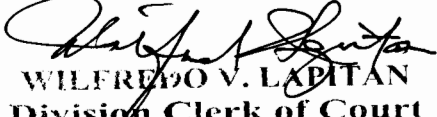




Republic of the Philippines
 Supreme Court
 Manila

CERTIFIED TRUE COPY

 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

MAR 19 2019

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 237349

Present:

- versus -

PERALTA, *J.*, Chairperson,
 PERLAS-BERNABE,*
 LEONEN,
 REYES, A., JR., and
 HERNANDO, *JJ.*

MANUEL BASA, JR., a.k.a. "Jun,"
 Accused-Appellant.

Promulgated:

February 27, 2019

X----------X

DECISION

PERALTA, J.:

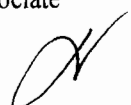
For consideration of the Court is the appeal of the Decision¹ dated September 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08164 which affirmed with modification the Decision² dated July 27, 2015 of the Regional Trial Court (RTC) of Parañaque City, Branch 194, finding Manuel Basa, Jr., a.k.a. "Jun," guilty beyond reasonable doubt of rape under Article 266-A, paragraphs (1) and (2) of the Revised Penal Code (RPC), in relation to Republic Act (R.A.) No. 7610.

The antecedent facts are as follows:

* Designated as additional member, in lieu of Justice Rosmari D. Carandang, per Special Order No. 2624-0 dated February 20, 2019; on official leave.

¹ Rollo, pp. 2-18. Penned by Associate Justice Stephen C. Cruz, with the concurrence of Associate Justices Rosmari D. Carandang and Nina G. Antonio-Valenzuela.

² CA rollo, pp. 107-120. Penned by Judge Marie Grace Javier Ibay.



In two (2) separate Informations filed on August 19, 2003, Basa was charged with one violation each of Article 266-A, paragraphs (1) and (2) of the RPC, in relation to R.A. No. 7610, the accusatory portions of which read:

Criminal Case No. 04-0200

That on or about a date prior to December 25, 2002 in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, and by taking advantage of his moral ascendancy, did then and there wilfully, unlawfully and feloniously insert his [finger] into the genitalia of [AAA], a [REDACTED] minor, by means of force, threat or intimidation, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.³

Criminal Case No. 04-0201

That on or about a date prior to December 31, 2002 in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, and by taking advantage of his moral ascendancy, did then and there wilfully, unlawfully and feloniously have carnal knowledge of [AAA], a [REDACTED] minor, through force, threat or intimidation, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.⁴

During arraignment, Basa, assisted by counsel, pleaded not guilty to the charges. Subsequently, trial on the merits ensued. The prosecution presented four (4) witnesses, namely: (1) private complainant AAA;⁵ (2) senior medico-legal officer Dr. Alvin David; (3) AAA's teacher at [REDACTED], Veronica Malapad Francisco; and (4) a representative of the Local Civil Registrar, Josefina Villorant.⁶ The defense,

³ *Id.* at 107-108.

⁴ *Id.* 108.

⁵ The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to R.A. No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; R.A. No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

⁶ The witnesses' testimony was dispensed with after the submission of the certified true copy of AAA's Certificate of Live Birth.



thereafter, presented the testimonies of: (1) accused Basa; and (2) a certain Alvin Modina.⁷

AAA testified that Basa raped her on two (2) occasions: the first incident, prior to December 25, 2002; while the second, about a week after the first. Both occasions took place inside the office of “Ka Eddie,” an Iglesia Ni Cristo (INC) pastor, located at the second floor of the INC church at [REDACTED], Parañaque City. AAA had been a member of the INC for almost a year prior to the first incident. Basa, also a member of the INC, had been doing the task of cleaning the church.

