

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

RECEIVED  
JUL 19 2019  
BY: YS  
TIME: 10:30 am



Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

JUL 16 2019

### THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 231306

Present:

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

- versus -

PIERRE ADAJAR y TISON @ SIR  
PAUL,

Promulgated:

Accused-Appellant.

June 17, 2019

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

### DECISION

**PERALTA, J.:**

For consideration of the Court is the appeal of the Decision<sup>1</sup> dated September 24, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06550 which affirmed, with modification, the Decision<sup>2</sup> dated December 9, 2013 of the Regional Trial Court (RTC) of [REDACTED], finding accused-appellant Pierre T. Adajar guilty beyond reasonable doubt of four (4) counts of rape under Article 266-A, paragraphs (1) and (2), and Article 266-B of the Revised Penal Code (RPC).

The antecedent facts are as follows.

In four (4) separate Informations, Adajar was charged with four (4) counts of rape under Article 266-A, paragraphs (1) and (2), and Article 266-B of the RPC, the accusatory portions of which read:

\* On official business.

<sup>1</sup> Penned by Associate Justice Rosmari D. Carandang (now a member of this Court), with Associate Justices Mario V. Lopez and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 2-15.

<sup>2</sup> Penned by Judge Roslyn M. Rabara-Tria; CA *rollo*, pp. 41-48.

**Criminal Case No. Q-11-170195**

That on or about the period between January and February, 2010, in ██████████, Philippines, the said accused by means of force, violence and intimidation, did then and there willfully, unlawfully, and feloniously with lewd design commit an act of sexual abuse against [AAA], 10 years of age, a minor, by then and there inserting his organ to her vagina while lying on the foam inside complainant's bedroom, all against her will and without her consent to the damage and prejudice of the said offended party.

CONTRARY TO LAW.<sup>3</sup>

**Criminal Case No. Q-11-170196**

That on or about the period between January and February, 2010, in ██████████, Philippines, the said accused by means of force, violence and intimidation, did then and there willfully, unlawfully, and feloniously with lewd design commit an act of sexual abuse against [AAA], 10 years of age, a minor, by then and there inserting his middle finger into complainant's private parts, undressed himself and forcibly asked complainant to hold his male organ while both were at complainant's bathroom, all against her will and without her consent, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.<sup>4</sup>

**Criminal Case No. Q-11-170197**

That on or about the period between January and February, 2010, in ██████████, Philippines, the said accused by means of force, violence and intimidation, did then and there willfully, unlawfully, and feloniously with lewd design commit an act of sexual abuse against [AAA], 10 years of age, a minor, by then and there holding complainant's private parts and kissed the latter on her lips while both were at complainant's bedroom, all against her will and without her consent, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.<sup>5</sup>

**Criminal Case No. Q-11-170198**

That on or about the period between January and February, 2010, in ██████████, Philippines, the said accused by means of force, violence and intimidation, did then and there willfully, unlawfully, and feloniously with lewd design commit an act of sexual abuse against [AAA], 10 years of age, a minor, by then and there while at the CR undressed complainant and accused took off his briefs and shorts up to his knees and inserted his organ to complainant's vagina, all against her will and without her consent to the damage and prejudice of the said offended party.

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

---

<sup>3</sup> Records, p. 2.

<sup>4</sup> *Id.* at 8.

<sup>5</sup> *Id.* at 14.

<sup>6</sup> *Id.* at 20.

During arraignment, Adajar, assisted by counsel, pleaded not guilty to the charge. During pre-trial, the parties stipulated on the identity of the accused as the one charged and that victim AAA is a minor, being only ten (10) years old at the time of the commission of the offense. Subsequently, trial on the merits ensued. The prosecution presented three (3) witnesses – victim AAA;<sup>7</sup> victim's mother, BBB; and Dr. Shanne Lore Dettabali.

It was established by the prosecution that AAA was born on July 20, 1999 and was only ten (10) years of age in 2010 when she was sexually abused by her dance instructor, Adajar, whom she called "*Sir Paul*." Adajar was AAA's ballet instructor at the Quezon City Performing Arts (QCPA). When he resigned from the QCPA, he, together with AAA and other persons, formed a new group and competed in several dance competitions.<sup>8</sup>

Sometime in August 2009, Adajar asked permission from BBB, AAA's mother, if he could stay in BBB's internet shop near the place where they rehearse. BBB accommodated his request. When AAA's family transferred to their new residence, Adajar went along with them. BBB accepted and treated him as part of their family since he told her that his own mother had already passed away and that he considers his students as family. Since then, Adajar and AAA were always together. He endeared himself to AAA, buying her gifts and allowing her to use his cellular phone. He courted her and sent her romantic messages.

