



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 25, 2023**, which reads as follows:*

“G.R. No. 260179 (XXX,* *Petitioner*, v. *People of the Philippines, Respondent*). – Before the Court is a Petition¹ for Review on *Certiorari* under Rule 45 of the Rules of Court filed by XXX (petitioner) assailing the Decision² dated March 24, 2021 and the Resolution³ dated March 28, 2022 of the Court of Appeals (CA) in CA-G.R. CR No. 43375. The CA affirmed with modification the Decision⁴ dated February 22, 2019 of Branch 9, Regional Trial Court (RTC), [REDACTED], Bulacan in Criminal Case No. 5473-M-2017 which found petitioner guilty of Rape under Article 266-A, paragraph 2 of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353.⁵ The assailed resolution denied petitioner’s motion for reconsideration.

In the petition, petitioner alleged that his guilt was not proven beyond reasonable doubt. He argued that the CA erred when it sustained the finding of the RTC that the prosecution established all the elements of Rape by Sexual Assault; that his conviction is not supported by the evidence on record;⁶ and that the discrepancies and contradictory statements in the victim’s testimony seriously impair its probative value, cast serious doubt

* The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 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;” RA 9262, “An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and For Other Purposes;” Section 40 of Administrative Matter No. 04-10-11-SC, known as the “Rule on Violence against Women and Their Children,” effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

¹ *Rollo*, pp. 25–54.

² *Id.* at 13–23. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Emily R. Alifio-Geluz and Raymond Reynold R. Lauigan.

³ *Id.* at 10–11.

⁴ *Id.* at 62–73. Penned by Presiding Judge Veronica A. Vicente-De Guzman.

⁵ The Anti-Rape Law of 1997, approved on September 30, 1997.

⁶ *Rollo*, pp. 29–35.

on its credibility, and erode its integrity.⁷

At the outset, the Court notes that the instant petition suffers from the following technical defects: (1) it lacks a copy of the petition as required under the Rules on E-Filing (A.M. No. 10-3-7-SC) and the Efficient Use of Paper Rule (A.M. No. 11-9-4-SC) and (2) the verification of the petition with certification of non-forum shopping was signed by the mother of petitioner (YYY), without proof of authority to sign on behalf of her son.⁸

Sections 4⁹ and Section 5¹⁰ of Rule 7 of the 2019 Amended Rules of Court provide that the authorization of the affiant to act on behalf of a party should be attached to the pleading. Section 5 of the same Rule further provides that the failure to comply with the requirements, which include attaching the aforesaid authorization, shall not be curable by mere amendment of the pleading and shall be sufficient cause for the dismissal of the case. The failure to attach to the instant petition the proof of authority of YYY to sign the Verification/Certification of Non-Forum Shopping¹¹ on behalf of petitioner is sufficient basis for the dismissal of the petition.

Even assuming that the petition for review on *certiorari* had been properly filed, the petition must still be dismissed for lack of merit.

The CA convicted petitioner of the crime of Rape by Sexual Assault under Article 266-A, paragraph 2 of the RPC, in relation to Section 5(b)¹² of

⁷ Id. at 35.

⁸ Id. at 54.

⁹ SECTION 4. *Verification.* – x x x.

A pleading is verified by an affidavit of an affiant duly authorized to sign said verification. The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading x x x.

x x x x

¹⁰ SECTION 5. *Certification against Forum Shopping.* – x x x.

The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. x x x.

¹¹ *Rollo*, p. 54.

¹² Section 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be:

RA 7610.¹³

Rape by Sexual Assault is committed when the penis is inserted into another person's mouth or anal orifice, or when any instrument or object is inserted into another person's genital or anal orifice.¹⁴

The elements of Rape by Sexual Assault are as follows:

- (1) That the offender commits an act of sexual assault;
- (2) That the act of sexual assault is committed by any of the following means:
 - (a) *By inserting his penis into another person's mouth* or anal orifice;
or
 - (b) By inserting any instrument or object into the genital or anal orifice of another person;
- (3) That the act of sexual assault is accomplished under any of the following circumstances:
 - (a) By using force and intimidation;
 - (b) When the woman is deprived of reason or otherwise unconscious;
or
 - (c) By means of fraudulent machination or grave abuse of authority; or
 - (d) *When the woman is under 12 years of age* or demented.¹⁵
(Emphasis supplied)

On the other hand, the essential elements of sexual abuse under Section 5(b) of RA 7610 are as follows: "(1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the

Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x

x x x x

¹³ Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, approved on June 17, 1992.

¹⁴ ARTICLE 266-A. *Rape; When And How Committed*. — Rape is committed:

x x x x

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.

¹⁵ *Granton v. People*, 841 Phil. 973, 982-983 (2018).

child, whether male or female, is below 18 years of age.”¹⁶

Meanwhile, lascivious conduct is defined in Section 2(h) of the Implementing Rules and Regulations (IRR) of RA 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.