On the first incident, AAA narrated that she went to the INC church at around 9:00 a.m. at the request of her cousin, BBB,⁸ to check if their attendance card or what they refer to as “*tarheta*” had been overturned. Under the INC’s practice, this signifies the presence of a person during the worship service. Wearing a skirt and a t-shirt, AAA saw Basa, whom she referred to as “Kuya Jun,” cleaning the first floor of the church, near the area where the attendance cards were placed. Basa told AAA that he would show her a small fishpond at the back portion of the church. Trusting her Kuya Jun, AAA went with him. But instead, Basa held her right arm and dragged her to the office of Pastor Eddie at the second floor and locked the door behind them. The office is usually locked, but since Basa was in charge of cleaning the church, he had in his possession the key to the door thereof. There, AAA recounted that Basa began kissing her lips and mashing her breast. He then pulled up her skirt and, through the side of her underwear, inserted his finger into her private part, causing AAA to feel pain. Thereafter, Basa removed her skirt and underwear and started kissing her private part. AAA said that she could not resist because Basa threatened to kill her should she tell anybody of her ordeal.⁹

A week thereafter, the second incident occurred. AAA relayed that between 9:00 and 10:00 a.m., she went to the INC church to check the “*tarheta*.” When Basa saw her, he immediately dragged her again and brought her to Pastor Eddie’s office. As before, she could not do anything out of fear for her life. AAA recalled that apart from the security guards stationed outside the church, no other persons were inside the place of worship. In the office, Basa kissed her, pulled up her shirt, and mashed her breast. Afterwards, he removed her skirt and underwear and put his penis out of his denim pants. He then told her to lie down on the floor and inserted his penis inside her private part, causing her to feel pain. After the incident, AAA went home and swore never to tell anybody about what Basa did to her. It was only in January 2003, when classes resumed in her school at [REDACTED], that she found the courage to tell her

⁷ Rollo, p. 4.

⁸ AAA referred to BBB as her cousin but Basa referred to BBB as AAA’s aunt.

⁹ Rollo, pp. 5-6.

teacher, Francisco, about the ordeal she went through during the vacation. Upon learning this, Francisco called AAA's grandmother, CCC. Then, when AAA's aunts found out about the incidents, they immediately reported the same to the National Bureau of Investigation where AAA submitted her *Sinumpaang Salaysay* dated January 20, 2003.¹⁰

AAA's testimony was corroborated by her teacher, Francisco, who stated that AAA was an average student. A week after the 2002 Christmas break, she noticed that AAA was quite withdrawn compared to her usual behavior. Bothered by what she observed, she asked AAA to stay in the classroom after class. Francisco recalled that AAA was first reluctant to confide in her but, after a while, she was able to convince AAA into sharing her harrowing experience. AAA then told her that her Kuya Jun, a caretaker in the INC church, fondled her twice and forced himself on her. Francisco added that as AAA was narrating the incident, she was trembling in fear, terribly shaking, and appeared to have been traumatized. Upon learning of said incident, Francisco immediately relayed the story to AAA's grandmother.¹¹

In his defense, Basa denied the accusations against him. He narrated that on December 25, 2002, AAA was not yet a member of the INC and was still under probation or "*sinusubok*." Basa contended that on the alleged first rape incident, he was preparing the stage of the church for its afternoon program, while on the second rape incident, he was with several other persons preparing for the New Year's celebration and afternoon prayer. According to Basa, the only possible reason that could have impelled AAA to file cases against him was because of BBB. He recounted an instance wherein their "*Pangulong Diakono*" or Deputy Head Deacon told him to order those persons not included in the worship service, among them was BBB, to go outside of the church. This incident angered BBB. In addition, Basa revealed that BBB once admired him, but he turned her down.¹²

The defense also presented, as its witness, Alvin Modina, a member of the INC. Modina knew Basa as a "*masiglang kaanib*" of their religious segregation, while AAA as one of those being indoctrinated in their barangay. According to Modina, he was at the INC church from 8:00 a.m. to 9:30 a.m. on the alleged first incident when AAA was molested, but he did not notice the presence of AAA or Basa. He stated that AAA arrived only in the evening when the church was opened for the worship service. On the alleged second rape incident, Modina testified that he was at the INC church from 9:00 a.m. until 4:00 p.m. and saw Basa there preparing for the New Year celebration.¹³

¹⁰ *Id.* at 6.

