



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

BBB247234,*

G.R. No. 247234

Petitioner,


Present:

LEONEN, J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., JJ.

- versus -

Promulgated:

PEOPLE OF THE PHILIPPINES,
Respondent.

AUG 22 2022 

x-----x

DECISION

LOPEZ, J., J.:

Assailed in this Petition for Review on *Certiorari*¹ are the Decision² dated August 31, 2018 and the Resolution³ dated March 15, 2019 of the

* The identity of the victims or any information which could establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, titled "An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and For Other Purposes," approved on June 17, 1992; R.A. No. 9262, titled "An Act Defining Violence Against Women and Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, and For Other Purposes," approved on March 8, 2004; and Section 40 of Administrative Matter No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See *People v. Cadano, Jr.*, 729 Phil. 576, 578 (2014) [Per J. Perlas-Bernabe, Second Division], citing *People v. Lomaque*, 710 Phil. 338, 342 (2013) [Per J. Brion, Second Division]. See also Administrative Circular No. 83-2015, titled "Protocols and Procedures in The Promulgation, Publication, and Posting on The Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances," dated September 5, 2017; and *People v. XXX and YYY*, 835 Phil. 1083 (2018) [Per J. Perlas-Bernabe, Second Division]).

¹ *Rollo*, pp. 11-30.

² Penned by Associate Justice Tita Marilyn Payoyo-Villordon, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; *id.* at 34-59.

³ Penned by Associate Justice Tita Marilyn Payoyo-Villordon, with Associate Justices Edgardo A.



Court of Appeals (CA) in CA-G.R. CR No. 01507-MIN affirming with modification as to the penalty imposed by the Joint Judgment⁴ dated September 29, 2016 of Branch 8, Regional Trial Court (RTC), [REDACTED] in Criminal Case Nos. 23936-13 and 23938-13 finding petitioner BBB247234 guilty of two counts of rape by sexual assault.

Antecedents

BBB247234 was charged with two counts of other acts of child abuse and rape by sexual assault under three separate Informations, viz.:

Criminal Case No. 23936-13

That on the 2nd day of July 2010, in [REDACTED] Province of Bukidnon, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of one [KKK247234]⁵, a 3-year-old minor, born on June 13, 2008, did, then and there willfully, unlawfully and feloniously grab and insert his fingers into the vagina of [KKK247234]; thereby demeaning, debasing, and degrading the intrinsic worth and dignity of the latter as a child, which act of sexual abuse caused psychological distress upon the child which is prejudicial to her development, to the damage and prejudice of the said [KKK247234] in such amount as may be allowed by law.

The crime is aggravated by relationship, accused being the uncle of the minor, and a relative by affinity, within the fourth (4th) civil degree.

CONTRARY to and in violation of Section 10 in relation to Section 3 of R.A. [No.] 7610.⁶

Criminal Case No. 23938-13

That on or before the 16th day of November 2011, at [REDACTED] Province of Bukidnon, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, prompted by lewd design, did, then and there willfully, unlawfully and criminally suck the penis of [LLL247234]⁷, a 5-year-old minor, born on September 12,

Camello and Oscar V. Badelles, concurring; *id.* at 77-78.

⁴ Records (Criminal Case No. 23936-13), pp. 281-298.

⁵ 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 initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 553 Phil. 703 (2006) [Per J. Tinga, En Banc], and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

⁶ Records (Criminal Case No. 23936-13), p. 3.

⁷ The real name of the victim, his personal circumstances and other information which tend to establish or compromise his identity, as well as those of his immediate family, or household members, shall not be disclosed to protect his privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 553 Phil. 703 (2006) [Per J. Tinga, En Banc], and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

2006, and had him suck his penis, suck his tongue, insert a nail into his anus five (5) times, lick the minor's abdomen, let the minor to suck his breast, insert his penis into the minor's mouth, and have the minor suck it and made a push and pull movement on the legs of [LLL247234] and a whitish substance came out of accused, let the minor lick his neck and slap the face of [LLL247234], against his will, to his damage and prejudice in such amount as may be allowed by law.

The same is aggravated by relationship, accused being the uncle of the minor, within the third civil degree of affinity. It is also aggravated by the fact that the minor-victim is below seven (7) years old.

CONTRARY to and in violation of Article 266 (1) (B) of the Revised Penal Code.⁸

Criminal Case No. 23939-13

That on or about the 2nd day of July 2012, in [REDACTED] Province of Bukidnon, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of one [LLL247234], a 5-year-old minor, born on September 12, 2006, did, then and there willfully, unlawfully and feloniously touch the penis of [LLL247234], thereby demeaning, debasing, and degrading the intrinsic worth and dignity of the latter as a child, which act of sexual abuse caused psychological distress upon the child which is prejudicial to his development, to the damage and prejudice of the said [LLL247234] in such amount as may be allowed by law.

The crime is aggravated by relationship, accused being the uncle of the minor, and a relative by affinity, within the fourth (4th) civil degree.

Contrary to and in violation of Section 10 in relation to Section 3 of R.A. [No.] 7610.⁹

On arraignment, BBB247234 pleaded not guilty.¹⁰ Pre-trial and trial on the merits followed.

Private complainants KKK247234 and LLL247234 are the niece and nephew of BBB247234, they being the children of the brother of his wife, NNN247234.¹¹ KKK247234 was born on June 13, 2008¹² while LLL247234 was born on September 12, 2006.¹³

⁸ Records (Criminal Case No. 23938-13), p. 2.

⁹ Records (Criminal Case No. 23936-13), p. 282.

¹⁰ Id. at 45.

¹¹ Id. at 173-174 and 180.

¹² Id. at 164.

¹³ Id. at 181.

LLL247234 narrated that sometime in November 2011, he was watching television at the house of BBB247234, who he calls "Papa BBB247234," when the latter asked him to go to the bedroom with him. When they entered the room, BBB247234 pushed him to the bed. After BBB247234 removed his brief, he made him suck his penis. Thereafter, BBB247234 removed LLL247234's brief and sucked his penis. After sucking his penis, BBB247234 asked him to turn around and bend over, and then poked his anus with his fingers. BBB247234 made him lie down then removed his shirt and started licking his stomach and kissing his lips. BBB247234 asked him to stick his tongue out and then the former sucked the same. BBB247234 then made pumping movements and he saw something black and white from BBB247234's penis. After what happened, BBB247234 told LLL247234 to keep quiet and not to tell NNN247234 what happened, and cursed him, "*buang ka*," "*yate ka!*" Not satisfied with what happened, BBB247234 asked him to open his mouth and to suck his nipple. Thereafter, BBB247234 slapped his left cheek. LLL247234 could do nothing but cry after going through the horrors of his uncle's depravity. They then went out of bedroom after putting their clothes back on. Despite the earlier warning of his uncle, LLL247234 told NNN247234 what happened to him when she arrived that evening. LLL247234 positively identified Papa BBB247234 to be the same person as BBB247234.¹⁴

