



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **March 27, 2023**, which reads as follows:*

**“G.R. No. 263712 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus CCC,\* accused-appellant.**

This is an ordinary appeal filed by the accused-appellant CCC, assailing the Decision,<sup>1</sup> dated May 26, 2022, of the Court of Appeals (CA), in CA-G.R. CEB CR. HC. No. 03667. The CA denied CCC’s appeal from the Decision<sup>2</sup> of the Regional Trial Court, 7<sup>th</sup> Judicial Region, Branch 51, WWW, Bohol (RTC), dated August 9, 2019, in Criminal Case No. 1087, which convicted him of Statutory Rape.

*The Facts*

CCC was charged with the crime of Statutory Rape in an Information that reads:

The undersigned, Second Assistant Provincial Prosecutor hereby accuses CCC, 16 years old and a resident of Barangay WWW, Bohol of the crime of Statutory Rape, committed as follows:

That on or about the 26<sup>th</sup> day of March 2008 in the Municipality of WWW, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, as a Family Court, the above-named Juvenile in Conflict with the Law, with lewd design and acting with evident discernment, did then and there willfully, unlawfully and feloniously, bring AAA, an 00 years (*sic*) old minor (having been born on MMDDYYYY) to a grassy place, and thereafter, undressed her and lay her on the ground, removed his short pants and placed himself on top of the minor-victim and inserted his erect penis to her vagina, thus, the accused succeeded in having carnal

\* In line with Amended Administrative Circular No. 83-2015, as mandated by the Revised Penal Code, Art. 266-A, the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

<sup>1</sup> *Rollo*, pp. 11-30. Penned by Associate Justice Mary Charlene V. Hernandez-Azura and concurred in by Associate Justices Bautista G. Corpin, Jr. and Mercedita G. Dadole-Ygnacio.

<sup>2</sup> *Id.* at 36-44. Penned by Presiding Judge Jennifer Chavez-Marcos.

knowledge with AAA against the latter's will and without her consent; to the damage and prejudice of the offended victim in the amount to be proved during trial.<sup>3</sup>

On arraignment, CCC pleaded not guilty. During the trial, the prosecution presented four witnesses: the victim, AAA; the victim's uncle, BBB; the Social Welfare Officer who prepared the Assessment Report and the Discernment Report, Lolita Castro (**Castro**); and Marilou Toston (**Toston**), who brought the medical certificate on the examination done on AAA. The defense presented CCC and his brother, DDD, as witnesses.<sup>4</sup>

### *Version of the Prosecution*

AAA testified that in the morning of March 26, 2008, she was looking for her younger brother at the school near their house when she met her cousin, CCC, and a certain "Along." CCC invited AAA to a nearby grassy area, undressed her and had sexual intercourse with her.<sup>5</sup>

BBB testified that he knew of CCC and AAA as they were both his neighbors in WWW, Bohol. He testified that while he was gathering coconut husks near the school, he saw CCC with AAA. He saw CCC "standing up and then he ran towards the coconut plantation and hid there while the young girl had her panties on her feet and had difficulty raising it and then she also ran towards the plantation and hid there."<sup>6</sup> When he went to approach CCC and AAA, BBB "told CCC that may be (*sic*) he has done something wrong with the little girl and then the two of them immediately ran away."<sup>7</sup> CCC had told BBB that he, CCC, merely accompanied AAA while she was defecating.<sup>8</sup> But when BBB went to the area where he saw CCC and AAA, he did not see any excreta.<sup>9</sup> Later that afternoon, when AAA's mother, EEE, went to deliver some medicine to BBB's house, BBB reported what he saw to EEE who thereafter brought AAA to be examined by a doctor.<sup>10</sup>

Castro testified that she assessed both AAA and CCC. She found that CCC acted with discernment when he raped AAA. During her interview with CCC and his grandmother, Castro learned that CCC only finished third grade before he stopped schooling, and instead would go fishing with his grandfather. Castro informed the court that she did not interview CCC's parents as CCC lived with his grandmother, his parents having long been separated. The grandmother told Castro that she taught CCC and his brother good manners and right conduct when they were young, but they were

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<sup>3</sup> Id. at 36.

<sup>4</sup> Id. at 37-41.

<sup>5</sup> CA *rollo*, p. 86, Brief for Plaintiff-Appellee.

<sup>6</sup> TSN, Trial on March 31, 2011, p. 4.