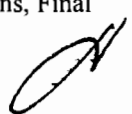
Sometime in February 2010, the special closeness of AAA and Adajar caught the attention of BBB and other members of the household. BBB also noticed that every time she talks to her daughter, Adajar stayed close. One night, when AAA was already asleep, BBB looked at AAA's cellular phone and discovered a text message wherein Adajar called AAA "Mi." There was also another text message from him which states: "*Dapat walang ibang pwedeng makagawa ng ginagawa ko sa iyo kundi ako lang*;" "*Mahal na mahal kita! Huwag ka sanang magbabago at tutuparin mo ang pangako natin sa isa't isa*." BBB, likewise, discovered an autograph book wherein Adajar called AAA "*wife*." Immediately, BBB confronted AAA about her discovery. AAA then revealed the things Adajar has been doing to her.<sup>9</sup>

---

<sup>7</sup> 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.

<sup>8</sup> *Rollo*, p. 6.

<sup>9</sup> *Id.* at 6-7.



AAA testified that from January to February 2010, Adajar raped and sexually assaulted her. In one occasion in January 2010, AAA just came home from school and was about to change her clothes in her room when Adajar entered. He kissed her on the lips, placed his hand inside her jogging pants, and inserted his finger inside her vagina. She was surprised by what he did and felt pain in her private part. In another occasion, Adajar followed AAA to her bedroom. He removed his shorts and briefs, and asked AAA to hold his penis. When AAA refused, Adajar took her hand and forced her to hold his penis. Thereafter, he inserted his finger into her vagina. In yet another instance, when AAA was inside the bathroom, Adajar entered and locked the door behind him. He pulled down to his knees his shorts and briefs, undressed AAA, held her on her waist, and carried her while inserting his penis inside her vagina.<sup>10</sup> Finally, another instance happened when Adajar followed AAA to her room and locked the door behind him. He removed AAA's jogging pants and panties. He told her to lie down beside him on the foam facing him. Then, he inserted his penis into her vagina. Adajar warned AAA not to tell anyone about what he did to her because her mother will get mad at her.<sup>11</sup>

Upon learning of the incidents, AAA and BBB reported the same to the Police Women's Desk in Camp Caringal where AAA was referred to the Philippine National Police (PNP) Crime Laboratory for medico-legal examination. Dr. Shanne Lore A. Dettabali, who conducted the physical and genital examination on AAA, found the presence of a deep healed laceration on her hymen at the 6 o'clock position and concluded that the "finding shows evidence of blunt force or penetrating trauma."<sup>12</sup>

For its part, the defense presented the lone testimony of Adajar who denied the accusations against him. According to Adajar, he knew no reason why AAA would file a case of rape against him considering that he had no misunderstanding with her or her family. He insisted that the alleged incidents could not have happened because there were other people residing in AAA's house, namely, her two (2) grandmothers, her three (3) siblings, BBB, and BBB's boyfriend, Mark.<sup>13</sup>

On December 9, 2013, the RTC rendered its Decision finding Adajar guilty of the crimes charged, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Finding accused Pierre Adajar y Tison @ Sir Paul guilty beyond reasonable doubt of the crime of rape defined and penalized

---

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *CA rollo*, p. 44.

<sup>12</sup> *Id.* at 45.

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

under Article 266-A[,] paragraph 1[,] and [Article] 266-B of the Revised Penal Code, as amended in Criminal Cases Nos. Q-11-170195 and Q-11-170198 and sentencing him to suffer the penalty of *reclusion perpetua* without the eligibility [for] parole in each case and that accused is additionally ordered to pay AAA P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages in each case;

2. Finding accused Pierre Adajar y Tison @ Sir Paul guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A[,] paragraph 2[,] and [Article] 266-B of the Revised Penal Code, as amended in Criminal Cases Nos. Q-11-170196 and Q-11-170197 and sentencing him to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional*[,] as minimum, to eight (8) years and one (1) day of *prision mayor*[,] as maximum[,] in each case and that accused is additionally ordered to pay AAA P30,000.00 as civil indemnity, P30,000.00 as moral damages, and P30,000.00 as exemplary damages in each case.

SO ORDERED.<sup>14</sup>

The RTC found that AAA had consistently, positively, and categorically identified Adajar as her abuser and that her testimony was direct, candid, and replete with details of the rape.<sup>15</sup>

In a Decision dated September 24, 2015, the CA affirmed with modification the RTC Decision, disposing of the case as follows:

WHEREFORE, premises considered, the assailed RTC Decision dated December 9, 2013 is hereby AFFIRMED with MODIFICATIONS:

1. In Criminal Case Nos. Q-11-170195 and Q-11-170[1]98, We find accused-appellant Pierre Adajar y Tison @ Sir Paul guilty beyond reasonable doubt of the crime of rape through sexual intercourse defined under Article 266-A[,] paragraph 1[,] and penalized under [Article] 266-B of the Revised Penal Code, as amended; and, sentencing him to suffer the penalty of *reclusion perpetua* without the eligibility [for] parole in each case. Accused-appellant Adajar is 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. Q-11-170196, We find accused-appellant Adajar guilty beyond reasonable doubt of the crime of rape by sexual assault defined under Article 266-A[,] paragraph 2[,] and penalized under [Article] 266-B of the Revised Penal Code, as amended; and, is hereby sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional*[,] as minimum, to eight (8) years and one (1) day of *prision mayor*[,] as maximum; and, to pay the victim AAA

<sup>14</sup> CA rollo, pp. 47-48.

<sup>15</sup> *Id.* at 45.

P30,000.00 as civil indemnity, P30,000.00 as moral damages, and P30,000.00 as exemplary damages.

3. In Criminal Case No. Q-11-170197, We find accused-appellant Adajar guilty beyond reasonable doubt of the crime of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code, as amended. He is sentenced to indeterminate prison terms of six (6) months of *arresto mayor*, as minimum[,] to four (4) years and two (2) months of *prision correccional*, as maximum; and, is ordered to pay the victim AAA P20,000.00 as civil indemnity, P30,000.00 as moral damages, and P10,000.00 as exemplary damages.

SO ORDERED.<sup>16</sup>

The CA affirmed the Solicitor General's contention that in Criminal Case No. Q-11-170197, Adajar cannot be convicted of sexual assault since there was no allegation in the Information that he inserted his finger into AAA's genitalia, merely stating that he held her private parts. But pursuant to the *Variance* doctrine, he can still be held liable for the lesser crime of acts of lasciviousness defined and penalized under Article 336 of the RPC.

Now before Us, Adajar manifested that he would no longer file a Supplemental Brief as he has exhaustively discussed the assigned errors in his Appellant's Brief.<sup>17</sup> The Office of the Solicitor General (*OSG*) similarly manifested that it had already discussed its arguments in its Appellee's Brief.<sup>18</sup> As Adajar argued before the courts below, he must be acquitted because the evidence against him, particularly AAA's testimony, is full of inconsistencies and contradictions. Again, he could not have committed the alleged sexual abuses against AAA in a house full of her relatives.

After a careful review of the records of this case, however, the Court finds no cogent reason to reverse the ruling of the CA. Basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the CA, as in the instant case.<sup>19</sup> At the trial, AAA was able to narrate all the details of the sexual abuses she suffered in Adajar's hands. We, therefore, find that her account of her ordeal being straightforward, candid, and corroborated by the medical findings of the examining physician, as well as her positive identification of Adajar as the perpetrator of the crime, are, thus, sufficient to support a conviction of rape.

Adajar persistently insists that he could not possibly have done those acts accused of him since the house where he allegedly committed them was

---

<sup>16</sup> *Rollo*, pp. 13-14.

<sup>17</sup> *Id.* at 28.

<sup>18</sup> *Id.* at 22.

<sup>19</sup> *People v. Andres Talib-og y Tuganan*, G.R. No. 238112, December 5, 2018.

always filled with people. Unfortunately for him, however, this contention had already been refuted many times before. Settled is the rule that the presence of people in a certain place is no guarantee that rape will not and cannot be committed. Time and again, the Court has held that for rape to be committed, it is unnecessary for the place to be ideal, or the weather to be fine, for rapists bear no respect for place and time when they execute their evil deed. Rape may be committed inside a room in a crowded squatters' colony and even during a wake.<sup>20</sup>

In this regard, Adajar's defense of denial must necessarily fail. Being a negative defense, the defense of denial, if not substantiated by clear and convincing evidence, as in the instant case, deserves no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses, like AAA, who testified on affirmative matters. Since AAA testified in a categorical and consistent manner without any ill motive, her positive identification of Adajar as the sexual offender must prevail over his defenses of denial and *alibi*.<sup>21</sup>

Hence, in Criminal Case Nos. Q-11-170195 and Q-11-170198, We sustain Adajar's conviction of statutory rape defined under Article 266-A, paragraph 1(d), in relation to Article 266-B of the RPC. Under said Article 266-A, paragraph 1(d), the crime of rape may be 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. Thus, regardless of whether there was force, threat, or intimidation or grave abuse of authority, it is enough that the following elements of statutory rape are proven: (1) that the offended party is under twelve (12) years of age; and (2) that the accused had carnal knowledge of the victim.<sup>22</sup> We recently ruled in *People v. Tulagan*,<sup>23</sup> that even if the girl who is below twelve (12) years old consents to the sexual intercourse, it is always a crime of statutory rape under the RPC because the law presumes that she is incapable of giving a rational consent. Here, the prosecution sufficiently proved that AAA was merely ten (10) years old when Adajar had sexual intercourse with her. As the trial court observed, moreover, AAA was able to narrate in detail the abusive acts done to her by Adajar, *viz.*:

Q: What about on the 3<sup>rd</sup> incident, madam witness. Could you recall if he did anything to you?

x x x x

<sup>20</sup> *People v. Soriano*, 560 Phil. 415, 420 (2007).

<sup>21</sup> *People v. Salvador Tulagan*, G.R. No. 227363, March 12, 2019.

<sup>22</sup> *People v. Andres Talib-og y Tuganan*, *supra* note 19.

<sup>23</sup> *Supra* note 21.

A: The third incident happened in February 2010, I also went inside the C.R. and Sir Paul suddenly entered the C.R. also and he lowered his shorts and brief up to his knee then he undressed me.

x x x x

Q: After undressing you, what happened next?

A: He held my waist then he lifted me.

x x x x

Q: And what happened next? What did he do next?

A: He inserted his penis into my vagina.

Q: Did you feel his penis inside your vagina?

A: Yes, ma'am.

Q: How did it feel?

A: Sobrang sakit po.

x x x x

Q: And what did you do when you felt pain?

A: I was crying and I told him to stop but he still continue[d] doing it.

x x x x

Q: Was that incident, the insertion of the penis, ever repeated?

A: Yes, ma'am.

x x x x

Q: Can you tell us how it happened?

A: February of 2010 I went up to our room and he suddenly also went up.

Q: And what happened next?

A: He forced me to lay (sic) down.

Q: And what happened next?

A: He also laid (sic) down and hinarap n'ya po ako sa kanya.

x x x x

Q: And can you tell us what happened?

A: He undressed me and he also undressed and then he inserted his penis into my vagina, ma'am.

x x x x

Q: And did you feel his penis inside your vagina?

A: Yes, ma'am.

Q: Did you feel pain?

A: Sobrang sakit po.<sup>24</sup>



According to the trial court, the above account constitutes AAA's direct, positive, and convincing narration of what transpired on that fateful day. Time and again, the Court has held that "trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility."<sup>25</sup> As such, We find no cogent reason to deviate from the lower courts' findings of fact.

Thus, in line with our pronouncement in *Tulagan*, Adajar was correctly convicted of rape under Article 266-A, paragraph 1(d), in relation to Article 266-B of the RPC, and sentenced to suffer the penalty of *reclusion perpetua*.<sup>26</sup> The Court, however, notes that there is no need to qualify the sentence of *reclusion perpetua* with the phrase "without eligibility for parole," as held by the appellate court. This is pursuant to the A.M. No. 15-08-02-SC,<sup>27</sup> in cases where death penalty is not warranted, such as this case, it being understood that convicted persons penalized with an indivisible penalty are not eligible for parole. Moreover, pursuant to *People v. Jugueta*,<sup>28</sup> the amount of exemplary damages awarded by the CA should be increased to ₱75,000.00. Also, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

Similarly, in Criminal Case No. Q-11-170196, the Court does not find any reason to reverse the factual findings of the RTC, as affirmed by the CA. As duly found by the trial court, AAA was able to recount, in a clear and straightforward manner, how Adajar sexually abused her by inserting his finger into her vagina, to wit:

Q: What happened to you on the second incident?

A: February 2010 I went inside the C.R. then suddenly Sir Paul entered the C.R. also and he inserted his hand inside my jogging pants and then he inserted his middle finger into my vagina and he kissed me.

x x x x

Q: And did you feel pain when he inserted, according to you, his middle finger?

A: Yes, ma'am.

<sup>25</sup> *People v. Jelmer Matutina y Maylas, et al.*, G.R. No. 227311, September 26, 2018.

<sup>26</sup> *People v. Salvador Tulagan*, *supra* note 21.

<sup>27</sup> Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, August 4, 2015.

<sup>28</sup> 783 Phil. 806 (2016).

Q: What was your reaction?  
A: I was crying, ma'am.<sup>29</sup>

In view of the *Tulagan*<sup>30</sup> doctrine, however, a modification of the penalty imposed, damages awarded, and nomenclature of the crime is in order. Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta v. People*,<sup>31</sup> and *People v. Caoili*,<sup>32</sup> We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b), Article III of R.A. No. 7610" instead of "rape by sexual assault under Article 266-A, paragraph 2 and penalized under 266-B of the RPC," as held by the CA.

With respect to the penalty imposed by the appellate court of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, We rule that the same must also be modified. In *Dimakuta v. People*,<sup>33</sup> 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." 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*,<sup>34</sup> 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.'"

Thus, instead of applying the penalty under Article 266-B of the RPC, which is *prision mayor*, the proper penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is *reclusion temporal* in its

<sup>29</sup> TSN, April 23, 2012, pp. 16-17.

<sup>30</sup> *Supra* note 21.

<sup>31</sup> 771 Phil. 641 (2015).

<sup>32</sup> G.R. Nos. 196342 & 196848, August 8, 2017, 835 SCRA 107.

<sup>33</sup> *Supra* note 31, at 670.

<sup>34</sup> 661 Phil. 208, 222-223 (2011).

medium period. This is because AAA was below twelve (12) years of age at the time of the commission of the offense, and that the act of inserting his finger in AAA's private part undeniably amounted to "lascivious conduct." 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. Adajar should, therefore, be meted the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. As for the damages awarded, moreover, the Court deems it necessary to fix the civil indemnity, moral damages, and exemplary damages at ₱50,000.00 each, in line with our ruling in *Tulagan*.<sup>35</sup> The amount of damages awarded shall also earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

Finally, We, likewise, sustain the ruling of the CA in Criminal Case No. Q-11-170197 finding Adajar guilty of acts of lasciviousness and not of sexual assault, due to the fact that the Information failed to allege that there was an insertion of Adajar's finger into AAA's genitalia. A cursory perusal of said Information would reveal that Adajar committed an act of sexual abuse by "holding complainant's private parts and kissing the latter on her lips while both were at complainant's bedroom, all against her will and without her consent, to the damage and prejudice of the said offended party." Nevertheless, as aptly ruled by the appellate court, Adajar may still be convicted of the lesser crime of acts lasciviousness defined and penalized under Article 336 of the RPC, pursuant to the *Variance* doctrine embodied in embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Court, which reads:

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

Sec. 5. When an offense includes or is included in another. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. **And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.**<sup>36</sup>

---

<sup>35</sup> *Supra* note 21.

<sup>36</sup> *CA rollo*, p. 129. (Emphasis supplied)

In the present case, both the trial court and the appellate court were fully convinced by the evidences presented during trial that Adajar committed sexual assault against AAA by inserting his finger inside her vagina. The elements of rape by sexual assault are: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others.<sup>37</sup>

The Information against Adajar, however, did not accuse him of inserting his finger inside AAA's vagina but only charged him with holding AAA's private parts and kissing her on the lips. To the Court, this nonetheless constitutes acts of lasciviousness. Pursuant to Article 336 of the RPC, acts of lasciviousness is consummated when the following essential elements are present: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age. As thus used, 'lewd' is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity; or that which is carried on a wanton manner.<sup>38</sup>

The fact, moreover, that AAA was only ten (10) years old at the time of the commission of the lascivious act calls for the application of Section 5(b) of Republic Act No. 7610 defining sexual abuse of children and prescribing the penalty therefor, 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 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

<sup>37</sup> *People v. Caoili*, *supra* note 32, at 141.

