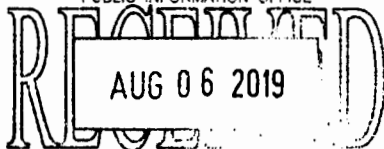


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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division



AUG 01 2019

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



BY: *750*
TIME: *8:58*

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 228260

Present:

- versus -

PERALTA, J., *Chairperson,*
LEONEN,
REYES, A., JR.,
CARANDANG,* and
INTING, JJ.

ELMER MOYA,
Accused-Appellant.

Promulgated:

June 10, 2019

X-----*Wilfredo V. Lapitan*-----X

DECISION

PERALTA, J.:

This is to resolve the appeal of appellant Elmer Moya that seeks to reverse and set aside the Decision¹ dated October 22, 2015 of the Court of Appeals (CA) affirming with modifications the Decision² dated April 8, 2013 of the Regional Trial Court (RTC), Branch 10, Balayan, Batangas, finding the appellant guilty beyond reasonable doubt of Rape and Qualified Rape under Article 266-A, in relation to Article 266-B of the Revised Penal Code (RPC); and violation of Section 5(b), Article III of Republic Act (R.A.) No. 7610.

The facts follow.

* Additional member in lieu of Associate Justice Ramon Paul L. Hernando per Raffle dated June 10, 2019.

¹ *Rollo*, pp. 2-22; penned by Associate Justice Maria Elisa Sempio Diy, and concurred in by Associate Justices Ramon M. Bato, Jr. and Ramon Paul L. Hernando.

² CA *rollo*, pp. 37-46; penned by Presiding Judge Cristino E. Judit.

On July 20, 2008, AAA,³ the victim, then thirteen (13) years old (born on July 25, 1995) and the sister of appellant, was sleeping in the other room of appellant's house. AAA was awakened when appellant entered the room. Appellant then placed his hand on AAA's mouth and started to undress her by removing her shorts and underwear. AAA could not shout for help since appellant had placed his hand on her mouth.⁴

Thereafter, on July 27, 2008, at around 8:30 p.m., the same incident took place. Appellant placed his hand on AAA's mouth and started to undress her. Afterwards, appellant inserted his penis into AAA's vagina and ejaculated. AAA did not tell anyone about the incident because she was afraid that no one would believe her. Appellant likewise threatened AAA by telling her that she would be killed if someone finds out about the incident.⁵

Again, on August 3, 2008, at around 8:00 p.m., appellant entered the room of AAA and the former placed his hand on the mouth of the latter. Appellant undressed AAA and, thereafter, appellant ejaculated.⁶

Then on August 14, 2008, at around 8:30 p.m., AAA was in the house of appellant and was awakened when appellant entered her room. Appellant then placed his hand on AAA's face and proceeded to undress her. Thereafter, appellant inserted his finger into AAA's vagina.⁷

On October 21, 2008, Police Superintendent Roy A. Camarillo, MD, MBA, Medico-Legal Officer, examined AAA. The medico-legal report indicated the following findings and conclusion:

FINDINGS:

Fairly nourished, normally developed, conscious, coherent, ambulatory female subject. Breasts are budding. Abdomen is soft & flat.

There's scanty growth of pubic hair. Labia majora are full, convex and coaptated with light brown and non-hypertrophied labia minora presenting in between. On separating the same is disclosed crescentic type of

³ The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 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"; 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.

⁴ *Rollo*, pp. 5-6.

⁵ *Id.* at 6.

⁶ *Id.*

⁷ *Id.*

hymen, thin, with PRESENCE OF DEEP HEALED LACERATION at 9 o'clock position and SHAL[L]OW HEALED LACERATION at 3 o'clock position. The perihymenal, urethra, periurethral area and fossa navicularis have no evident injury noted at the time of examination. There is no discharge noted.

CONCLUSION:

MEDICAL EXAMINATION SHOWS BLUNT HEALED TRAUMA TO THE HYMEN.

THERE ARE NO EXTRA-GENITAL INJURIES NOTED AT THE TIME OF EXAMINATION.⁸

Hence, four (4) separate Informations were filed against appellant, thus:

Criminal Case No. 6263

That on or about the 27th day of July, 2008, at around 8:00 o'clock in the evening, at [REDACTED], Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge with one [REDACTED], a thirteen (13) year old minor, accused's sister, against her will and consent, which acts debased, degraded or demeaned her intrinsic worth and dignity, as a human being.