<sup>7</sup> Id.

<sup>8</sup> Id. at 5.

<sup>9</sup> Id. at 6.

<sup>10</sup> *Rollo*, p. 13, Decision.

influenced by their friends when they grew older. Castro also interviewed the barangay captain who told her that CCC and his friends were engaged in petty thievery in their barangay.<sup>11</sup>

When asked about what CCC himself told her, Castro testified that during the interview, CCC admitted to Castro that he brought AAA to a coconut tree and took off her shorts and panty before they were caught by BBB.<sup>12</sup> Castro insisted that CCC admitted to her that he raped AAA because when she, Castro, asked him what he had done to the victim as AAA was continuously crying and had bloody discharge from her vagina, CCC said that he raped AAA.<sup>13</sup> When prodded by the Court to explain how she concluded that CCC acted with discernment, Castro answered that “he is a normal person and he knows what he did was a wrongdoing.”<sup>14</sup>

The prosecution presented the Medical Certificate issued by Dr. Cholomely I. Ardaniel, brought by Toston, which lends credibility to the allegations as it indicated multiple new lacerations, whitish discharge on the vaginal vault and reddish inflammation and laceration on the labia majora.<sup>15</sup>

#### *Version of the Defense*

CCC denied the allegations that he raped AAA on March 26, 2008. He testified that on that day, he, AAA, and AAA’s elder brother were gathering fruits from the mango tree of BBB that was situated near the school. BBB caught them, although they tried to run away. BBB thereafter accused CCC of raping AAA. CCC’s brother, DDD, testified that he remembered an incident where BBB went to their house and demanded the return of the mango fruits gathered. On that same day, DDD met BBB who warned DDD saying: “Your brother should beware.”<sup>16</sup>

#### *The Ruling of the RTC*

On August 9, 2019, the RTC found CCC guilty beyond reasonable doubt as follows:

**IN VIEW OF THE FOREGOING CONSIDERATIONS** and it appearing that the prosecution has established the guilt of the accused CCC beyond reasonable doubt, the court finds accused CCC (who is no longer a CICL) guilty beyond reasonable doubt of **STATUTORY RAPE under Article 266-A(1)(d) and penalized in Article 266-B of the Revised**

<sup>11</sup> TSN, Trial on September 22, 2011, pp. 6-17.

<sup>12</sup> CA *rollo*, p. 28, Brief for the Accused-Appellant.

<sup>13</sup> TSN, Trial on September 22, 2011, p. 11.

<sup>14</sup> Id. at p. 10.

<sup>15</sup> Records, p. 8, Medical Certificate, dated March 27, 2008.

<sup>16</sup> CA *rollo*, p. 29, Brief for the Accused-Appellant.

**Penal Code**, and hereby sentences him to **RECLUSION PERPETUA**. Accused is further ordered to pay the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P75,000.00 as civil indemnity. Also in consonance with prevailing jurisprudence, the amount of damages awarded shall earn interest at the rate of six (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

SO ORDERED.<sup>17</sup> (Emphasis in the original)

The RTC was not convinced by CCC's denial as a defense, there being no clear and convincing evidence to give greater evidentiary value to his denial than to the testimony of credible witnesses. It found that the testimonies of the victim and BBB were "too strong for the defense to overcome," particularly considering that testimonies of child-victims are normally given full weight and credit, especially when a minor girl says she has been raped.<sup>18</sup> The RTC Decision specifically quoted the direct examination on CCC as follows:

Q. You were present when AAA testified in this courtroom Mr. Witness, correct?

A. Yes

Q. Did you hear her testifying that according to her you undressed her and you undressed yourself and you placed yourself on top of her?

A. Yes

Q. Is that true?

A. Yes

COURT:

And he is smiling now.

The RTC found that "with the above testimony of child victim AAA, there is no denying that at a young age of eight (8), she was subjected to having carnal knowledge with the accused then sixteen (16)-year old CCC when on March 26, 2008, she was made to undress herself and submit to an intercourse with the aforementioned accused."<sup>19</sup>

The RTC held that all the elements of Statutory Rape were met. As such, CCC was found guilty beyond reasonable doubt of statutory rape.<sup>20</sup>

CCC appealed the case to the CA. He claimed that there was a "lack of detail as to the allegation of actual sexual intercourse" as narrated by AAA, as she "merely narrated in general terms how CCC had sexual congress with her." Moreover, CCC alleged that the testimony of AAA added confusion as

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<sup>17</sup> *Rollo*, p. 44, Decision.