¹¹ CA rollo, p. 112.

¹² Rollo, pp. 6-7.

¹³ CA rollo, pp. 114-115.



On July 27, 2015, the RTC rendered its Decision finding Basa guilty of the crime charged, disposing of the cases as follows:

WHEREFORE, the Court finds accused **MANUEL BASA, a.k.a. "Jun" GUILTY** beyond reasonable doubt of the crime of Rape under the following cases:

1. **GUILTY** beyond reasonable doubt **under Criminal Case No. 04-0200** for the crime of Rape under Article 266-A (2) in relation to Republic Act No. 7610 and is hereby sentenced to suffer the indeterminate penalty ranging from four (4) years of *prision correccional* as minimum, to ten (10) years of *prision mayor* as maximum and to pay private complainant [AAA] the amount of P30,000.00 as moral damages and P30,000.00 as exemplary damages.
2. **GUILTY** beyond reasonable doubt **under Criminal Case No. 04-0201** for the crime of Rape under Article 266-A (1) in relation to RA 7610 and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay private complainant [AAA] the amount of P30,000.00 as moral damages and P30,000.00 as exemplary damages.

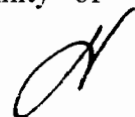
As the accused is a detention prisoner, the period of his detention shall be credited in the period of his sentence.

SO ORDERED.¹⁴ (Emphases and italics in the original.)

The RTC found that judging on the basis of the testimonies of both the prosecution and the defense in connection with which documentary pieces of evidence were formally offered, the prosecution sufficiently established the existence of the elements of the crime charged against Basa.¹⁵

In a Decision dated September 28, 2017, the CA affirmed with modification the RTC Decision in the following manner:

Anent the damages awarded by the RTC, We find that modification of the amount of damages awarded is in order. For Criminal Case No. 04-[0200], in addition to the Php30,000.00 award as moral damages and Php30,000.00 as exemplary damages, the amount of Php30,000.00 shall also be awarded as civil indemnity. On the other hand, for Criminal Case No. 04-[0201], in line with recent jurisprudence, the amount of exemplary damages shall be modified and increased to P75,000.00. AAA shall likewise be entitled to civil indemnity of P75,000.00 and moral damages of P75,000.00.



¹⁴ *Id.* at 119-120.

¹⁵ *Id.* at 116.

In addition, all the monetary awards shall earn interest at the legal rate of 6% per annum from the date of finality of this decision until fully paid.

WHEREFORE, premises considered, the Decision dated July 27, 2015 of the Regional Trial Court of Parañaque, Branch 194 in Criminal Cases No. 04-0200 and [No.] 04-0201, is hereby **AFFIRMED**.

SO ORDERED.¹⁶ (Citations omitted; emphases in the original.)

According to the appellate court, there is no reason to disturb the findings of the RTC, holding that AAA's credibility, by well-established precedents, is given great weight and accorded high respect.¹⁷

Now before us, Basa manifested that he is dispensing with the filing of a supplemental brief considering that he had exhaustively discussed the assigned errors in his Appellant's Brief.¹⁸ The Office of the Solicitor General similarly manifested that it had already discussed its arguments in its Appellee's Brief.¹⁹

According to Basa, AAA's testimony is too incredible and full of inconsistencies to merit faith and credence. If she did go through such ordeal, she should have struggled or, at least, shouted for help considering that there was no mention of any fatal weapon and especially during the time when Basa was allegedly opening the door to Pastor Eddie's office. Moreover, her behavior after the first rape incident contradicts her claim of fear because she simply wore back her dress, fixed herself, and went home. Basa also points out that the report of the medico-legal officer shows "no evident sign of extragenital injuries and the hymen, intact and its orifice small as to preclude complete penetration by an average sized adult Filipino male organ in full erection without producing any genital injury."²⁰ Thus, physical evidence belies AAA's claims that he inserted his finger and penis inside her vagina.

