



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated August 7, 2023, which reads as follows:*

**“G.R. No. 265331 (MARK RYAN VARGAS y FORNEAS @ “Kuya Makoy,”** Petitioner, v. **PEOPLE OF THE PHILIPPINES,** Respondent). – Assailed in this Petition for Review on *Certiorari*<sup>1</sup> is the Decision<sup>2</sup> dated September 30, 2022 and the Resolution<sup>3</sup> dated January 16, 2023 of the Court of Appeals (CA) in CA-G.R. CR No. 44890, which affirmed with modifications the Decision<sup>4</sup> dated January 30, 2020 of the Regional Trial Court (RTC) of Bataan, Branch 3, finding petitioner Mark Ryan Vargas y Forneas @ “Kuya Makoy” (Vargas) guilty beyond reasonable doubt of Sexual Assault under paragraph 2 of Article 266-A of the Revised Penal Code (RPC), as amended, in relation to Section 5(b) of Republic Act (R.A.) No. 7610.

**The Factual Antecedents**

Vargas was formally charged with the crime of Rape defined and penalized under Article 266-A(2) of the RPC in relation to R.A. No. 7610 before the RTC. The accusatory portion of which so provides:

That on or about November 23, 2016 in [REDACTED], Bataan, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of force, did then and there willfully, unlawfully and feloniously succeed in sexually assaulting [AAA],<sup>5</sup> 5 years old, by inserting his finger into the vagina of the latter, against the will and without the consent of the said [AAA], thereby subjecting her to sexual abuse, which is prejudicial to her growth and development, to her damage and prejudice.

CONTRARY TO LAW.<sup>6</sup>

<sup>1</sup> Rollo, pp. 11-28.

<sup>2</sup> Id. at 33-48. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Roberto P. Quiroz and Michael P. Ong, concurring.

<sup>3</sup> Id. at 49.

<sup>4</sup> Id. at 61-75. Penned by Presiding Judge Ma. Teresa Pagtalunan-Mauleon.

<sup>5</sup> The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* [533 Phil. 703 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>6</sup> Rollo, p. 33.

On July 16, 2018, during arraignment, Vargas pleaded not guilty to the offense charged.<sup>7</sup>

At the pre-trial conference, the parties stipulated on the following: (1) that the court has jurisdiction over the case; (2) the identity of Vargas as the person charged and arraigned; (3) that the victim was five years old at the time of the commission of the offense on November 23, 2016; and (4) that Dr. Maria Almira Kiat (Dr. Kiat) of the Bataan General Hospital was the one who examined AAA on December 5, 2016, and who executed the Medico-Legal Report.<sup>8</sup>

Thereafter, trial on the merits ensued.<sup>9</sup>

### Version of the Prosecution

Evidence for the prosecution included the testimonies of victim AAA and her mother BBB. According to their testimonies, at the time of the incident, AAA was only five years old and was living with her mother BBB in the house of the latter's parents in Bataan. Also living with them were CCC (BBB's younger sister) and Vargas, who was CCC's live-in partner at that time.<sup>10</sup>

AAA testified that while she was sleeping, Vargas carried her from the living room and brought her to the bedroom of DDD (BBB's younger brother). AAA was awoken when Vargas inserted his finger into her vagina, which made her cry.<sup>11</sup> That same night, AAA told her mother BBB, “[m]ama, sinundot po ni Tito Makoy yung pepe ko.”<sup>12</sup>

Corroborating AAA's testimony, BBB stated that her younger brother DDD later told her about what happened.<sup>13</sup> After learning what Vargas did to her daughter, BBB confronted the former, but Vargas did not say anything. The following day, BBB brought her child to the *barangay* hall to report the incident. A few days after, they went to the police to formally file a complaint against Vargas.<sup>14</sup>

AAA was then examined by Dr. Kiat, who then prepared a report indicating that: “[n]o evident injury at the time of the examination but medical evaluation cannot exclude sexual abuse. The Anogenital findings seen in this patient are to be expected in a child who describes this type of molestation.”<sup>15</sup>

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<sup>7</sup> Id. at 34.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id. at 34-35.

<sup>13</sup> Id. at 35.

<sup>14</sup> Id.

<sup>15</sup> Id.