<sup>18</sup> *Id.* at 43.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 43-44.

she testified that CCC was positioned at her back when he allegedly undressed her, and that although he was doing “the pumping motion, he was wearing his underwear the whole time.”<sup>21</sup>

In his Appellant’s Brief that was submitted to the CA, CCC alleged that the prosecution failed to prove actual insertion of his penis in AAA’s vagina, based on AAA’s testimony in court where AAA repeated that CCC assaulted her “only at the butt.”<sup>22</sup> As for the Medical Certificate, CCC claimed that there was no categorical finding by the examining physician that the laceration was caused by his, CCC’s male organ, or by any other object.<sup>23</sup>

Ultimately, CCC claimed that AAA’s narration as to the circumstances of the rape is improbable as there are conflicting narrations between her testimony in court and her affidavit. AAA also testified that she was also raped on other occasions by two other persons: her older brother in their house, and her cousin at school. Finally, CCC alleged that AAA did not struggle nor react at the time she was allegedly raped.<sup>24</sup> Considering all these circumstances, CCC alleged that his “defense of denial and alibi should not be outrightly viewed with disfavor.”<sup>25</sup>

### *The Ruling of the CA*

On May 26, 2022, the CA denied CCC’s appeal.

**WHEREFORE**, the appeal is hereby **DENIED** for want of merit. The Judgment dated August 9, 2019 of the Regional Trial Court (RTC), Branch 51, WWW, Bohol in Criminal Case No. 1087, finding accused-appellant CCC, guilty beyond reasonable doubt of statutory rape under Article 266-A(1)(d), is **AFFIRMED with MODIFICATION** that aside from the amount of P75,000.00 as civil indemnity, P75,000.00 moral damages, another P75,000.00 should be awarded as Exemplary damages and not as another civil indemnity as mentioned in the RTC Decision. All damages awarded shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

No pronouncement as to cost.

**SO ORDERED.**<sup>26</sup> (Emphasis in the original)

The CA found that it had no reason to doubt the credibility of AAA’s testimony which was corroborated on material points by BBB. For the defense, they could only claim denial.

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<sup>21</sup> CA rollo, p. 31, Brief for the Accused-Appellant.

<sup>22</sup> Id. at 37.

<sup>23</sup> Id. at 38.

<sup>24</sup> Id. at 40.

<sup>25</sup> Id. at 44.

<sup>26</sup> Rollo, p. 29, Decision.

It also held that the elements of Statutory Rape were sufficiently proven by the testimonies of AAA and BBB, and that the minor inconsistencies in AAA's testimonies are to be expected. The CA relied on the trial court's assessment of the credibility of AAA's testimony.

However, while it agreed with the penalty imposed by the RTC, the CA altered the imposition of damages to ₱75,000.00 as exemplary damages instead of another civil indemnity, to remain consistent with the Court's ruling in *People v. Tulagan*<sup>27</sup> (*Tulagan*) and in *People v. XXX*.<sup>28</sup>

Aggrieved, CCC appealed to this Court.

### *The Issue*

Is CCC guilty beyond reasonable doubt of the crime of Statutory Rape?

### *The Ruling of the Court*

The appeal is partly meritorious. As a preliminary matter, the Court has held time and again that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. 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.<sup>29</sup>

Guided by this, the Court modifies the findings of the RTC and the CA.

*The prosecution failed to prove  
CCC's guilt beyond reasonable doubt  
in the crime of Statutory Rape*

In *People v. Rapiz*,<sup>30</sup> the Court held that:

Reasonable doubt may arise from the evidence adduced or from the lack of evidence, and it should pertain to the facts constitutive of the crime charged. While no test definitively determines what is reasonable doubt under the law, the view is that it must involve genuine and irreconcilable

<sup>27</sup> 849 Phil. 197 (2019).

<sup>28</sup> G.R. No. 225781, November 16, 2020.

<sup>29</sup> *People v. Estonilo*, G.R. No. 248694, October 14, 2020.

<sup>30</sup> G.R. No. 240662, September 16, 2020.

contradictions based, not on suppositional thinking, but on the hard facts constituting the elements of the crime.