The prosecution also presented KKK247234. When qualified as a witness, she declared that she was aware that one must only tell the truth and a person who lied would go to hell. A teddy bear was used as testimonial aid. When asked about the location of the vagina, she pointed to the crotch of her teddy bear. She recalled that when she was two years old, she was at the living room of her aunt and uncle's house when Papa BBB247234 made her sit on his lap, inserted his finger through the leg hole of her panty and then poked her vagina several times. She demonstrated how her vagina was poked by poking the crotch of the teddy bear several times. She told NNN247234 what happened. Later, she identified Papa BBB247234 as BBB247234, the accused in this case.¹⁵

Dr. Marcelo Orong (*Dr. Orong*), the rural health physician of [REDACTED] who examined KKK247234 and LLL247234 attested that the medical certificates presented in court were the ones he issued. He conveyed that the examination he performed on KKK247234 revealed that she had healed lacerations on a ruptured hymen which could have been caused by any blunt object like a finger. KKK247234 was crying when he examined her.¹⁶ As for LLL247234, Dr. Orong's examination showed that the boy had multiple red lesions in the anal area which could have been

¹⁴ TSN, October 18, 2013, pp. 12, 14–15, 17–28, and 30–31.

¹⁵ TSN, June 13, 2014, pp. 39–44.

¹⁶ TSN, August 16, 2013, pp. 7–9, and 14–17.

caused by constant scratching or insertion of a blunt object. The tip of his penis was also inflamed, which could have been caused by irritation, sucking, playfulness of a child in said area, trauma, or by another person. He also observed that LLL247234 was very reluctant to have himself examined.¹⁷

NNN247234 corroborated the testimonies of LLL247234 and KKK247234. According to her, in the evening of November 19, 2009, LLL247234 told her that his anus was poked by BBB247234 with a nail. She immediately confronted BBB247234 about it but he denied committing the said act. NNN247234 also recounted that while she was preparing dinner on November 16, 2011, LLL247234 approached her and told her that BBB247234 sucked his penis and that he was also made to suck BBB247234's penis; they also kissed on the lips and then BBB247234 sucked his tongue to his utter shock and disbelief. The following morning, LLL247234 had a raging fever and he complained of pain in his penis. He was brought to the hospital for check-up but his test results came back normal. Thus, he was only given medication for fever. She did not confront her husband about the incident because she was afraid. She believed that LLL247234 had been molested multiple times from 2009 to 2011.¹⁸ NNN247234 also testified that when she got home at around 5:00 p.m. on July 2, 2010, she saw KKK247234 seated on the lap of BBB247234 in the living room. Later on, she saw her lying face down on the sofa. Thus, she brought her to the bedroom and asked her what was wrong. KKK247234 told her that BBB247234 inserted his finger inside her vagina. When she checked KKK247234's vagina, she noticed that there was redness, inflammation and lacerations. She then confronted BBB247234 about what happened.¹⁹

According to NNN247234, it was only on December 10, 2011 when she had the courage to tell the parents of the victims about what happened to them. The children were then brought to Dr. Orong for examination. She supported the filing of the charges against BBB247234 not out of jealousy or spite, but to make him accountable for what he did to her nephew and niece who she loved. She added that whatever misunderstanding and quarrels they had in their marriage was caused by what he had done to LLL247234 and KKK247234, and not for some other reason.²⁰

Meeland Cristy Teves-Pedarse (*Pedarse*), a psychology graduate and a psychologist of the Department of Social Welfare and Development who

¹⁷ Id. at 18-20, and 22-28.

¹⁸ TSN, June 13, 2014, pp. 46-47, 50, 53-54, and 62-66.

¹⁹ Id. at 56-58.

²⁰ Id. at 66-67, 69-70, and 75-76.

5

had close to seven years of experience dealing with child victims of physical abuse, testified that her clinical interview and assessment of LLL247234 showed that the child's anus was poked by a nail, and his penis was kissed and fondled. LLL247234 was also made to do the same to BBB247234. Pedarse also noted that LLL247234 talked about his abuses openly but he was visibly sad while narrating the same.²¹ Her clinical interview with KKK247234 revealed that BBB247234 inserted his finger into her vagina. According to her, it was impossible for KKK247234 to have invented stories with sexually explicit details at her age if she had not experienced it herself.²²

Marose F. Bordaje, a social welfare officer assigned in [REDACTED], also took the witness stand. She recounted that when she interviewed the victims, KKK247234 was very consistent in telling her that her vagina was poked five times by BBB247234. On the other hand, LLL247234 revealed to her that BBB247234 sucked his penis, kissed his lips, poked his anus with a nail, and licked his belly.²³

Gina Cuevas, a resident and neighbor of BBB247234 for the past 18 years, testified for the defense. She described BBB247234 as a kind person and a loving husband; while she portrayed NNN247234 as a perfectionist. NNN247234 was good at her work, but she would sometimes insult her co-workers. She was not a very good wife and BBB247234 was the one who managed the family finances. Having worked for spouses BBB247234 and NNN247234 as a cook from 2008 to 2012 during harvest season, she attested that BBB247234 treated LLL247234 and KKK247234 very well. She noticed that LLL247234 stayed with BBB247234 and NNN247234 from 2007 to 2009, and a nanny took care of him. LLL247234 and KKK247234 were never left alone.²⁴

Elena Lumonda, a childhood friend of BBB247234 and co-worker of NNN247234, also testified for BBB247234. She had been cleaning their house and doing random chores for them for 11 years. She described BBB247234 as a good person and without any bad record in the *barangay*, and NNN247234 as a gossip who made up stories, and scolded people. She was familiar with LLL247234 and used to see him with his nanny. She noticed that LLL247234 would stay with BBB247234 and NNN247234 for one week and then would go home the following week. She claimed that LLL247234 was never left alone with BBB247234.²⁵

²¹ TSN, June 13, 2014, pp. 5–8, 10, 12–13, 16–17.

²² TSN, August 15, 2014, pp. 12, 14–17.

²³ TSN, August 22, 2014, pp. 5, 16, 18–24, 26; *rollo*, pp. 40–41.

²⁴ TSN, December 11, 2014, pp. 2, 4–6, 8, 10–14, and 20.

²⁵ TSN, February 5, 2015, pp. 3, 5–9, 12–14, and 17.

Dr. Leo G. Labrador (*Dr. Labrador*) was presented as an expert witness, having obtained his Doctorate Degree in Clinical Psychology specializing in Traumatology. According to him, by law, a baccalaureate degree holder in psychology cannot be considered as a psychologist. He claimed that the psychological evaluation conducted by Pedarse of the children was not sufficient because it was not exhaustive enough. He found it surprising that it was NNN247234 who initiated the complaint against BBB247234 instead of the biological parents, and for the prosecution to have refused the children to be subjected to psychological evaluation. In his assessment of the circumstances of the abuse, he is of the opinion that children of tender age who experienced sexual abuse, such as LLL247234 and KKK247234, would be able to narrate the event in full detail. A child below three years of age usually has infantile amnesia since his or her hippocampus is not yet fully developed. As such, the child will not be able to store explicit memories and narrate in verbal terms what happened. Also, being exposed to traumatic experience at such a young age, there is a possibility that the child will disassociate himself or herself from the said event, making him or her forget what happened.²⁶

In his defense, BBB247234 claimed that he could never commit the charges hurled against him because he treated the two children like his own. Since they were little, they would always frequent his house with their parents. They would normally arrive around 9:00 a.m. after their classes, and go home around 5:00 p.m. or 7:00 p.m. He insisted that there was never a time when the children were left alone with him. According to him, because his wife planned to adopt LLL247234, he stayed with them for six months when he was four years old, along with his nanny who was also the sister of LLL247234's mother. His wife suspected that something was going on between him and the nanny. Thus, to avoid any trouble, he sent LLL247234 back to his parents in 2011. He was not very close to KKK247234 as he would see her only when her parents visited his place. He declared that he could never do the crimes he allegedly committed because on the dates the victims claimed they were molested, he was busy working on his farm. He also denied molesting LLL247234 on November 16, 2011. He claimed that on said date, he fetched LLL247234 at around 6:00 p.m. from his parents-in-law's house per instruction of NNN247234. Thereafter, they proceeded to Aglayan and waited for NNN247234 to arrive from Davao City. He contended that the cases were filed against him because he was not able to give NNN247234 a Toyota Vios. He also claimed that because of jealousy, insecurity, and alleged marital infidelity, he was stabbed by NNN247234.²⁷

²⁶ TSN, March 17, 2016, pp. 2, 6-7, 9, 15-16, and 23-27.

²⁷ TSN, April 14, 2016, pp. 3-21.



On September 29, 2016, the RTC rendered its Joint Judgment²⁸ finding BBB247234 guilty of two counts of rape by sexual assault under Article 266-A, in relation to Article 266-B, of Revised Penal Code in Criminal Case Nos. 23936-13 and 23938-13. However, the RTC acquitted BBB247234 in Criminal Case No. 23939-13 for lack of evidence. The decretal portion of the Joint Decision reads:

WHEREFORE, premises considered, the Court renders judgment as follows:

- I.) In Criminal Case No. 23936-13, [BBB247234] is found GUILTY beyond reasonable doubt for violation of Article 266-A in relation to Article 266-B of the Revised Penal Code and sentences him to an indeterminate penalty of six (6) years of *prision correccional* in its maximum period as minimum to twelve (12) years of *prision mayor* in its maximum period as maximum after taking into consideration the aggravating circumstances of minority and relationship. He shall serve sentence at Davao Penal Prison and Farm at Dujali, Davao del Norte. He [is] further ordered to pay KKK[247234] the following sums: P30,000.00 civil indemnity; P30,000 moral damages; and P25,000 as exemplary damages.
- II.) In Criminal Case No. 23938-13, [BBB247234] is found GUILTY beyond reasonable doubt for violation of Article 266-A in relation to Article 266-B of the Revised Penal Code and sentences him to an indeterminate penalty of six (6) years of *prision correccional* in its maximum period as minimum to twelve (12) years of *prision mayor* in its maximum period as maximum after taking into consideration the aggravating circumstances of minority and relationship. He shall serve sentence at Davao Penal Prison and Farm at Dujali, Davao Del Norte. He [is] further ordered to pay LLL[247234] the following sums: P30,000.00 civil indemnity; P30,000.00 moral damages; and P25,000.00 as exemplary damages.
- III.) In Criminal Case No. 23939-13, [BBB247234] is ACQUITTED for want of evidence. The bail bond put up for his provisional liberty in this case only is cancelled and released to the bondsperson.

SO ORDERED.²⁹

In Criminal Case No. 23936-13, the RTC found the positive, straightforward, consistent and credible testimony of KKK247234, a 2-year old child at the time of the incident, who positively identified BBB247234, her uncle, and attested to the fact that he inserted his fingers into her vaginal opening several times. The RTC also gave weight to the testimony of Dr.

²⁸ Records (Criminal Case No. 23936-13), pp. 281–298.

²⁹ Id. at 297–298. (Emphasis in the original)

Orong, as well as the medical certificate³⁰ he issued, which showed that KKK247234 had healed laceration which could have been caused by the insertion of a finger or a blunt foreign object. The RTC held that these proved beyond a shadow of doubt BBB247234's guilt for rape by sexual assault.³¹

As to Criminal Case No. 23938-13, the RTC also gave credence to the candid narration of LLL247234, a 5-year old child at the time of the abuse, that BBB247234, his uncle whom he calls "Papa BBB247234," sucked his penis and tongue, licked his abdomen; and asked him to suck the latter's breast and penis while BBB247234 made a push and pull movement until a whitish substance came out of his penis. LLL247234's straightforward, positive, direct and categorical testimony which is consistent with psychological evaluation³² conducted on him was found by the RTC to have sufficiently established the guilt beyond reasonable doubt of BBB247234 for rape by sexual assault.³³

In both cases, the RTC found to be absurd the claim of BBB247234 that the charges filed against him were borne of the insecurity of his wife, NNN247234, as well as his failure to give her the Vios car that she requested.³⁴

As for Criminal Case No. 23939-13, the RTC dismissed the charge for lack of evidence to substantiate the assertion that BBB247234 molested LLL247234 on July 2, 2012.³⁵

BBB247234 moved for reconsideration contending that the trial court (a) violated the marital disqualification rule when it allowed his wife to testify against him; (b) violated his right to due process when it allowed three prosecution witnesses to testify against him without his counsel's presence; (c) erred in ruling in favor of the admissibility of the prosecution evidence even if the charges were merely trumped-up; the psychological evaluation report presented in evidence was not conducted by a licensed psychologist; and the prosecution filed 48 days late its formal offer of exhibits; and (d) erred in finding that his guilt was proven beyond reasonable doubt.³⁶

³⁰ Id. at 165-167.

³¹ Id. at 290-293.

³² Id. at 177-179.

³³ Id. at 293-295.

³⁴ Id. at 295.

³⁵ Id. at 296-297.

³⁶ Id. at 299-304.

In a Resolution³⁷ dated November 11, 2016, the RTC denied the reconsideration of the Joint Judgment for lack of merit.