After a careful review of the records of this case, the Court finds no cogent reason to reverse the rulings of the RTC and the CA finding him guilty of the acts charged against him. In view of the circumstances of the instant case, however, a modification of the penalty imposed, the damages awarded, and the nomenclature of the offense committed is in order.

In Criminal Case No. 04-0200, instead of rape under Article 266-A, paragraph (2) of the RPC, in relation to R.A. No. 7610, Basa should be held

¹⁶ *Rollo*, pp. 17-18.

¹⁷ *Id.* at 17.

¹⁸ *Id.* at 31.

¹⁹ *Id.* at 26.

²⁰ *CA rollo*, p. 175.

liable for Lascivious Conduct under Section 5 (b),²¹ Article III of R.A. No. 7610.

In *Dimakuta v. People*,²² the Court held that in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph (2) of the RPC, which is punishable by *prisión mayor*, the offender should be liable for violation of Section 5 (b), Article III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Article 266-A, paragraph (2) of the RPC and not R.A. No. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable for sexual abuse under R.A. No. 7610. The reason for the foregoing is that, aside from affording special protection and stronger deterrence against child abuse, R.A. No. 7610 is a special law which should clearly prevail over R.A. No. 8353, which is a mere general law amending the RPC. In *People v. Chingh*,²³ the Court noted that "it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those 'persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.'"

It is undisputed that at the time of the commission of the lascivious act in Criminal Case No. 04-0200, AAA was [REDACTED] years old. Thus, based on the above discussion, Section 5 (b) of R.A. No. 7610 finds application herein. The provision states:

²¹ Section 5 (b), Article III of R.A. No. 7610 provides:

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

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

X X X X

(b) Those who commit the act of sexual intercourse [or] lascivious conduct with a child exploited in prostitution or subject[ed] 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[.]

²² 771 Phil. 641 (2015).

²³ 661 Phil. 208, 222-223 (2011).

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 subject[ed] 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. (Emphases and italics ours.)

To achieve uniformity in designating the proper offense, moreover, the Court, in *People v. Caoili*,²⁴ prescribed guidelines in case lascivious conduct is committed under the section cited above. On the one hand, when the victim is under 12 years of age at the time the offense was committed, the offense is designated as Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5 of R.A. No. 7610. This finds support in the first *proviso* in Section 5 (b) of R.A. No. 7610 which requires 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 [RPC], for rape or lascivious conduct, as the case may be[.]" On the other hand, when the victim, at the time the offense was committed, is aged twelve (12) years or over but under eighteen (18), or is eighteen (18) or older but unable to fully take care of herself/himself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the nomenclature of the offense should be Lascivious Conduct under Section 5 (b) of R.A. No. 7610, since the law no longer refers to Article 336 of the RPC, and the perpetrator is prosecuted solely under R.A. No. 7610.²⁵

However, before an accused can be held criminally liable for lascivious conduct under Section 5 (b), Article III of R.A. No. 7610, the Court held in *Quimvel v. People*²⁶ that the requisites for Acts of Lasciviousness, as penalized under Article 336 of the RPC, must be met in

²⁴ G.R. Nos. 196342 and 196848, August 8, 2017.

²⁵ *People v. Caoili, supra*.

²⁶ G.R. No. 214497, April 18, 2017. 823 SCRA 192.

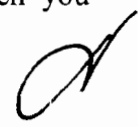
addition to the requisites for sexual abuse under Section 5 (b), Article III of R.A. No. 7610, namely:

1. The offender commits any act of lasciviousness or lewdness;
2. That it be 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; or
 - 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;
3. That said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and
4. That the offended party is a child, whether male or female, below 18 years of age.

