



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 249149  
Plaintiff-Appellee,

Present:

PERALTA, CJ.,  
Chairperson,  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

-versus-

JOSE CABALES y WEBBER @ Promulgated:  
"BASIL",

Accused-Appellant.

DEC 02 2020

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DECISION

CARANDANG, J.:

This is an appeal<sup>1</sup> from the Decision<sup>2</sup> of the Court of Appeals (CA) dated January 31, 2019 in CA-G.R. CR-HC No. 09979. The decision denied the appeal of Jose Cabales y Webber @ "Basil" (accused-appellant) and affirmed with modification the Decision<sup>3</sup> dated July 19, 2017 of the Regional Trial Court's (RTC) of Manila finding him guilty of sexual assault and rape, respectively, as defined and penalized under Article 266-A, paragraphs 2 and 1 of the Revised Penal Code (RPC), as amended by Republic Act No. (R.A.) 8353, in Criminal Case Nos. 16-328863 and 16-328864.

In separate Informations,<sup>4</sup> Cabales was charged as follows:

Criminal Case No. 16-328863

The undersigned Assistant City Prosecutor upon sworn complaint by the offended party [AAA], a minor, 15

<sup>1</sup> Rollo, p. 18.

<sup>2</sup> Penned by Associate Justice Franchito N. Diamante, with the concurrence of Associate Justices Romeo F. Barza and Jhosep Y. Lopez; id. at 3-17.

<sup>3</sup> Records, pp. 181-202.

<sup>4</sup> Rollo, pp. 4-5.

years old, assisted by Social Welfare Officer 1 MARIA BENILDA SANTOS accuses JOSE CABALES y WEBBER @ "BASIL" of the crime of RAPE as defined and penalized under Article 266-A, paragraph 2 of the Revised Penal Code as amended by Republic Act 8353, committed as follows:

That on or about **September 2, 2016**, in the City of Manila, Philippines, the said accused, with lewd designs and by means of force and intimidation, did, then and there willfully and knowingly commit sexual assault upon the said [AAA], by then and there compelling her to go inside the comfort room of their house located at x x x, and once inside, directing her in removing her clothes and thereafter putting his penis inside the latter's mouth, against her will and without her consent.

Contrary to law.<sup>5</sup> (Emphasis in the original)

Criminal Case No. 16-328864

That on or about **September 2, 2016**, in the City of Manila, Philippines, the said accused, with lewd designs and by means of force and intimidation, did, then and there willfully and knowingly rape the said [AAA], by then and there compelling her to go inside the comfort room of their house located at x x x, and once inside, succeeded in having carnal knowledge upon the latter by telling her to bend down and thereafter inserting his penis into her vagina, against her will and without her consent.

Contrary to law.<sup>6</sup> (Emphasis in the original)

Accused-appellant pleaded not guilty to the crimes charged.<sup>7</sup> The cases were consolidated and during the pre-trial conference, the defense admitted: (1) the RTC's jurisdiction over the person of accused-appellant; (2) the accused-appellant's identity as the person named in the information and as the person arraigned in the cases; and (3) that accused-appellant underwent inquest proceedings.<sup>8</sup> Trial on the merits then ensued.

The prosecution presented: (1) AAA;<sup>9</sup> (2) Dr. Melissa Joyce P. Ramboangga (Dr. Ramboangga); (3) PO3 Jennifer De Leon-Cadatal (PO3 De Leon-Cadatal); and (4) PO1 Antonio Mangaoang, Jr. (PO1 Mangaoang) as its witnesses.<sup>10</sup> For the defense: (1) accused-appellant;<sup>11</sup> and (2) AAA's mother, BBB,<sup>12</sup> took the witness stand.<sup>13</sup>

<sup>5</sup> Records (Crim. Case No. 16-328863), p. 1.

<sup>6</sup> Records (Crim. Case No. 16-328864), p. 1.

<sup>7</sup> Records (Crim. Case No. 16-328863), pp. 26, 43.

<sup>8</sup> Id. at 49.

<sup>9</sup> The victim/private complainant will be referred to as "AAA." The real name of the victim/private complainant is withheld in accordance with A.M. No. 12-7-15-SC dated July 21, 2015.