Contrary to law.⁹

Criminal Case No. 6264

That on or about the 20th day of July, 2008, at around 8:00 o'clock in the evening, at [REDACTED], Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge with one [REDACTED], a thirteen (13) year old minor, accused's sister, against her will and consent, which acts debased, degraded or demeaned her intrinsic worth and dignity, as a human being.

Contrary to law.¹⁰

Criminal Case No. 6265

That on or about the 14th day of August 2008, at around 8:00 o'clock in the evening, at [REDACTED]

⁸ Records, Vol. 1, p. 10.

⁹ *Id.* at 1.

¹⁰ Records, Vol. 2, p. 1.

██████████, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge with one ██████████, a thirteen (13) year old minor, accused's sister, against her will and consent, which acts debased, degraded or demeaned her intrinsic worth and dignity, as a human being.

Contrary to law.¹¹

Criminal Case No. 6266

That on or about the 3rd day of August 2008, at around 8:00 o'clock in the evening, at ██████████ ██████████ ██████████, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge with one ██████████, a thirteen (13) year old minor, accused's sister, against her will and consent, which acts debased, degraded or demeaned her intrinsic worth and dignity, as a human being.

Contrary to law.¹²

During arraignment, appellant pleaded not guilty to all the charges against him; and after the pre-trial conference, trial on the merits ensued.

Appellant interposed the defense of denial and alibi. According to him, he was not even at his house on the dates of the alleged incidents. Appellant claimed that he was out fishing, together with his co-fisherman and uncle, in Calatagan, Batangas, which is estimated to be more than one (1) kilometer away from his house. The same was corroborated by BBB, appellant and AAA's aunt.¹³

The RTC found appellant guilty beyond reasonable doubt of the crime of Rape under Article 266-A(1), in relation to Article 266-B, 1st paragraph of the RPC, as amended by R.A. No. 8353, and in relation further to Article III, Section 5(b) of R.A. No. 7610, and Section 3(g) of its Implementing Rules and Regulations; sentenced him to suffer, on each count, the penalty of *reclusion perpetua*, without eligibility for parole; and ordered him to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages, thus:

In view of the foregoing and by proof beyond reasonable doubt, the Court hereby render[s] judgment as follows:

¹¹ Records, Vol. 3, p. 1.

¹² Records, Vol. 4, p. 1.

¹³ *Rollo*, p. 7.

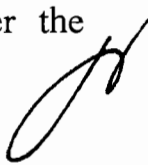
1. In Criminal Case No. 6263, the Court finds accused Elmer Moya guilty beyond reasonable doubt of the crime of Rape as charged and hereby sentences him to suffer the penalty of Reclusion Perpetua without eligibility for parole, and indemnify victim ██████████ the amount of Php50,000.00 as civil indemnity, Php75,000.00 as moral damages and Php25,000.00 as exemplary damage[s].
2. In Criminal Case No. 6264, the Court finds accused Elmer Moya guilty beyond reasonable doubt of the crime of Rape as charged and hereby sentences him to suffer the penalty of Reclusion Perpetua without eligibility for parole, and to indemnify victim ██████████ the amount of Php50,000.00 as civil indemnity, Php75,000.00 as moral damages and Php25,000.00 as exemplary damages.
3. In Criminal Case No. 6265, the Court finds accused Elmer Moya guilty beyond reasonable doubt of the crime of Rape as charged and hereby sentences him to suffer the penalty of Reclusion Perpetua without eligibility for parole, and to indemnify victim ██████████ the amount of Php50,000.00 as civil indemnity, Php75,000.00 as moral damages and Php25,000.00 as exemplary damages.
4. In Criminal Case No. 6266, the Court finds accused Elmer Moya guilty beyond reasonable doubt of the crime of Rape as charged and hereby sentences him to suffer the penalty of Reclusion Perpetua without eligibility for parole, and to indemnify victim ██████████ the amount of Php50,000.00 as civil indemnity, Php75,000.00 as moral damages and Php25,000.00 as exemplary damages.

