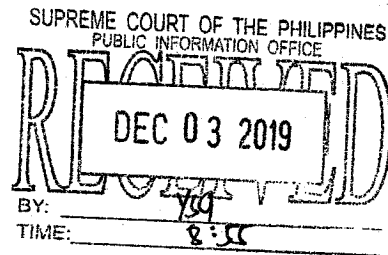




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila



SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 October 2019** which reads as follows:*

**"G.R. No. 231382 (People of the Philippines v. Danilo Nicolas y Fernando @ "Jojo")**

X-----X

**THE CASE**

This appeal assails the Court of Appeals' Decision dated May 31, 2016 in CA-G.R. CR-H.C. No. 06734, affirming with modification the conviction of appellant Danilo Nicolas y Fernando "Jojo" for acts of lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to Republic Act (RA) No. 7610, as amended and for rape under Article 266-A of the RPC.

**ANTECEDENTS**

**Proceedings before the Trial Court**

Appellant Danilo Nicolas y Fernando @ "Jojo" was charged with acts of lasciviousness and rape under the following Informations:

**Criminal Case No. 05-458**

That on or about the 15<sup>th</sup> day of December, 2004, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, did then and there willfully and unlawfully commits (sic) acts of lasciviousness conduct to complainant "AAA", an eleven (11) year old minor, by kissing her lips and masturbating in front of said complainant, with an intent to abuse, humiliate, harass, degrade, arouse or gratify the sexual desire of said complainant/victim.

CONTRARY TO LAW.<sup>1</sup>

**Criminal Case No. 05-459**

That on or about the month of October, 2004, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, did then and there willfully and unlawfully and feloniously have carnal knowledge of complainant AAA, an eleven (11) year old minor, against the latter's will and consent.

<sup>1</sup> CA rollo, p. 10-11.

fn/bw

CONTRARY TO LAW.<sup>2</sup>

The case was raffled to the Regional Trial Court-Branch 207, Muntinlupa City.

On arraignment, appellant pleaded *not guilty* to both charges.<sup>3</sup> During pre-trial, the prosecution and defense agreed that both cases be consolidated and jointly heard.

During the joint trial, complainant AAA and Dr. Victoria C. Ribaya testified for the prosecution. On the other hand, appellant was the lone witness for the defense.<sup>4</sup>

### The Prosecution's Version

Then eleven (11)-year-old AAA testified that sometime in October 2004, between 11 to 12 o'clock in the evening, she and other family members were sleeping in their room when appellant, her family's *ampon*, grabbed and pulled her. She tried to push him away but he succeeded in dragging her into the living room. There, he removed her shorts and underwear. Despite her resistance, appellant was able to insert his penis into her vagina. After sexually ravishing her, appellant threatened to kill her and her family should she reveal to anyone what had happened. She laid down on the floor and cried. Overcome by fear, she did not immediately report the incident to her mother or the authorities.<sup>5</sup>

On December 15, 2004, around 2 o'clock in the morning, appellant again entered the family's bedroom and brought her into his own room. He started to touch and kiss her while holding his penis. Her mother saw her come out of appellant's room, so her mother asked her why she was there. But because of appellant's threat, she did not respond. It was only when her grandfather went to their house that she mustered the courage to tell her family what had happened.<sup>6</sup> She and her mother then reported the incident to the police headquarters where her statement was taken.

**Dr. Victoria C. Ribaya** testified to conducting a medical examination on AAA and reported: *ano-genital findings concerning for abuse or trauma* and *ano-genital findings suggestive of sexual abuse* in her Initial and Final Medico Legal Reports, respectively.<sup>7</sup>

### The Defense's Version

**Appellant** testified that he was AAA's neighbor in Magdaong Drive, NBP Reservation. He used to drive a tricycle that plied the route of Bayan to

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<sup>2</sup> *Rollo*, p. 4.

<sup>3</sup> *Id.* at 61.

<sup>4</sup> *CA rollo*, p. 12.

<sup>5</sup> *CA rollo*, p. 12; *Rollo*, pp. 11-12.