<sup>10</sup> Records (Crim. Case No. 16-328863), p. 49.

<sup>11</sup> TSN dated February 27, 2017, pp. 1-18.

<sup>12</sup> The mother of the victim/private complainant will be referred to as "BBB." The real name of the mother of the victim/private complainant is withheld in accordance with A.M. No. 12-7-15-SC dated July 21, 2015.

<sup>13</sup> TSN dated May 12, 2017, pp. 2-6.

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AAA stated that she was 15 years old. She shared that accused-appellant is her stepfather. Accused-appellant and her mother, BBB, have been living together since 2009 and their relationship has produced three children.<sup>14</sup> She revealed that accused-appellant has been repeatedly raping her since she was 12 years old and her mother knew of this fact. She and her mother tried to run away but accused-appellant chased them, caught them, and beat up BBB. BBB could not do anything about AAA's predicament because she gets beaten up by accused-appellant. The last rape incident, which prompted her to file the present case, happened on September 2, 2016.<sup>15</sup>

At around 9:00 or 10:00 a.m. of September 2, 2016, accused-appellant instructed AAA to go to the market and her siblings to play outside of their home. Upon arriving from the market, AAA cooked their food. While cooking, accused-appellant told AAA to follow him inside the comfort room. Instead of doing as told, AAA just continued with her cooking in the meantime.<sup>16</sup>

AAA's siblings noisily went inside their home. They, along with AAA, were sent out by accused-appellant. Accused-appellant, however, whispered to AAA to quickly come back and join him inside the comfort room. Acceding to accused-appellant's command, AAA went back inside their home, entered the comfort room, and saw accused-appellant naked. AAA removed her clothing as directed by accused-appellant. Accused-appellant ordered AAA to put his penis inside her mouth. Thereafter, accused-appellant told AAA to bend over and he inserted his penis inside her vagina. AAA revealed that she does not make a sound during the despicable act because accused-appellant repetitively threatens her that if she did, he will beat her up like he did in the past.<sup>17</sup>

After five minutes, AAA got dressed, went out of the comfort room, and prepared their food. Emboldened and fed up with what accused-appellant was doing to her, AAA left their home, went to a friend's house, and disclosed to her friend everything that had transpired. AAA likewise revealed her predicament with her friend's mother and the latter had the accused-appellant arrested.<sup>18</sup>

AAA added that accused-appellant is a drug-user and that he uses drugs before he rapes AAA. She left the custody of BBB and now stays at Bahay Tuluyan. She vividly recalls what transpired on September 2, 2016 because it was BBB's birthday.<sup>19</sup>

The testimonies of Dr. Melissa Joyce P. Ramboanga (Dr. Ramboangga), PO3 Jennifer De Leon-Cadatal (PO3 De Leon-Cadatal), and PO1 Antonio Mangaoang, Jr. (PO1 Mangaoang) were dispensed with after

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<sup>14</sup> TSN dated December 8, 2016, pp. 3-5.

<sup>15</sup> Id. at 9-10.

<sup>16</sup> Records (Crim. Case No. 16-328863), p. 6.

<sup>17</sup> Id.

<sup>18</sup> TSN dated December 8, 2016, pp. 10-11.

<sup>19</sup> Id. at 14-15.



the prosecution and defense entered into stipulations of facts as regards their intended respective testimonies.<sup>20</sup>

For Dr. Ramboanga:

1. that she is a physician assigned at the Child Protection Unit, UP-PGH;
2. that she examined AAA on September 5, 2016 at 1:21 p.m.;
3. that the result of AAA's examination is embodied in Final Medico-Legal Report No. 2016-17113;
4. that the Ano-Genital Examination stated therein revealed (a) "*absent hymen from 6 to 8 o'clock; yellow bruise from 9 to 11 o'clock*" and (b) "*Anogenital findings are indicative of blunt force or penetrating trauma;*"
5. that the possible cause of injury is an erect penis;
6. that she conducted an interview with AAA and issued the corresponding summary thereof;
7. that she took photos of AAA and AAA's private part as well; and
8. that she has no personal knowledge as to the facts and circumstances constituting rape allegedly committed by accused-appellant against AAA.<sup>21</sup>

For PO3 De Leon-Cadatal:

1. that she is a bonafide member of the PNP assigned at the Police Station No. 2, Moriones, Tondo, Manila;
2. that she is the assigned on-case investigator;
3. that she prepared the Letter Endorsement to the City Prosecutor as well as the Booking Sheet and Arrest Report;
4. that she interviewed AAA, as well as arresting officers PO1 Antonio Mangaoang, Jr., PO1 Jay-Ar Valdez, PO2 Reyzen del Rosario; PO1 Clifton de Leon, and PO1 Jonathan Manalang, and that she translated their respective narrations into Judicial Affidavits and Affidavit of Apprehension; and
5. that she has no personal knowledge as to the facts and circumstances constituting rape allegedly committed by accused-appellant against AAA.<sup>22</sup>

For PO1 Mangaoang:

1. that he is a bonafide member of the PNP assigned at the Police Station No. 2, Moriones, Tondo, Manila;
2. that he is one of the arresting officers together with PO1 Jay-Ar Valdez;

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<sup>20</sup> Records (Crim. Case No. 16-328863), pp. 77-80.

<sup>21</sup> Id. at 77-78.

<sup>22</sup> Id. at 78-79.

3. that on September 4, 2016, he was at the Police Station when a certain Prescilla lodged a complaint for rape;
4. that he – along with PO1 Valdez, AAA, and Prescilla – proceeded to No. 355 Sta. Isabel, Tondo, Manila;
5. that upon arrival thereat, AAA pointed at her assailant, the accused-appellant, who was standing outside of their home;
6. that accused-appellant was brought to the Gat Andres Bonifacio Medical Center for medical examination and thereafter to Police Station No. 2 for investigation;
7. that he executed a Joint Affidavit of Apprehension; and
8. that he has no personal knowledge as to the facts and circumstances constituting rape allegedly committed by accused-appellant against AAA.<sup>23</sup>

For his defense, Cabales denied the allegations against him. Cabales claimed that at 12:00 p.m. of September 2, 2016, he took a bath while his eldest son was watching television. After taking a bath, he went to see his live-in partner, BBB, at Paco Market where she was selling *kakanin* and he stayed with her until 6:00 p.m. Cabales averred that AAA eloped twice with Mico, AAA's boyfriend. AAA filed the present cases against him because he punched Mico on September 3, 2016 when AAA returned to their home after their second elopement.<sup>24</sup>

Cabales insisted that Ma. Benilda Santos (Santos), a Social Welfare Officer of Manila, is the aunt of Mico. Santos assisted AAA to file a complaint against him in retaliation for punching Mico. Cabales, however, admitted that he failed to blotter the incidents that led to the filing of the criminal cases against him and to file the appropriate complaints with the barangay.<sup>25</sup>

For her part, BBB corroborated her common-law husband's story that at 12:00 p.m. of September 2, 2016, AAA, accused-appellant, and Nestar were at Paco Market waiting for her while she sells *kakanin* using *kariton*. BBB claimed that after accused-appellant punched Mico, the latter threatened to file a complaint against Cabales. BBB maintained that AAA filed the cases against her husband because of Mico's prodding. BBB stated that AAA is now pregnant and lives in Cebu with Mico.<sup>26</sup>

On cross-examination, BBB revealed that AAA left their home on September 3, 2016, a day after her birthday. Prior to September 2, 2016, AAA was missing for a week. She saw AAA again on September 2, 2016 when AAA and accused-appellant went to the market together and brought her a cake. She got angry at AAA when she saw her and she hit AAA. BBB explained that AAA was raised by her grandmother and that she only started living with them in 2011. BBB described AAA as hard-headed. BBB

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<sup>23</sup> Id. at 79-80.

<sup>24</sup> TSN dated February 27, 2017, pp. 3-6.

<sup>25</sup> Id. at 15-18.

<sup>26</sup> TSN dated May 12, 2017, pp. 3-5.

declared that AAA should have informed her earlier that her live-in partner was raping her. BBB stated that she was not present when AAA testified that, “*Ang pinakikinggan mo lang naman ay yung asawa mo at hindi silang mga anak.*”<sup>27</sup>

BBB alleged that she leaves their home at 4:00 a.m. to go to the market and she comes back at 1:00 or 2:00 p.m. For that particular day on September 2, 2016, however, she went home with AAA and accused-appellant between 10:00 to 11:00 p.m.<sup>28</sup> When confronted why she was wearing a yellow shirt for detainees, BBB confirmed that she was under detention for a drug-related case.<sup>29</sup>

### **Ruling of the Regional Trial Court**

On July 19, 2017, the RTC found accused-appellant guilty beyond reasonable doubt for the crimes charged.<sup>30</sup> AAA’s narration – on how accused-appellant summoned her inside the comfort room and once there required her to put his penis inside her mouth – was clear, straight forward, and credible. The fear created by accused-appellant’s repeated mauling of AAA prevented the latter from resisting the sexual assault. Accused-appellant’s moral ascendancy over AAA as the latter’s stepfather substituted for the elements of violence or intimidation. AAA’s consistent and forthright account of how accused-appellant required her to bend over in order for him to enter her vagina from behind gives credence to her rape story. The anogenital findings indicative of “blunt force or penetrating trauma” which could have caused by an erect penis is consistent with AAA’s claim that she was raped by accused-appellant. For the RTC, accused-appellant’s contention that AAA filed the cases against him to retaliate for punching Mico is inconsistent with human experience. The RTC opined that it is too high a price to be demanded in exchange for a minor assault. The RTC observed that AAA, at her age, ordinarily would not know and would not be able to narrate details of her rape story if it did not happen to her.<sup>31</sup>

In Criminal Case No. 16-328863 (for rape by sexual assault), the RTC applied the penalty of *reclusion temporal* in its medium period<sup>32</sup> as provided in Section 5(b), Article III of R.A. 7610<sup>33</sup> taking into account AAA’s age (15 years old). The RTC sentenced accused-appellant to suffer 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. The RTC further adjudged accused-appellant to pay: (a) civil indemnity; (b) moral damages; and (c) exemplary damages in the amount of ₱30,000.00 for each.<sup>34</sup>

<sup>27</sup> TSN dated May 19, 2017, pp. 3-6.

<sup>28</sup> Records (Crim. Case No. 16-328863), pp. 185-186.

<sup>29</sup> TSN dated May 9, 2017, p. 7.

<sup>30</sup> Records (Crim. Case No. 16-328863), p. 202.

<sup>31</sup> Id. at 189, 193-197.

<sup>32</sup> Rape through sexual assault is penalized with *prision mayor*.

<sup>33</sup> Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

<sup>34</sup> Records (Crim. Case No. 16-328863), p. 202.

In Criminal Case No. 16-328864 (for rape by carnal knowledge), accused-appellant was sentenced to suffer the penalty of *reclusion perpetua* and was ordered to pay: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; (c) ₱30,000.00 as exemplary damages; and (d) the costs of suit.

Aggrieved, Cabales appealed<sup>35</sup> his conviction to the CA. In his Brief,<sup>36</sup> he argued that he was unarmed during the commission of the alleged offenses depriving him of the opportunity to employ force or intimidation. Moral influence or ascendancy cannot be presumed as substitutes for the elements of force or intimidation absent any evidence that moral influence or ascendancy vitiated the victim's consent when her womanhood was violated. He noted that one who is being sexually abused for several years would have sought help and run away when she had the means and opportunity to do so. He claimed that AAA was ill-motivated when she filed false charges against him, and BBB corroborated his testimony on this matter. If he indeed raped AAA, BBB would not have testified against AAA, her own daughter.<sup>37</sup>

The Office of the Solicitor General (OSG), appearing for the prosecution, countered that the common law spouse of a biological parent may be considered as having moral ascendancy over the victim in rape cases. The prevailing doctrine of relationship as a substitute for the element of force, threat, or intimidation is well recognized by our courts. AAA failed to resist accused-appellant's repeated sexual advances because she feared being beaten up by him.<sup>38</sup> The OSG reminded that children of tender age cannot be expected to react or respond like adults. There is no uniform reaction to a harrowing experience like rape. The victim of sexual offenses is not burdened to prove her resistance and non-resistance is not synonymous to assent to the sexual act. The OSG highlighted that the presiding judge who rendered the appealed decision is the same judge who presided over the trial. She had the unique opportunity to personally observe AAA's demeanor, conduct, and attitude under grueling examination. After observing the witnesses and hearing their testimonies, she found AAA as credible, whose clear and straight forward testimony is worthy of belief.<sup>39</sup>

### **Ruling of the Court of Appeals**

On January 31, 2019, the CA affirmed Cabales' conviction but increased the monetary awards of: (a) civil indemnity *ex delicto*; (b) moral damages; and (c) exemplary damages in Criminal Case No. 16-328864 to ₱75,000.00 each in accordance with prevailing jurisprudence.<sup>40</sup>

The CA ruled that the prosecution was able to establish the elements of the crimes charged since: (a) accused-appellant had carnal knowledge of AAA; (b) by inserting his penis into AAA's private part and mouth; (c)

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<sup>35</sup> CA *rollo*, pp. 13-14.

<sup>36</sup> *Id.* at 27-65.

<sup>37</sup> *Id.* at 35-39.

<sup>38</sup> *Id.* at 100-101.

<sup>39</sup> *Id.* at 103-105

<sup>40</sup> *Rollo*, p. 16.

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through force, threat, or intimidation; (d) against her will and without her consent. It asserted that resistance is not an element of rape. Physical resistance is not necessary when intimidation is exerted upon the victim who, in turn, submits against her will to the rapist's lust out of fear for her own and for her loved one's safety.<sup>41</sup>

The CA ruled that Cabales' arguments hinged on AAA's credibility. The trial court's assessment of the witnesses' credibility is accorded great respect, if not finality, on appeal. The CA recognized the trial court's unique and distinct position to be able to observe, personally, the witness' demeanor, conduct, and attitude whose credibility is put in issue. AAA unwaveringly recounted in her Judicial Affidavit and testimony the unfortunate experience she had with accused-appellant.<sup>42</sup>

The CA reduced accused-appellant's prison sentence in Criminal Case No. 16-328863 but maintained the monetary awards for the crime. The CA stated that aside from AAA's narration in her Judicial Affidavit and testimony, the records are bereft of proof to prove her actual age. The victim's age must be proved conclusively and indubitably as the crime itself. Accordingly, Cabales was made to suffer the indeterminate penalty of imprisonment from four (4) years and two (2) months of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum.<sup>43</sup>

Cabales filed a Notice of Appeal.<sup>44</sup> Both the OSG and accused-appellant manifested that they will no longer file any supplemental brief.<sup>45</sup>

### **Ruling of the Court**

The appeal is without merit.

This Court repeats that "an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned."<sup>46</sup> "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."<sup>47</sup>

The arguments of accused-appellant are hinged primarily on AAA's lack of credibility. It is well-settled "that the assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court, whose findings are binding and conclusive on appellate courts. Matters affecting credibility are best left to the trial court because of its unique opportunity to

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<sup>41</sup> Id. at 8-9.

<sup>42</sup> Id. at 10-12.

<sup>43</sup> Id. at 15-16.

<sup>44</sup> Id. at 18-19.

<sup>45</sup> Id. at 31-33, 35-37.

<sup>46</sup> *Rivac v. People*, 824 Phil. 156, 166 (2018), citing *People v. Dahil*, 750 Phil. 212 (2015); citation omitted.

<sup>47</sup> Id.; see *People v. Comboy*, 782 Phil. 187, 196 (2016).

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observe the elusive and incommunicable evidence of that witness' deportment on the stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the silent records of the case."<sup>48</sup> Both the trial court and the CA held that "AAA" was a credible witness. They ruled that her testimony deserved credence and is sufficient evidence that she was raped by accused-appellant. We find no persuasive reason to overturn these findings.