### Version of the Defense

The defense presented the testimonies of Vargas and DDD. According to the former, he is the live-in partner of CCC, and they had been living together for two years. He admitted that he carried AAA while she was asleep, but maintained that the reason why AAA cried was merely because she was roused from her sleep. He postulated that the rape charge was a deliberate scheme concocted by AAA's biological father who wanted to take AAA away from his custody. He went on to contend that BBB was egged on by her live-in partner to make a false accusation against him as they were not in good terms.<sup>16</sup>

Meanwhile, DDD, the younger brother of BBB and the uncle of AAA, insisted that Vargas could not have done such deplorable act because he was the one taking care of AAA and her siblings, as well as DDD's other siblings.<sup>17</sup> DDD recounted that when he saw AAA crying, he heard Vargas ask AAA if she was wearing diapers and seeing that she had none, Vargas told AAA to put one on.<sup>18</sup>

### The Ruling of the RTC

Finding all the elements of rape present, the RTC, in its January 30, 2020 Decision,<sup>19</sup> handed a guilty verdict on Vargas.<sup>20</sup> The dispositive portion so reads:

**WHEREFORE, in view of all the foregoing,** the prosecution having sufficiently established the guilt of the accused beyond reasonable doubt, this Court finds the accused, **MARK RYAN VARGAS Y FORNEAS, GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE** defined and penalized under Article 266-A (2) of the Revised Penal Code in relation to R.A. 7610 and considering that the act was committed with the aggravating circumstance of minority, AAA, being five (5) years old only at that time and no mitigating circumstance, he is hereby sentenced to suffer the **INDETERMINATE PENALTY OF 12 YEARS OF RECLUSION TEMPORAL, AS MINIMUM, TO 15 YEARS OF RECLUSION TEMPORAL, AS MAXIMUM.**

The accused is likewise is ordered to pay the victim the following sums: P30,000.00 as civil indemnity; P30,000.00 as moral damages. Exemplary damages are likewise called for, by way of public example and to protect the young from sexual abuse which is the amount of P20,000.00. Lastly, in accordance with current jurisprudence, the damages awarded shall earn legal interest at the rate of six percent (6%) per annum to be reckoned from the date of finality of this judgment until fully paid.

SO ORDERED.<sup>21</sup> (Emphases, italics, and underscoring in the original)

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<sup>16</sup> Id.  
<sup>17</sup> Id. at 36.  
<sup>18</sup> Id.  
<sup>19</sup> Id. at 61-75.  
<sup>20</sup> Id. at 74.  
<sup>21</sup> Id. at 74-75.

Aggrieved, Vargas appealed to the CA, alleging that the trial court gravely erred in convicting him despite the prosecution's failure to prove the elements of rape beyond reasonable doubt, and in dismissing his defense of denial.<sup>22</sup>

### The Ruling of the CA

The CA, through its September 30, 2022 Decision,<sup>23</sup> resolved to deny the appeal, the *fallo* of which provides:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The assailed Decision rendered by the Family Court, Branch 3 of the Regional Trial Court of ██████████, Bataan, Third Judicial Region in Criminal Case No. ML-057 (FC), formerly ML-6821, is hereby **AFFIRMED** with **MODIFICATIONS** in that accused-appellant MARK RYAN VARGAS y FORNEAS @ "Kuya Makoy" is found **GUILTY** beyond reasonable doubt of Sexual Assault under paragraph 2 of Article 266-A of the Revised Penal Code, as amended, in relation to Section 5 (b) of Republic Act No. 7610. He is hereby sentenced to suffer the indeterminate penalty ranging from twelve (12) years, ten (10) months, and twenty-one (21) days of *reclusion temporal*, as minimum, to sixteen (16) years, five (5) months and ten (10) days of *reclusion temporal*, as maximum. He is further ordered to pay AAA the amounts of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php50,000.00 as exemplary damages which shall all earn interest at six percent (6% per annum from finality of judgment until fully paid.

**SO ORDERED.**<sup>24</sup> (Emphases and italics in the original)

Undaunted, Vargas filed a Motion for Reconsideration,<sup>25</sup> reiterating his earlier arguments, before the CA, which denied the same in a Resolution<sup>26</sup> dated January 16, 2023, to wit:

**WHEREFORE**, the instant motion for reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.**<sup>27</sup> (Emphases and italics in the original)

Still unfazed, Vargas elevates the case to this Court, through a Petition for Review on *Certiorari*,<sup>28</sup> advancing substantially the same arguments they broached before the lower courts. Particularly, Vargas maintains that: (1) AAA's testimonial evidence miserably fails to convince because of the dubiousness surrounding her testimony,<sup>29</sup> (2) BBB's testimony is not believable considering that her behavior in responding to the alleged rape of

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

<sup>23</sup> Id. at 33-47.

<sup>24</sup> Id. at 47.

<sup>25</sup> Id. at 90-95.

<sup>26</sup> Id. at 49.

<sup>27</sup> Id.

<sup>28</sup> Id. at 11-28.