SO ORDERED.¹⁴

According to the RTC, the victim, AAA, spontaneously and without hesitation, identified appellant as the malefactor; and although the victim's testimony suffered some lapses and inconsistencies, the same was understandable, taking into account the nature of the crime committed at her young age. The trial court also held that the incident of rape is corroborated by the medico-legal findings.

The CA affirmed the decision of the RTC with modifications. In Criminal Case No. 6263, appellant was sentenced by the CA to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and ordered him to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. In Criminal Case Nos. 6264 and 6266, appellant was found guilty of violation of Section 5(b), Article III of R.A. No. 7610 and sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, and ordered to pay ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, as well as a ₱15,000.00 fine. In Criminal Case No. 6265, appellant was found guilty of Qualified Rape by Sexual Assault under Article 266-A, in relation to 266-B of the RPC and sentenced to suffer the

¹⁴ Records, Vol. 1, pp. 105-106.



indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor*; as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, and ordered him to pay AAA ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, thus:

WHEREFORE, premises considered, the appeal is hereby PARTIALLY GRANTED. The Decision dated April 8, 2013 rendered by Branch 10, Regional Trial Court (RTC) of Balayan, Batangas is hereby AFFIRMED with the following MODIFICATIONS:

1. In Criminal Case No. 6263, [Elmer Moya] is found GUILTY of qualified rape through sexual intercourse under Article 266-A in relation to 266-B of the Revised Penal Code. [Elmer Moya] is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and ordered to pay AAA P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages.
2. In Criminal Case [No.] 6264, [Elmer Moya] is found GUILTY of violation of Section 5(b), Article III of Republic Act 7610. [Elmer Moya] is meted to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, and ordered to pay P20,000.00 as civil indemnity and P15,000.00 as moral damages to AAA, as well as a P15,000.00 fine.
3. In Criminal Case No. 6265, [Elmer Moya] is found GUILTY of qualified rape by sexual assault under Article 266-A in relation to 266-B of the Revised Penal Code. [Elmer Moya] is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, and ordered to pay AAA P30,000.00 as civil indemnity, P30,000.00 as moral damages, and P30,000.00 as exemplary damages.
4. In Criminal Case [No.] 6266, [Elmer Moya] is found GUILTY of violation of Section 5(b), Article III of Republic Act 7610. [Elmer Moya] is meted to suffer the indeterminate penalty of x x x six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, and ordered to pay P20,000.00 as civil indemnity and P15,000.00 as moral damages to AAA, as well as a P15,000.00 fine.

SO ORDERED.¹⁵ (Citation omitted.)

According to the CA, in Criminal Case No. 6265, *prision mayor* is the penalty prescribed for rape by sexual assault under Article 266-B of the RPC, and the penalty is increased to *reclusion temporal* if the rape is committed with any of the ten (10) aggravating circumstances mentioned in said article. The CA further ruled that since the qualifying circumstances of relationship

¹⁵ Rollo, pp. 20-21.

and minority are sufficiently alleged and proven, the penalty, therefore, is *reclusion temporal* which ranges from twelve (12) years and one (1) day to twenty (20) years, and applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years. Hence, the CA imposed the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. The CA further reduced the civil indemnity and moral damages to ₱30,000.00, and increased the award of exemplary damages to ₱30,000.00, in accordance with existing jurisprudence.

In Criminal Case Nos. 6264 and 6266, the CA ruled that the penalty provided for in Acts of Lasciviousness, in relation to Section 5(b), Article III of R.A. No. 7610, is *prision correccional*; and as the crime was committed by the brother of the victim, the alternative circumstance of relationship should be appreciated. The CA added that in crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating. With the presence of such aggravating circumstance and no mitigating circumstance, the CA imposed the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, in each case; and in line with current jurisprudence, the CA awarded AAA ₱20,000.00 as civil indemnity and ₱15,000.00 as moral damages. A fine of ₱15,000.00 for each case was likewise imposed.

In this present appeal, appellant insists that the prosecution was not able to prove his guilt beyond reasonable doubt. In his Appellant's Brief¹⁶ dated December 26, 2013, appellant assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING EVERY CIRCUMSTANCE OR DOUBT FAVORING THE ACCUSED-[APPELLANT].

