threat, or intimidation; (ii) when the offended party is deprived of reason or otherwise unconscious; (iii) by means of fraudulent machination or grave abuse of authority; and (3) that the offended party is another person of either sex.³⁵ In acts of lasciviousness, when the victim is under the age of 18, regardless of the consent of the child, the accused can still be held guilty of the said crime, or when the victim is at least 18 years of age and is unable to protect themselves from abuse because of some physical or mental disability, or when the victim is at least 18 years of age and the lewdness was committed against the victim without their consent.

As held in the recent case of *People v. Tulagan*,³⁶ when the victim is under the age of 12 or is demented, the crime to be charged is acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of R.A. No. 7610, and the imposable penalty is *reclusion temporal in its medium period*. When the victim is over the age of 12 but below 18, or even if the victim is at least 18, but is unable to protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of some physical or mental disability, the crime to be charged is lascivious conduct under Section 5(b) of R.A. No. 7610 and the imposable penalty is *reclusion temporal in its medium period* to *reclusion perpetua*. When the victim is over the age of 18, R.A. No.

³⁴ *People v. Barrera*, supra note 32.

³⁵ *People v. Padlan*, 817 Phil. 1008, 1024 (2017).

³⁶ Supra note 28.

7610 is inapplicable and the crime to be charged is acts of lasciviousness under Article 336 of the RPC and the imposable penalty is *prision correccional*.

As testified to by AAA, while tying her hands, Cordial repeatedly paused to mash her breasts. The prosecution sufficiently established the elements of acts of lasciviousness. The mashing of AAA's breasts is clearly an act of lewdness. It was also done through force, threat, and intimidation since at that moment, Cordial was tying AAA's hands while Eva pointed a gun at her. Additionally, Cordial is also held guilty of the crime of acts of lasciviousness. In conspiracy, conspirators can be held guilty not only of the crime they personally committed but also all other crimes their co-conspirator committed.³⁷ In the present case, since there is nothing in the records that would indicate the age of AAA, R.A. No. 7610 is inapplicable. Hence, Cordial should be charged with acts of lasciviousness under Article 336 of the RPC.

Cordial can be convicted of three separate crimes of robbery, sexual assault, and acts of lasciviousness because, as worded, the Information sufficiently alleged all the elements of the three felonies and he failed, before arraignment, to move for the quashal of the Information. As such, Cordial can be found guilty of as many crimes as those charged and proved during the trial.³⁸

Penalty

At the outset, an appeal in criminal cases throws the entire case wide open for review and the court can correct errors, though unassigned in the appealed judgment.³⁹ The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.⁴⁰

In this case, the other accused Irinco and Apilyedo did not appeal the RTC ruling anymore. Hence, they shall not be affected by the appeal taken by Cordial, except when the judgment of the appellate court is favorable and applicable to them.⁴¹

Here, the RTC correctly appreciated the aggravating circumstance of dwelling and committed by a band because both were sufficiently alleged in the Information and duly proven during the trial.

Dwelling is considered an aggravating circumstance primarily because of the sanctity of privacy that the law accords to the human abode. Dwelling is aggravating in robbery with violence or intimidation because the crime of robbery can be committed without the necessity of trespassing the sanctity of

³⁷ *People v. Peralta*, 134 Phil. 703 (1968).

³⁸ *People v. Tamayo*, 434 Phil. 642, 656 (2002).

³⁹ *Ramos v. People*, 803 Phil. 775, 783 (2017).

⁴⁰ *People v. Bagamano*, 793 Phil. 602, 607 (2016).