<sup>29</sup> Id. at 19.

AAA was contrary to ordinary experience and common knowledge;<sup>30</sup> and (3) the medico-legal certificate provides that there were no injuries at the time of examination.<sup>31</sup>

### Issue

For the resolution of this Court is the issue of whether Vargas is guilty beyond reasonable doubt of Sexual Assault under Article 266-A(2) of the RPC, as amended, in relation to Section 5(b) of R.A. No. 7610.

### The Ruling of the Court

Upon a careful scrutiny of the records, the Court finds Vargas guilty beyond reasonable doubt of Sexual Assault under Article 266-A(2) of the RPC, as amended, in relation to Section 5(b) of R.A. No. 7610.

At the outset, the Court finds that a cursory reading of the present petition reveals that it is a mere reiteration of the factual issues and arguments raised by Vargas in his appeal and Motion for Reconsideration before the CA, which had already been passed upon by the court *a quo*.

Even so, it is well-settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the elusive and incommunicable evidence of such witness's deportment on the stand during examination.<sup>32</sup> Therefore, said assessment remains binding and conclusive on the appellate courts,<sup>33</sup> except when the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of great weight and significance, which, if considered, would have affected the result of the case.<sup>34</sup> None of the said exceptions is likewise present in this case.

In any case, the petition must be denied.

In the instant case, Vargas was charged with the crime of Rape by Sexual Assault defined and penalized under Article 266-A(2) of the RPC in relation to R.A. No. 7610. When an accused is charged with the same, the prosecution must prove the following to warrant a guilty verdict:

- (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:

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<sup>30</sup> Id. at 21.

<sup>31</sup> Id. at 22.

<sup>32</sup> *People v. Laboa*, 613 Phil. 337, 347 (2009).

<sup>33</sup> Id.

<sup>34</sup> *ABC v. People*, 876 Phil. 901 (2020).

- (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,
  - (c) By means of fraudulent machination or grave abuse of authority; or
  - (d) When the woman is under 12 years of age or demented.<sup>35</sup>**

While this Court finds all the elements present in this case, there is a need to clarify the proper nomenclature of the offense. Instead of Rape by Sexual Assault, the court *a quo* correctly held Vargas liable for Sexual Assault under Article 266-A(2) of the RPC, as amended, in relation to Section 5(b) of R.A. No. 7610. This is pursuant to *People v. Tulagan*,<sup>36</sup> where the Court prescribed the guidelines in the proper designation or nomenclature of acts constituting sexual assault and the imposable penalty depending on the age of the victim, to wit:

Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta* and *Caoili*, We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610" and no longer "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of R.A. No. 7610," because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A(2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.

Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5 (b) of R.A. No. 7610" with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC. It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor*.<sup>37</sup>

<sup>35</sup> REVISED PENAL CODE, Article 266-A, paragraph 2.

<sup>36</sup> 849 Phil. 197 (2019).

<sup>37</sup> Id. at 229.

Proceeding from the foregoing, this Court finds no reason to disturb the findings of the lower courts, considering that all the elements of the offense are present. As aptly found by the court *a quo*, affirming the trial court, AAA positively identified Vargas as the one who sexually molested her by inserting his finger into her vagina. Further, the age of AAA at that time the incident occurred, which was five years old, was duly established by the identification and presentation of her birth certificate.

Anent Vargas' argument that AAA cannot be deemed a competent witness due to her minority and fallible memory, the Court emphasizes that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality, unless there are facts or circumstances of weight which the lower court may have overlooked, misunderstood, or misappreciated.<sup>38</sup>

In the case at bar, this Court finds no compelling reason to deviate from the said rule that the factual findings of the trial court should not be disturbed on appeal. Hence, as aptly found by the RTC:

AAA testified with a candid narration of what transpired during the incident and her positive identification of the accused as the one who committed the same. She was consistent on material points. She cried when accused inserted his finger in her vagina, because she was hurt which jibes with the testimony of the accused that when the sleep of AAA is disturbed, she cries. All through [out] her testimony, she was firm, and she testified in a categorical and straightforward manner.<sup>39</sup>

Time and again, this Court has held that testimonies of rape victims, especially the young and immature, as in this case, deserve full credence, considering that no young woman, especially of tender age, would devise a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Indeed, youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, like AAA, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is false.<sup>40</sup>

Clearly, in his attempt to exonerate himself from criminal liability, Vargas persistently, yet helplessly, raises doubts on AAA's credibility based on his opinion of what is believable. However, the Court finds that between AAA's direct, positive, straightforward, and categorical testimony and Vargas' bare and self-serving denial, the former shall prevail.

