Republic of the Philippines
Supreme Court
Manila

EN BANC

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

GLENN BARRERA y GELVEZ,
Accused-Appellant.

G.R. No. 230549

Present:

PERALTA, *Chief Justice*,
PERLAS-BERNABE,*
LEONEN,*
CAGUIOA,
GESMUNDO,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,**
ZALAMEDA,
LOPEZ,
DELOS SANTOS,*
GAERLAN, and
ROSARIO, *JJ.*

Promulgated:
December 1, 2020

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DECISION

GAERLAN, *J.*:

Courts, in criminal cases, must delicately carry the scales of justice to arrive at a three-way balance with respect to the interest of the State to maintain an effective system of deterrence; to provide adequate retribution to the victim; and with utmost regard to the innate value of human liberty and the constitutional rights of the accused.[1] *Hence, a determination of guilt does not automatically tilt the law against the person convicted. On the contrary, in case of ambiguity, it is the Court's duty to apply and interpret criminal law in favor of the defendant. As in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice lean towards the former.*[2]

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* On official leave.
** No part.
1 *Cf. Allado v. Judge Diokno*, 302 Phil. 213, 238 (1994).
2 *People v. Lacson*, 448 Phil. 317, 463 (2003).

father was waiting. Thereafter, Rachelle saw the accused-appellant being arrested by the *barangay tanods*. Rachelle admitted that she did not know what happened from the time the accused left his house up to the time he went towards the sea.[13]

On November 20, 2014, the RTC rendered its Decision,[14] ruling as follows:

> WHEREFORE, foregoing premises considered, JUDGMENT is hereby rendered finding accused GLENN BARRERA *y* GELVEZ GUILTY beyond reasonable doubt of the crime of Robbery with Rape under Article 293 in relation to Article 294 of the Revised Penal Code and hereby imposes upon him the penalty of *reclusion perpetua.*
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> Moreover, accused GLENN BARRERA *y* GELVEZ is, likewise, ORDERED to PAY private complainant AAA the amount of ₱50,000.00 as civil damages *ex delicto*, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages. The total monetary awards shall earn 6% interest *per annum* from the finality of this Decision until fully paid.
>
> SO ORDERED.[15]

The RTC held that there is an undeniable positive identification of the accused-appellant as the person who entered BBB's house and took their television and DVD player.[16] Further, the RTC found AAA's testimony credible and sufficient to establish the fact that she was sexually assaulted by the accused-appellant.[17]

The accused-appellant filed an appeal before the CA, which rendered the herein assailed Decision,[18] dated September 30, 2016, affirming the RTC Decision, the dispositive portion of which reads:

> WHEREFORE, in light of the foregoing, the appeal is DENIED. The assailed Decision of the RTC of Calamba City, Branch 34, in Criminal Case No. 22085-2014-C, is hereby AFFIRMED with MODIFICATION in that accused-appellant shall not be eligible for parole pursuant to Republic Act No. 9346 and the awards of civil indemnity and moral damages are each increased to ₱75,000.00.
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> SO ORDERED.[19]

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13 Id. at 66-67.
14 Id. at 63-73; rendered by Judge Maria Florencia B. Formes-Baculo.
15 Id. at 73.
16 Id. at 69.
17 Id. at 71.
18 Id. at 2-10.
19 Id. at 9-10.

In this appeal, both parties manifested that they would no longer submit supplemental briefs considering that they had already exhaustively discussed the issues in their briefs before the CA.[20]

In the main, the accused-appellant assails the judgment of conviction on the ground that the testimonies upon which they are based are "incongruent and improbable" and as such should not be given weight and credence.[21]

Ruling of the Court

The appeal is ***not*** **meritorious.** The accused-appellant's conviction must stand, albeit for two separate offenses of robbery and sexual assault.

The Court affirms, as there is no compelling reason to deviate from the common factual findings of the RTC and the CA.

It is settled that questions on credibility of witnesses are generally left for the trial court to determine as it had the unique opportunity to observe the witness' deportment and demeanor on the witness stand. The trial court's evaluation is accorded the highest respect and will not be disturbed on appeal in the absence of any showing that significant facts have been overlooked or disregarded, which could have otherwise affected the outcome of the case. This rule is more stringently observed when the assessment and conclusion of the RTC is concurred in by the CA.[22]

In this case, both the RTC and the CA found the testimonies of AAA and BBB to be trustworthy and sufficient to establish the guilt of the accused-appellant beyond reasonable doubt. The Court sees no reason to depart from such finding.