Aggrieved, BBB247234 appealed to the CA raising the same grounds that he raised in his motion for reconsideration before the RTC.³⁸

The CA denied the appeal and affirmed the conviction of BBB247234 for two counts of rape by sexual assault on the following grounds: (a) The marital disqualification rule did not apply in this case in light of the strained marital relationship between NNN247234 and BBB247234; (b) BBB247234 waived his right to confront and cross examine the three prosecution witnesses when he turned down the opportunity to cross examine them; (c) The RTC ruled correctly in favor of the admissibility of the prosecution's evidence; in particular, NNN247234's testimony, as no concrete evidence was proffered to prove that NNN247234 orchestrated the filing of bogus charges against BBB247234; the psychological evaluation conducted on the victims by Pedarse who was not a licensed psychologist, since it had been established during the trial that she possessed the knowledge, experience, training, and exposure in examining and evaluating physically abused victims; and the offer of exhibits that was belatedly filed, as the late filing thereof cannot be deemed a waiver of the right to file the same or a reasonable ground to disallow the exhibits considering that the prosecution offered a persuasive reason to justify the lapse; and (d) All the elements of rape by sexual assault had been duly established by the prosecution. The child victims recounted in categorical and straightforward manner the bestial acts done on them by their uncle. Their claims of molestation were corroborated by the medical findings of the examining physician who found KKK247234 to have healed lacerations on her hymen which could have been due to the insertion of a finger, and LLL247234 to have lesions at the tip of his penis and in his anus, which could have been caused by trauma or by another person. BBB247234's defense of denial cannot be believed for being frail and easy to concoct. His claim that the charges against him were motivated by ill will was not given probative weight for lack of evidence to support such claim.³⁹

The CA, however, modified the penalties imposed and damages awarded by the RTC in line with the ruling in *People v. Bolo*.⁴⁰ The *fallo* of the CA decision reads:

³⁷ Penned by Judge Mirabeaus A. Undalok; id. at 305–314.

³⁸ Id. at 332.

³⁹ *Rollo*, pp. 47–57.

⁴⁰ 792 Phil. 905 (2016) [Per J. Peralta, Third Division]

WHEREFORE, the appeal is DENIED. The Joint Judgment dated 29 September 2016 of the Regional Trial Court, 10th Judicial Region, Branch 8, ██████████ in *Criminal Case. Nos. 23936-13 and 23938-13*, is hereby AFFIRMED with MODIFICATION insofar as the penalty imposed in each case will be nine (9) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, and the damages awarded in each case will be P30,000 as civil indemnity, P30,000.00 as moral damages, and P30,000.00 as exemplary damages. Likewise, all the damages shall earn interest at the rate of 6% *per annum* from the date of finality of the Decision until full payment.

SO ORDERED.⁴¹

The CA denied the reconsideration sought in a Resolution⁴² dated March 15, 2019.

Hence, the present petition.

Issue

The issue for this Court's resolution is whether the CA erred in holding that BBB247234's guilt for two counts of rape by sexual assault had been proven beyond reasonable doubt.

Petitioner asseverates that his conviction for two counts of rape by sexual assault cannot stand.

First, he insists that the RTC and the CA violated the marital disqualification rule embodied in Section 22, Rule 130 of the Revised Rules on Evidence when they allowed his wife to testify against him and gave weight to her testimony. Considering that his relationship with his wife was already wanting in domestic tranquility, petitioner posits that the courts have more reason to apply the said rule since the danger of him being punished through the hostile testimony of his spouse was clearly present in this case.⁴³

Second, he maintains that the filing of the complaints was brought about by the made-up stories of abuse by his wife. To support his contention, he claims that it was NNN247234 who fed the victims' father the details about the alleged abuse, and brought the victims and their parents to

⁴¹ *Rollo*, p. 58. (Emphasis in the original)

⁴² *Id.* at 77-78.

⁴³ *Id.* at 20-21.

the social worker. Since their information came from a poisonous source, the same should be inadmissible against him.⁴⁴

Third, his right to due process, specifically his right to confront and cross examine KKK247234, NNN247234 and Pedarse, was violated when they were allowed to testify during trial without his counsel's presence. Even if he was given an opportunity to cross examine the witnesses in the next hearing, such does not cure the violation committed since he was denied of the opportunity to object to the offer of said witnesses' testimonies as well as to the questions propounded during their direct examination.⁴⁵

Fourth, his right to be informed of the nature and cause of accusations against him was violated when he was charged for violating Republic Act No. 7610 (*R.A. No. 7610*) or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, but convicted under the Revised Penal Code.⁴⁶

Finally, lingering doubt on his culpability for two counts of rape by sexual assault exists as it is possible that the victims' injuries and lacerations were due to some other causes especially so when his witnesses attested to the fact that the victims were never left alone whenever they visit his place. The Psychological Evaluation Report conducted by Pedarse, a non-licensed psychologist, should be considered as inadmissible since it was not conducted under the supervision of a licensed psychologist. Instead, the psychological evaluation conducted by Dr. Labrador which states that it is highly improbable for the two victims of tender age to vividly and calmly narrate the incidents that transpired years ago without emotional trigger should be the one believed since this evaluation was made by a licensed psychologist. The refusal of the parents of the child victims to allow them to be evaluated by an independent licensed psychologist creates suspicion to the veracity of their claims of abuse.⁴⁷

In its Comment, the respondent, through the Office of the Solicitor General, contends that the petition must fail as it involves factual issues that are beyond the scope of a Rule 45 petition.⁴⁸ Even if petitioner clears the procedural hurdle, his arguments still fail on substantive grounds for the following reasons:

⁴⁴ Id. at 20, 22-23.

⁴⁵ Id. at 23-24.

⁴⁶ Id. at 25.

⁴⁷ Id. at 26-27.

⁴⁸ *Rollo*, pp. 103-104.

First, contrary to the contention of the petitioner, the marital disqualification rule is not absolute. When what the rule aims to protect—trust, confidence, respect and love—are already non-existent, the said rule will no longer apply. Since, as found by the RTC and upheld by the CA, there is no more harmonious conjugal relations to be preserved between petitioner and his wife even prior to the filing of the cases against him, the marital disqualification rule clearly does not apply here. Besides, even without the testimony of his wife, the testimonies of the victims are sufficient to support his conviction.⁴⁹

Second, petitioner's claim that his right to due process was violated when prosecution witnesses were allowed to testify even if his counsel was not present during the trial has no basis. On the contrary, he voluntarily waived his right to confront and cross-examine the prosecution witnesses when his counsel stubbornly refused to cross-examine them despite being given the opportunity to do so.⁵⁰

Third, petitioner's right to due process was also not transgressed when he was charged under a special law but convicted under the Revised Penal Code. What is controlling is not the title of the complaint, or the designation of the offense charged, but the description of the crime charged and the actual recital of the facts in the information. However, pursuant to *People v. Tulagan*,⁵¹ (*Tulagan*) instead of rape by sexual assault, petitioner should be convicted for sexual assault under paragraph 2, Article 266-A of the Revised Penal Code in relation to Section 5(b) of the R.A. No. 7610.⁵²

Last, contrary to the claim of the petitioner, the proven facts and the evidence proffered demonstrate with moral certainty his guilt for sexual assault under paragraph 2, Article 266-A of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610.⁵³

Our Ruling

The petition must be denied.

⁴⁹ Id. at 104–106.

⁵⁰ Id. at 106.

⁵¹ G.R. No. 227363, March 12, 2019 [Per J. Peralta, En Banc]. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

⁵² *Rollo*, pp. 108–110.

⁵³ Id. at 110–112.

Petitioner's contention that his right to confront and cross examine the prosecution witnesses was violated when they were allowed to testify even if he was not represented by counsel is unfounded.