A review of the evidence presented by the prosecution reveals that the elements enumerated above were sufficiently established. With respect to the first requisite, the prosecution was able to show, through the credible testimony of AAA, that Basa committed lascivious conduct against her when he dragged her to the room of Pastor Eddie, pulled up her skirt and, through the side of her underwear, inserted his finger into her private part, causing her to feel pain. During her direct examination, the trial court was wholly convinced by AAA’s narration of her harrowing experience, to *wit*:

Q: Going back to the first rape prior to December 25, 2002 at Iglesia ni Kristo at [redacted], Parañaque City when you arrived there at around 9 a.m. coming from your house to check the taheta of your [redacted] whether is it overturned what happen[ed] when you arrived there?

x x x x



A: Nandoon po siya.

x x x x

Q: Who is this “siya” you are referring to?

x x x x

A: Si Ka Jun po.

x x x x

Q: Meaning to say the accused in this case?

x x x x

A: Opo.

x x x x

Q: At that time that you saw him at 9 a.m. prior to December 25, 2002 at the Iglesia ni Kristo, [REDACTED], Parañaque City what was he doing?

x x x x

A: Naglilinis po.

x x x x

Q: In what place in the Iglesia ni Kristo at [REDACTED], Parañaque City did you see him there cleaning?

x x x x

A: Malapit po sa taheta.

x x x x

Q: And where is that taheta located, first floor or second floor?

x x x x

A: First floor.

x x x x

Q: And when you saw him there cleaning near the taheta what happen[ed] next?

x x x x

A: Sinabi niya po na may ipapakita daw po siya sa akin.

x x x x

Q: Did he tell you what that something was?

x x x x

A: Opo.

x x x x

Q: What was that something that he told you he will show you?

x x x x

A: Yung palaisdaan po na maliit sa may kapilya; maliit lang po siya.

x x x x

Q: Where was this fishpond or [aquarium?]

x x x x

A: Parang fishpond po na maliit.

x x x x

Q: According to him, where was this fishpond that he wanted to show you located?

x x x x

A: Sa labas po; sa likod po yun ng Iglesia.

x x x x

Q: First floor or second floor?

x x x x

A: First floor po.

x x x x

Q: And what did you say when the accused told you that he wanted to show a fishpond in the first floor of the Iglesia ni Kristo?

x x x x

A: Sumama [po] ako.

x x x x

Q: Why did you go with him?

x x x x

A: Kasi po may tiwala naman po ako.

x x x x

Q: How much did you trust him at that time?

x x x x

A: Sobra.

x x x x

Q: And when you said "yes" to his proposal to show you this fishpond what happen[ed] next?

x x x x

A: Hinalikan niya po ako.



x x x x

Q: Where did he kiss you?

x x x x

A: Sa labi po.

x x x x

Q: You said that he drag[ged] you, how forceful was he dragging your right arm?

x x x x

A: Hindi ko na maano[,] basta po hinila niya po ako.

x x x x

Q: Did it hurt, did your right arm hurt when he drag[ged] you?

x x x x

A: Opo.

x x x x

Q: How much did [it] hurt?

x x x x

A: Masakit po.

x x x x

Q: At that time that he was dragging you at the second floor at the office of Pastor Eddie did you resist him?

x x x x

A: Hindi po[.]

x x x x

Q: Why?

x x x x

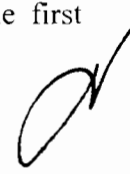
A: Kasi po natatakot po ako sa kanya.

x x x x

Q: Did you ask him why he was dragging you, why are you going to the second floor when you say that the fishpond is at the first floor?

x x x x

A: Opo.



x x x x

Q: What did he say?

x x x x

A: Wala lang po.

x x x x

Q: And you said a while ago that at the office he kiss[ed] you [on] your lips several times is that correct at the office of Pastor Eddie?

x x x x

A: Opo, tapos pinaghahawakan po ang dito ko, yung dede ko.

x x x x

Q: How long did he [kiss] you several times and mashed your breast?

x x x x

A: Mga one minute po siguro.

x x x x

Q: At the time that he mashed your breast was his hand outside your clothes or inside your clothes?

x x x x

A: Nasa loob po.

x x x x

Q: At that time were you wearing any bra?

x x x x

A: Baby bra po.

x x x x

Q: And his hand was it outside your baby bra or inside your baby bra?

x x x x

A: Nasa loob po.

x x x x

Q: After he kiss[ed] you several times and mashed your breast what happen[ed] next?

x x x x

A: Yung daliri niya po pinasok niya sa ari ko.



x x x x

Q: What part of his finger entered your vagina?

x x x x

A: Hindi ko alam.

x x x x

Q: But you are sure that his finger entered your vagina?

x x x x

A: Opo.

x x x x

Q: By the way at that time were you a virgin?