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<sup>38</sup> *People v. Belga*, 402 Phil. 734, 742-743 (2001).

<sup>39</sup> *Rollo*, p. 41.

<sup>40</sup> *People v. Chingh*, 661 Phil. 208, 218 (2011).

Vargas likewise assails the credibility of BBB's testimony, alleging that the same is not believable, considering that her behavior in responding to the alleged rape of AAA, *i.e.*, reporting to the police only six days after the incident, was contrary to ordinary experience and common knowledge. The Court has adhered to the rule that while the act of immediately reporting the commission of rape has been considered as a factor strengthening credibility, delay, or vacillation in criminal accusations does not necessarily impair the complainant's credibility.<sup>41</sup> In any case, BBB promptly reported the matter to the *barangay* the day following the incident. Contrary to Vargas' assertion, the act of reporting first to the barangay authorities before heading to the police does not necessarily mean that a crime was never committed and that BBB had another motive for initiating a legal action against him.

Even unworthy of credence is Vargas' contention that he could not have committed the crime for fear of being caught, there being other people inside the house. The Court has stressed in a plethora of cases that lust is no respecter of time and place. Thus, in *People v. Balora*,<sup>42</sup> the Court decreed:

The [C]ourt has time and again held that "the evil in man has no conscience. The beast in him bears no respect for time and place, driving him to commit rape anywhere — even in places where people congregate such as in parks, along the roadside, within school premises and inside a house where there are other occupants." "Rape does not necessarily have to be committed in an isolated place and can in fact be committed in places which to many would appear to be unlikely and high-risk venues for sexual advances." Indeed, no one would think that rape could happen in a public place like the comfort room of a movie house and in broad daylight.<sup>43</sup>

Further, Vargas' postulation that the results of the medical examination conducted on AAA did not show any evident injury, the same does not negate the commission of rape. As previously ruled by the Court, a medico-legal report is not indispensable in rape cases, as the same is merely corroborative.<sup>44</sup> If at all, the medico-legal report prepared by Dr. Kiat after examining AAA still indicates that said medical evaluation cannot exclude sexual abuse.<sup>45</sup>

All things considered, this Court finds Vargas guilty beyond reasonable doubt of Sexual Assault under Article 266-A(2) of the RPC, as amended, in relation to Section 5(b) of R.A. No. 7610.

As regards the penalty, the court *a quo* properly imposed the penalty of *reclusion temporal* in its medium period against Vargas, who is hereby found guilty of sexual assault committed against a child below 12 years of age, pursuant to Section 5(b), Article III of R.A. No. 7610, and as settled in *People v. Tulagan*.<sup>46</sup> Accordingly, Vargas is sentenced to suffer the indeterminate

<sup>41</sup> *People v. Errojo*, 299 Phil. 51, 60 (1994).

<sup>42</sup> 388 Phil. 193 (2000).

<sup>43</sup> *Id.* at 203. See also *rollo*, p. 41.

<sup>44</sup> 834 Phil. 656, 663 (2018).

<sup>45</sup> *Rollo*, p. 25.

<sup>46</sup> *Supra* note 36.



penalty ranging from twelve (12) years, ten (10) months, and twenty-one (21) days of *reclusion temporal* in its minimum period, as minimum, to sixteen (16) years, five (5) months, and ten (10) days of *reclusion temporal* in its medium period, as maximum.

Anent the award of damages, AAA is entitled to civil indemnity, moral damages, and exemplary damages amounting to ₱50,000.00 each. All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until its full satisfaction.

**WHEREFORE**, the petition is **DENIED**. The Decision dated September 30, 2022 and the Resolution dated January 16, 2023 of the Court of Appeals in CA-G.R. CR No. 44890 are hereby **AFFIRMED**. Petitioner Mark Ryan Vargas y Forneas @ “Kuya Makoy” is hereby found guilty beyond reasonable doubt of Sexual Assault under paragraph 2 of Article 266-A of the Revised Penal Code, as amended, in relation to Section 5(b) of Republic Act No. 7610, and 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 sixteen (16) years, five (5) months, and ten (10) days of *reclusion temporal*, as maximum.

Petitioner Mark Ryan Vargas y Forneas @ “Kuya Makoy” is **ORDERED** to pay AAA civil indemnity, moral damages, and exemplary damages amounting to ₱50,000.00 each. All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until its full satisfaction.

**SO ORDERED.”**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAEL DOMINGO C. BATTUNG III**  
Division Clerk of Court *11/24/23*

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[REDACTED] Bataan  
(Criminal Case No. ML-057 (FC) [formerly ML-6821])

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