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT WAS PROVEN BEYOND REASONABLE DOUBT.¹⁷

Appellant questions the credibility of AAA, claiming that her testimony is unconvincing, incredible and inconsistent with common human experience. According to him, the generalized statements of AAA that she was raped repeatedly after the first incident were inadequate to establish his guilt.

¹⁶ CA rollo, pp. 22-35.

¹⁷ Id. at 22.

The appeal is unmeritorious.

Article 266-A, in relation to Article 266-B of the RPC, as amended by Republic Act No. 7610 and Section 2(g) of its Implementing Rules and Regulations, provides the following:

Article 266-A. Rape: When And How Committed. – Rape is committed:

- 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - 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.
- 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or oral orifice of another person.

Article 266-B Penalty. – x x x

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

- 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

From the above provisions of the law, rape can be committed in two ways:

1. Article 266-A, paragraph 1 refers to rape through sexual intercourse, also known as “organ rape” or “penile rape.” The central element in rape through sexual intercourse is carnal knowledge, which must be proven beyond reasonable doubt.¹⁸

¹⁸ *People v. Soria*, 698 Phil. 676, 689 (2012).

2. Article 266-A, paragraph 2 refers to rape by sexual assault, also called "instrument or object rape" or "gender-free rape."¹⁹ It must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1.²⁰

In this case, it is indisputable that appellant is the brother of AAA and that AAA testified that she and appellant had carnal knowledge through force and intimidation on July 27, 2008 (Criminal Case No. 6263), making the appellant guilty of Qualified Rape. To sustain a conviction for qualified rape, the following elements must concur: a) the victim is a female over 12 years, but under 18 years of age; b) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and c) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she was deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.²¹ Likewise, AAA testified that she was sexually assaulted on August 14, 2008 (Criminal Case No. 6265) when appellant inserted his finger into her vagina, thus:

Q Could you please elaborate how Elmer raped you on August 14, 2008 at around 8:30 in the evening?

A He went inside my room where I was sleeping and he placed something on my face, sir.

Q And what was that something that was placed on your face?

A His hands, sir.

Q And after his hands was (*sic*) placed on your face, what happened next?

A He undressed me, sir.

Q And then what happened next after he undressed you?

A He also undressed my underwear and put his finger on (*sic*) my vagina, sir[.]


x x x x

Q On (*sic*) July 2008, can you tell the Honorable Court, what happened at 8:00 in the evening at kuya Elmer's house?

A The same thing, Your Honor.

Q And the same thing that happened when he placed his hand on your [mouth] and you did nothing, is that correct?

A Yes, sir.



¹⁹ *People v. Abulon*, 557 Phil. 428, 454 (2007). (Citations omitted.)

²⁰ *People v. Soria*, *supra* note 18, at 687.

²¹ *People v. Arcillas*, 692 Phil. 40, 50 (2012).

- Q He also removed your clothes and inserted his penis into your vagina?
- A Yes, sir.²²

To corroborate the above testimony, the result of AAA's medical examination shows the presence of a deep healed laceration at 9 o'clock position and a shallow healed laceration at 3 o'clock position, which is consistent with AAA's statement that appellant inserted his penis into her vagina. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.²³

Appellant was also charged in all the Informations with violation of Section 5(b), Article III of R.A. No. 7610, the provisions of which read as follows:

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[.]²⁴

The following elements of sexual abuse under Section 5, Article III of R.A. No. 7610 must be established:

1. The accused commits the act of sexual intercourse or lascivious conduct.

²² TSN, March 7, 2011, pp. 9-15.

²³ *People v. Tuballas*, 811 Phil. 201, 217 (2017).

²⁴ Emphasis supplied.

2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

3. The child, whether male or female, is below 18 years of age.²⁵

All the elements are present in this case. As earlier shown, appellant, on August 14, 2008 (Criminal Case No. 6265) inserted his finger in AAA's vagina, thus, satisfying the first element. This Court, in *People v. Ceferino Villacampa*,²⁶ explained the second element, thus:

Next, the second element is that the act is performed with a child exploited in prostitution or subjected to other sexual abuse. To meet this element, the child victim must either be exploited in prostitution or subjected to other sexual abuse. In *Quimvel v. People*, the Court held that the fact that a child is under the coercion and influence of an adult is sufficient to satisfy this second element and will classify the child victim as one subjected to other sexual abuse. The Court held:

To the mind of the Court, the allegations are sufficient to classify the victim as one "exploited in prostitution or subject[ed] to other sexual abuse." This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, which encompasses children who indulge in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.