COURT:

She was only [REDACTED] years old at that time.

PROS. LEONARDO RODRIGUEZ:

Q: When his finger entered your vagina what did you feel?

x x x x

A: Masakit po.

x x x x

Q: How much it (sic) did it hurt?

x x x x

A: Masakit po.

x x x x

Q: After he inserted his finger inside your vagina what happen[ed] next or what else did he do to you?

x x x x

A: Hinubaran po yung panty ko.

x x x x

Q: He removed your panty downwards?

x x x x

A: Opo.

x x x x



Q: And after he removed your panty what happen[ed] next?

x x x x

A: Hinalikan po yung ari ko.

x x x x

Q: How many times did he kiss your vagina?

x x x x

A: Dalawa (2) po.

x x x x

Q: After he kiss[ed] your vagina what happen[ed] next?

x x x x

A: Umuwi na po ako.

x x x x

Q: At that time he was kissing your lips several times; he was mashing your breast; he inserted his finger inside your vagina and kiss[ed] your vagina did you resist him, did you resist his advances?

x x x x

A: Hindi po kasi natatakot po ako.

x x x x

Q: Why were you scared?

x x x x

A: Natatakot po ako.

x x x x

Q: Was he threatening you?

x x x x

A: Opo.

x x x x

Q: How did he threaten you?

x x x x

A: Huwag daw po akong magsusumbong.

x x x x



Q: Or else what will happen?

x x x x

A: Papatayin daw po ako.²⁷

In view of the foregoing, the prosecution duly established the element of intentional touching, either directly or through clothing, of the genitalia of any person, with intent to abuse or gratify sexual desire. This act constitutes sexual abuse and lascivious conduct under the definition provided by Section 2, paragraphs (g) and (h)²⁸ of the rules and regulations of R.A. No. 7610, known as the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

As regards the second requisite that the lascivious conduct be done under the enumerated circumstances, it has been said that "force and intimidation" are subsumed under "coercion and influence" and such terms are used almost synonymously. This can be gleaned from Black's Law Dictionary's definitions of "coercion" as "compulsion; force; duress," of "influence" as "persuasion carried over to the point of overpowering the will," and of "force" as "constraining power, compulsion; strength directed to an end"; as well as from jurisprudence which defines "intimidation" as "unlawful coercion; extortion; duress; putting in fear."²⁹ As AAA expressly testified, Basa grabbed her right arm and forcefully dragged her to the office of Pastor Eddie and threatened to kill her should she tell anybody of what he did to her.

Anent the third requisite, a child is deemed exploited in prostitution or subjected to other sexual abuse when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit or any other consideration; or (b) under the coercion or any influence of any adult, syndicate or group.³⁰ In the case of *Olivarez v. Court of Appeals*,³¹ the Court explained that the phrase "other sexual abuse," in the above provision, covers not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult. In the latter case, there must be some form of compulsion equivalent to intimidation which subdues the free

²⁷ TSN, June 17, 2009, pp. 23-52.

²⁸ Section 2. Definition of Terms. — As used in these Rules, unless the context requires otherwise —

x x x x

(g) "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;

h) "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person[.]

²⁹ *People v. Macapagal*, G.R. No. 218574, November 22, 2017.

³⁰ *Id.*


³¹ 503 Phil. 421 (2005).

exercise of the offended party's will.³² Again, AAA was clearly coerced, in fact dragged, by Basa into going with him to the room of their pastor, where he forcefully inserted his finger into her private part.