⁴¹ Section 11(a), Rule 122 of the Revised Rules of Criminal Procedure.



the victim's house.⁴² Further when the robbery is committed by more than three armed malefactors, the robbery is deemed to have been committed by a band.⁴³

Under Article 294, paragraph 5 of the RPC the penalty for simple robbery is *prision correccional* maximum to *prision mayor* medium, which ranges from 4 years, 2 months, and 1 day to 10 years. Since the aggravating circumstances of dwelling and by a band are duly appreciated by the court, the penalty prescribed by law should be imposed in the maximum. The RTC however failed to provide a minimum period of the indeterminate sentence. Imposing the correct penalty, specifically by fixing a minimum term of the penalty, is applicable even as to those accused who did not appeal the Decision of the RTC, since Cordial can apply for parole upon serving the minimum sentence imposed by the court. As such, the decision in this case is favorable and beneficial to accused Irinco and Apilyedo, hence, applicable to them.

Thus, taking into account the indeterminate sentence law, the minimum term of the penalty to be imposed to Cordial, Irinco, and Apilyedo for simple robbery is the penalty next lower in degree than that provided by law, or within *arresto mayor maximum* to *prision correccional medium*.

Therefore, applying the Indeterminate Sentence Law, Cordial, Irinco, and Apilyedo shall be imposed a penalty of imprisonment of four (4) years and two (2) months of *prision correccional* as minimum to ten (10) years of *prision mayor* as maximum.

The penalty prescribed under R.A. No. 10951, amending the penalty for Article 299 and Article 302 of the RPC is not applicable in the present case, since in this case, Cordial did not enter the dwelling of the victims under any of the circumstances under Article 299, such as, (1) entering the house through an opening not intended for entrance or egress; or (2) by breaking any wall, roof, floor, door or window; or (3) by using false keys, picklocks, or similar tools; or (4) by using any fictitious name or pretending to be exercising public authority. As testified to by the victims, their maid, known only as "Gina," left the gate open and let Cordial enter their house.

As to the award of damages by the RTC for the crime of robbery, the same is deleted since no damages are awarded in simple robbery. Considering that the items stolen were recovered, the accused are no longer liable to restitute the same to the victims.

While there was only one Information charging Cordial of robbery with rape, the same is not an obstacle to convict the latter with three separate crimes of robbery, sexual assault under Article 266-A, paragraph 2 of the RPC, and acts of lasciviousness under Article 336 of the same Code. The Information in this case contains a complete recital of the elements of the crime of robbery,

⁴² *People v. Fabon*, 384 Phil. 860, 877 (2000)

⁴³ *Vergara v. People*, 425 Phil. 124, 130 (2002).

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sexual assault, and acts of lasciviousness. Since Cordial failed to move for the quashal of the Information for being a duplicitous Information, he is deemed to have waived his right to move for the quashal of the Information and he may be convicted of all crimes that is charged in the Information and proven during the trial.⁴⁴

Thus, for the crime of sexual assault under Article 266-A, paragraph 2 of the RPC, the penalty imposed is *prision mayor*. However, when the crime of sexual assault is committed with the use of deadly weapon or by two or more persons, the penalty shall be *prision mayor to reclusion temporal*. Since in this case, the sexual assault committed against AAA was done while a gun was pointed at the latter and was committed by two persons, the penalty to be imposed against Cordial should be *prision mayor to reclusion temporal*. Further, since the sexual assault was committed inside the dwelling of the victim, which aggravating circumstance was properly alleged in the Information and duly proven during the trial, the aggravating circumstance of dwelling is appreciated. As such, the penalty of *prision mayor to reclusion temporal* is to be imposed in its maximum period.

Applying the Indeterminate Sentence Law, the minimum term of the sentence should be taken anywhere within the range of *arresto mayor to prision correccional*. Thus, for the crime of Sexual Assault under paragraph 2 of Article 266-A of the RPC, accused Cordial should be imposed the penalty of imprisonment of four (4) years and two (2) months of *prision correccional* as minimum to fifteen (15) years, four (4) months, and one (1) day of *reclusion temporal* as maximum.