AAA was merely seven years of age at the time the crime was committed. She was eight years old when she testified before the court. Nonetheless, AAA was clear, straightforward, and unwavering in relating to the court what happened to her and in identifying the accused as the perpetrator of the offense. During cross-examination, her testimony

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20 Id. at 27-29; 18-20.
21 CA *rollo*, p. 55.
22 *People v. Banzuela*, 723 Phil. 797, 814 (2013).

remained consistent and unrebutted.[23] Thus, the RTC and the CA did not err in giving her testimony full faith and credit.

Jurisprudence recognized that "[y]outh and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true."[24]

The accused-appellant's defense of denial and alibi, in the absence of clear and convincing proof to substantiate the same, will not stand against the categorical statement and positive identification of the prosecution witnesses.[25]

Notably, the accused-appellant failed to make account of his whereabouts during that period after he left the house and prior to the time he went to the seashore to help his father and was captured by the barangay officials.[26] Considering the proximity of these places to the scene of the crime, the accused-appellant was not able to prove that "it is impossible for him to be somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime."[27] Since there is a chance for the accused-appellant to be present at the crime scene, his defense of alibi must fail.[28]

The accused-appellant should be convicted of two separate crimes of robbery and sexual assault.

While the Court affirms and adopts the factual findings of the RTC and the CA, it however differs with respect to the crime committed by the accused-appellant. As aptly pointed out by Justice Rosmari D. Carandang during the deliberations of this case, the accused-appellant should be convicted of two separate crimes, *i.e.*, robbery and sexual assault under Article 266-B of the Revised Penal Code (RPC).

The legislature intended to maintain the dichotomy between rape through carnal knowledge and sexual assault; the former

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23 Id. at 71.
24 *People v. Pareja*, 724 Phil. 759, 780 (2014) citing *People v. Perez*, 595 Phil. 1232, 1251-1252 (2008).
25 *People v. Banzuela*, supra note 22.
26 *Rollo* p. 8.
27 *People v Evangelio, et al.*, 672 Phil. 229, 245 (2011).
28 Id.

should be treated more severely than the latter.

The crime of robbery with rape is a special complex crime penalized by Article 294 of the RPC, as amended by Section 9 of Republic Act (R.A.) No. 7659. For a successful prosecution of the said crime, the following elements must be established beyond reasonable doubt: a) the taking of personal property is committed with violence or intimidation against persons; b) the property taken belongs to another; c) the taking is done with intent to gain or *animus lucrandi;* and d) the robbery is accompanied by rape.[29] In robbery with rape, the true intent of the accused must be to take, with intent to gain, the property of another; rape must be committed only as an accompanying crime. Article 294 does not distinguish when rape must be committed, for as long as it is contemporaneous with the commission of robbery.[30]

With the amendment introduced by R.A. No. 7659 on December 13, 1993, the penalty of *reclusion perpetua* to death was imposed for the special complex crime of robbery with rape owing to its inherent atrocity and perversity.[31] The penalty for the crime of rape was similarly amended under Section 11 of the same Act by imposing the penalty of death when Rape is attended by certain circumstances.[32] Even so, the definition of rape under Article 335 of the RPC and as a component of the special complex crime of robbery with rape, remained unchanged, *viz.*:

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29 *People v. Romobio*, 820 Phil. 168, 183-184 (2017).

30 Id. at 184-185.

31 REPUBLIC ACT NO. 7659, Sec. 9.

32 Article 335. x x x

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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.
2. when the victim is under the custody of the police or military authorities.
3. when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
4. when the victim is a religious or a child below seven (7) years old.
5. when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
6. when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
7. when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

> **Section 11.** Article 335 of the same Code is hereby amended to read as follows:
>
> Art. 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
>
> 2. When the woman is deprived of reason or otherwise unconscious; and
>
> 3. When the woman is under twelve years of age or is demented.
>
> x x x x

In choosing to impose the penalty of death for certain heinous crimes, the legislature acted within the purview of crimes as they are defined at the time of the passage of R.A. No. 7659. To be more specific, in the special complex crime of robbery with rape, the legislature evaluated the gravity of the offense and formulated its decision as to the depravity of the offenses based on the definition of the component crimes at that point in time: robbery as defined under Article 293 of the RPC, and rape as defined under then Article 335 (now Article 266-A(1) of the RPC, herein aforequoted.