Fourth, as previously mentioned, it is undisputed that AAA was only [REDACTED] years old at the time of the commission of the offense. Under Section 3 (a) of R.A. No. 7610, "children" refers to person[s] below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]"

In view of the presence of all the elements of the crime, Basa should be convicted of Lascivious Conduct under Section 5 (b), Article III of R.A. No. 7610. As duly found by the trial court, and affirmed by the appellate court, the prosecution, through the positive and categorical testimony of AAA, duly established that Basa succeeded in forcefully inserting his finger into her vagina at a time when she was merely [REDACTED] years old. He must, therefore, be held liable therefor.

With respect to Criminal Case No. 04-0201, the Court affirms the rulings of the courts below finding that the prosecution was also able to prove, beyond reasonable doubt, all the elements of the crime of rape under Article 266-A, paragraph (1), in relation to R.A. No. 7610. In the instant case, the RTC aptly found that the prosecution sufficiently established the presence of the elements of rape under Article 266-A, paragraph (1) (a) of the RPC which provides that rape is committed: "1) By a man who shall have carnal knowledge of a woman 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." During the trial, AAA vividly gave a detailed narration of what transpired a week after the occurrence of the first incident of molestation. In a sincere and convincing manner, she painstakingly recalled how she was once again dragged into the room of Pastor Eddie, where Basa kissed her and mashed her breast, and, thereafter, removed her skirt and underwear in order to insert his penis inside her vagina. She testified on the matter as follows:

- Q. After he was touching your breast for a long time, what happened next?
- A. Hinubad niya iyong palda at panty ko.
- Q. Did he remove it one at a time or simultaneously?
- A. Sabay po.
- 

³²

People v. Dagsa, G.R. No. 219889, January 29, 2018.

- 1Q. After he removed your skirt and panty simultaneously, what did he do?
A. Inilabas niya iyong ari niya
- Q. At that time, what was he wearing when he put out his penis?
A. Nakapantalón po.
- Q. Long or short?
A. Long po.
- Q. What kind of material, slacks or maong?
A. Maong po.
- Q. He put out his penis from his long maong pants, is that correct?
A. Opo.
- Q. Did he put it out through the zipper only or did he put down his pants?
A. Zipper lang po.
- Q. After he put out his penis, what happened?
A. Inihiga na niya ako.

X X X X

- Q. After he made you lie down, what did he do?
A. Sinusubukan niya pong ipasok iyong ari niya sa ari ko.
- Q. Was he successful?
A. Hindi po masyado. Pinipilit niya po.
- Q. Was he able to insert his penis inside your vagina?
A. Opo.
- Q. He was able to insert it and how many times did he insert his penis inside your vagina?
A. Isa lang po.
- Q. How deep did it penetrate your vagina?
A. Medyo ibabaw lang po.
- Q. But you felt his penis inside your vagina?
A. Opo.
- Q. What did you feel when his penis was inside your vagina?
A. Masakit po.
- Q. How long did he insert his penis in your vagina?
A. Medyo matagal po.³³

In a long line of cases, the offended parties of which are young and immature girls, the Court found a considerable receptivity on the part of the trial courts to lend credence to the testimonies of said victims. This is in consideration of not only the offended parties' relative vulnerability, but also

³³ TSN, September 16, 2009, pp. 23-29.

the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, exposes them to. Indeed, no woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars. Hence, AAA's testimony is entitled to full faith and credence.³⁴

It bears stressing that all the arguments raised by Basa in his Appellant's Brief — which the Public Attorney's Office adopted instead of filing a supplemental appeal brief — have been properly addressed in full and in detail in the appealed CA decision. For one, AAA's failure to shout or immediately report the incident does not necessarily belie her claims because as the appellate court held, a rape victim's actions are oftentimes overwhelmed by extreme psychological terror that numbs her into silence and submissiveness. For another, the fact that the medico-legal report shows no evident sign of injuries is of no moment since laceration of the hymen, even if considered a telling evidence of sexual assault, is not always essential to establish the consummation of the crime of rape.³⁵ Indeed, when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts of weight, substance, or value are overlooked, misapprehended or misappreciated by the lower court which, if properly considered, would alter the result of the case. After a circumspect study of the records, the Court sees no compelling reason to depart from the foregoing principle.³⁶