As for the crime of acts of lasciviousness, the penalty to be imposed is that provided for under Article 336 of the RPC, which is *prision correccional*. Since, the aggravating circumstance of dwelling is properly appreciated, the penalty should be imposed in its maximum period. Thus, applying the indeterminate sentence law, the minimum term of the sentence should be taken anywhere within the range of *arresto mayor*. Thus, for the crime of acts of lasciviousness, accused Cordial should be imposed the penalty of imprisonment of six (6) months of *arresto mayor* to six (6) years of *prision correccional*.

As to the amount of damages for the crime of sexual assault, accused Cordial is ordered to pay to AAA ₱30,000.00 each as civil indemnity, moral damages, and exemplary damages.⁴⁵

As to the amount of damages for the crime of acts of lasciviousness, accused Cordial is ordered to pay to AAA ₱20,000.00 each as civil indemnity, moral damages, and exemplary damages.⁴⁶

⁴⁴ *People v. Barrera*, supra note 32.

⁴⁵ *People v. De Chavez*, 824 Phil. 930 (2018).

⁴⁶ *People v. Tulagan*, supra note 28.

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Further, a legal interest of 6% *per annum* should be imposed on the damages awarded, computed from the date of finality of this judgment until full payment.⁴⁷

WHEREFORE, the appeal is **DENIED**. The Decision dated May 27, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 09176 is **AFFIRMED** with the following **MODIFICATIONS**:

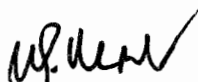
1. Accused-appellant Jay Cordial y Brez, Jimmy Irinco y Lagitan and Marvin Apilyedo y Vililia are found **GUILTY** beyond reasonable doubt of the crime of robbery as penalized under Article 294(5) of the Revised Penal Code. They are therefore sentenced to suffer an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum to ten (10) years of *prision mayor*, as maximum. The award of moral damages and exemplary damages are **DELETED**.
2. Accused-appellant Jay Cordial y Brez is found **GUILTY** of Sexual Assault under Article 266-A(2) of the Revised Penal Code. He is hereby sentenced to suffer an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum to fifteen, (15) years, four (4) months, and one (1) day of *reclusion temporal* as maximum. Further, accused-appellant Jay Cordial y Brez is **ORDERED** to pay damages to AAA in the amount of ₱30,000.00 each as civil indemnity, moral damages, and exemplary damages.
3. Accused-appellant Jay Cordial y Brez is found **GUILTY** of acts of lasciviousness under Article 336 of the the Revised Penal Code. He is hereby sentenced to suffer an indeterminate penalty of six (6) months of *arresto mayor* to six (6) years of *prision correccional*. Further, accused-appellant Jay Cordial y Brez is **ORDERED** to pay damages to AAA in the amount of ₱20,000.00 each as civil indemnity, moral damages, and exemplary damages.
4. Further, a legal interest of six percent (6%) *per annum* is likewise imposed on the total award of damages computed from the date of finality of this judgment until fully paid.

SO ORDERED.

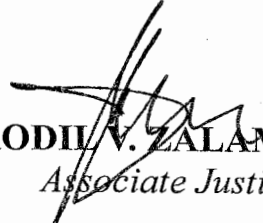

ROSMARI D. CARANDANG
Associate Justice

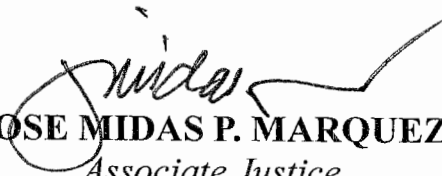
⁴⁷ *People v. Jugueta*, 783 Phil. 806 (2016).

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

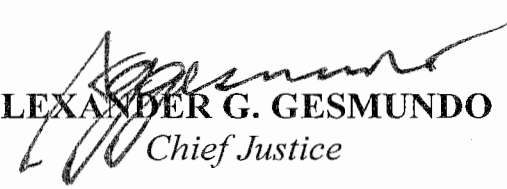
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice