



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 208835

Present:

- versus -

SERENO, C. J., *Chairperson,*
 LEONARDO-DE CASTRO,
 BERSAMIN,*
 DEL CASTILLO, *and*
 TIJAM, JJ.

NOEL BEJIM y ROMERO,
Accused-Appellant.

Promulgated:
JAN 19 2018

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DECISION

DEL CASTILLO, J.:

This is an appeal from the September 25, 2012 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05010 affirming with modification the December 9, 2010 Consolidated Judgment² of the Regional Trial Court (RTC), Branch 9, La Trinidad, Benguet, finding appellant Noel Bejim y Romero guilty of seven counts of rape.

Factual Antecedents

On February 19, 2007, appellant was charged before the RTC of La Trinidad, Benguet, with seven counts of statutory rape under seven separate Informations, viz.:

Allova

³ Per raffle dated October 18, 2017 vice Justice Francis H. Jardeleza who recused due to prior participation as Solicitor General.
¹ CA rollo, pp. 148-185; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Edwin D. Sorongon.
² Records (Criminal Case No. 07-CR-6765). pp. 205-221; penned by Judge Francis A. Buliyat, Sr.

Criminal Case No. 07-CR-6765

That sometime in the first week of October, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "AAA,"³ a minor being six (6) years and eleven (11) months of age at the time of the commission of the crime, to her damage and prejudice.

CONTRARY TO LAW.⁴

Criminal Case No. 07-CR-6766

That sometime in the second week of October, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "AAA," a minor being six (6) years and eleven (11) months of age at the time of the commission of the crime, to her damage and prejudice.

CONTRARY TO LAW.⁵

Criminal Case No. 07-CR-6767

That sometime in the month of September, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "BBB," a minor being seven (7) years and eleven (11) months of age at the time of the commission of the crime, to her damage and prejudice.

CONTRARY TO LAW.⁶



³ "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 5, 2004." *People v. Dumadag*, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 538-539.

⁴ Records (Criminal Case No. 07-CR-6765), p. 1.

⁵ Records (Criminal Case No. 07-CR-6766), p. 1.

⁶ Records (Criminal Case No. 07-CR-6767), p. 1.

Criminal Case No. 07-CR-6768

That sometime in the month of September, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "CCC," a minor being seven (7) years and ten (10) months of age at the time of the commission of the crime, to her damage and prejudice.

CONTRARY TO LAW.⁷

Criminal Case No. 07-CR-6769

That sometime in the second week of October, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "CCC," a minor being seven (7) years and eleven (11) months of age at the time of the commission of the crime, to her damage and prejudice.

CONTRARY TO LAW.⁸

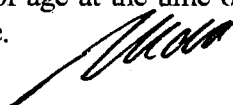
Criminal Case No. 07-CR-6770

That sometime in the last week of October, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "CCC," a minor being seven (7) years and eleven (11) months of age at the time of the commission of the crime, to her damage and prejudice.

CONTRARY TO LAW.⁹

Criminal Case No. 07-CR-6771

That sometime in the first week of October, 2001, x x x Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of "CCC," a minor being seven (7) years and eleven (11) months of age at the time of the commission of the crime, to her damage and prejudice.



⁷ Records (Criminal Case No. 07-CR-6768), p. 1.

⁸ Records (Criminal Case No. 07-CR-6769), p. 1.

⁹ Records (Criminal Case No. 07-CR-6770), p. 1.

CONTRARY TO LAW.¹⁰

On May 8, 2007, appellant was arraigned in all the seven Informations and pleaded not guilty. The cases were consolidated and tried jointly.

Criminal Case No. 07-CR-6765

“AAA” first met appellant who was the helper of her cousin “CCC’s” father at “CCC’s” house when she went there to play. In the first week of October 2001 while at “CCC’s” house, appellant made “AAA” lie on a sofa. He undressed her, applied cooking oil on her vagina and on his penis, and then rubbed his penis against her vagina for some time. He then pulled “CCC” to the sofa and again placed cooking oil on his penis and on “CCC’s” vagina. “AAA” saw this because she was just a meter away from them. Appellant warned “AAA” and “CCC” not to tell anyone of what transpired otherwise he would kill them and their families.

Criminal Case No. 07-CR-6766

Sometime in the second or third week of October 2001, while “AAA” and “CCC” were playing at the latter’s house, appellant again pulled them to a sofa. When appellant went to the kitchen, “AAA” and “CCC” tried to run away but appellant caught them at the living room. He forced “AAA” to lie on the sofa, pulled down her pants and panties to her ankle, and applied cooking oil on his penis and her vagina. Appellant rubbed his penis on “AAA’s” vagina. She felt pain. Thereafter, appellant likewise pulled “CCC” to the sofa, brought down the latter’s pants, and rubbed his penis against her vagina. After threatening them, appellant wore his pants and went out of the house.

Criminal Case No. 07-CR-6767

“BBB” is also a cousin of “CCC” and “AAA”. In the first week of September 2001, while she and “CCC” were inside the latter’s house, appellant suddenly pulled them to the sofa in the living room. Appellant laid “CCC” on the sofa, applied cooking oil on her vagina and his penis, and tried to insert his penis into “CCC’s” vagina. Thereafter, appellant turned to “BBB.” He made her lie on the sofa, lifted her skirt, pulled down her panties, his pants and brief, and tried to insert his penis into her vagina. Unsuccessful, he just brushed or rubbed his penis against her vagina. “BBB” felt pain in her vagina. Appellant immediately stood up, fixed his clothes and ran away upon seeing the arrival of “BBB’s” cousins, “DDD” and “EEE.” “BBB” told her cousins that they were sexually molested by

¹⁰ Records (Criminal Case No. 07-CR-5771), p. 1.



appellant but warned them not to tell anybody because if they do appellant would kill them.

Criminal Case No. 07-CR-6768

“CCC” knew appellant because he was the helper of her father and lived with them in their house. In the first week of September 2001, while she and her cousin “BBB” were playing inside their house, appellant closed all the windows and doors, made her lie on the sofa, lowered her pants and underwear down to her ankle, and put cooking oil on his penis and on her vagina. “BBB” saw appellant’s penis penetrating “CCC’s” vagina. When appellant saw “CCC’s” two sisters “DDD” and “EEE” arrive, he went out of the house.

Criminal Case No. 07-CR-6769

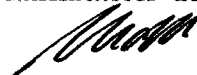
In the second week of October 2001, appellant laid “CCC” on the kitchen table, removed her pants, put cooking oil on his penis and her vagina and tried to penetrate it but was unsuccessful.

Criminal Case No. 07-CR-6770

In the last week of October 2001, while “CCC” was sleeping in her sister’s bedroom, appellant came and removed her clothes, mounted her and tried to insert his penis but he failed, albeit she felt his big penis. “CCC” did not tell her father of what happened because of appellant’s threat.

Criminal Case No. 07-CR-6771

Sometime in the first week of October 2001 and while inside “CCC’s” house, appellant laid “CCC” on the sofa, put cooking oil on her vagina and his penis. He tried to insert his penis into her vagina but failed. Thereafter, appellant went outside. “CCC” did not tell anyone about the incident because of appellant’s threat to kill her and her family.

“AAA,” “BBB” and “CCC” were physically examined by Dra. Bernadette Valdez (Dra. Valdez). The result of her examination which was reduced into writing¹¹ shows no evident injury at the time of her examination though her medical evaluation does not exclude possible sexual abuse. 

¹¹ Exhibit “A,” records (Criminal Case No. 07-CR-6765), p. 5.

Appellant denied the accusations against him claiming that he was not in the house of "CCC" when the alleged incidents happened in 2001.

Ruling of the Regional Trial Court

After trial, the RTC rendered on December 9, 2010 its Consolidated Judgment finding appellant guilty beyond reasonable doubt of seven counts of rape and sentencing him to suffer the penalty of *reclusion perpetua* for each count. He was also ordered to pay the amount of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages for each crime.

Ruling of the Court of Appeals

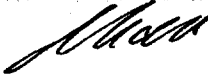
The CA, in its Decision dated September 25, 2012, affirmed with modifications the RTC Consolidated Judgment in this wise:

ACCORDINGLY, the Consolidated Judgment dated December 9, 2010 is AFFIRMED with MODIFICATION, as follows:

1. pronouncing appellant Noel Bejim y Romero guilty of qualified rape in Criminal Case Nos. 07-CR-67-65 and 07-CR-67-66 and liable for Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php30,000.00 as exemplary damages for each count;
2. pronouncing appellant Noel Bejim y Romero guilty of statutory rape in Criminal Case No. 07-CR-67-67 and liable for Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php30,000.00 as exemplary damages; and,
3. pronouncing appellant Noel Bejim y Romero guilty of statutory rape in Criminal Case Nos. 07-[CR]-67-68, 07-[CR]-67-69, 07-[CR]-67-70, and 07-[CR]-67-71 and liable for Php75,000.00 as civil indemnity, Php75,000.00 as moral [damages] and Php30,000.00 as exemplary damages for each count.

In Criminal Case Nos. 07-CR-67-65 and 07-CR-67-66 appellant shall not be qualified for parole.

SO ORDERED.¹²

Appellant interposed before this Court the present recourse adopting the same argument he raised in his brief before the CA, viz.: 

¹² CA rollo, pp. 184-185.

The court a quo gravely erred in finding the accused-appellant guilty of the crime of rape despite the prosecution's failure to prove his guilt beyond reasonable doubt.¹³

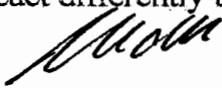
In support of his argument, appellant impugns the victims' credibilities by capitalizing on the alleged inconsistencies in their open court testimonies; their failure to shout for help during the alleged incidents; the belated filing of their complaints; and, the medical finding of no evident injury during their examination.

Our Ruling

The appeal lacks merit.

The inconsistency pointed out by appellant as to whether "AAA" was alone or with "BBB" during the alleged incident on the first week of October 2001 refers merely to inconsequential matter that will not affect the determination of whether appellant is innocent of the crime charged or not. "[D]iscrepancies referring only to minor details and not to the central fact of the crime do not affect the veracity or detract from the credibility of a witness' declaration x x x."¹⁴ Respecting the alleged inconsistency on whether appellant's penis touched "AAA's" vagina or not, the same has been clarified by "AAA" herself.¹⁵ "AAA" stated that appellant's penis indeed brushed her vagina. As held in *Dizon v. People*,¹⁶ "[i]n rape cases, the testimony of [the] complainant must be considered and calibrated in its entirety, and not in its truncated portion or isolated passages thereof. The true meaning of answers to questions propounded to a witness is to be ascertained with due consideration of all the questions and answers given thereto. The whole impression or effect of what has been said or done must be considered, and not individual words or phrases alone. Facts imperfectly stated in answer to a question may be supplied or clarified by one's answer to other questions."¹⁷

The failure of the victims to shout for help or escape during the incidents does not undermine their credibility. It is not also fatal to the prosecution's case. "[N]o standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress, and rape victims are no different from them."¹⁷



¹³ Id. at 86.

¹⁴ *People v. Soriano, Sr.*, 570 Phil. 115, 120 (2008).

¹⁵ See TSN, September 10, 2007, p. 9.

¹⁶ 616 Phil. 498, 513 (2009).

¹⁷ *People v. Crespo*, 586 Phil. 542, 566 (2008).

Neither the delay in reporting the incidents to the proper authorities tainted the victims' credibility. For sure, there was no prompt revelation of what befell the victims. But "long silence and delay in reporting the crime of rape have not always been construed as indications of a false accusation."¹⁸ "A rape charge becomes doubtful only when the delay in revealing its commission is unreasonable and unexplained."¹⁹ In the present case, appellant threatened the victims that he would kill them and their families if they would tell anyone of what he did to them. To our mind, this is a reasonable explanation for the delay.

Regarding the findings of Dra. Valdez that her physical examination on the victims shows no evident injury, this Court had already ruled that "a medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the [accused] of the crime."²⁰

Appellant denies being at the house of "CCC" during the incidents. However, he failed to provide an account of his whereabouts such that it was physically impossible for him to have committed the crimes. Appellant's unsubstantiated denial must fail in light of the categorical testimonies of the victims that it was he who molested them.

Notably, appellant's belabored attempt to reverse his conviction is essentially anchored on credibility. The general rule is that "this Court will not disturb the findings of the trial court as to the credibility of witnesses, considering that it is in a better position to observe their candor and behavior on the witness stand."²¹ However, this principle does not preclude a reevaluation of the evidence to determine whether material facts or circumstances have been overlooked or misinterpreted by the trial court.²² Consistent with the principle that an appeal in a criminal action opens the whole case for review, we shall now determine whether the evidence of the prosecution is sufficient to sustain the conviction of the appellant for qualified rape and statutory rape.

Rape is committed by having carnal knowledge of a woman with the use of force, threat or intimidation or when she is under 12 years of age or is demented. Where the victim is below 12 years old, the only subject of inquiry is whether "carnal knowledge" took place. Carnal knowledge is "the act of a man having sexual intercourse or sexual bodily connections with a woman".²³ There must be proof that his penis touched the *labias* of the victims or slid into their female

¹⁸ *People v. Ortoz*, 599 Phil. 232, 245 (2009).

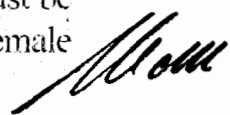
¹⁹ *People v. Domingo*, 579 Phil. 254, 264 (2008).

²⁰ *People v. Banig*, 693 Phil. 303, 317 (2012).

²¹ *People v. Tormis*, 595 Phil. 589, 602 (2008).

²² *Dacles v. People*, 572 Phil. 412, 422 (2008).

²³ See *People v. Bon*, 444 Phil. 571, 579 (2003).



organs and not merely stroked the external surface thereof, to produce a conviction of rape by sexual intercourse.²⁴

“AAA” recounted the details on how the alleged rape was committed as follows:

The alleged rape committed on the first week of October 2001 (Criminal Case No. 07-CR-6765)–

X X X X

Q: And what did he do after he made you lie down on the sofa?

A: He went to get cooking oil and poured it on his penis and he undressed me and he also poured cooking oil on my vagina.

Q: After he placed oil [on] his penis and placed oil [on] your vagina, what did he do next?

A: He rubbed his penis on my vagina.²⁵

The rape on the second week of October 2001 (Criminal Case No. 07-CR-6766)–

X X X X

Q: And after pulling down your pants and panty, what did he do next?

A: Sir, he again placed cooking oil on his penis and [on] my vagina and he again rubbed his penis into my vagina.

X X X X

Q: And did you feel anything when he rubbed his penis [on] your vagina?

A: Yes, sir, it was quite painful.²⁶

Regarding the rape allegedly committed during the first week of September 2001 (Criminal Case No. 07-CR-6767) “BBB” narrated her horrifying experience as follows:

Q: So after Noel Bejim sat beside you, did Noel Bejim do anything else?

A: Yes, sir.



²⁴ *People v. Briso*, 600 Phil. 530, 541 (2009)

²⁵ TSN, September 24, 2007, p. 6.

²⁶ *id.* at 10-11.

- Q: What did he do?
A: He pulled me and let me lie down on the sofa.
- Q: Was he able to make you lie down on the sofa?
A: Yes, sir.
- Q: And when he was able to lay you down on the sofa, what did he do next, if any?
A: He lifted my skirt and . . .
- Q: After he lifted your skirt, what did he do next, if any?
A: He brought down my panty and he pulled down his clothes.
- Q: What clothes did he bring down?
A: Sir, his pants sir and his brief.
- Q: And after he brought down his pants and his brief, what did Noel Bejim do next?
A: He tried to insert his penis [into] my vagina.
- Q: Did you feel his penis [inside] your vagina?
A: Yes, sir.
- Q: And was he able to insert his penis into your vagina?
A: Sir, he just brushed it.
- x x x x
- Q: And what did you feel, if any, when he was brushing his penis [on] your vagina?
A: It was painful, sir.
- x x x x
- Q: So after rubbing his penis into your vagina, what did he do next?
A: When he saw my cousins, he immediately got up, stood up.
- x x x x
- Q: And when he stood up, what did he do next?
A: He fixed his pants and his brief and he ran away.²⁷

The foregoing revelations of “AAA” and “BBB” show that the evidence adduced by the prosecution did not conclusively establish the element of carnal knowledge. In the aforementioned cases, there is no categorical proof of entrance or introduction of appellant’s male organ into the *labia* of the *pudendum* of “AAA.” Neither is there evidence to show that appellant made an attempt to penetrate “AAA’s” vagina. The prosecution’s evidence lacks definite details regarding penile penetration. On the contrary, “AAA” and “BBB” stated that

²⁷ TSN, September 17, 2007, pp. 18-19.

appellant merely “brushed or rubbed” his penis on their respective private organs. While “BBB” testified that appellant tried to insert his penis into her vagina, she nevertheless failed to state for the record that there was the slightest penetration into it. What is clear on record is that appellant merely brushed it.

The Court held in *People v. Butiong*²⁸ that “the *labia majora* must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the *mons pubis* of the *pudendum* is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, *i.e.*, touching of either the *labia* of the *pudendum* by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.” While “the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge,”²⁹ “the act of touching should be understood here as inherently part of the entry of the penis into the *labias* of the female organ and not mere touching alone of the *mons pubis* or the *pudemdum*.”³⁰ Indeed, the grazing of the victims’ private organ caused pain, but it cannot be presumed that carnal knowledge indeed took place by reason thereof. As the Court held in *People v. Briosos*,³¹ “the Court is loath to convict an accused for rape solely on the basis of the pain experienced by the victim as a result of efforts to insert the penis into the vagina.” Significantly, from their own declaration following the public prosecutor’s questioning, they suffered pains not because of appellant’s attempt to insert his penis but because of the grazing of their vagina.

Given the foregoing and since there is neither clear showing or direct proof of penile penetration or that appellant’s penis made contact with the *labias* of the victims, which is an essential element of the crime of rape, we cannot sustain appellant’s conviction for the crime of rape in Criminal Case Nos. 07-CR-6765; 07-CR-6766; 07-CR-6768; 07-CR-6769 and 07-CR-6770.

However, appellant can be convicted of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5 of Republic Act (RA) No. 7610,³² which was the offense proved though he was charged with rape through sexual intercourse in relation to RA 7610, applying the variance doctrine under Section 4 in relation to Section 5 of Rule 120 of the Revised Rules

²⁸ 675 Phil. 621, 630-631 (2011), citing *People v. Campuhan*, 385 Phil. 912, 921-922 (2000).

²⁹ *People v. Campuhan*, supra at 920.

³⁰ *People v. Trayco*, 612 Phil. 1140, 1158-1159 (2009) citing *People v. Bali-Balita*, 394 Phil. 790, 809 (2000).

³¹ Supra note 24.

³² See *People v. Caoili*, G.R. Nos. 196342 & 196848, August 8, 2017.

of Criminal Procedure.³³ The crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610, which was the offense proved is included in rape, the offense charged.³⁴

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 child, whether male or female, is below 18 years of age³⁵

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) Where the offended party is deprived of reason or otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority;
 - 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

³³ REVISED RULES OF CRIMINAL PROCEDURE, Rule 120, Sections 4 and 5.

Section 4. *Judgment in case of variance between allegation and proof.* - When there is variance between the offense charge 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.

Section 5. *When an offense includes or is included in another.* - An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

³⁴ *People v. Leonardo*, 638 Phil. 161, 198 (2010).

³⁵ *Quimvel v. People*, G.R. No. 214497, April 18, 2017.

(3) That the offended party is another person of either sex.³⁶

All the elements of acts of lasciviousness under Article 336 of the RPC and sexual abuse under Section 5(b) of RA 7610 were sufficiently established in the afore-numbered cases. Specifically, appellant committed lasciviousness when he poured cooking oil on the victims' private organ and rubbed them with his penis. The victims were under 12 years of age as established by their respective birth certificate and therefore way below 18 years of age. They were subjected to "other sexual abuse" as required under Section 5(b) of RA 7610. "A child is deemed subjected to 'other sexual abuse' when he or she indulges in lascivious conduct under the coercion or influence of any adult."³⁷ There is coercion or influence when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will.³⁸ In the present cases, the victims were sexually abused as they were coerced, influenced, threatened and intimidated by appellant who was the helper of "CCC's" father.

Based on the evidence established, appellant can thus be held criminally liable of the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610.³⁹

On the alleged rape committed during the second week of October 2001 (Criminal Case No. 07-CR-6769), "CCC declared:

Q: And after your pants were removed, what did Noel Bejim do next?

A: He again raped me, sir.

Q: What did he do?

A: He again tried to put his penis into my vagina.

Q: Did you feel his penis into your vagina?

A: Yes, your Honor.

Q: And what happened when he was trying to insert his penis into your vagina?

A: Sir, it failed.

Q: What do you mean it failed?

A: It did not enter, it cannot enter. He was hard up inserting his penis.

Q: Why?

A: Because his penis is big.⁴⁰



³⁶ Id.

³⁷ *Navarrete v. People*, 542 Phil. 496, 511 (2007).

³⁸ *Caballo v. People*, 710 Phil. 792, 805 (2013).

³⁹ See *People v. Caoili*, supra note 32.

⁴⁰ TSN, September 10, 2007, pp. 14-15.

As to the rape allegedly committed in the last week of October 2001 (Criminal Case No. 07-CR-6770) "CCC's" pertinent testimony is as follows:

Q: And after he removed your clothes, what did he do next?

A: He again tried to insert it [into] my vagina, sir.

x x x x

Q: Did you feel his penis in your vagina?

A: Yes, your Honor.

Q: What did you feel?

A: He was trying to insert his penis into my vagina, your Honor and I felt pain.

Q: What caused that pain?


A: His penis is big.⁴¹

We find no compelling reason why we should not apply our earlier ratiocination in Criminal Case Nos. 07-CR-6765, 07-CR-6766 and 07-CR-6767 to the incidents committed on "CCC" sometime in October 2001. In Criminal Case No. 07-CR-6769, "CCC" categorically testified that appellant failed to insert his penis into her vagina because it is big. Similarly, in Criminal Case No. 07-CR-6770, "CCC" revealed that she felt pain when appellant was trying to insert his penis into her vagina because it is big. Significantly, however, we could not discern from her testimony that there was penile penetration even only in the slightest degree. To conclude that there was penile penetration simply because they felt pain when appellant tried to insert his penis into her vagina is engaging in the realm of speculation. However, the medical examination on "CCC," though not indispensable in a prosecution for rape, shows no evident injury. At this juncture, it must be stressed that in a criminal prosecution, each and every element of the crime must be proved beyond reasonable doubt. Judgment must never rest on speculation or suspicion, no matter how strong it is. "Courts cannot function to supply missing links in the prosecution evidence which otherwise insufficiently proves carnal knowledge."⁴²

Relative to the rape which allegedly occurred in the first week of September 2001 (Criminal Case No. 07-CR-6768) "CCC" related her ordeal as follows:

Q: In the year 2001 while you were in Grade Two, do you recall if Noel Bejim did anything to you?

A: Yes, your Honor.



⁴¹ Id. at 16.

⁴² *People v. Egan*, 432 Phil. 74, 90 (2002) citing *People v. Tavag*, 385 Phil. 1150 (2000).

Q: What did he do to you?

A: He raped me, sir.

x x x x

Q: So you said you were raped by Noei Bejim, how did he rape you, what did he do to you that you claim that he raped you?

x x x x

A: Sir, he [got] cooking oil, your Honor.

Q: After he got cooking oil, what did he do with the cooking oil, if you noticed?

A: He placed the cooking oil [on] my vagina and [on] his penis.

x x x x

Q: So after he removed x x x your pants and panty [and] while you were lying down on the sofa, what did Noel Bejim do next?

A: He tried to put his penis [into] my vagina.

Q: How did he try?

A: He held his penis.

Q: And what did he do with his penis?

A: He inserted it [into] my vagina.

Q: Did his penis touch your vagina?

A: No, your Honor.

Q: It did not touch your vagina?

A: His penis touched my vagina.

Q: Now, you said he was trying to insert his penis into your vagina, what motion did he do, if any?

A: He was hard up.

Q: Did you feel his penis?

A: Yes, your Honor.

Q: You felt it in your vagina?

A: Yes, your Honor.⁴³

“CCC” continued further in narrating the incident of rape allegedly committed in the first week of October 2001 (Criminal Case No. 07-CR-6771) as follows:



⁴³ TSN, September 10, 2007, pp. 7-9.

- Q: And after putting cooking oil [on] your vagina and [on] his penis, what did he do next?
- A: He tried again to put his penis [into] my vagina but he failed again.
- Q: Did you feel his penis into your vagina?
- A: Yes, sir.
- Q: Now, why did you say he failed?
- A: It was not inserted enough.
- Q: Do you know of any reason why it was not inserted enough into your vagina?
- A: Because his penis is big.⁴⁴

Based on the foregoing narration, the Court is convinced that in Criminal Case Nos. 07-CR-6768 and 07-CR-6771, there was a slight penetration on “CCC’s” genitalia. “CCC” positively testified that appellant’s penis indeed touched her vagina. That appellant’s penis was not inserted enough only indicates that he was able to penetrate her even partially. Anyway, complete penetration is not required to consummate the crime of rape. “Full penile penetration is not a consummating ingredient in the crime of rape.”⁴⁵ Thus, from the testimonial account of “CCC,” the Court could reasonably conclude that there was indeed carnal knowledge by appellant of the victim “CCC.” We therefore sustain the CA in finding appellant guilty of statutory rape in Criminal Case Nos. 07-CR-6768 and 07-CR-6771, the only elements of which are “(1) that the offender had carnal knowledge of a woman; and (2) that such woman is under 12 years of age or is demented.”⁴⁶

With the guilt beyond reasonable doubt of appellant of the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610 in Criminal Case Nos. 07-CR-6765, 07-CR-6766, 07-CR-6767, 07-CR-6769 and 07-CR-6770 and statutory rape in Criminal Case Nos. 07-CR-6768 and 07-CR-6771, having been proven, we shall now determine the appropriate penalties imposable for each offense.

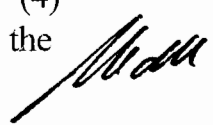
Under Article 336 of the RPC, in relation to Section 5(b), Article III of RA 7610,⁴⁷ the penalty for acts of lasciviousness when the victim is under 12 years of age is *reclusion temporal* in its medium period which has a range of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, the minimum of the

⁴⁴ Id. at 13.

⁴⁵ *People v. Barberos*, 623 Phil. 1008, 1025 (2009).

⁴⁶ *People v. Pamintuan*, 710 Phil. 414, 422 (2013).

⁴⁷ An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes.



indeterminate penalty shall be taken from the full range of the penalty next lower in degree *i.e.*, *reclusion temporal* in its minimum period or from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. The maximum of the indeterminate penalty shall be taken from the proper penalty that could be imposed under the RPC for acts of lasciviousness which, there being no aggravating or mitigating circumstance in these cases, is the medium period of *reclusion temporal* medium which ranges from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days.

In Criminal Case Nos. 07-CR-6768 and 07-CR-6771, the sentence of *reclusion perpetua* imposed upon appellant by the CA for the crime of statutory rape is in accordance with Article 266-B of the RPC, as amended, in relation to Section 5(b), Article III of RA 7610. Likewise proper are the awards of civil indemnity in the amount of Php75,000.00 and moral damages in the amount of Php75,000.00 for each count of rape. The award of exemplary damages in the amount of Php30,000.00 is increased to Php75,000.00 for each case.

WHEREFORE, the appealed September 25, 2012 Decision of the Court of Appeals is **AFFIRMED with modifications**. Appellant Noel Bejim y Romero is found **GUILTY** of:

1. Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 of Republic Act No. 7610 in Criminal Case Nos. 07-CR-6765, 07-CR-6766, 07-CR-6767, 07-CR-6769 and 07-CR-6770 and sentenced in each case to an indeterminate prison term of thirteen (13) years, nine (9) months and ten (10) days of *reclusion temporal* minimum, as minimum, to sixteen (16) years, five (5) months and nine (9) days of *reclusion temporal* medium, as maximum. In addition, appellant is ordered to pay the victims the amounts of Php20,000.00 as civil indemnity, Php15,000.00 as moral damages, Php15,000.00 as exemplary damages, and Php15,000.00 as fine, for each count of acts of lasciviousness.

2. Statutory Rape in Criminal Case Nos. 07-CR-6768 and 07-CR-6771 and sentenced to suffer the penalty of *reclusion perpetua* for each count and ordered to pay the offended party the amounts of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php75,000.00 as exemplary damages for each count of rape.


Appellant is **ORDERED** to pay the offended parties interest on all damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.



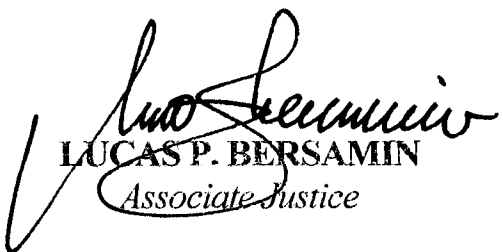
SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


NOEL GIMENEZ TIJAM
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.


MARIA LOURDES P. A. SERENO
Chief Justice