On October 22, 1997, R.A. No. 8353 otherwise known as the "Anti-Rape Law of 1997" took effect. It expanded the traditional definition of rape to include acts of sexual assault also referred to as "gender-free rape" or "object rape." Thus, there are now two modes in which rape may be committed, *viz.*:

> 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 anal orifice of another person.**[33] (Emphasis supplied)

The expansion of the definition of the crime of rape by including acts of sexual assault notwithstanding, it is evident that R.A. No. 8353 does not view the two modes of commission on an equal footing. The distinction between rape committed through sexual intercourse (first mode) on the one hand and sexual assault (second mode) on the other is exhibited by the penalty which the legislature determined appropriate to impose. R.A. No. 8353 punishes rape through the first mode more severely as depending on the attendance of circumstances, it provides for the penalty within the range of *reclusion perpetua* to death; whereas, rape under the second mode is generally punishable with penalty ranging from *prision mayor* to *reclusion temporal*, save for instances where homicide attended its commission, then penalty of *reclusion perpetua* is imposed. Article 266-B of the RPC as amended by R.A. No. 8353, reads:

> Article 266-B. *Penalties*. — Rape **under paragraph 1** of the next preceding article shall be punished by *reclusion perpetua.*
>
> Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.
>
> When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to death.
>
> When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.
>
> When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.
>
> 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;
>
> 2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

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[33] REPUBLIC ACT NO. 8353, Sec. 2.

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

5) When the victim is a child below seven (7) years old;

6) When the offender knows that he is afflicted with Human Immune-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

Rape **under paragraph 2** of the next preceding article shall be punished by *prision mayor*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *prision mayor* to *reclusion temporal*.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion temporal*.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion temporal* to *reclusion perpetua*.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be *reclusion perpetua*.

Reclusion temporal shall also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article. (Emphasis supplied)

The imposition of a more severe penalty for rape through sexual intercourse shows that the legislature found such mode of commission more appalling than the other thus warranting a more severe punishment as a form of chastisement and deterrence.

The distinction between the two modes- the traditional concept of rape and sexual assault, has been exhaustively and judiciously discussed in the landmark case of *People v. Tulagan*.[34] The case highlighted that R.A. No. 8353 merely upgraded Rape from a "crime against chastity" (a private crime) to a "crime against persons" (a public crime) for facility in prosecution; and reclassified specific acts constituting "acts of lasciviousness" as a distinct crime of "sexual assault." The Court, speaking through then Associate Justice, now Chief Justice, Diosdado M. Peralta, elucidated:

> Upon the effectivity of R.A. No. 8353, specific forms of acts of lasciviousness were no longer punished under Article 336 of the RPC, but were transferred as a separate crime of "sexual assault" under paragraph 2, Article 266-A of the RPC. Committed by "inserting penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person" against the victim's will, "sexual assault" has also been called "gender-free rape" or "object rape." However, the term "rape by sexual assault" is a misnomer, as it goes against the traditional concept of rape, which is carnal knowledge of a woman without her consent or against her will. In contrast to sexual assault which is a broader term that includes acts that gratify sexual desire (such as cunnilingus, felatio, sodomy or even rape), the classic rape is particular and its commission involves only the reproductive organs of a woman and a man. **Compared to sexual assault, rape is severely penalized because it may lead to unwanted procreation; or to paraphrase the words of the legislators, it will put an outsider into the woman who would bear a child, or to the family, if she is married. The dichotomy between rape and sexual assault can be gathered from the deliberation of the House of Representatives** on the Bill entitled "*An Act to Amend Article 335 of the Revised Penal Code, as amended, and Defining and Penalizing the Crime of Sexual Assault*:"
>
> INTERPELLATION OF MR. [ERASMO B.] DAMASING:
>
> x x x x
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> Pointing out his other concerns on the measure, specifically regarding the proposed amendment to the Revised Penal Code making rape gender-free, Mr. Damasing asked how carnal knowledge could be committed in case the sexual act involved persons of the same sex or involves unconventional sexual acts.