<sup>6</sup> *CA rollo*, pp. 12-13.

<sup>7</sup> *Id.* at 13.

Bilibid from 5 o'clock in the afternoon until 6 o'clock in the morning. He would go to school from 8 o'clock in the morning until 4 o'clock in the afternoon.

On December 15, 2004, he arrived home and saw all his belongings thrown outside, some of which were being burned by AAA's mother and grandfather. He then learned of the case filed against him for allegedly raping AAA.<sup>8</sup>

AAA's grandfather threatened to shoot him, forcing him to leave his residence and stay in Caloocan City for a while. When he returned to the NBP Reservation, the barangay officials apprehended and took him to the Criminal Investigation Division where he got detained.<sup>9</sup>

### The Trial Court's Ruling

By Decision dated March 3, 2014,<sup>10</sup> the trial court found appellant guilty of acts of lasciviousness and rape, viz:

WHEREFORE, the court finds accused Danilo Nicolas y Fernando @ "Jojo" guilty beyond reasonable doubt in Criminal Case No. 05-458 for acts of lasciviousness defined and penalized under Article 336 of the Revised Penal Code in the absence of allegations of influence or coercion in the Information which would have made him guilty of violation of R.A. 7610, and is sentenced to the indeterminate penalty of four (4) months of *arresto mayor* in its medium as the minimum period to four (4) years and two (2) months of *prision correccional* in its medium as the maximum period, in the absence of mitigating or aggravating circumstances. He is further ordered to pay AAA P5,000 as and for civil damages and P3000 as and for moral damages.

As to Criminal Case No. 05-459, the Court finds accused Danilo Nicolas y Fernando @ "Jojo" guilty beyond reasonable doubt of rape under Article 266-A (d) and is sentenced to *reclusion perpetua* without possibility of parole, and ordered to pay AAA P75,000 as and for civil damages and P50,000 as and for moral damages.

The duration of his preventive imprisonment shall be credited in his favour.

The Jail Warden, Tunasan, Muntinlupa City Jail is directed to immediately transfer the custody of the accused to the New Bilibid Prison for the service of his sentence.

So ordered.<sup>11</sup>

The trial court gave credence to AAA's testimony and found that all the elements of acts of lasciviousness and rape were present. It also found no ill

<sup>8</sup> *Id.* at 14.

<sup>9</sup> *Id.*

<sup>10</sup> Penned by Presiding Judge Philip A. Aguinaldo; *CA rollo*, pp. 10-18.

<sup>11</sup> *CA rollo*, p. 16-17.

will or motive on the part of AAA or her family to falsely charge appellant. Against AAA's positive testimony, appellant's bare denial failed<sup>12</sup>

### Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for relying solely on the testimony of AAA. He asserted that AAA's failure to ask for help, resist, and immediately report the alleged crimes cast doubt on her credibility; AAA was not able to establish whether he threatened to kill her before or after the act; the Initial Medico-Legal Report and Final Medical Reports do not support the allegation of rape because the hymenal laceration could have been caused by any blunt force or trauma, whether intentional or accidental, and does not necessarily mean there was sexual abuse; finally, the lascivious act was not proven beyond reasonable doubt because AAA simply went with appellant to his bedroom, which does not prove the presence of any lewd design.<sup>13</sup>

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Karl B. Miranda, Assistant Solicitor General Myrna N. Agno-Canuto and Associate Solicitor Maria Celeste A. Reantaso defended the verdict of conviction. It maintained that all the elements of both acts of lasciviousness and rape were proven beyond reasonable doubt; the prosecution need not prove that AAA resisted appellant to establish that she had been raped; and AAA's straightforward and candid testimony deserved full weight and credence.