Accused-appellant, however, argues that his defense of denial should have been considered and given credence since it was duly corroborated by BBB – his common-law spouse and the victim's mother. In *People v. Bugna*,<sup>49</sup> We reiterated the "time-honored principle in jurisprudence that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable. Hence, **it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused.**"<sup>50</sup> Alibi is an issue of fact that hinges on the credibility of witnesses, and that the assessment made by the trial court must be accepted unless it is patently and clearly inconsistent.<sup>51</sup> Indeed, We have observed that "some wives are overwhelmed by emotional attachments to their husbands to such an extent that the welfare of their own offsprings takes [*sic*] back seat. *Le coeur a ses raisons que la raison ne connaît point.*"<sup>52</sup> Knowingly or otherwise, they suppress the truth and act as medium for injustice to preponderate. Though heavens fall, they would stand by their man."<sup>53</sup>

A review of the Decision of the CA shows that it did not commit any reversible error in affirming Cabales' conviction. The records show that Cabales: (a) sexually assaulted and forced AAA to have sex with him on September 2, 2016; and (b) threatened AAA with physical harm whenever she resisted his sexual advances. Dr. Ramboanga's anogenital findings – that an erect penis may have caused the blunt force or penetrating trauma – corroborates AAA's narration. "When the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge."<sup>54</sup>

We reiterate that the moral ascendancy of Cabales over AAA renders it unnecessary to show physical force and intimidation since in rape committed by a close kin, such as the common-law spouse of her mother, moral influence or ascendancy takes the place of violence or intimidation.<sup>55</sup>

The defense failed to show any reason why the prosecution's evidence should not be given weight or credit except for imputing ill motive or revenge on the part of the victim since accused-appellant punched AAA's

<sup>48</sup> *Rondina v. People*, 687 Phil. 274, 290 (2012), citing *People v. Dahilig*, 677 Phil. 92 (2011).

<sup>49</sup> 829 Phil. 536, 549 (2018).

<sup>50</sup> *Id.*

<sup>51</sup> *People v. Apattad*, 671 Phil. 95, 112 (2011), citing *People v. Estoya*, 472 Phil. 602 (2004).

<sup>52</sup> The heart has its reasons that reason does not know.

<sup>53</sup> *People v. Boromeo*, 474 Phil. 605, 627 (2004), citing *People v. Dizon*, 408 Phil. 147 (2001).

<sup>54</sup> *People v. Manaligod*, 831 Phil. 204, 212-213 (2018), citing *People v. Mercado*, 664 Phil. 747 (2011).

<sup>55</sup> *People v. Belen*, 803 Phil. 751, 767 (2017)

boyfriend. However, “[m]otives such as family feuds, resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape victim. Also, ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused.”<sup>56</sup> “The charges against appellant involve a heinous offense, and a minor disagreement, even if true, does not justify dragging a young girl’s honor to a merciless public scrutiny that a rape trial brings in its wake.”<sup>57</sup>

The CA modified the penalty in Criminal Case No. 16-328863 (rape by sexual assault) opining that while the Information<sup>58</sup> alleged that AAA was 15 years old, the parties’ stipulation as regards AAA’s age during the pre-trial on her minority (through AAA’s narration in her Judicial Affidavit) and AAA’s testimony were insufficient evidence to prove that she was 15 years old when the crimes were committed. The CA cited Our ruling in *People v. Soria*<sup>59</sup> that independent evidence, other than the testimonies of prosecution witnesses and the absence of denial by the accused, are needed to prove the victim’s age. The independent and competent evidence alluded to are the victim’s original or duly certified birth certificate, baptismal certificate, or school records.

However, in *People v. Pruna*<sup>60</sup> this Court *En Banc* laid down the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, and declared that “[i]n the absence of a certificate of live birth, authentic document, or the testimony of the victim’s mother or relatives concerning the victim’s age, the complainant’s testimony will suffice provided that it is expressly and clearly admitted by the accused.”<sup>61</sup> In the case at bar, while AAA failed to present her Certificate of Live Birth, AAA testified that: (a) she was born on July 13, 2001; and (b) she was 15 years old.<sup>62</sup> During accused-appellant’s direct examination, the trial court acutely observed that accused-appellant admitted that AAA was 14 or 15 years of age.<sup>63</sup> Surely, accused-appellant is aware of AAA’s age and competent to testify on the same since he professed during cross-examination that AAA has been in his custody for eight (8) years already.<sup>64</sup>

In *People v. Tulagan*,<sup>65</sup> We declared that rape by sexual assault committed against a child twelve (12) years of age and below eighteen (18) years old is Lascivious Conduct under Section 5 (b), Article III of R.A. 7610 and is penalized by *reclusion temporal* in its medium period to *reclusion perpetua*.<sup>66</sup>

<sup>56</sup> *Rondina v. People*, 687 Phil. 274, 292 (2012), citing *Dizon v. People*, 616 Phil. 498 (2009).

