



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
 PUBLIC INFORMATION OFFICE

RECEIVED  
 JAN 22 2021  
 BY: JOAN  
 TIME: 8:53

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff-Appellee,

**G.R. No. 244609**

**Present:**

PERALTA, C.J., Chairperson,  
 CAGUIOA,  
 REYES, J. JR.,  
 LAZARO-JAVIER, and  
 LOPEZ, JJ.

- versus -

**XXX,\***

Accused-Appellant.

**Promulgated:**

**SEP 08 2020**

X-----X

**DECISION**

**REYES, J. JR., J.:**

On appeal is the Decision<sup>1</sup> dated October 8, 2018 of the Court of Appeals – Cebu City (CA) in CA-G.R. CEB CR-HC No. 02356, affirming with modification the Decision<sup>2</sup> dated July 11, 2016 of the Regional Trial Court (RTC), Branch 16, Naval, Biliran in Criminal Case No. N-2881.

In an Information dated September 13, 2012, XXX was charged with the crime of rape in relation to Republic Act (R.A.) No. 7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act. The Information reads:

\* At the victim's instance or, if the victim is a minor, that of his or her guardian, the complete name of the accused may be replaced by fictitious initials and his or her personal circumstances blotted out from the decision if the name and personal circumstances of the accused may tend to establish or compromise the victim's identity, in accordance with the Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>1</sup> Penned by Associate Justice Louis P. Acosta, with Associate Justices Pamela Ann Abella Maxino and Dorothy P. Montejo-Gonzaga, concurring; *rollo*, pp. 5-17.

<sup>2</sup> Penned by Presiding Judge Bienvenido M. Montalla; *CA rollo*, pp. 29-40.

That on or about the 8<sup>th</sup> day of May 2012, at around 1:00 o'clock early dawn, more or less, in x x x and within the jurisdiction of this Honorable Court, above-named accused, being the brother-in-law of AAA,<sup>3</sup> a 13-year old girl, actuated by lust and with evident premeditation, did then and there, willfully, unlawfully, and feloniously, undress said AAA and had carnal knowledge with said minor-victim, against the latter's will, to her damage and prejudice.

Contrary to law and with aggravating circumstance of minority.<sup>4</sup>

When arraigned on July 3, 2014, XXX entered a plea of not guilty to the crime charged.<sup>5</sup> Trial on the merits ensued.

At the time of the alleged commission of the crime, XXX and AAA were at the house of AAA's aunt. XXX is the live-in partner of AAA's sister.

### **Version of The Prosecution**

On May 8, 2012, at around 1:00 a.m., AAA and her two cousins were sleeping on the floor of the main sala of her aunt's house. She averred that she was dragged by XXX towards the place where their plates were placed. XXX undressed AAA, inserted his penis into her vagina and made a push and pull movement. She tried to shout but XXX covered her mouth. After satisfying himself, XXX threatened AAA that he would kill her mother if she tells anyone about the incident.<sup>6</sup> A few days after, AAA told her sister-in-law about her experience in the hands of XXX. Thereafter, she reported the rape incident to the police.<sup>7</sup>

On June 29, 2012, Dr. Fernando B. Montejo (Dr. Montejo), Municipal Health Officer of the place where AAA resides, examined her and found that her vaginal orifice manifested signs that it had been penetrated.<sup>8</sup>

### **Version of the Defense**

XXX testified in his defense. He averred that on the date of the alleged rape incident, he and his live-in partner slept in a room while AAA, her parents, and her cousins slept in the sala of the house of AAA's aunt. He maintained that he has a good relationship with his live-in partner and AAA.<sup>9</sup>

---

<sup>3</sup> Pursuant to the ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006), the real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family or household members shall not be disclosed to protect her privacy and fictitious initials shall instead be used.

<sup>4</sup> CA rollo, p. 29

<sup>5</sup> Id. at 29.

<sup>6</sup> Id. at 52.

<sup>7</sup> Id. at 52-53.

<sup>8</sup> Id. at 53.

<sup>9</sup> Id. at 17-18.

### The RTC Ruling

On July 11, 2016, the RTC rendered a Decision finding XXX guilty of the crime charged, viz.:

WHEREFORE, judgment is hereby rendered finding [XXX] guilty beyond reasonable doubt of the crime of Rape in relation to R.A. 7610 and imposing upon him the penalty of Reclusion Perpetua. The accused is ordered to pay moral damages in the amount of P75,000.00 and exemplary damages of P50,000.00

SO ORDERED.<sup>10</sup>

The RTC rejected XXX's defense of denial in light of the prosecution's positive identification that it was him who raped AAA. Citing *People v. Espenilla*,<sup>11</sup> the court *a quo* stressed that no young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial if she was not in fact raped. It enunciated that by the quantum of evidence presented against XXX, the prosecution has overcome the presumption of his innocence and proved his guilt beyond reasonable doubt.

Aggrieved, XXX appealed his conviction.

### The Court of Appeals Ruling

In its Decision dated October 8, 2018, the CA-Cebu affirmed the RTC's ruling with modification by increasing the exemplary damages to ₱75,000.00 and ordering XXX to pay ₱75,000.00 as civil indemnity *ex delicto*. It found no cogent reason to deviate from the findings of the RTC regarding the credibility of AAA and the prosecution witnesses who testified in a straightforward and convincing manner about the victim's ravishment.<sup>12</sup> The appellate court clarified that the applicable law in the instant case is R.A. No. 8353, otherwise known as The Anti-Rape Law of 1997, and not R.A. No. 7610.<sup>13</sup>

Hence, the instant appeal.

### The Court's Ruling

The appeal is without merit.

---

<sup>10</sup> Id. at 39-40.

<sup>11</sup> 718 Phil. 153 (2013).

<sup>12</sup> CA *rollo*, pp. 80-82.

<sup>13</sup> Id. at 84-86.

On the basis of AAA's testimony, the RTC and the CA uniformly found that XXX had carnal knowledge of AAA against her will or without her consent. AAA testified in a clear, consistent, and categorical manner:

Q (Public Prosecutor): While you were in that house, what happened?

A [AAA]: During that time, my mother was not in the house, only the three of us, my cousins were sleeping, after that, I was dragged.

Q: You said you were dragged, who dragged you?

A: [XXX].

x x x x

Q: You said that you were dragged, in what part of the house were you brought by [XXX]?

A: Towards the place where the plates were placed.

Q: After you were brought to that portion of the house, what happened next?

A: He undressed me.

Q: After he undressed you, what happened next?

A: After that, he inserted his penis to my vagina and made a push and pull movement.

Q: Did you not shout?

A: I tried to shout but my mouth was covered by him.

Q: You said that he inserted his penis into your vagina, why did you know that his penis was inserted into your vagina?

A: I know it because I felt pain.

Q: You said that the accused made push and pull movement after he inserted his penis into your vagina, what happened next after he made that act?

A: After that, he told me that if ever I will tell anyone of what he did, he will kill my mother, so, I did not tell my mother.

Q: Going back to where you said he was making a push and pull movement while his penis was inserted into vagina, were (*sic*) not able to shout at that moment?

A: I was not able to shout, he was covering my mouth.

Q: Did you not try to resist from his aggression?

A: No, Sir, he is strong, I am overpowered by him.<sup>14</sup>

We see no reason to depart from the trial court's assessment of AAA's credibility, which was affirmed by the appellate court. AAA's recollection of her ordeal clearly established that XXX had carnal knowledge of her at the time when everyone in the house was in their deep slumber. XXX dragged AAA by her feet, pulled her to a solitary spot behind the television set, undressed her, and inserted his penis into her vagina despite her objection and resistance. It bears reiterating that the Court accords great respect and even confer finality to the findings of the trial court as to matters which are factual in nature as well as its assessment of the credibility of witnesses. The trial court's firsthand observation and direct estimation of the witnesses place it in a unique position to observe and weigh that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying.<sup>15</sup> Thus, when there is no clear showing that the trial court's factual findings were tainted with arbitrariness or that the trial court overlooked or misapplied relevant facts and circumstances, or inadequately calibrated the witnesses' credibility, the reviewing court is bound by its assessment,<sup>16</sup> as in this case.

Furthermore, AAA's narration as to the fact of sexual intercourse was corroborated by the medical certificate issued by Dr. Montejo indicating that the latter's "hymen [was] not appreciated" and that her "vaginal orifice was penetrated."<sup>17</sup> In his direct examination, Dr. Montejo testified:

COURT:

Q: When is the hymen intact?

A: It is untouched.

Q: Was there a laceration?

A: I did not see the hymen.

Q: No more hymen. In your opinion as an expert, what caused the loss of the hymen?

A: It was touched.

Q: One has sexual intercourse?

A: Yes. Sir.

---

<sup>14</sup> Id. at 80-82.

<sup>15</sup> *People v. Traigo*, 734 Phil. 726, 729 (2014).

<sup>16</sup> *People v. Santuile*, 800 Phil. 284, 290 (2016).

<sup>17</sup> *CA rollo*, pp. 32-33.

Q: Here, the hymen was lacerated through sexual intercourse?

A: Yes, Sir.<sup>18</sup>

In bidding for acquittal, XXX impugns AAA's credibility and questions her claim that she was dragged on her feet while she was sleeping and that she was only awakened when he penetrated her. XXX asserts that AAA should have been awakened when she was dragged or during the time when she felt her short pants and underwear were being removed.<sup>19</sup>

The argument fails to persuade.

The prosecution has sufficiently established the sexual congress between XXX and AAA against the latter's will. XXX pulled AAA away from where she was sleeping and, when he found a convenient spot to satisfy his lust, forced himself on her, covered her mouth and let her suffer in silence. Such fact cannot be negated by AAA's account of the events that transpired prior to the sexual attack which XXX finds incredible.

XXX contends that the victim's narration is unbelievable considering that in the normal course of things, AAA should have been awakened at the time she was dragged or when her shortpants and underwear were being removed. It is worthy to stress that AAA was attacked in the middle of the night while she was sleeping beside her two cousins. There is nothing absurd about the fact that AAA remained in slumber until the rape incident for XXX could not have carried out his sexual advances had he been unwary and reckless in pulling AAA out of their floor bed set up and awakened her at once. Furthermore, ordinary human experience would tell us that it is not impossible for a young child to not be awakened while being dragged because those who have children know that most young children, and even those in their pre-teens, can be transferred, moved, or even lifted from one place to another by their parents and can even be undressed and dressed up without waking up.

Suffice it to state that XXX's contention pertains to an insignificant detail which does not bear on the very fact of the commission of the offense. Neither does it render XXX's bestial act physically impossible nor inconceivable. For the gravamen of rape is sexual intercourse with a woman against her will or without her consent,<sup>20</sup> which was fully sustained by the evidence presented by the prosecution.

Moreover, the Court cannot concede to XXX's asseveration that the rape incident was improbable because other members of the household were present in the same room where the rape was perpetrated. It has been repeatedly announced that lust respects no time and place; rape defies

---

<sup>18</sup> Id. at 61.

<sup>19</sup> Id. at 24.

<sup>20</sup> *People v. Gragasin*, 613 Phil. 574, 587 (2009).

V

constraint of time and space.<sup>21</sup> The abominable crime of rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is known to happen even in the most unlikely places. Hence, it is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed.<sup>22</sup>

In view thereof, the courts below correctly found XXX guilty of rape.

The RTC convicted XXX of rape in relation to R.A. 7610 but the CA, on appeal, modified the July 11, 2016 RTC Decision as to the damages awarded and the nomenclature of the offense and convicted XXX of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by R.A.No. 8353.

The Court agrees with the CA that all the elements for the crime of rape under Article 266-A (1) are extant in this case, to wit: (1) the male offender had carnal knowledge of a woman; and (2) he accomplished the said act through force, threat or intimidation.<sup>23</sup> However, we cannot sustain the appellate court's pronouncement that the prosecution has established XXX's criminal liability under Section 5(b), Article III of R.A. No. 7610, which provides:

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

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 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 x

<sup>21</sup> *People v. XXX*, G.R. No. 225793, August 14, 2019.

<sup>22</sup> *People v. Bangsoy*, 778 Phil. 294, 303 (2016).

<sup>23</sup> *People v. Chavez*, G.R. No. 235783, September 25, 2019.

The elements of Section 5(b) are: (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>24</sup>

For a charge under R.A. No. 7610 to prosper, it is crucial that the minor victim is a child “exploited in prostitution or other sexual abuse.” The Court scrutinized the phrases “children exploited in prostitution” and “other sexual abuse” in *People v. Tulagan*<sup>25</sup> in this wise:

To avoid further confusion, We dissect the phrase “children exploited in prostitution” as an element of violation of Section 5 (b) of R.A. No. 7610. As can be gathered from the text of Section 5 of R.A. No. 7610 and having in mind that the term “lascivious conduct” has a clear definition which does not include “sexual intercourse,” the phrase “children exploited in prostitution” contemplates four (4) scenarios: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; (c) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse.

The term “other sexual abuse,” on the other hand, is construed in relation to the definitions of “child abuse” under Section 3, Article I of R.A. No. 7610 and “sexual abuse” under Section 2(g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*. In the former provision, “child abuse” refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters. In the latter provision, “sexual abuse” includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.

In *Quimvel*, it was held that the term “coercion or influence” is broad enough to cover or even synonymous with the term “force or intimidation.” Nonetheless, it should be emphasized that “coercion or influence” is used in Section 5 of R.A. No. 7610 to qualify or refer to the means through which “any adult, syndicate or group” compels a child to indulge in sexual intercourse. On the other hand, the use of “money, profit or any other consideration” is the other mode by which a child indulges in sexual intercourse, without the participation of “any adult, syndicate or group.” In other words, “coercion or influence” of a child to indulge in sexual intercourse is clearly exerted NOT by the offender whose liability is based on Section 5(b) of R.A. No. 7610 for committing sexual act with a child exploited in prostitution or other sexual abuse. Rather, the “coercion or influence” is exerted upon the child by “any adult, syndicate, or group” whose liability is found under Section 5(a) for engaging in, promoting, facilitating or inducing child prostitution, whereby the sexual intercourse is the necessary consequence of the prostitution.