It has been repeatedly ruled that in criminal litigation, the evidence of the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the defense. The burden of proof rests on the prosecution... Surely, where the evidence of the prosecution is concededly weak, even if the evidence for defense itself is equally weak, an accused must be duly accorded the benefit of the doubt in view of the constitutional presumption of innocence that an accused enjoys.

Here, the Court partially grants the appeal of CCC, considering that the prosecution failed to prove CCC's guilt beyond reasonable doubt of the crime of Statutory Rape.

Article 266-A(1)(d) of the Revised Penal Code (RPC) provides:

ART. 266-A. Rape. When and How Committed – Rape is committed

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

xxx

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

To convict an accused of Statutory Rape, the prosecution must prove: 1) the age of the complainant; 2) the identity of the accused; and 3) the sexual intercourse between the accused and the complainant.<sup>31</sup> Here, the first two requisites are uncontroverted as the age of AAA, eight years old at the time of the rape, was sufficiently proven by her birth certificate, and by CCC's own testimony. As for the second requisite, CCC was positively identified by AAA as her assailant.<sup>32</sup> The issue lies with the third requisite, proof that there was sexual intercourse between CCC and AAA.

In *People v. Bay-od*,<sup>33</sup> the Court held that:

It should be emphasized at this point that carnal knowledge, as an element of rape under Article 266-A (1) of the RPC, is not synonymous to sexual intercourse in its ordinary sense; it implies neither the complete penetration of the vagina nor the rupture of the hymen. Indeed, jurisprudence has held that even the slightest penetration of the victim's genitals — i.e., the "touching" by the penis of the vagina's labia — is enough to satisfy the element. As *People v. Bormeo* held:

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<sup>31</sup> *People v. Ramirez*, 827 Phil. 203, 211 (2018).

<sup>32</sup> *Rollo*, p. 16, Decision.

<sup>33</sup> 845 Phil. 644 (2019).

Carnal knowledge has been defined as the act of a man having sexual bodily connections with a woman; sexual intercourse. An essential ingredient thereof is the penetration of the female sexual organ by the sexual organ of the male. In cases of rape, however, mere proof of the entrance of the male organ into the labia of the pudendum or lips of the female organ is sufficient to constitute a basis for conviction.

And in *People v. Quiñanola*:

In the context it is used in the Revised Penal Code, carnal knowledge, unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured. The crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ or, as once so said in a case, by the mere touching of the external genitalia by a penis capable of consummating the sexual act.<sup>34</sup> (Citations omitted)

Further, in *People v. Agao*,<sup>35</sup> the Court held that:

[R]ape of a female victim by a male person through penile penetration reaches the consummated stage as soon as the penis penetrates the cleft of the *labia majora*, also known as the vulval or pudendal cleft, or the fleshy outer lip of the vulva, in even at the slightest degree. Simply put, mere introduction, however slight, into the cleft of the *labia majora* by penis that is capable of penetration, regardless of whether such penile penetration is thereafter fully achieved, consummates the crime of rape.

x x x

[F]or child victims in the pre-puberty age, the genital contact threshold for a finding of consummated rape through penile penetration is deemed already met once the entirety of the prosecution evidence establishes a clear physical indication of the inevitability of the minimum genital contact threshold as clarified here, if it were not for the physical immaturity and underdevelopment of the minor victim's vagina, which may include repeated touching of the accused's erect penis on the minor victim's vagina and other indicative acts of penetration. (Emphases and Citations omitted)

Jurisprudence provides that for there to be carnal knowledge, there must be, at least, a touching of the external genitalia of the victim. However, from the testimony of AAA, it is unclear whether there was in fact touching of, or penetration in, her vagina.

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<sup>34</sup> Id. at 654.

<sup>35</sup> G.R. No. 248049, October 4, 2022.



The RTC and the CA relied heavily on AAA and BBB's testimony on the rape. However, a perusal of the records of the case shows that the RTC and the CA erred in their conclusion that there was carnal knowledge between CCC and AAA.

While AAA's sworn statement was clear in that CCC inserted his penis in her vagina, in the transcript of stenographic notes (TSN) from the trial on April 19, 2011, AAA herself insisted that CCC's penis was inserted in her butt as opposed to her vagina.

- Q. What part of your body was examined by the doctor?  
A. (And witness was pointing to her genitalia).

COURT:

- Q. Do you know the name of that?  
A. Yes.