<sup>57</sup> *People v. Hermosa*, 452 Phil. 404, 412 (2003).

<sup>58</sup> Records (Crim. Case No. 16-328863), p.1.

<sup>59</sup> 698 Phil. 676, 696 (2012).

<sup>60</sup> 439 Phil. 440, 471 (2002).

<sup>61</sup> *Id.*

<sup>62</sup> TSN dated December 8, 2016, pp. 2-3.

<sup>63</sup> TSN dated February 27, 2017, p. 4.

<sup>64</sup> *Id.* at 13.

<sup>65</sup> G.R. No. 227363, March 12, 2019.

<sup>66</sup> *Id.*

Under Article 64 of the RPC, when there are neither aggravating nor mitigating circumstances, the penalty prescribed by law shall be imposed in its medium period, which is seventeen (17) years, four (4) months and one (1) day to twenty (20) years of *reclusion temporal*. Applying the Indeterminate Sentence Law, the minimum term shall be within the range of the penalty next lower in degree, which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period, ranging from eight (8) years, and one (1) day, to fourteen (14) years and eight (8) months. Hence, Cabales should be meted the indeterminate sentence of ten (10) years, two (2) months, and twenty-one (21) days of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.

Following this Court's pronouncement in *Tulagan*, the monetary awards for civil indemnity, moral damages, and exemplary damages in Criminal Case No. 16-328863 should each be increased from 30,000.00 to ₱50,000.00.

Finally, the CA did not commit any reversible error in increasing the amount of civil indemnity, moral damages, and exemplary damages awarded in Criminal Case No. 16-328864 (rape by carnal knowledge) in line with prevailing jurisprudence.<sup>67</sup>

**WHEREFORE**, the instant appeal is **DISMISSED**. The Decision dated January 31, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 09979 is **AFFIRMED** with **MODIFICATION** as follows:

- (1) in Criminal Case No. 16-328864, accused-appellant Jose Cabales y Webber @ "Basil" is found **GUILTY** beyond reasonable doubt for rape and is sentenced to suffer the penalty of *reclusion perpetua*. Accused-appellant Jose Cabales y Webber @ "Basil" is **ORDERED** to pay AAA: (1) ₱75,000.00 as civil indemnity; (2) ₱75,000.00 as moral damages; and (3) ₱75,000.00 as exemplary damages; and
- (2) in Criminal Case No. 16-328863 accused-appellant Jose Cabales y Webber @ "Basil" is found **GUILTY** beyond reasonable doubt of Lascivious Conduct under Section 5 (b), Article III of Republic Act No. 7610, and is sentenced to suffer the indeterminate penalty of ten (10) years, two (2) months, and twenty-one (21) days of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. Accused-appellant Jose Cabales y Webber @ "Basil" is **ORDERED** to pay AAA: (1) ₱50,000.00 as civil indemnity; (2) ₱50,000.00 as moral damages; and (3) ₱50,000.00 as exemplary damages.

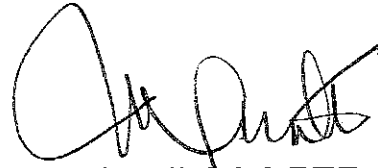
All the monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from date of finality of this judgment until fully paid.

<sup>67</sup> *People v. Jugueta*, 783 Phil. 806 (2016).