Appellant's defense of denial cannot prevail over AAA's positive testimony. A young and innocent girl would not fabricate a story and subject herself to medical examination and public trial if she was not impelled by a sincere desire to put behind bars the person who assaulted her.<sup>14</sup>

### The Court of Appeals' Ruling

By Decision dated May 31, 2016,<sup>15</sup> the Court of Appeals affirmed with modification, thus:

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit. The assailed Joint Decision rendered by the Regional Trial Court of Muntinlupa City, Branch 207 on 03 March 2014 is AFFIRMED with MODIFICATION. In Criminal Case No. 05-458 for Acts of Lasciviousness, accused-appellant Danio Nicolas y Fernando @ "Jojo" is sentenced to imprisonment of 8 years and 1 day of *prision mayor*, as minimum, to 17 years, 4 months and 1 day of *reclusion temporal*, as maximum. Accused-appellant Danilo Nicolas y Fernando @ "Jojo" is ordered to pay AAA P20,000.00 as civil indemnity,

<sup>12</sup> *Id.* at 16.

<sup>13</sup> *CA rollo*, pp. 32-48.

<sup>14</sup> *Rollo*, p. 7-8; *CA rollo*, pp. 63-89.

<sup>15</sup> Penned by Associate Justice Elihu A. Ybañez with Associate Justices Magdangal M. De Leon and Henri Jean Paul B. Inting (Now an Associate Justice of the Supreme Court), concurring.

P15,000.00 as moral damages and P15,000.00 as exemplary damages. In Criminal Case No. 05-459, accused-appellant Danilo Nicolas y Fernando @ "Jojo" is sentenced to *reclusion perpetua* without possibility of parole, and is ordered to pay AAA P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages. An interest of 6% on all the monetary awards for damages is imposed to be reckoned from the date of the finality of this decision until fully paid.

SO ORDERED.<sup>16</sup>

The Court of Appeals sustained the trial court's factual findings on the credibility of the witnesses and its assessment of the evidence on record.<sup>17</sup> It, nonetheless, modified the penalty for acts of lasciviousness to conform with RA 7610.

### The Present Appeal

Appellant now seeks affirmative relief from the Court, praying anew for his acquittal.

In compliance with Resolution dated August 9, 2017, appellant filed his Manifestation In Lieu of Supplemental Brief adopting his arguments in his Supplemental Brief before the Court of Appeals.<sup>18</sup> On the other hand, the OSG filed its Manifestation and Motion, praying that it be excused from filing a Supplemental Appellee's Brief, having fully addressed the issues before the Court of Appeals.<sup>19</sup>

### Issue

Did the Court of Appeals err in affirming appellant's conviction for rape and acts of lasciviousness under Article 336 of the RPC in relation to Section 5, Article III of RA 7610?

### Ruling

We affirm.

Rape is defined and penalized under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353 (RA 8353), *viz.*:

**Article 266-A. Rape: When and How Committed.** - Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

<sup>16</sup> *Rollo*, pp. 18.

<sup>17</sup> *Id.* at 72-73.

<sup>18</sup> *Id.* at 39-41.

<sup>19</sup> *Id.* at 20.

- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- d) **When the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present. (Emphasis supplied)

x x x x

The Information charged appellant with rape under Article 266-A(1)(d). It requires the following elements: (1) the offended party is under twelve (12) years of age and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.<sup>20</sup>

On the other hand, acts of lasciviousness is defined and penalized under Article 336 of the Revised Penal Code (RPC), *viz.*:

**Article 336. Acts of Lasciviousness.** - Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

x x x x

It requires the following elements: (1) the offender commits any act of lasciviousness or lewdness; (2) it is done under any of the following circumstances: (a) through force, threat, or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and (d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and (3) the offended party is another person of either sex.<sup>21</sup>

Meanwhile, RA 7610 further 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.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

XXXX

<sup>20</sup> See *People v. Francia*, G.R. No. 208625, September 6, 2017, citing *People v. Gutierrez*, 731 Phil. 352 (2014) [Per Leonen, J., Third Division].

<sup>21</sup> See *Orsos v. People*, G.R. No. 214673, November 20, 2017, citing *Quimvel v. People*, G.R. No. 214497, April 18, 2017.