<sup>38</sup> *Edmisael Lutap v. People*, G.R. No. 204061, February 5, 2018.



rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x

In addition, lascivious conduct is defined by Section 2(h) of the rules implementing R.A. 7610 as:

[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.<sup>39</sup>

In view of the facts that were proven by the prosecution evidence, specifically that Adajar committed lascivious acts against AAA when he inserted his finger inside her vagina, We find that the elements of acts of lasciviousness under Article 336 of the RPC and of lascivious conduct under R.A. 7610 were established in the present case. Thus, applying the variance doctrine, Adajar can be convicted of the lesser crime of acts of lasciviousness, which was the offense charged, because it is included in the sexual assault, the offense proved. In effect, therefore, he is being held liable for the offense as precisely charged in the Information. Hence, it cannot be claimed that there was a violation of his constitutional right to be informed of the nature and cause of the accusation against him. Pursuant to our pronouncement in *People v. Caoili*,<sup>40</sup> however, Adajar must be convicted of the offense designated as “Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of R.A. 7610” since AAA, the minor victim in this case, is below 12 years old. Moreover, the imposable penalty shall be *reclusion temporal* in its medium period.

Nevertheless, We resolve to modify the indeterminate prison term imposed by the CA of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. Applying the Indeterminate Sentence Law, and in the absence of mitigating or aggravating circumstances, the minimum term shall be taken from the penalty next lower than *reclusion temporal* medium, which is *reclusion temporal* minimum, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. The maximum term 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*. Accordingly, the prison term is modified to twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6)

---

<sup>39</sup> Emphasis supplied.

<sup>40</sup> *Supra* note 32, at 153.

months and twenty (20) days of *reclusion temporal*, as maximum.<sup>41</sup> Further, in line with *Tulagan*, Adajar is ordered to pay AAA civil indemnity, moral damages, and exemplary damages in the amount of ₱50,000.00 each.<sup>42</sup> As with the foregoing, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

**WHEREFORE**, premises considered, the appeal is **DISMISSED**. The Decision dated December 9, 2013 of the Regional Trial Court of [REDACTED], in Criminal Case Nos. Q-11-170195-8, as affirmed by the Court of Appeals Decision dated September 24, 2015 in CA-G.R. CR HC No. 06550, is **AFFIRMED** with **MODIFICATIONS**. We find accused-appellant Pierre Adajar y Tison @ Sir Paul, guilty beyond reasonable doubt:

1. In Criminal Case Nos. Q-11-170195 and Q-11-170198, of **Statutory Rape under Article 266-A (1) (d) and penalized under Article 266-B of the Revised Penal Code** and is sentenced to suffer the penalty of *reclusion perpetua*. Appellant 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.
2. In Criminal Case No. Q-11-170196, of **Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code, in relation to Section 5 (b) of Republic Act No. 7610**, and is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. Appellant is **ORDERED** to **PAY** AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.
3. In Criminal Case No. Q-11-170197, of **Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5 (b) of Republic Act No. 7610**, and is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. Appellant is **ORDERED** to **PAY** AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.



<sup>41</sup> *Edmisael Lutap v. People*, *supra* note 38.

<sup>42</sup> *People v. Salvador Tulagan*, *supra* note 21.

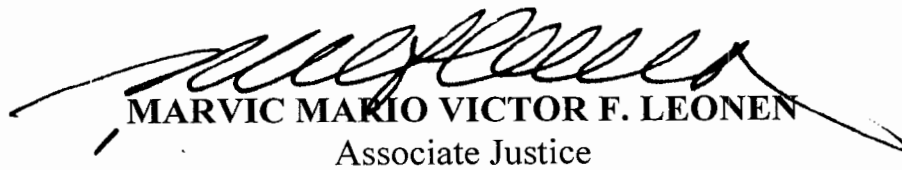
Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid.

**SO ORDERED.**



**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

  
**MARVIC MARIO VICTOR F. LEONEN**  
 Associate Justice


*Reyes*  
**ANDRES B. REYES, JR.**  
 Associate Justice

On official business  
**RAMON PAUL L. HERNANDO**  
 Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
 Associate Justice

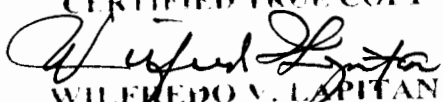
**ATTESTATION**

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.

CERTIFIED TRUE COPY  
  
**WILFREDO V. LAPITAN**  
 Division Clerk of Court  
 Third Division

  
**LUCAS P. BERSAMIN**  
 Chief Justice

JUL 16 2019