<sup>24</sup> *People v. Jaime*, G.R. No. 225332, July 23, 2018.

<sup>25</sup> G.R. No. 227363, March 12, 2019.



For a clearer view, a comparison of the elements of rape under the RPC and sexual intercourse with a child under Section 5 (b) of R.A. No. 7610 where the offended party is between 12 years old and below 18, is in order.

<b>Rape under Article 266-A (1) (a, b, c) under the RPC</b>	<b>Section 5 (1) of R.A. No. 7610</b>
1. Offender is a man;	1. Offender is a man;
2. Carnal knowledge of a woman;	2. Indulges in sexual intercourse with a female child exploited in prostitution or other sexual abuse, who is 12 years old or below 18 or above 18 under special circumstances;
3. Through force, threat or intimidation; when the offended party is deprived of reason or otherwise unconscious; and by means of fraudulent machination or grave abuse of authority.	3. Coercion or influence of any adult, syndicate or group is employed against the child to become a prostitute.

As can be gleaned above, “force, threat or intimidation” is the element of rape under the RPC, while “due to coercion or influence of any adult, syndicate or group” is the operative phrase for a child to be deemed “exploited in prostitution or other sexual abuse,” which is the element of sexual abuse under Section 5(b) of R.A. No. 7610. The “coercion or influence” is not the reason why the child submitted herself to sexual intercourse, but it was utilized in order for the child to become a prostitute. Considering that the child has become a prostitute, the sexual intercourse becomes voluntary and consensual because that is the logical consequence of prostitution as defined under Article 202 of the RPC, as amended by R.A. No. 10158 where the definition of “prostitute” was retained by the new law: x x x” (citations omitted and underscoring supplied).

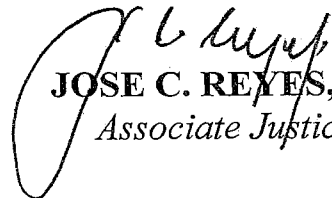
In light of the foregoing definition, AAA cannot be deemed to be a child “exploited in prostitution and other sexual abuse.” Patently, the second element of Section 5(b) of R.A. No. 7610 is lacking in this case. Accordingly, XXX should be convicted for rape under Article 266-A(1) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, and ordered to pay AAA the following: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; (c) ₱75,000.00 as exemplary damages; and (d) interest of 6% per annum on all damages awarded from the date of

Y

finality of this judgment until fully paid pursuant to prevailing jurisprudence.<sup>26</sup>

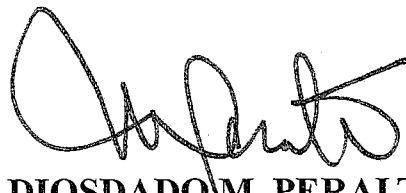
**WHEREFORE**, the appeal is **DENIED**. The Decision dated October 8, 2018 of the Court of Appeals-Cebu City in CA-G.R. CEB CR-HC No. 02356 is **AFFIRMED**.

**SO ORDERED.**



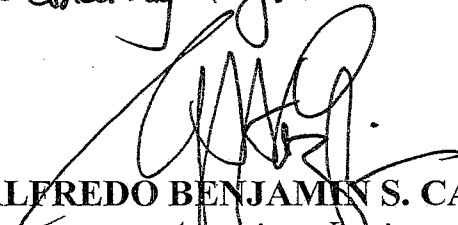
**JOSE C. REYES, JR.**  
*Associate Justice*

**WE CONCUR:**

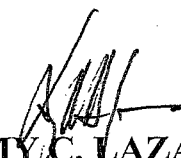


**DIOSDADO M. PERALTA**  
*Chief Justice*  
*Chairperson*

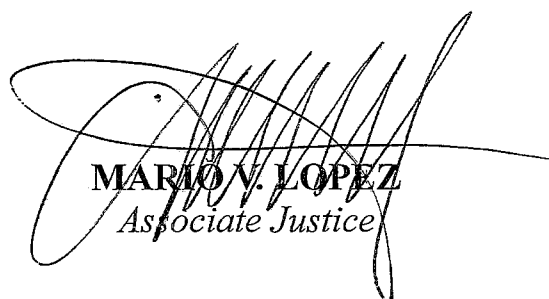
*See Concurring Opinion*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*



**AMY C. LAZARO-JAVIER**  
*Associate Justice*



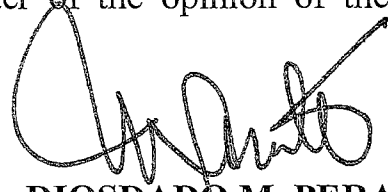
**MARIO V. LOPEZ**  
*Associate Justice*

---

<sup>26</sup> *People v. Jugueta*, 783 Phil. 806 (2016).

**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*

✓