The right of a party to confront and cross-examine opposing witnesses in a litigation is a fundamental right which is part of due process and which may be waived for being personal.⁵⁴ This right ensures that courts can confidently ferret out the facts on the basis of which they can determine whether a crime occurred and the level of culpability of the accused.⁵⁵

The right of confrontation has a two-fold purpose: (1) primarily, to afford the accused an opportunity to test the testimony of the witnesses by cross-examination; and (2) secondarily, to allow the judge to observe the deportment of the witness.⁵⁶ As regards the right to cross-examine, it is mere opportunity and not actual cross-examination which is the essence of such right.⁵⁷

Records show that on May 30, 2014, the prosecution filed a Motion for Transfer of Hearing Date requesting the RTC to reset the hearing scheduled in the morning of June 13, 2014 to the afternoon of even date.⁵⁸ Attys. Nestor Cajés, Jr. (*Atty. Cajés, Jr.*) and Christina Peach Galarrita (*Atty. Galarrita*), counsels for petitioner, were duly notified of the said motion.⁵⁹ Since the RTC had not yet ruled on the motion, Atty. Cajés, Jr. was present for trial in the morning of June 13, 2014. He, however, was not allowed to enter his appearance because he was already appointed as the Provincial Administrator of the Province of Bukidnon. Atty. Galarrita, on the other hand, was in Cagayan de Oro City.⁶⁰

Without the RTC ruling on the motion, it proceeded with the reception of the prosecution's testimonial evidence, particularly those of KKK247234, NNN247234 and Pedarse's even if petitioner was without counsel in the afternoon of June 13, 2014. It nonetheless allowed petitioner to cross-examine these witnesses on the next hearing date which was scheduled on

⁵⁴ *Dy Teban Trading, Inc. v. Dy*, 814 Phil. 564, 579–580 (2017) [Per J. Jardeleza, Third Division], citing *Savory Luncheonette v. Lakas Manggagawang Pilipino*, 159 Phil. 310 (1975) [Per J. Muñoz Palma, First Division].

⁵⁵ *Kim Liang v. People*, 832 Phil. 8, 26 (2018) [Per J. Leonen, Third Division]

⁵⁶ *People v. Sergio*, G.R. No. 240053, October 9, 2019 [Per J. Hernando, Third Division]. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website. (Citations omitted)

⁵⁷ *People v. Narca*, 341 Phil. 696, 706 (1997). [Per J. Francisco, Third Division]. (Emphasis supplied and citation omitted)

⁵⁸ Records (Criminal Case No. 23936-13), pp. 122–123.

⁵⁹ *Id.* at 123.

⁶⁰ *Id.* at 127, 139, and 149.

August 15, 2014.⁶¹ In effect, petitioner still had the opportunity to confront and cross-examine the said witnesses.

Petitioner's position that the denial of his right to object to the offer of said witnesses' testimonies cannot be cured by according him the opportunity to cross-examine them lacks merit. The purpose of Section 35, Rule 132 of the Rules of Court in requiring testimonial evidence to be offered at the time the witness is called to testify, and concomitantly for the opposing party to raise his or her objection thereto, is not intended to benefit such opposing party, but for the trial court not to waste its time as "it can right away rule on whether the testimony is not necessary because it is irrelevant or immaterial."⁶²

There is also no merit to petitioner's claim that he was precluded from objecting to the questions these witnesses were asked during their direct examination. It bears stressing that petitioner filed his Manifestation/Objection⁶³ to the presentation of the prosecution witnesses in the absence of the defense counsel 40 days after they had testified. Furthermore, the trial court scheduled the cross examination of the three witnesses on August 15, 2014. On the said hearing date, their cross-examination did not push through. Instead, the RTC ruled on the objection of the petitioner. In its Order⁶⁴ dated August 15, 2014, the RTC denied petitioner's Manifestation/Objection, but made clear that he was being given all the leeway to cross-examine the witnesses already presented, as well as to move "to strike out objectionable testimony during the direct examination of the witnesses."⁶⁵ During the hearing of August 22, 2014, petitioner, through his counsel, was adamant in his stance not to cross-examine said witnesses despite the sufficient time it had to secure copies and review the transcripts of the witnesses' testimonies, as well as the assurance by the trial court that it can move for the striking out of the inadmissible parts of their testimonies. Despite being warned by the trial court that his refusal to cross-examine the witnesses might be considered as a waiver of his right to do so, petitioner still refused to cross-examine them.⁶⁶ In other words, the RTC did not foreclose petitioner's opportunity to confront and cross-examine these witnesses. He had the opportunity to diminish the probative weight of the testimonies of the prosecution's witnesses by taking advantage of the right to cross-examination and propounding his own questions for which he had more than enough time to prepare, and even move to expunge from the records part or parts of their testimonies.

⁶¹ Id. at 144-145.

⁶² *Catuiria v. Court of Appeals*, 306 Phil. 424, 427 (1994) [Per J. Bellosillo, First Division]

⁶³ Records (Criminal Case No. 23936-13), pp. 138-141.

⁶⁴ Id. at 144-145.

⁶⁵ Id. at 144.

⁶⁶ Id. at 149-150.

Besides, the RTC did not err or abuse its discretion in preserving petitioner's right to confront and cross-examine witnesses on a later hearing date. Courts have the constitutional power to control its proceedings to ensure a fair and impartial trial.⁶⁷ Such power is even "inherent" in all courts.⁶⁸ By giving petitioner the opportunity to test the veracity of the testimony of the prosecution's witnesses, the RTC ensured that the taking of such testimonies was still fair and impartial as the constitutional rights of both parties have been preserved in a meaningful way. Such manner of controlling the proceedings done by the RTC is consistent with the principle that "procedural rules should yield to substantive laws."⁶⁹ Here, the RTC had effectively upheld the constitutional rights of all parties. It was petitioner's misplaced insistence—that he was deprived of the right to confront and cross-examine the prosecution's witnesses—that cost him of such an opportunity.

At this juncture, this Court must state that it cannot countenance petitioner's insistence to retake the testimony of KKK247234 as that would subject the child victim to further trauma by letting her recreate the horrors of her experience. This is certainly what Section 27⁰ of the Rule on Examination of a Child Witness⁷¹ seeks to prevent. To be clear, this Court is not diluting petitioner's fundamental right to "meet the witnesses face to face" as guaranteed in Section 14 (2), Article III of the Constitution. It is merely upholding Section 11, Article XIII and Section 3 (2), Article XV of the Constitution which recognize the rights of children to be prioritized especially in protection against conditions prejudicial to their development. From the foregoing, the CA did not err when it allowed NNN247234, KKK247234, and Pedarse to testify.

In a last-ditch attempt to exclude the testimony of NNN247234, petitioner invoked the marital disqualification rule. According to him, the testimony of his wife should not have been given probative weight and should not have been allowed to be used against him pursuant to the said rule.