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34 G.R. No. 227363, March 12, 2019.

Mr. [Sergio A. F.] Apostol replied that the Bill is divided into two classifications: rape and sexual assault. The Committee, he explained, defines rape as carnal knowledge by a person with the opposite sex, while sexual assault is defined as gender-free, meaning it is immaterial whether the person committing the sexual act is a man or a woman or of the same sex as the victim.

Subsequently, Mr. Damasing adverted to Section 1 which seeks to amend Article 335 of the Revised Penal Code as amended by RA No. 7659, which is amended in the Bill as follows: "Rape is committed by having carnal knowledge of a person of the opposite sex under the following circumstances." He then inquired whether it is the Committee's intent to make rape gender-free, either by a man against a woman, by a woman against a man, by man against a man, or by a woman against a woman. He then pointed out that the Committee's proposed amendment is vague as presented in the Bill, unlike the Senate version which specifically defines in what instances the crime of rape can be committed by a man or by the opposite sex.

Mr. Apostol replied that under the Bill "carnal knowledge" presupposes that the offender is of the opposite sex as the victim. If they are of the same sex, as what Mr. Damasing has specifically illustrated, such act cannot be considered rape — it is sexual assault.

Mr. Damasing, at this point, explained that the Committee's definition of carnal knowledge should be specific since the phrase "be a person of the opposite sex" connotes that carnal knowledge can be committed by a person, who can be either a man or a woman and hence not necessarily of the opposite sex but may be of the same sex.

Mr. Apostol pointed out that the measure explicitly used the phrase "carnal knowledge of a person of the opposite sex" to define that the abuser and the victim are of the opposite sex; a man cannot commit rape against another man or a woman against another woman. He pointed out that the Senate version uses the phrase carnal knowledge with a woman."

While he acknowledged Mr. Apostol's points, Mr. Damasing reiterated that the specific provisions need to be clarified further to avoid confusion, since, earlier in the interpellation Mr. Apostol admitted that being gender-free, rape can be committed under four situations or by persons of the same sex. Whereupon, Mr. Damasing read the specific provisions of the Senate version of the measure.

In his rejoinder, Mr. Apostol reiterated his previous contention that the Bill has provided for specific and distinct definitions regarding rape and sexual assault to differentiate that rape cannot be totally gender-free as it must be committed by a person against someone of the opposite sex.

With regard to Mr. Damasing's query on criminal sexual acts involving persons of the same sex, Mr. Apostol replied that Section 2, Article 266(b) of the measure on sexual assault applies to this particular provision.

> Mr. Damasing, at this point, inquired on the particular page where Section 2 is located.
>
> SUSPENSION OF SESSION
>
> x x x x
>
> INTERPELLATION OF MR. DAMASING
> (Continuation)
>
> Upon resumption of session, Mr. Apostol further expounded on Sections 1 and 2 of the bill and differentiated rape from sexual assault. Mr. Apostol pointed out that the main difference between the aforementioned sections is that carnal knowledge or rape, under Section 1, is always with the opposite sex. Under Section 2, on sexual assault, he explained that such assault may be on the genitalia, the mouth, or the anus; it can be done by a man against a woman, a man against a man, a woman against a woman or a woman against a man.
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> 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.[35] (Citations omitted and emphasis supplied)

From the foregoing discussion, it can be inferred that it was never the intention of the legislature to redefine the traditional concept of rape. R.A. No. 8353 merely expanded the crime by including another mode in which the crime of rape may be committed. Simply, the legislature only found it fit to categorize acts previously classified and punished as "Acts of Lasciviousness" as the second mode of committing the crime of rape, that is, through sexual assault. In doing so, legislative intent is clear in that while encompassed in the definition of rape, sexual assault should be treated less severely than rape through carnal knowledge. In the exercise of its discretion and wisdom, the legislature resolved that a more severe penalty should be imposed when rape is committed through sexual intercourse owing to the fact that it may lead to unwanted procreation, an outcome not possible nor present in sexual assault.

Inasmuch as the intent of a law is a vital component and the essence of the law itself,[36] the clear legislative intent to maintain the dichotomy

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35 Id.

36 *Eugenio v. Exec. Sec. Drilon*, 322 Phil. 112, 117 (1996), citing Vol.II, Sutherland, STATUTORY CONSTRUCTION, pp. 693-695.

between the two modes of commission of rape, in terms of penalty, must be carried out.