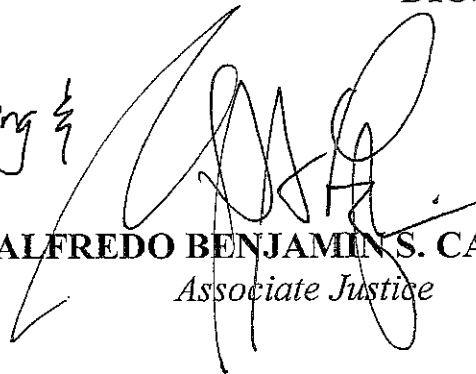
**SO ORDERED.**

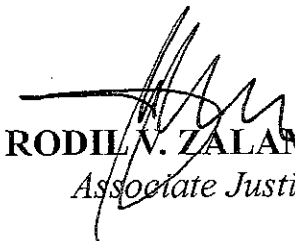
  
**ROSMARI D. CARANDANG**  
*Associate Justice*

**WE CONCUR:**

  
**DIOSDADO M. PERALTA**  
*Chief Justice*

*See Concurring &  
 Dissenting  
 Opinion*

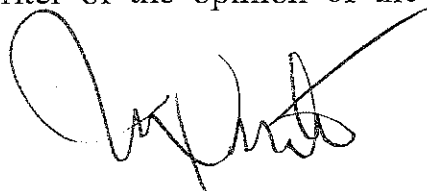
  
**ALFREDO BENJAMINS S. CAGUIOA**  
*Associate Justice*

  
**RODIL N. ZALAMEDA**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*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's Division.

  
**DIOSDADO M. PERALTA**  
*Chief Justice*

FIRST DIVISION

G.R. No. 249149 — PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*,  
*versus* JOSE CABALES y WEBBER @ “BASIL,” *accused-appellant*.

Promulgated:

DEC 02 2020



x-----x

CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

I concur with the *ponencia* insofar as it affirms the guilt of the accused-appellant **Jose Cabales y Webber @ “Basil”** (Cabales) for the crime he was charged with.

I disagree, however, that the nomenclature of the crime he was convicted of should be “Lascivious Conduct under Section 5(b), Republic Act No. 7610,” and with the imposition of the penalty of “ten (10) years, two (2) months, and twenty-one (21) days of *prision mayor*, as minimum to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.”<sup>1</sup> Cabales should instead be convicted of the crime of Sexual Assault under paragraph 2 of Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353.

I reiterate and maintain my position in *People v. Tulagan*<sup>2</sup> that R.A. No. 7610 and the RPC, as amended by R.A. No. 8353, “have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors.”<sup>3</sup> Section 5(b) of R.A. No. 7610 applies only to the specific and limited instances where the child-victim is “exploited in prostitution or subjected to other sexual abuse” (EPSOSA).

In other words, for an act to be considered under the purview of Section 5(b), R.A. No. 7610, so as to trigger the higher penalty provided therein, “the following essential elements need to be proved: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child ‘exploited in prostitution or subjected to other sexual abuse’; and (3) the child whether male or female, is below 18 years of age.”<sup>4</sup> Hence, it is

<sup>1</sup> *Ponencia*, p. 11. Penalty imposed under Republic Act No. 7610, Section 5(b) for Lascivious Conduct after the application of the Indeterminate Sentence Law.

<sup>2</sup> G.R. No. 227363, March 12, 2019.

<sup>3</sup> J. Caguioa, Concurring and Dissenting Opinion in *People v. Tulagan*, G.R. No. 227363, March 12, 2019, p. 33; emphasis, italics and underscoring omitted.

<sup>4</sup> *Id.* at 21, citing *People v. Abello*, 601 Phil 373, 392 (2009).



not enough that the victim be under 18 years of age. The element of the victim being EPSOSA – *a separate and distinct element* – must first be both alleged and proved before a conviction under Section 5(b), R.A. No. 7610 may be reached.

Specifically, in order to impose the higher penalty provided in Section 5(b) as compared to Article 266-B of the RPC, as amended by R.A. No. 8353, it must be **alleged** and **proved** that the child — (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group — indulges in sexual intercourse or lascivious conduct.<sup>5</sup>

In this case, the Information only alleged that the victim was a 15-year old minor, but it did not allege that she was EPSOSA. Likewise, there was no proof or evidence presented during the trial that she indulged in sexual intercourse or lascivious conduct either for a consideration, or due to the coercion or influence of any adult.

Thus, while I agree that Cabales's guilt was proven beyond reasonable doubt, it is my view that his conviction should be for Sexual Assault under paragraph 2 of Article 266-A of the RPC, as amended by R.A. No. 8353.

Accordingly, the penalty that ought to be imposed on him should be within the range of *prision correccional*, as minimum and *prision mayor*, as maximum instead of the one imposed by the *penencia*, which is within the range of *prision mayor* to *reclusion temporal*.



ALFREDO BENJAMIN S. CAGUIOA  
Associate Justice

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<sup>5</sup> Id. at 28.