Here, all the elements of Rape by Sexual Assault under Article 266-A, paragraph 2 of the RPC, in relation to Section 5(b) of RA 7610, are present. As testified upon by the victim, AAA petitioner instructed her to insert his penis into her mouth. At the date of the incident, AAA was only six years old.¹⁷

“Findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded respect, if not finality by the appellate court.”¹⁸ As such, the Court finds no doubt as to AAA’s credibility and has no reason to deviate from the findings of the RTC and CA in lending credence to her version of the incident.

Moreover, “testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.”¹⁹ Even inconsistencies in these testimonies do not affect their credibility. On the contrary, these inconsistencies strengthen the testimonies’ credibility as they show that these are not rehearsed. It is only important that these testimonies are consistent as to the occurrence and identity of the perpetrator.²⁰

From the foregoing discussion, the CA correctly ruled that AAA’s positive identification that petitioner sexually assaulted her holds more weight than the latter’s weak defenses of denial and alibi.

¹⁶ *Dela Cruz v. People*, G.R. No. 245516, June 14, 2021.

¹⁷ *Rollo*, p. 71.

¹⁸ *Estrella v. People*, G.R. No. 212942, June 17, 2020, citing *People v. Aspa*, 838 Phil. 302, 311-312 (2018).

¹⁹ *People v. XXX*, G.R. No. 218277, November 9, 2020, citing *People v. Salaver*, 839 Phil. 93, 103 (2018).

²⁰ *Fernandez v. People*, 843 Phil. 745, 757 (2018).

Furthermore, the Court does not find it necessary to deliberate on the contention of petitioner that he should be acquitted as the evidence on record (*i.e.*, the photograph of AAA allegedly holding the penis of petitioner and the cellular phone which petitioner allegedly used to take the photograph) has no probative value for being inadmissible. It should be pointed out that the CA in finding petitioner guilty for the crime charged relied on the credibility and sufficiency of AAA's testimony.²¹ The Court agrees with the CA as "[i]t is doctrinally settled that the lone testimony of the rape victim herself is competent to establish guilt, where the same is found to be credible, convincing, and consistent with human nature and the normal course of things."²²

Following *People v. Tulagan*²³ (*Tulagan*), Rape by Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of RA 7610 is punishable by *reclusion temporal* in its medium period when the victim is under 12 years old.²⁴ Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law and the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period.

The RTC, as affirmed by the CA, correctly imposed the minimum term of the indeterminate penalty of twelve (12) years, ten (10) months, and twenty-one (21) days of *reclusion temporal*. However, consistent with Article 65²⁵ of the RPC, the Court modifies the maximum term of the indeterminate penalty from fifteen (15) years, six (6) months, and twenty (20) days to *fifteen (15) years, six (6) months, and twenty-one (21) days of reclusion temporal*.²⁶

The increase in the awards of civil indemnity and moral damages from ₱30,000.00 to ₱50,000.00 and the award of exemplary damages in the amount of ₱50,000.00 are in accord with the pronouncement in *Tulagan*. However, a fine in the amount of ₱15,000.00²⁷ is imposed against petitioner

²¹ *Rollo*, p. 19.

²² *People v. Bulos*, 412 Phil. 222, 233 (2001), citing *People v. Navida*, 400 Phil. 684, 697 (2000), *People v. Tagaylo*, 398 Phil. 1123, 1132–1133 (2000), *People v. Turco, Jr.*, 392 Phil. 498, 517 (2000), and *People v. Geromo*, 378 Phil. 972, 979 (1999).

²³ G.R. No. 227363, March 12, 2019.

²⁴ *Id.*

²⁵ ARTICLE 65. *Rule in Cases in Which the Penalty is Not Composed of Three Periods.* — In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.

²⁶ See *People v. Jagdon, Jr.*, G.R. No. 242882, September 9, 2020; *People v. XXX*, G.R. No. 233661, November 6, 2019.

²⁷ *People v. Eulalio*, G.R. No. 214882, October 16, 2019.

in accordance with Section 31(f),²⁸ Article XII of RA 7610. Additionally, all monetary awards should earn legal interest at the rate of six percent (6%) *per annum* from the date of the finality of this Resolution until fully paid.²⁹

WHEREFORE, the petition is **DENIED**. The Decision dated March 24, 2021 and Resolution dated March 28, 2022, of the Court of Appeals in CA-G.R. CR No. 43375 are **AFFIRMED with MODIFICATION**. Petitioner XXX is found guilty beyond reasonable doubt of Rape by Sexual Assault under Article 266-A, paragraph 2 of the Revised Penal Code, as amended, in relation to Section 5(b) of Republic Act No. 7610. He is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months, and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal*, as maximum. Further, he is **ORDERED** to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱50,000.00 as exemplary damages, and ₱15,000.00 as fine. The amounts shall earn interest at the rate of six percent (6%) *per annum* from finality of this Resolution until fully paid.

SO ORDERED.”

By authority of the Court:

Misael Domingo C. Battung III
Misael Domingo C. Battung III
Division Clerk of Court
SER 6116/23

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²⁸ 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.

²⁹ *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

The Presiding Judge
REGIONAL TRIAL COURT
Branch 9, Malolos City, Bulacan
(Criminal Case No. 5473-M-2017)

Gen. Gregorio Pio P. Catapang, Jr., AFP (Ret.) CESE
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