In the same vein, following legislative intent in the passage of R.A. No. 7659, the penalty of *reclusion perpetua* to death for the special complex crime of robbery and rape should be limited to instances when rape is accomplished through sexual intercourse or "organ penetration." The penalty should not be unduly extended to cover sexual assault considering that the acts punishable under such mode were not yet recognized as "Rape" but as "Acts of Lasciviousness" at the time the severe penalty of death was imposed. All the more, to repeat for the sake of emphasis, as even after the inclusion of sexual assault in the definition of rape by R.A. No. 8353, Congress deliberations show that the law never intended to redefine the traditional concept of rape. Rather, the law merely expanded the definition of the crime of rape, with the intent of maintaining the existing distinction between the two modes of commission.

The criminalization of an act cannot be based on mere inferences.

A law is tested by its purposes and results. In seeking the meaning of the law, the first concern is legislative intent. In determining such intent, the law should never be interpreted in such a way as to cause injustice.[37] As "[a]n indispensable part of that intent, in fact, for we presume the good motives of the legislature, is *to render justice*."[38] In the performance of its duty, courts should therefore interpret the law in harmony with the dictates of justice.[39]

The Court cannot simply presume that with the passage of R.A. No. 8353, rape as a component of the special complex crime of robbery with rape includes sexual assault. With respect to penal statutes, the Court cannot rest on mere deductions.[40] Likewise, "it is not enough to say that the legislature intended to make a certain act an offense."[41] The penal statute must clearly and specifically express that intent. In order for an accused to be convicted under a penal statute, the latter must definitively encompass and declare as criminal the accused's act prior to its commission.[42] "Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment."[43]

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37 *Alonzo v. Intermediate Appellate Court*, 234 Phil. 267, 276 (1987).
38 Id.
39 Id.
40 *People v. PO1 Sullano*, 827 Phil. 613, 625-626 (2018).
41 Id. at 623.
42 *People v. PO1 Sullano*, supra at 625.
43 Id., citing *Centeno v. Judge Villalon-Pornillos*, 306 Phil. 219, 230-231 (1994).

In the case at bar, R.A. No. 7659, insofar as it imposes the penalty of *reclusion perpetua* to death for the special complex crime of robbery with rape, is bereft of any statement to suggest that it contemplates any and all forms of rape which may subsequently be defined. Thus, the law which imposes a harsher penalty should not be extended to include sexual assault, which was recognized as rape only after its passage.

Furthermore, it is a fundamental rule in criminal law that any ambiguity shall be always construed strictly against the State and in favor of the accused.[44] Penal laws "are not to be extended or enlarged by implications, intendments, analogies or equitable considerations. They are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies."[45] Consequently, the interpretation of penal statutes is subjected to a strict and careful scrutiny in order to safeguard the rights of the accused. When confronted with two reasonable and contradictory interpretations, that which favors the accused is always preferred.[46]

In view of the foregoing principles therefore, the more reasonable interpretation is that when Sexual Assault under Article 266-A paragraph 2 of the RPC accompanied the robbery, the accused should not be punished of the special complex crime of robbery with rape but that of two separate and distinct crimes, as it would be more favorable to the accused.

The conviction of the accused-appellant of two separate offenses does not violate his right to information.

The Constitution guarantees the right of an accused in a criminal prosecution to be informed of the nature and cause of accusation against him.[47] Flowing from the said right, it is required that every element of the offense charged must be alleged in the Complaint or Information, to afford the accused an opportunity to adequately prepare his defense. Consequently, an accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the Information,[48]

The nature of the offense charged is judged on the basis of the recital of facts in the Complaint or Information, without regard to the caption or the specification of the law alleged to have been violated.[49] In this case, the recital

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44 *People v. PO1 Sullano*, supra.
45 *Centeno v. Judge Villalon-Pornillos*, supra.
46 Id.
47 1987 CONSTITUTION, Article III, Section 14(2).
48 *Canceran v. People*, 762 Phil. 558, 568 (2015).
49 Id. at 568-569.

of facts in the Information presents no obstacle in convicting the accused-appellant of two distinct crimes of robbery and sexual assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610. The Information contains a complete recital of the elements of each of the said offenses.