Asst. Prov'l. Pros. Julius R. Cesar: (to witness)

- Q. What is the name of that part of your body which you always point?  
A. Sex organ.

COURT:

And she is smiling.

Asst. Prov'l. Pros. Julius R. Cesar: (to witness)

- Q. What happened to your sex organ?  
A. It was examined.

- Q. What did CCC do to your "*bisong*", to your genitalia?  
A. It was in my butt.

COURT:

You made that clear what butt means?

Asst. Prov'l. Pros. Julius R. Cesar: (to witness)

- Q. What do you mean when you say butt or "*lobot*"? where is this butt or lobot?  
A. (And the witness is leaning forward and pointing towards the back of her body as her back).

COURT

Now, butt as the organ, you have to define that where is that really because otherwise, the court cannot picture where the penis of the accused was inserted.

Asst. Prov'l. Pros. Julius R. Cesar: (to witness)

- Q. Clarify us AAA, the penis of CCC was inserted where AAA?  
A. (And witness is pointing towards...)

- Q. Point to us where the penis of CCC was inserted.  
A. (And witness is pointing to the in between the space of the buttocks).

COURT

In between the portion at the middle of the two buttocks.

Asst. Prov'l. Pros. Julius R. Cesar: (to witness)

Q. How about your genitalia, your vagina, you mentioned a while ago "bisong", did CCC also inserted his penis into your vagina or not?

ATTY. ALEXANDER J. TRADIO:

It's leading your Honor. The witness already answered that.

COURT:

Yes, several times already.

Asst. Prov'l. Pros. Julius R. Cesar:

She has been pointing the part of the genitalia. She point here and she point here so there was already an answer about the butt.

COURT:

You ask that one. She is telling the truth.

A. No.

COURT:

The witness is shaking her head

Asst. Prov'l. Pros. Julius R. Cesar: (to witness)

Q. Only at the butt?

A. Yes.

Q. Do you really know the difference between the genitalia and the anus AAA?

COURT:

Nothing is said about the anus. She pointed the space between the two buttocks.

Asst. Prov'l. Pros. Julius R. Cesar:

Yes.

(to witness)

Q. When CCC inserted his penis, where was he located? In front of you or at the back?

A. At my back.<sup>36</sup>

AAA consistently testified that CCC inserted his penis into her buttocks, even when repeatedly questioned by the Assistant Provincial Prosecutor. And when the prosecutor said that she was pointing to the part of the genitalia in addition to her buttocks, AAA clearly shook her head and agreed that it was "only at the butt."

Additionally, during another portion of AAA's testimony, she indicated that CCC was wearing his underwear while he was "pumping" against her from her back.

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<sup>36</sup> Rollo, pp. 20-22, Decision.

Q. Now you mentioned Ms. Witness that you said you are crying after your shortpants was been pull down you said also that you continue crying while your panty were removed and you said that the accused “*gikijuran ka* at the back”, am I correct in saying that?

A. Yes.

Q. How did you feel or what is your feeling when CCC pumping you?

A. I cried.

Q. Did you felt (*sic*) pain?

A. Yes.

Q. Why?

A. I just felt pain.

Q. What area of your body felt pain Ms. Witness?

Court Interpreter:

Witness was pointing to the back of her body particularly towards the buttocks of her body.

Atty. Alexander Tradio:

Q. How many times did CCC pump you Ms. Witness?

A. Many times.

Q. Is it true that when CCC pump you he is wearing his underwear?

A. Yes.

Jurisprudence has been clear that the insertion of the penis into the anal region does not constitute Statutory Rape, which requires carnal knowledge. As such, with the Information only alleging Statutory Rape, the prosecution, by the testimony of the victim herself, failed to prove a key element thereof.

Although admittedly, a Medical Certificate was presented indicating multiple new lacerations, whitish discharge on the vaginal vault and reddish inflammation and laceration on the labia majora, the fact that the doctor who examined AAA was not presented to testify as to the findings stated in the certificate weakens the reliability of this evidence. The certificate itself did not state the particulars that caused the lacerations and inflammation, though it did state March 26, 2008 at 10:00 a.m. as the date and time of incidence while the date and time of the examination was on March 26, 2008 at around 5:00 p.m.; and that the place of incidence was WWW Elementary School at the Star Apple Tree.<sup>37</sup>

Moreover, in the counterstatement of facts of the Office of the Solicitor General, it stated that “CCC invited AAA towards a nearby grassy area, where he then undressed her and had sexual intercourse with her, by inserting his penis into her back side. AAA cried and felt pain.”<sup>38</sup> The prosecution thus

<sup>37</sup> Records, p.8, Medical Certificate, dated March 27, 2008.