Correlatively, Sec. 5(a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children[.]

The Court further clarified that the sexual abuse can happen only once, and still the victim would be considered a child subjected to other sexual abuse, because what the law punishes is the maltreatment of the child, without regard to whether or not this maltreatment is habitual. The Court held:

Contrary to the exposition, the very definition of "child abuse" under Sec. 3(b) of RA 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of. For it refers to the maltreatment, whether habitual or not, of the child. Thus, a violation of Sec. 5(b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.²⁷

²⁵ *People v. Ceferino Villacampa*, G.R. No. 216057, January 8, 2018.

²⁶ *Id.*

²⁷ Citations omitted.

In this case, having been established that AAA was subjected to sexual abuse, the second element has, therefore, been met. Anent the third element, the age of AAA at the time of the incidents is undisputed. The evidence²⁸ presented shows that AAA was born on July 25, 1995, making her thirteen (13) years old during the first alleged incident of sexual abuse and on the succeeding incidents, which were all alleged in the Informations filed against appellant. Appellant's relationship with AAA was also established when it was admitted by appellant in court that AAA is his sister.

The CA, however, is correct in ruling that in Criminal Case Nos. 6264 and 6266, the prosecution failed to prove the guilt of appellant for the crime of rape. Based on AAA's testimony on what transpired on July 20, 2008 and August 3, 2008, nothing indicates that there was carnal knowledge or that the private organ of appellant penetrated the private organ of AAA, thus:

COURT:

[Q] Now, when was the first time that you were raped?
A On July 20, Your Honor.

x x x x

COURT:

Q When he entered your room, what did he do?
A He placed his hand on my mouth, Your Honor.

COURT:

Q What else did he do?
A He undressed me, Your Honor.

COURT:

Q What were you wearing on that time when he undressed you?
A T-shirt and shorts, Your Honor.

COURT:

Q When he removed your shorts, do you have an idea that [you] are going to [be raped] by kuya Elmer?
A No, Your Honor.

COURT:

Q Did he remove your panty?
A Yes, Your Honor.

x x x x



- Q Now, going on August 3, 2008, you stated that you were raped in your sworn statement on that night at around 8:00 o'clock in the evening, where [did this happen]?
- A On the same place, sir.
- Q In the house of kuya Elmer?
- A Yes, sir.
- Q And could you please tell the Honorable Court what happened in details about the raping incident?
- A The same thing, sir.
- Q What do you mean by the same thing?
- A He again entered my room, he placed his hand on my mouth, he undressed me.
- Q You said that you were undressed by the accused x x x that time, what was he wearing?
- A White T-shirts (*sic*) and tokong shorts, sir.
- Q Were you wearing panty x x x that time?
- A Yes, sir.²⁹

However, appellant is still guilty of Lascivious Conduct under Section 5(b) of R.A. No. 7610. Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases defines "lascivious conduct" as follows:

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

The testimony of AAA clearly recounted the lascivious conduct committed by appellant through the latter's covering of AAA's mouth and undressing her.

In *People v. Salvador Tulagan*,³⁰ this Court has emphasized that other forms of acts of lasciviousness or lascivious conduct committed against a child, such as touching of other delicate parts other than the private organ or kissing a young girl with malice, are still punished as acts of lasciviousness under Article 336 of the RPC, in relation to R.A. No. 7610, or lascivious conduct under Section 5 of R.A. No. 7610, thus:

²⁹ TSN, March 7, 2011, pp. 11-16.

³⁰ G.R. No. 227363, March 12, 2019.

Concededly, R.A. No. 8353 defined specific acts constituting acts of lasciviousness as a distinct crime of “sexual assault,” and increased the penalty thereof from *prision correccional* to *prision mayor*. But it was never the intention of the legislature to redefine the traditional concept of rape. The Congress merely upgraded the same from a “crime against chastity” (a private crime) to a “crime against persons” (a public crime) as a matter of policy and public interest in order to allow prosecution of such cases even without the complaint of the offended party, and to prevent extinguishment of criminal liability in such cases through express pardon by the offended party. Thus, **other forms of acts of lasciviousness or lascivious conduct committed against a child, such as touching of other delicate parts other than the private organ or kissing a young girl with malice, are still punished as acts of lasciviousness under Article 336 of the RPC in relation to R.A. No. 7610 or lascivious conduct under Section 5 of R.A. No. 7610.**

Also, in *Tulagan*,³¹ this Court has summarized, for easy reference, the proper designation of crimes and their corresponding imposable penalties, applying the provisions of paragraphs 1 and 2 of Article 266-A and Article 336 of the RPC, as amended by R.A. No. 8353, and Section 5(b) of R.A. No. 7610, thus:

In sum, the following are the applicable laws and penalty for the crimes of acts of lasciviousness or lascivious conduct and rape by carnal knowledge or sexual assault, depending on the age of the victim, in view of the provisions of paragraphs 1 and 2 of Article 266-A and Article 336 of the RPC, as amended by R.A. No. 8353, and Section 5(b) of R.A. No. 7610:

Designation of the Crime & Imposable Penalty

Age of Victim: Crime Committed:	Under 12 years old or demented	12 years old or below 18, or 18 under special circumstances ³²	18 years old and above
Acts of Lasciviousness committed against children exploited in prostitution or other sexual abuse	Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No.	Lascivious conduct ³³ under Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its	Not applicable

³¹ *Id.*

³² The “children” refers to a person 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. [Section 3(a), R.A. No. 7610]

“Child” shall refer to a person below eighteen (18) years of age or one over said age and who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of himself fully because of a physical or mental disability or condition or of protecting himself from abuse. [Section 2(a), Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

³³ “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. [Section 2(h), Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

	7610: <i>reclusion temporal</i> in its medium period	medium period to <i>reclusion perpetua</i>	
Sexual Assault committed against children exploited in prostitution or other sexual abuse	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Not applicable
Sexual Intercourse committed against children exploited in prostitution or other sexual abuse	Rape under Article 266-A(1) of the RPC: <i>reclusion perpetua</i> , except when the victim is below 7 years old in which case death penalty shall be imposed ³⁴	Sexual Abuse ³⁵ under Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Not applicable
Rape by carnal knowledge	Rape under Article 266-A(1) in relation to Art. 266-B of the RPC: <i>reclusion perpetua</i> , except when the victim is below 7 years old in which case death penalty shall be imposed	Rape under Article 266-A(1) in relation to Art. 266-B of the RPC: <i>reclusion perpetua</i>	Rape under Article 266-A(1) of the RPC: <i>reclusion perpetua</i>
Rape by Sexual Assault	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Sexual Assault under Article 266-A(2) of the RPC: <i>prision mayor</i>

For the crime of acts of lasciviousness or lascivious conduct, the nomenclature of the crime and the imposable penalty are based on the guidelines laid down in *Caoli*. For the crimes of rape by carnal knowledge and sexual assault under the RPC, as well as sexual intercourse committed against children under R.A. No. 7610, the designation of the crime and the imposable penalty are based on the discussions in *Dimakuta*, *Quimvel* and *Caoli*, in line with the policy of R.A. No. 7610 to provide stronger deterrence and special protection to children from all forms of abuse, neglect, cruelty, exploitation, discrimination, and other conditions

³⁴ Subject to R.A. No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

³⁵ "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. [Section 3(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

prejudicial to their development. It is not amiss to stress that the failure to designate the offense by statute, or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged, for what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information. Nevertheless, the designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly. (Some citations omitted.)