The right of the accused to information is also the basis for the rule that a Complaint or Information, to be valid, must charge only one offense.[50] Failure to comply with this rule is a ground for quashing the duplicitous Complaint or Information. However, the accused must raise the defect in a motion to quash before arraignment, otherwise the defect is deemed waived.[51] In this case, the accused-appellant entered a plea of not guilty without moving for the quashal of the Information, hence, he is deemed to have waived his right to question the same.

The accused-appellant equally failed to object to the duplicitous information during trial. As a result, the court may convict the accused-appellant of as many offenses as charged and proved during trial, and impose upon him the penalty for each offense.[52]

The Court finds that the facts as alleged and proven establish that robbery was committed by the use of force upon things as defined and penalized under Article 299(a) 1 of the RPC. The elements[53] of the said crime was established through the common factual findings of the RTC and the CA, which the Court approves and adopts:

> [T]here is thus an undeniable positive identification of the accused as the person who entered private complainant [BBB's] house, and brought out the television set and the DVD player. And the four elements constituting the crime of Robbery with Force Upon Things are duly proven. The second element of the taking of personal properties was testified to and duly established by private complainant [BBB] whose television set and DVD player were taken by the accused. The first element of intent to gain or *animus lucrandi* is presumed from the fact of the loss of the personal belongings of private complainant. And there can be no dispute or quibble that the two items taken, which were both recovered, are personal properties, thus the third element is likewise proven.
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> Lastly, the fourth element of the use of force upon things is very clear as testified to by the private complainant [BBB] of the destruction of their

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50 RULES OF COURT, Rule 110, Section 13; *People, et al. v. Court of Appeals, et al.*, 755 Phil. 80, 116-117 (2015).

51 RULES OF COURT, Rule 117, Section 9.

52 RULES OF COURT, Rule 120, Section 3.

53 1) that there is taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi*; and (4) the taking is with violence against or intimidation of persons or force upon things. [*Consulta v. People*, 598 Phil. 464. 471 (2009).]

> window jalousies in order to reach the doorknob of his house and to gain entry into private complainant [BBB's] house. x x x
>
> It is thus clear that by destroying the jalousies of the window to reach the doorknob of the door to gain ingress or entry into private complainant [BBB's] house, the fourth element of the crime charged is duly proven. [54]

Similarly, the prosecution proved beyond reasonable doubt all the elements of the crime of Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610. The RTC explained:

> Moreover, from the testimony of private complainant [AAA], x x x, rape by sexual assault was committed by the accused. x x x [S]he categorically testified that the accused licked and inserted his tongue inside her vagina, During the incident complained of private complainant [AAA] was only 7 years old as duly proven by her Certificate of Live Birth.[55]

The apparent inconsistencies in the narration of facts relative to the specific sexual acts performed by the accused-appellant does not affect the nature and character of the crime committed. Herein, the Information alleged that the accused-appellant "*inserted his tongue*" inside AAA's vagina;[56] the CA Decision narrated that the accused-appellant "*licked her vagina*;"[57] while the RTC concluded that the accused-appellant "*licked and inserted his tongue*" inside AAA's vagina.[58]

As aforementioned early on in this Decision, the Court sees no reason to depart from the factual findings of the RTC that the accused-appellant committed acts of Sexual Assault against AAA by licking and inserting his tongue inside her vagina. Owing to its unique position to observe directly the demeanor of witnesses, the trial court's evaluation of the testimony of witnesses is accorded the highest respect by the Court, more so, when as in this case, the CA made a similar conclusion. Despite the apparent inconsistencies in the language employed, the CA Decision was clear in that it is affirming the factual findings of the trial court. There should be no obstacle in convicting the accused-appellant of the crime of Sexual Assault. The difference as to the terminologies used by the RTC and the CA is understandable. In her testimony, AAA stated "*.. sa paggising ko po ay dinidilaan ang pepe ko..*" While literally translated, "dilaan" means to "lick" the Court must consider that the witness is a child of tender years. AAA was merely seven years of age at the time the crime was committed; and eight years old when she testified in court. As such, she cannot be expected to describe with such particularity the sexual act

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54 CA *rollo* pp. 69-70.
55 Id. at 70.
56 *Rollo* p. 3
57 Id. at 4.
58 CA *rollo* p. 70.

committed. Verily, the trial court, observing the demeanor of the witnesses first hand, is in a better position than the appellate court to evaluate the testimonial evidence properly[59] and draw conclusions from them.