<sup>38</sup> CA *rollo*, p. 72, Brief for Plaintiff-Appellee. (Underscoring supplied)

acknowledged that AAA testified to CCC inserting his penis into her back side and not her vagina.

Jurisprudence provides that:

Given the natural frailties of the human mind and its incapacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. It is well settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. The minor inconsistencies and contradictions only serve to attest to the truthfulness of the witnesses and the fact that they had not been coached or rehearsed.<sup>39</sup>

It cannot be said that the inconsistency regarding where CCC inserted his penis in AAA's body is considered a "minor" inconsistency that can be overlooked. The Information specifically charges CCC with Statutory Rape which requires carnal knowledge. But where CCC did not in fact insert his penis into AAA's vagina, and there is no showing that it touched her labia, then reasonable doubt arises as to whether or not CCC did in fact commit Statutory Rape.

Part of the testimony relied upon by both the RTC and the CA in their decisions is quoted here:

Q. Now what did CCC do to you at the grassy area?

A. I was raped.

Q. What do you mean by rape? What did CCC do to you in Visayan?

A. He undressed me.

Q. After CCC undressed you, what did he do next, if any?

A. He have sex with me.

Asst. Prov'l. Pros. Julius R. Cesar:

May we put on the record the term used by the witness is "*gikijuran*".

COURT:

Which in English translation is what? Sexual intercourse.

ATTY. ALEXANDER J. TRADIO:

It was not established that the sexual organ was inserted.

COURT:

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<sup>39</sup> *Madali v. People*, 612 Phil. 582, 586 (2009).

You continue. But the translation of “*kijuran*” is it is a pumping motion indicative of sexual intercourse. Proceed.

Asst. Prov’l. Pros. Julius R. Cesar: (to witness)

Q. When you say “*gikijuran*”, have sex with you, what action did CCC do to you?

A. I was raped.

Q. What part of your body was being subjected when you said you were raped by CCC?

A. (Witness is pointing to her private parts).

COURT:

Witness is pointing to the genital area.

Asst. Prov’l. Pros. Julius R. Cesar: (to witness)

Q. You are pointing to your genital area, what are you pointing there AAA?

A. Ass.

COURT:

The anal orifice.

Asst. Prov’l. Pros. Julius R. Cesar: (to witness)

Q. What are you pointing to AAA?

COURT:

And witness is pointing towards the back of her body. You can ask leading questions.

x x x

Q. When you say you were being raped or “*gikijuran*”, what happened to you AAA?

A. He inserted his penis.

Q. Where did he insert his penis?

A. (Witness is pointing to her anal orifice).<sup>40</sup>

Later in the trial, the RTC clarified that:

At this point, I would like to correct the records. The witness was actually not pointing to the anal orifice. She was pointing at the back of her body. It’s not the anal orifice because you cannot see actually the anal orifice. She pointed towards the genitalia and she pointed to the back of her body but I think I was in error that it is in the anal orifice because the anal orifice cannot be seen. She was pointing towards the butt. So, you establish that. Strike out the word anal orifice.<sup>41</sup>

<sup>40</sup> TSN, Trial on April 19, 2011, pp. 5-6.

<sup>41</sup> *Rollo*, p. 19, Decision.

During BBB's testimony during trial, the Court asked clarificatory questions which revealed that BBB did not in fact see the alleged rape of AAA by CCC. He merely saw CCC standing up and raising his trousers; BBB did not observe whether CCC had his briefs on as he "only saw [CCC's] short pants."<sup>42</sup>

The convictions by the RTC and the CA lead this Court to believe that they also relied heavily on AAA's sworn statement taken sometime in March 28, 2008:

- Q. Why are you here in the police office?  
A. I am here to complain for raping me "gikijuran ko" by CCC my neighbor.
- Q. When and where did it happen?  
A. That in the morning of March 26, 2008, while I was walking, CCC called me and brought me near at the coconut and star apple tree adjacent to the fence of ....., Bohol and he removed my panty and short pants and he laid me on the grass and he also removed his short pants and brief then he lay over me and forcibly inserted his penis into my vagina and made a pumping motion, then he suddenly stood up when he saw BBB coming over to us and he quickly wear his clothes, ran away and hide in the coconut tree then I also dressed up and followed him.
- Q. What did you do next?  
A. I went home because I felt pain in my vagina.
- x x x
- Q. How many times did CCC raped "gikijuran" you?  
A. He done this for several times that he removed my clothes, lay on my top and made a pumping motion, there in our old house, and also in their house and in the field.
- Q. What do you feel about the thing that CCC done to you?  
A. I cried because of the pain.