Therefore, the evidence presented by the prosecution has convincingly established the guilt of the appellant on all cases beyond reasonable doubt. The credibility given by the trial court to AAA is an important aspect of evidence which the appellate court can rely on because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct and attitude during the direct and cross-examination by counsel. There is no showing that the trial court judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, his assessment of credibility deserves this Court's highest respect.³⁶

As to appellant's contention that the testimony of AAA is full of inconsistencies and, hence, should not be given credence, this Court has ruled that discrepancies referring only to minor details and collateral matters do not affect the veracity or detract from the essential credibility of a witness' declarations, as long as these are coherent and intrinsically believable on the whole.³⁷ Furthermore, it is an accepted doctrine in rape cases that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.³⁸

Anent appellant's defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the victim. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.³⁹

As to the penalties imposed, the CA was correct in imposing the penalty of *reclusion perpetua*, without eligibility for parole, in Criminal Case No. 6263, for the crime of Qualified Rape. The CA, however, erred in imposing the indeterminate penalty of imprisonment of six (6) years and one (1) day of

³⁶ *People v. Dimaano*, 506 Phil. 630, 641 (2005).

³⁷ *People v. Laog*, 674 Phil. 444, 463 (2011), citing *People v. Suarez*, 496 Phil. 231 (2005).

³⁸ *People v. Aguilar*, 565 Phil. 233, 249 (2007).

³⁹ *People v. Abulon*, *supra* note 19, at 448.

prision mayor, as minimum, to fourteen (14) years, eight (8) months, and one (1) day, as maximum, in Criminal Case No. 6265 for Rape by Sexual Assault under Article 266-A, in relation to Article 266-B of the RPC, and Section 5(b) of R.A. No. 7610, which, as discussed earlier, should be designated as the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610.

The impossible penalty for Lascivious Conduct is that provided for under Section 5(b) of R.A. No. 7610 or *reclusion temporal* in its medium period to *reclusion perpetua*. As mentioned earlier, the prosecution was able to prove the victim's minority, being thirteen (13) years old at the time of the incident, and her relationship with appellant, the latter being her brother; thus, based on the above-quoted provisions of the law, the proper penalty impossible is the maximum which, in this case, is *reclusion perpetua*, there being no mitigating circumstance to offset the aggravating circumstance present.

Such modification of the penalty is but a mere consequence of this Court's review of an appeal in a criminal case. Settled is the rule that an appeal in a criminal case throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those raised as errors by the parties.⁴⁰ "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."⁴¹

In imposing the penalties in Criminal Case Nos. 6264 and 6266 under R.A. No. 7610, the CA also erred in applying the penalty provided for in the crime of Acts of Lasciviousness under Article 336 of the RPC which is *prision correccional*. In *People v. Armando Chingh y Parcia*,⁴² this Court expounded the need to impose the penalty provided under R.A. No. 7610, instead of the one provided under the RPC, thus:

The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article [336], in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*. This is undeniably unfair to the child victim. To be sure, 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

⁴⁰ *People v. Erlinda Racho*, G.R. No. 227505, October 2, 2017, citing *Ramos v. People*, G.R. Nos. 218466 and 221425, January 23, 2017.

⁴¹ *Id.*

⁴² 661 Phil. 208 (2011).

themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.⁴³ (Citation omitted.)

The matter has also been thoroughly discussed in *People v. Tulagan*,⁴⁴ thus:

We are also not unmindful of the fact that the accused who commits acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b) of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period, than the one who commits Rape Through Sexual Assault, which is merely punishable by *prisión mayor*.

In *People v. Ching*, We noted that the said fact is undeniably unfair to the child victim, and 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. We held that despite the passage of R.A. No. 8353, R.A. No. 7610 is still a 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."

In *Dimakuta*, We added that where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium and the said act is, likewise, covered by sexual assault under Art. 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 the higher penalty of *reclusion temporal* medium, if the offended party is a child. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 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 of sexual abuse under R.A. No. 7610. The reason for the foregoing is that with respect to lascivious conduct, R.A. No. 7610 affords special protection and stronger deterrence against child abuse, as compared to R.A. No. [8353] which specifically amended the RPC provisions on rape.

Finally, despite the enactment of R.A. No. 8353 more than 20 years ago in 1997, We had been consistent in our rulings in *Larin*, *Olivarez*, and *Garingarao*, *Quimvel* and *Caoli*, all of which uphold the intent of R.A. No. 7610 to provide special protection of children and stronger deterrence

⁴³ *Id.* at 222-223.