The separation of the charge into two distinct offenses finds further justification as the same is more favorable to the accused-appellant.

Under Article 294 of the RPC, the special complex crime of robbery with rape is penalized by *reclusion perpetua* to death. Pursuant to Article 63(1) of the same Code, when the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the deed is attended by an aggravating circumstance. With the presence of the aggravating circumstance of dwelling in this case, the penalty would be death, the higher among the two individual penalties prescribed. Consequently, had the conviction be for the special complex crime of robbery with rape, the penalty would be "*reclusion perpetua* without eligibility for parole" as directed by R.A. No. 9346 and A.M. No. 15-08-02-SC.

In contrast, the prosecution and conviction for two separate offenses, even if taken together would yield a lower penalty.

The penalty for robbery by the use of force upon things as defined under Article 299(a) 2 of the RPC as amended by R.A. No. 10951,[60] depends upon the value of the property taken and whether or not the offender carry arms, *viz.*:

> ART. 299. *Robbery in an inhabited house or public building or edifice devoted to worship.* — Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by *reclusion temporal*, if the value of the property taken shall exceed Fifty thousand pesos (P50,000), and if —
>
> (a) The malefactors shall enter the house or building in which the robbery was committed, by any of the following means:
>
> x x x x
>
> 2. By breaking any wall, roof, or floor or breaking any door or window.

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59 *People v. Perez*, 595 Phil. 1232, 1251 (2008).

60 An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed under the Revised Penal Code, Republic Act No. 10951, August 29, 2017.

SECTION 100. *Retroactive Effect.* — This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.

x x x x

When the offenders do not carry arms, and the value of the property taken exceeds Fifty thousand pesos (P50,000), the penalty next lower in degree shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed Fifty thousand pesos (P50,000).

When said offenders do not carry arms and the value of the property taken does not exceed Fifty thousand pesos (P50,000), they shall suffer the penalty prescribed in the two (2) next preceding paragraphs, in its minimum period.

x x x x[61] (Emphasis supplied)

Herein, the information alleged that the accused-appellant took "one (1) portable DVD worth ₱2,500.00 and one (1) TCL 21 inches television."[62] The Court finds such allegation insufficient to prove the amount of the property taken for the purpose of fixing the penalty imposable against the accused-appellant. The prosecution must prove such value by an independent and reliable estimate.[63] An uncorroborated estimate is not enough.[64] The prosecution failed on this score. In the absence of factual and legal bases, jurisprudence instructs that the Court may either apply the minimum penalty or fix the value of the property taken based on the attendant circumstances of the case.[65]

In the exercise of such discretion, the Court hereby imposes upon the accused-appellant the minimum penalty under Article 299 of the RPC, as warranted by the circumstances, *i.e.*, *prision mayor* minimum.

In the crime of robbery by the use of force upon things, the breaking of the jalousies in BBB's house is a means of committing the crime and as such can no longer be considered to increase the penalty.[66] Similarly, with the separation of the crimes committed and the crime of robbery established is with the use of force upon things, the aggravating circumstance of dwelling can no longer be considered as it is inherent in the offense.[67]

Applying the Indeterminate Sentence Law (ISL), there being no attendant mitigating or aggravating circumstance, the maximum penalty shall

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61 REPUBLIC ACT NO. 10951, Section 79.
62 *Rollo* p. 3.
63 *Cf. Viray v. People*, 720 Phil. 841, 848 (2013).
64 *People v. Anabe*, 644 Phil. 261, 280-281 (2010), citing *Merida v. People*, 577 Phil. 243, 258-259 (2008).
65 *People v. Anabe*, id.
66 REVISED PENAL CODE, Article 62, as amended.
67 *People v. Cabatlao*, 195 Phil. 211, 223 (1981).

be within the medium period of *prision mayor* minimum or 6 years, 8 months and 1 day to 7 years and 4 months.[68] The minimum penalty on the other hand shall be anywhere within the range of *prision correccional* in its maximum period or 4 years, 2 months and 1 day to 6 years, the penalty next lower in degree to *prision mayor* minimum.[69]

With this, for the crime of robbery, the Court imposes upon the accused-appellant the indeterminate penalty of 6 years of *prision correccional* as minimum and 7 years and 4 months of *prision mayor* as maximum.