As for the penalties and damages for the crimes charged herein, the Court rules as follows. In Criminal Case No. 04-0200 for Lascivious Conduct under Section 5 (b), Article III of R.A. No. 7610, the penalty imposed by the courts below must be modified. Section 5, Article III of R.A. No. 7610 provides that the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse. Here, in the absence of mitigating or aggravating circumstances, the maximum term of the sentence shall be taken from the medium period thereof.³⁷ Moreover, notwithstanding the fact that R.A. No. 7610 is a special law, Basa may still enjoy the benefits of the Indeterminate Sentence Law. In applying the provisions thereof, the minimum term shall be taken from within the range of the penalty next lower in degree, which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period.³⁸ Thus, Basa shall suffer the indeterminate

³⁴ *People v. Macapagal*, *supra* note 29.

³⁵ *Rollo*, pp. 14-15.

³⁶ *People v. Macapagal*, *supra* note 29.

³⁷ 17 years, 4 months and 1 day to 20 years.

³⁸ 8 years and 1 day to 14 years and 8 months.

sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, for violation of the said provision of R.A. No. 7610.³⁹ Likewise, and conformably with prevailing jurisprudence,⁴⁰ he is directed to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, ₱15,000.00 as exemplary damages, and ₱15,000.00 as fine, pursuant to Section 31 (f), Article XII of R.A. No. 7610, all of which shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

With respect to Criminal Case No. 04-0201 for rape under Article 266-A, paragraph (1), the Court affirms the penalty imposed and the amount of damages awarded by the courts *a quo*. Thus, Basa is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, pursuant to *People v. Jugueta*,⁴¹ all of which shall likewise earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

WHEREFORE, premises considered, the instant appeal is **DISMISSED** for lack of merit. The assailed Decision dated September 28, 2017 of the Court of Appeals, affirming with modification the Decision dated July 27, 2015 of the Regional Trial Court of Parañaque City, Branch 194, is likewise **AFFIRMED** with **MODIFICATION**:

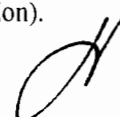
1. In Criminal Case No. 04-0200, appellant Manuel Basa, Jr. is held guilty of one (1) count of Lascivious Conduct under Section 5 (b), Article III of R.A. No. 7610, and is hereby sentenced to suffer the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. Basa is likewise ordered to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, ₱15,000.00 as exemplary damages, and a fine of ₱15,000.00.

2. In Criminal Case No. 04-0201, Basa is held guilty of one (1) count of rape under Article 266-A, paragraph (1), and is hereby sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

³⁹ *People v. Zamora*, G.R. No. 229835, January 31, 2018 (Minute Resolution).

⁴⁰ *Orsos v. People*, G.R. No. 214673, November 20, 2017.

⁴¹ 783 Phil. 806 (2016).



All damages awarded shall incur legal interest at the rate of six percent (6%) per annum from finality of this Decision until fully paid.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'Diosdado M. Peralta', written in a cursive style.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

On official leave
ESTELA M. PERLAS-BERNABE
Associate Justice

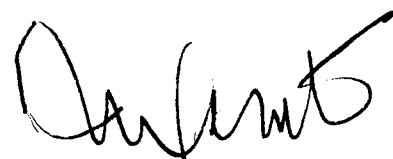

MARVIC M.V.F. LEONEN
Associate Justice


ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice

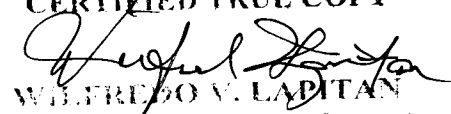
ATTESTATION


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


DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

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.

CERTIFIED TRUE COPY

WELFREDO V. LAPITAN
Division Clerk of Court
Third Division


ANTONIO T. CARPIO
Acting Chief Justice
(Per S.O. No. 2637 dated February 26, 2019)

MAR 19 2019