Section 22, Rule 130 of the Revised Rules on Evidence⁷² as a rule, prohibits the husband or the wife, during their marriage, to be a witness for or against the other. The section reads:

⁶⁷ *Perez v. Estrada*, 412 Phil. 686, 705 (2001) [Per J. Vitug, En Banc]. (Citation omitted)

⁶⁸ *Aberca v. Maj. Gen. Ver.*, 684 Phil. 207, 228-229 (2012) [Per J. Mendoza, Third Division]

⁶⁹ *Villa Gomez v. People*, G.R. No. 216824, November 10, 2020 [Per J. Gesmundo, En Banc]. (Citation omitted)

⁷⁰ Section 2. *Objectives.* - The objectives of this Rule are to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth.

⁷¹ A.M. No. 004-07-SC, November 21, 2000.

⁷² Bar Matter No. 411, July 1, 1989.

SECTION 22. *Disqualification by reason of marriage.* — During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants.

In *Alvarez v. Ramirez*,⁷³ this Court laid down the rationale for the rule:

1. There is identity of interests between husband and wife;
2. If one were to testify for or against the other, there is consequent danger of perjury;
3. The policy of the law is to guard the security and confidences of private life, even at the risk of an occasional failure of justice, and to prevent domestic disunion and unhappiness; and
4. Where there is want of domestic tranquility there is danger of punishing one spouse through the hostile testimony of the other.⁷⁴

In *Ordoño v. Daquigan*,⁷⁵ this Court ruled:

We think that the correct rule, which may be adopted in this jurisdiction, is that laid down in *Cargill vs. State*, 35 ALR 133, 220 Pac. 64, 25 Okl. 314, wherein the court said:

The rule that the injury must amount to a physical wrong upon the person is too narrow; and the rule that any offense remotely or indirectly affecting domestic harmony comes within the exception is too broad. The better rule is that, *when an offense directly attacks, or directly and vitally impairs, the conjugal relation, it comes within the exception to the statute that one shall not be a witness against the other except in a criminal prosecution for a crime committed (by) one against the other.*⁷⁶

The abominable, repulsive, and beastly acts committed by the petitioner against no less than the niece and nephew of his wife are acts totally alien to the harmony and confidences of marital relation and have effectively eroded connubial relationship which the disqualification primarily seeks to protect, thereby eliminating any reason to apply such rule.⁷⁷ As such, NNN247234 was correctly allowed to testify.

⁷³ 509 Phil. 650 (2005) [Per J. Sandoval-Gutierrez, Third Division].

⁷⁴ Id. at 655–656. (Citation omitted)

⁷⁵ 159 Phil. 323 (1975) [Per J. Aquino, En Banc].

⁷⁶ Id. at 326. (Emphasis in the original)

⁷⁷ *Kim Liong v. People*, supra note 55.

Even assuming *arguendo* that petitioner is correct in his argument that NNN247234's testimony should have been ruled by the RTC and CA as inadmissible due to the marital disqualification rule, such does not necessarily spell his acquittal. At best, NNN247234's testimony is merely corroborative which is dispensable.⁷⁸ It is settled that **corroboration shall not be required of a testimony of a child for, if it is credible by itself, his or her testimony shall be sufficient to support a finding of fact, conclusion, or judgment subject to the standard of proof required in criminal and non-criminal cases.**⁷⁹ Consequently, when the testimony of a child victim has been ruled by the trial court to be straightforward and categorical, a *prima facie* case is established as a result for such evidence is "good and sufficient on its face."⁸⁰ At this point in the proceeding, the accused is now charged with the burden of evidence to overthrow such *prima facie* case.⁸¹ Thus, instead of focusing on the irrelevant topic of invalidating the admissibility of his wife's testimony which is not even needed to establish his guilt for being merely corroborative, he should have presented countervailing evidence to overthrow the *prima facie* case of his guilt created by LLL247234 and KKK247234's testimonies. Even without NNN247234's testimony, petitioner's conviction will stand as will be shown below.

After a careful review of the records of this case, this Court finds no cogent reason to overturn petitioner's conviction for the acts charged against him in Criminal Case Nos. 23936-13 and 23938-13.

A reading of the allegations in the two Informations make out a case for sexual assault penalized under Article 266-A (2) of the Revised Penal Code. This crime is committed by any person who, under the same set of circumstances in Article 266-A (1), inserts his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. The article reads:

ART. 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;

⁷⁸ See *Macayan, Jr. v. People*, 756 Phil. 202, 222 (2015) [Per J. Leonen, Second Division].

⁷⁹ *People v. Ugos*, 586 Phil. 765, 773 (2008) [Per J. Velasco, Jr., Second Division], citing Section 22 of the Rule on Examination of a Child Witness. (Emphasis supplied)

⁸⁰ See *Wa-acon v. People*, 539 Phil. 485, 494 (2006) [Per J. Velasco, Jr., Third Division].

⁸¹ See *People v. Court of Appeals*, 755 Phil. 80, 109 (2015) [Per J. Peralta, Third Division].

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.

*People v. Soria*⁸² enumerated the elements of rape by sexual assault as follows:

(1) That the offender commits an act of sexual assault;
(2) That the act of sexual assault is *committed* by any of the following means:

(a) By inserting his penis into another person's mouth or anal orifice; or

(b) By inserting any instrument or object into the genital or anal orifice of another person;

(3) That the act of sexual assault is accomplished under any of the following circumstances:

(a) By using force and intimidation;

(b) When the woman is deprived of reason or otherwise unconscious; or

(c) By means of fraudulent machination or grave abuse of authority; or

(d) When the woman is under 12 years of age or demented.⁸³

In this case, both the RTC and CA found petitioner guilty beyond reasonable doubt for two counts of rape by sexual assault for inserting his finger inside KKK247234's vagina; and for inserting his penis into LLL247234's mouth and poking LLL247234's anus. This Court finds no cogent reason to depart from the findings of the trial and appellate courts. As held in *People v. Agalot*:⁸⁴

It is well-settled that the factual findings and evaluation of witnesses' credibility and testimony should be entitled to great respect unless it is shown that the trial court may have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance. The

⁸² 698 Phil. 676 (2012) [Per J. Del Castillo, Second Division].

⁸³ Id. at 693–694. (Citation omitted)

⁸⁴ 826 Phil. 541 (2018) [Per J. Martires, Third Division].

assessment of the credibility of witnesses is a task most properly within the domain of trial courts. The rule is even more strictly applied if the appellate court has concurred with the trial court.⁸⁵

As correctly observed by the RTC, and upheld by the CA, both LLL247234 and KKK247234 clearly narrated the details of the abuse they suffered in the hands of petitioner, their uncle, in a clear, straightforward, and categorical manner. Their credible testimonies established with moral certainty the elements of rape by sexual assault. The pertinent portions of their testimonies are reproduced below:

Testimony of LLL247234

Q Do you remember what Papa [BBB247234] did to you?
A Yes.

Q Tell me where did that happen?
A In the house of [NNN247234].

Q Where in the house of [NNN247234], do you remember?
A In the bedroom.

x x x x

Q Do you remember what happened in the bedroom?
A Yes.

x x x x

Q Do you remember what happened in the morning, noon or in the afternoon?
A It was already nighttime.

Q Was it dark or not yet dark?
A The light was on.