On the amount of civil liability, it is clear that no actual damages can be awarded as the television set and DVD player that were stolen were eventually recovered.[70]

With respect to the crime of sexual assault under Article 266-A(2) of the RPC in relation to Section 5b of R.A. No. 7610 committed against AAA, 7 years of age, guided by the Court's ruling in the case of *People v. Tulagan*,[71] the penalty shall be *reclusion temporal* in its medium period.

In view of the separation of the crimes, the aggravating circumstance of dwelling having been properly alleged in the Information must still be appreciated. While dwelling cannot be considered in the crime of robbery, the Court deems it proper to consider the same in determining the penalty of sexual assault, the same having been proven during trial. When the crime of rape through sexual assault is committed in the dwelling of the offended party, and the latter has not given any provocation, dwelling may be appreciated as an aggravating circumstance.[72]

The presence of the aggravating circumstance of dwelling warrants the imposition of the penalty prescribed in its maximum period.[73] Hence, applying the ISL, the maximum term shall be anywhere within the maximum period of *reclusion temporal* medium or 16 years, 5 months and 10 days to 17 years and 4 months. The minimum penalty, on the other hand, shall be one degree lower of *reclusion temporal* in its medium period or *reclusion temporal* in its minimum period. The minimum term of the indeterminate sentence should therefore be within the range of 12 years and 1 day to 14 years and 8 months.[74]

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68 REVISED PENAL CODE, Article 64(1).

69 INDETERMINATE SENTENCE LAW, Section 1.

70 *Rollo* p. 73.

71 G.R. No. 227363, March 12, 2019.

72 *People v. Gayeta*, 594 Phil. 636, 648-649 (2008). See *People v. Padilla*, 312 Phil. 721, 737 (1995), where the Court ruled that dwelling is an aggravating circumstance in rape.

73 REVISED PENAL CODE, Article 64 (3).

74 REVISED PENAL CODE, Article 64(1), *People v. Tulagan*, supra note 34; *Quimvel v. People*, 808 Phil. 889, 936-937 (2017).

For the crime of sexual assault under Article 266-A(2) of the RPC in relation to Section 5b of R.A. No. 7610, the Court hereby imposes upon the accused appellant the indeterminate prison term of 14 years and 8 months of *reclusion temporal* as minimum to 17 years, 4 months of *reclusion temporal* as maximum.

In accordance with recent jurisprudence, the accused-appellant is also liable to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as exemplary damages, and ₱50,000.00 as moral damages.[75] All damages shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.[76]

WHEREFORE, in view of the foregoing, the appeal is hereby **DISMISSED**. Accordingly, the Decision dated September 30, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07488 is hereby **AFFIRMED with MODIFICATION**, as follows:

A. The accused-appellant Glenn Barrera *y* Gelvez is hereby found **GUILTY** of the crime of robbery by the use of force upon things, defined and penalized by Article 299 of the Revised Penal Code, as amended by Republic Act No. 10951. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years of *prision correccional* as minimum and seven (7) years and four (4) months of *prision mayor* as maximum.

B. The accused-appellant Glenn Barrera *y* Gelvez is also found **GUILTY** of the crime of sexual assault under Article 266-A(2) of the Revised Penal Code in relation to Section 5b of Republic Act No. 7610. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of fourteen (14) years and eight (8) months of *reclusion temporal* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. In addition, in accordance with recent jurisprudence,[77] accused-appellant is ordered to **PAY** the private complainant AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as exemplary damages, and ₱50,000.00 as moral damages.

All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.[78]

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75 *People v. Tulagan*, id.
76 *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).
77 *People v. Tulagan*, supra note 34.
78 *Nacar v. Gallery Frames*, supra note 76.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

(On official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

(On official leave)
MARVIC M.V.F. LEONEN
Associate Justice

See Concurring & Dissenting Opinion
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

(No part)
HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

(On official leave)
EDGARDO L. DELOS SANTOS
Associate Justice

RICARDO R. ROSARIO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

DIOSDADO M. PERALTA
Chief Justice

Certified True Copy
ANNA-LI R.PAPA-GOMBIO
Deputy Clerk of Court En Banc
OCC En Banc, Supreme Court