⁴⁴ *Supra* note 30.

against child abuse. Judicial stability compels to stand by, but not to abandon, our sound rulings: [1] that Section 5(b), Article III of R.A. No. 7610 penalizes not only child prostitution, the essence of which is profit, but also other forms of sexual abuse wherein a child engages in sexual intercourse or lascivious conduct through coercion or influence; and [2] that it is inconsequential that the sexual abuse occurred only once. Our rulings also find textual anchor on Section 5, Article III of R.A. No. 7610, which explicitly states that a child is deemed “exploited in prostitution or subjected to other sexual abuse,” when the child indulges in sexual intercourse or lascivious conduct for money, profit or any other consideration, or under the coercion or influence of any adult, syndicate or group, as well as on Section 3(b), Article I thereof, which clearly provides that the term “child abuse” refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse. (Citations omitted.)

As such, appellant should be meted the penalty of *reclusion perpetua* in Criminal Case Nos. 6264 and 6266. This is so because the penalty imposable for Lascivious Conduct under Section 5(b) of R.A. No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. In this case, the maximum penalty should be imposed due to the presence of the aggravating circumstance of relationship, the victim being the sister of the perpetrator, and without any mitigating circumstance to offset such. There is no need, however, to qualify the sentence to *reclusion perpetua* with the phrase “without eligibility for parole” because, under A.M. No. 15-08-02-SC, in cases where the death penalty is not warranted, it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole.

As to the award of damages, a modification must be made per *People v. Jugueta*⁴⁵ and *People v. Tulagan*.⁴⁶ Where the penalty imposed is *reclusion perpetua* instead of death due to R.A. No. 9246, the amounts of damages shall be as follows:

Civil Indemnity	–	₱100,000.00
Moral Damages	–	₱100,000.00
Exemplary Damages	–	₱100,000.00

Thus, in Criminal Case No. 6263, where appellant is found guilty beyond reasonable doubt of the crime of Qualified Rape, he is ordered to pay the victim the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. While in Criminal Case Nos. 6264, 6265 and 6266, appellant is ordered to pay the victim civil indemnity, moral damages and exemplary damages in the amount of ₱75,000.00 each.

⁴⁵ 783 Phil. 806 (2016).

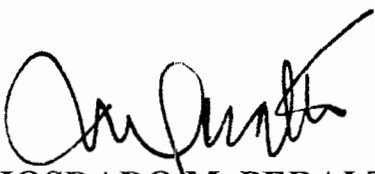
⁴⁶ *Supra* note 30.

WHEREFORE, the appeal of appellant Elmer Moya is **DISMISSED**. The Decision dated October 22, 2015 of the Court of Appeals affirming with modifications the Decision dated April 8, 2013 of the Regional Trial Court, Branch 10, Balayan, Batangas is **AFFIRMED** with **MODIFICATIONS**. This Court finds the appellant guilty beyond reasonable doubt:

1) in Criminal Case No. 6263, of Qualified Rape under Article 266-A, in relation to Article 266-B, of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and is ordered to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, with the appellant paying an interest of 6% per annum on all damages awarded from the date of finality of this judgment until fully paid; and


2) in Criminal Case Nos. 6264, 6265 and 6266, of the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610 and is sentenced to suffer, on each case, the penalty of *reclusion perpetua*. He is further 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 on the same cases, with the appellant paying an interest of 6% per annum on all damages awarded from the date of finality of this judgment until fully paid.


SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
 Associate Justice



ANDRES B. REYES, JR.
 Associate Justice


ROSMARI D. CARANDANG
 Associate Justice


HENRI JEAN PAUL B. INTING
 Associate Justice

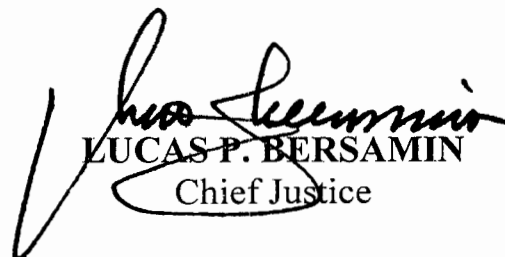
ATTESTATION

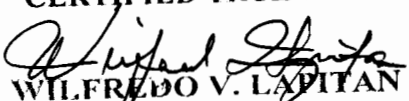
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


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.


LUCAS P. BERSAMIN
 Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

AUG 01 2019