Q You said earlier that the door is here, he brought you inside the room. Who brought you inside the room?
A Papa [BBB247234].

x x x x

Q Was the door open or close? When you entered the room, what happened?
A He pushed me to the bed facing down the bed.

Q After that what happened when he pushed you? What else happened? Is there something happened?
A He let me face upward.

⁸⁵ Id. at 550. (Citations omitted)

x x x x

Q After your face upward, what happened next?

A He let me [lie] down and he sucked my penis.

Q You said he let you lie down. How come that he was able to suck your penis? Were you not wearing brief?

A I was wearing brief.

x x x x

Q What happened first when you arrived in the room. I am now confused, you said earlier that he sucked your penis. You still wearing your brief when he sucked your penis?

A Yes.

Q He sucked your penis while your brief are still on?

A He returned it.

Q You said he returned or replaced your brief, what happened first? What happened first when you arrived inside the room.

A He let me [suck] his penis.

Q Why do you know that it was his penis?

A Just saw.

Q Was he wearing brief?

A Yes.

Q He has his brief?

A Yes, he removed his brief.

Q What did you suck, a brief or penis?

A The penis.

Q I am now confused. You said earlier that he let you suck his penis, you also said that you suck his penis, which is true?

A He removed my brief.

Q After he removed your brief, where did stop when he pulled down your brief?

A (Witness pointed to the knees of the doll)

Q After he removed your brief, what did he do next?

A He removed his brief and then he let me suck his penis.

Q What did he do after he removed your brief?

A After removing my brief, he [sucked] my penis.

Q What did he do next?

A (The witness demonstrated by putting big doll on the groin part of the smaller doll representing [LLL247234])

- Q After that, where is Papa [BBB247234] at that time?
A He was at the edge of the bed.
- Q What else did he do next?
A Like this. (Witness demonstrated by turning the smaller doll over and he was made to bend over with his back facing the bigger doll and thereafter demonstrated by poking the bigger doll's finger into his butt area and it was very painful).
- Q Where were you poked?
A Here (Witness demonstrated by poking the finger of the bigger doll into the [anus] of the smaller doll).
- Q Which part of the body were you poke, point to the part of your body?
A (Witness pointed to his butt).
- Q Which part of the butt, the chicks or the anus?
A The part where the human's waste feces passes or come out.⁸⁶

Testimony of KKK247234

- Q And what happened to you when you were two (2) years old?
A I was made to sit on a lap and then my vagina was poked.
- Q You now show us how you were made to sit on the lap of someone?
A Like this. (witness is now sitting sideways on the lap of the person who is carrying her)
- Q So could you now demonstrate how was your vagina poked?
A Here. (witness demonstrated by poking her vagina several times with her right forefinger)
- Q If you demonstrate that to the vagina of Teddy, how did this happen?
A Like this. (witness demonstrated by poking several times the crotch of the teddy bear)
- Q Teddy is wearing a panty, at that time were you wearing a panty? Do you remember?
A Yes.
- Q So how did the person inserted the finger into the panty?
A Like this. (witness demonstrated by inserting the finger through the leg hole of the panty directly to the crotch)
- Q Could you now tell us who is this person who inserted his finger into your vagina?
A Papa [BBB247234].

x x x x

⁸⁶ TSN, October 18, 2013, pp. 12, and 14-20.

- Q So where did this incident happen?
A At the living room of the house.⁸⁷

Moreover, the testimony and the medical findings of Dr. Orong, the examining physician, corroborated LLL247234 and KKK247234's claims of abuse:

- Q On the next paragraph Ano-Genital Examination with respect to the portion here on the hymen you have here made an annotation, please read it aloud and explains to the Court.
A On the Ano-Genital Examination at the part of the hymen it was examined as a [ruptured] at a level of a six o'clock, eight o'clock, two o'clock, a healed lacerations
Q When you say healed laceration, Doctor, what could be the presumption as to when did the hymen [ruptured], can you make an estimate of that?
A When we say healed lacerations on a [ruptured] hymen basically it means that a previous laceration or injury has occurred and at the time of examination it was already healed.

x x x x

- Q Okay. Mr. Witness, could you please tell us and tell the Honorable Court what could be the possible cause of the hymen of the minor to be [ruptured]?
A There are many aspects that caused of the [rupture], 1) could be the trauma, example, patient is riding on a bicycle and suddenly if the chair of the bicycle made a trauma on the hymen which caused now of the [rupture] or any penetrating injury could cause also the [rupture] of the hymen.

- Q It could be caused by the insertion of the finger?
A Probably

x x x x

- Q x x x From the allegations in the Information, could you give me an expert opinion if it is possible for the hymen to be [ruptured] when fingers or finger is being inserted?
A Based on my examination with regards now to the [ruptured] hymen there's a probability that trauma occurred that maybe [ruptured] of the hymen. And with regards now to the finger any blunt object would cause the [ruptured] of hymen one of them is the finger.

x x x x

⁸⁷ TSN, June 13, 2014, pp. 41-43.

Q I noticed, Mr. Witness, that you have a finding here with under the word Perineum, please read aloud your findings?

A On the Ano-Genital Examination on the patient that was examined was the perineum it was found out that multiple petechial rashes with erythematous lesions of external sphincter were noted.

Q Okay. Will you please explain in layman/s term because we do not understand what does it mean?

A Multiple petechial rashes meaning to say multiple [red] lesions on the area on the perineal aspect of the patient. On erythematous physically a rash laid on that area.

x x x x

Q What would be the cause of lesions which you found in the anal area of the minor?

A Patient suffering from this type of lesions could have many causes.
x x x

x x x x

Q Could it be caused by insertion of blunt object into the anal?

A The lesion was found only on the outside aspect of the area, Your Honor. So probably there was an insertion of any blunt object but on the examination it was only in the outside and probably is only a mechanical which is scratching.

Q Okay with respect to the urethra there is here annotation, please read it aloud and explain to us.

A On the part of the urethra it was noted that there was an inflammation of the prepuce area. The prepuce area of the patient now is, I am talking about the anatomical aspect, the shock or the penial shock of the patient and the above one is now the prepuce. Now, on examination there was inflammation. So that is what I wrote in my examination.

x x x x

Q Could it be caused by sucking?

A There are many aspects with regards now to the cause, Your Honor, but it could be one.

x x x x

Q Mr. Witness, as expert witness I'd like to get your opinion on whether or not the injury or the findings with respect to the anus and the penis of the minor victim who was earlier referred to as [LLL247234] could possibly be caused by a foreign object or a touching of the said parts of his body by another person or with the used of any foreign object. In your expert opinion could that be that one which was causing the tip of the penis to inflame and for the anus also suffer the lesion?