Jurisprudence has time and again provided that 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.<sup>43</sup> However, where there are blatant inconsistencies in her allegations, especially when involving key elements that are meant to establish the crime, such testimony cannot be taken at face value. Where the discrepancies and contradictory statements on important details in the testimony seriously impair its probative value, cast serious doubt on its credibility, and erode the integrity of the testimony, the Court should

<sup>42</sup> TSN, Trial on March 31, 2011, p. 7.

<sup>43</sup> *People v. Salaver*, 839 Phil. 90, 103 (2018).

acquit the accused.<sup>44</sup> Also, it is well settled that between an affidavit executed extra-judicially and an in-court testimony, the latter prevails. As held in *People v. Riego*,<sup>45</sup>

Affidavits, taken *ex-parte*, are generally considered to be inferior to the testimony given in open court. The Court has consistently held that an affidavit, taken *ex-parte*, is almost always incomplete and inaccurate, sometimes from partial suggestions, sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory and for his accurate recollection of all that belong to the subject.<sup>46</sup>

Here, there is a clear contrast between a key detail of the alleged rape in AAA's sworn statement with that in her testimony in court. There thus arose reasonable doubt as to the third element of Statutory Rape because AAA herself insisted multiple times in her testimony at trial that CCC inserted his penis in her "butt," and not in her vagina. AAA has shown that she knows the difference between her vagina and buttocks as she was clearly able to indicate that the doctor who examined her examined her vagina.

Rule 133, Section 2 of the Revised Rules on Evidence specifies the requisite quantum of evidence in criminal cases:

Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his or her guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Here, moral certainty is not reached where AAA, the victim herself, was clear and convincing in her testimony.

It must be stressed that in our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to their guilt. Where there is no moral certainty as to their guilt, they must be acquitted even though their innocence may be questionable. The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt.<sup>47</sup>

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<sup>44</sup> *People v. XXX*, 828 Phil. 770, 783 (2018).

<sup>45</sup> 267 Phil. 461 (1990).

<sup>46</sup> *Id.* at 471.

<sup>47</sup> *People v. Asis*, 439 Phil. 707 (2002).

*CCC may be convicted of the lesser crime of acts of lasciviousness, under Article 336 of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610*

Article III, Section 14 (2) of the 1987 Constitution requires that in criminal prosecutions, every element constituting the offense must be alleged in the Information before an accused can be convicted of the crime charged. This is to apprise the accused of the nature of the accusation against him, for him to successfully put up a defense.<sup>48</sup> No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried *or is necessarily included therein*.<sup>49</sup>

In *People v. Pareja*,<sup>50</sup> the Court held:

However, since the charge in the Information for the December 2003 incident is rape through carnal knowledge, Pareja cannot be found guilty of rape by sexual assault even though it was proven during trial. This is due to the material differences and substantial distinctions between the two modes of rape; thus, the first mode is not necessarily included in the second, and vice-versa. Consequently, to convict Pareja of rape by sexual assault when what he was charged with was rape through carnal knowledge, would be to violate his constitutional right to be informed of the nature and cause of the accusation against him.

Nevertheless, Pareja may be convicted of the lesser crime of acts of lasciviousness under the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure.<sup>51</sup>

Rule 120, Sec. 4 of the Rules of Court provides:

SECTION 4. Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved. (4a)

In *Navarrete v. People*,<sup>52</sup> the Court explained that although an accused is charged in the information with the crime of Statutory Rape, the offender

<sup>48</sup> *Quimvel y Braga v. People*, 808 Phil. 889, 912 (2017).

<sup>49</sup> *Andaya v. People*, 526 Phil. 480, 497 (2006). (Emphasis supplied)

<sup>50</sup> 724 Phil. 759 (2014).

<sup>51</sup> *Id.* at 764.

<sup>52</sup> 542 Phil. 496 (2007).



can be convicted of the lesser crime of acts of lasciviousness, which is included in rape. As such, the same is applied in this case.

Section 5 (b), Article III of Republic Act (R.A.) No. 7610, which defines and penalizes Acts of Lasciviousness committed against a child under 12 years old, provides as follows:

Sec. 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 subjected 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: 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

Sexual abuse under the provision presupposes the concurrence of the following elements: (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 child, whether male or female, is below 18 years of age.<sup>53</sup>

On the other hand, the elements of Acts of Lasciviousness under Article 336 of the RPC are as follows: (1) That the offender commits any act of lasciviousness or lewdness; (2) That it is done under any of the following circumstances: a) Through force, threat or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and (3) That the offended party is another person of either sex.<sup>54</sup>

Section 32, Article XIII, of the Implementing Rules and Regulations of R.A. No. 7610 or the Child Abuse Law defines lascivious conduct, as follows:

<sup>53</sup> *People v. Manuel*, G.R. No. 242278, December 9, 2020.

<sup>54</sup> *Id.*

[T]he 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.

Based on the testimony of AAA and BBB, it is clear that CCC committed acts of lasciviousness as he lay on top of AAA in the grassy area near her school, and inserted his penis in her buttocks.

While AAA's testimony varied on where CCC inserted his penis into her body, she is consistent in all other vital elements such as that it was CCC who violated her on March 26, 2008, and that he intentionally touched her when he invited her to the grassy area, undressed her and thrust himself upon her butt. This coupled with BBB's clear testimony that he saw CCC with AAA, with his pants initially down, and running away from the scene of the crime thereafter, to the mind of the Court, there is sufficient evidence to convict him of the lesser crime of acts of lasciviousness.

The due recognition of the constitutional right of an accused to be informed of the nature and cause of the accusation through the criminal complaint or information is decisive of whether his prosecution for a crime stands or not. Nonetheless, the right is not transgressed if the information sufficiently alleges facts and omissions constituting an offense that includes the offense established to have been committed by the accused, which, in this case, is lascivious conduct under Section 5 (b) of R.A. No. 7610.<sup>55</sup>

Pursuant to the case of *People v. Caoili*,<sup>56</sup> as affirmed in *Tulagan*,<sup>57</sup> the designation of the crime of acts of lasciviousness when committed against a victim who is under 12 years of age, is "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610." And pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.

Applying the Indeterminate Sentence Law, there being no modifying circumstances alleged and proven, the indeterminate penalty imposed should be 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 (20) days of *reclusion temporal*, as maximum.

Although CCC was identified by AAA as her cousin, the relationship was not so alleged in the Information, and so cannot be considered in

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<sup>55</sup> *People v. Caoili*, 815 Phil. 839, 891 (2017).

<sup>56</sup> *Id.*

<sup>57</sup> *Supra* note 27, at 228.

increasing the penalty to be imposed upon CCC. Nevertheless, considering the objective of R.A. No. 7610, which is to provide special protection to children and to assist in the rehabilitation of child victims, the Court holds that a fine of ₱15,000.00 must also be imposed upon CCC, pursuant to Section 31(f), Article XII of R.A. No. 7610.

**WHEREFORE**, the appeal is **PARTIALLY GRANTED**. The Court **ACQUITS** CCC of the crime of Statutory Rape on ground of reasonable doubt. However, the Court finds CCC **GUILTY** beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610, for which he is sentenced to suffer imprisonment for an indeterminate period 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 (20) days of *reclusion temporal*, as maximum, and to pay a fine of Fifteen Thousand Pesos (₱15,000.00), pursuant to Section 31(f), Article XII of Republic Act No. 7610.

Further, CCC is likewise **ORDERED** to pay the victim AAA, in addition to the costs of the suit, the following amounts: Fifty Thousand Pesos (₱50,000.00) as civil indemnity; Fifty Thousand Pesos (₱50,000.00) as moral damages; and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.

All amounts due shall earn legal interest of six percent (6%) per annum, from the date of finality of this Resolution until full payment.

**SO ORDERED.”**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAEL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
*(/s/)*

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The Presiding Judge  
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7<sup>th</sup> Judicial Region  
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(Criminal Case No. 1087)

CCC  
Accused-Appellant  
c/o Ms. Lolita Castro  
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