\$

- A On my opinion based on my examination the lesions found on the perennial area and also on the pepious of the patient probably this caused by a trauma or personal or another person.⁸⁸

LLL247234 and KKK247234's account of their ordeal being straightforward and candid and corroborated by the medical findings of the examining physician, as well as their positive identification of the petitioner as the perpetrator of the crime are sufficient to support a conviction for the crimes charged.⁸⁹ Youth and immaturity are generally badges of truth and sincerity. It is hard to believe that child victims would concoct a story that would send their uncle to jail, allow an examination of their private parts, and permit themselves to be subjected to a public trial, unless they are motivated solely by their desire to have their uncle punished for his transgressions.⁹⁰

Petitioner's defense of denial, which is not substantiated by clear and convincing evidence, deserves no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.⁹¹

While this Court upholds the CA's ruling that petitioner is guilty of two counts of rape by sexual assault he was charged in Criminal Case Nos. 23936-13 and 23938-13, there is a need, however, to modify the nomenclature of the said crime, its corresponding penalty, and the damages awarded in light of this Court's ruling in the landmark case of *Tulagan*.⁹²

In *Tulagan*, this Court ruled that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be sexual assault under paragraph 2, Article 266-A of the Revised Penal Code in relation to Section 5(b) of R.A. 7610. It explained:

Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta and Caoili*, We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610" and no longer

⁸⁸ TSN, August 16, 2013, pp. 14, 15, 17, 22–25, and 27–28.

⁸⁹ *People v. Tulagan*, supra note 51, at 355.

⁹⁰ See *People v. HHH*, G.R. No. 248245, August 26, 2020 [Per J. Carandang, Third Division]. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

⁹¹ *People v. Paragua*, 326 Phil. 923, 928 (1996) [Per J. Hermosisima, Jr., First Division].

⁹² Supra note 51.

5

“Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610,” because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A(2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the impossible penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.⁹³ (Emphasis in the original)

It must be underscored that only the nomenclature of the offense committed is changed. The elements of the crime remain the same. This is clear under Section 5(b) of R.A. No. 7160 which provides that those who commit lascivious conduct⁹⁴ with a child under 12 years of age shall be prosecuted under Article 336 of the Revised Penal Code, which is now paragraph 2, Article 266-A of the Revised Penal Code.⁹⁵

Petitioner cannot complain that his right to be informed of the nature and cause of accusations against him was violated because he was charged under a special law but convicted under the Revised Penal Code.

The nature and character of the crime charged are determined not by the description of the provision of the law alleged to have been violated but by the facts alleged in the indictment, that is, the statement of the facts as alleged in the body of the information, and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law.⁹⁶ In *People v. Dimaano*,⁹⁷ this Court instructs:

For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the **acts or omissions complained of as constituting the offense**; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No

⁹³ Id. at 368–369.

⁹⁴ Lascivious conduct under Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases of R.A. No. 7610 means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person[.]

⁹⁵ *People v. Tulagan*, supra note 51, at 357-359.

⁹⁶ *People v. Delector*, 819 Phil. 310, 320 (2017) [Per J. Bersamin, Third Division]. (Citation omitted)

⁹⁷ 506 Phil. 630 (2005) [Per Curiam, En Banc].

information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.⁹⁸

In other words, what is of paramount importance is that the charge sufficiently informs the person if he or she performed the acts alleged, in the manner so alleged.⁹⁹

A careful perusal of the Information in Criminal Case Nos. 23936-13 and 23938-13 shows that the specific acts constituting the elements of sexual assault under paragraph 2, Article 266-A of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610 had been sufficiently alleged. In Criminal Case No. 23936-13, it was alleged that petitioner unlawfully inserted his finger into the vagina of his 3-year-old niece, while the allegations in Criminal Case No. 23938-13 clearly accused petitioner of inserting his penis into his 5-year-old nephew's mouth as well as an object in his anus. The sufficiency of the two information adequately apprised petitioner of the accusations against him and enabled him to prepare for his defense. Thus, it is of no moment that he was charged for violating a particular law but convicted for committing a crime under another law for "it is the province of the court alone to say what the crime is or what it is named."¹⁰⁰

Pursuant to this Court's pronouncement in *Tulagan*, the impossible penalty for sexual assault under Article 266-A (2) of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610 is *reclusion temporal* in its medium period.¹⁰¹ Applying the Indeterminate Sentence Law, the maximum term shall be taken from the medium period of *reclusion temporal* in its medium period, which period ranges from 15 years, 6 months and 20 days to 16 years, 5 months and 9 days. The minimum term is within the range of penalty next lower than that prescribed by law, which is 12 years and 1 day to 14 years and 8 months of *reclusion temporal* in its minimum period.¹⁰² Thus, petitioner is sentenced to suffer the indeterminate penalty ranging from 14 years and 8 months of *reclusion temporal* in its minimum period, as

⁹⁸ Id. at 649–650. (Emphasis in the original and citations omitted)

⁹⁹ See *United States v. Lim San*, 17 Phil. 273, 279 (1910) [Per J. Moreland].

¹⁰⁰ *People v. Solar*, G.R. No. 225595, August 6, 2019 [Per J. Caguioa, En Banc]. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website. (Emphasis omitted)

¹⁰¹ *Supra* note 51, at 391–392.

¹⁰² *People v. HHH*, *supra* note 90.

minimum, to 16 years, 5 months and 9 days of *reclusion temporal* in its medium period, as maximum, for each case.

This Court also fixes the award of civil indemnity of ₱30,000.00 to ₱50,000.00; moral damages of ₱30,000.00 to ₱50,000.00; and exemplary damages of ₱30,000.00 to ₱50,000.00 in each case following the pronouncement in *Tulagan*.¹⁰³

ACCORDINGLY, the assailed Decision dated August 31, 2018 and the Resolution dated March 15, 2019 of the Court of Appeals in CA-G.R. CR No. 01507-MIN are **AFFIRMED** with **MODIFICATION**. Petitioner BBB247234 is found **GUILTY** beyond reasonable doubt of two (2) counts of sexual assault under paragraph 2, Article 266-A of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7160. For each count, petitioner BBB247234 is sentenced to suffer the indeterminate penalty ranging from fourteen (14) years and eight (8) months of *reclusion temporal* in its minimum period, as minimum, to sixteen (16) years, five (5) months, and nine (9) days of *reclusion temporal* in its medium period, as maximum. Petitioner BBB247234 is ordered to **PAY** the victims KKK247234 and LLL247234 the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages for each count.

All monetary awards imposed are subject to the interest rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

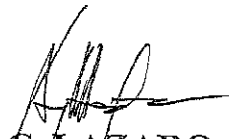

JHOSEP Y. LOPEZ
 Associate Justice

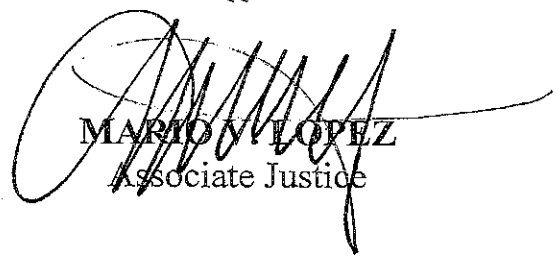
WE CONCUR:


MARVIC M.V. F. LEONEN
 Senior Associate Justice
 Chairperson

¹⁰³

Supra note 51, at 440-441.



AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice


ATTESTATION

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


MARVIC M.V. F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER A. GESMUNDO
Chief Justice