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the **victims 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**; (Emphases supplied)

XXXX

The requisites for sexual abuse under RA 7610 are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the 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>22</sup>

“Lascivious conduct” is defined in Section 32, Article XIII of the Implementing Rules and Regulations (IRR) of RA 7610, as follows:

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person

Here, the prosecution sufficiently established the elements of rape and acts of lasciviousness as defined and penalized under Article 336 of the Revised Penal Code in relation to Section 5(b), Article III of R.A. No 7610.

AAA testified on what appellant did to her in the morning of October 2004, viz:

X X X X

Q AAA, may kakilala ka bang Danilo Nicolas @ Jojo?  
A Opo

Q Okay. Paano mo siya nakilala?  
A Opo, kapitbahay po namin. Inampon po yan.

Q Inampon nino?  
A Inampon po ni yan ni tatay tsaka ni mama.

X X X X

Q Your Honor, she's crying but nevertheless she's trying to answer.  
Bakit nasabi mong hindi siya mabait?

A Manyakis po yang hayup na yan.

Q Bakit mo nasabi yun, na ganuon siya?

<sup>22</sup> See *People v. Bejim*, G.R. No. 208835, January 19, 2018, citing *Quimvel*.

A Minanyak po ako.

X X X X

A Sapilitan pong ano... gustong halikan at kantutin.

Q Yung salitang "kantot" AAA, anong pagkaintindi mo duon, pag sinabing "kantot" anong nangyayari?

A Ano po... may ginagawa po kayong dalawa.

Q Anong ginagawa ng ganuon?

A Hinahalik-halikan ka po tapos nakapatong po.

X X X X

Q **Anong nangyayari pag nakapatong? Yung sa salitang "kantot" iyon muna ang pinag-uusapan natin, ano ang intindi mo sa salitang "kantot"?**

A **Iyong ipapasok niya po yung ari niya sa akin.**

Q Sa iyo o saang parte ng katawan mo ipapasok?

A Sa vagina po.

X X X X

Q Naalala mo pa kung kalian nangyari ito?

A Nuong una po nuong October.

Q October ng anong taon?

A 2004 po.

Q 2004. Maalala mo AAA kung ilang taon ka nuon?

A **11 years old po.**

X X X X

Q Umaga ba yan o gabi?

A Siguro po mga alas onse o alas dose.

Q So, anong nangyari noong gabing iyon?

A Pumasok siya sa kuwarto namin.

Q Tapos, anong nangyari?

A Tapons hinila niya ako.

Q Nuong hinila ka, anong sumunod na nangyari?

A Hinubad niya po yung shorts tsaka po panty ko.

Q Hinubad niya. Saan-ka niya dinala?

A Doon po sa salas namin.

Q Sa salas. So, doon ba niya hinubad yung shorts mo saka panty mo?

A Opo.

Q **Ano ang sumunod na nangyari nuong hinubad niya yung short mo tsaka panty mo?**

A **Gusto niya po ipasok yung "titi" niya sa pepe ko tapos tinutulak**



ko siya.

**Q** Gusto niya ipasok pero tinutulak mo siya. Naipasok ba niya?  
**A** Opo.

**Q** Opo. Naipasok niya. Pagkatapos, nuong maipasok niya yun, ano ang sumunod na nangyari?

**A** Humiga na lang po ako at umiyak.

**Q** Humiga ka at umiyak. Nagsumbong ka ba kay mama?

**A** Hindi po.

**Q** **Bakit hindi ka nagsumong kay mama?**

**A** **Sabi niya kapag nagsumbong po ako, papatayin niya po ako.**

**Q** Sinabi niya na kapag nagsumbong ka, papatayin ka niya, ikaw ang papatayin niya hindi si mama?

**A** Kami po.

**Q** Kayo nila mama. Kaya hindi ka na lang kumibo?

**A** Opo.

X X X X

**Q** O sige. Ito pa lang mga panyayari na ito, yung sinabi mo na “minanyak ka”, “kinantot ka”, saan nangyari ito?

**A** Sa bahay po namin.

X X X X

**Q** Sige. Dito sa bas a loob ng kwartong ito, makikita mo itong si Jojo o si Danilo Nicolas? Nandito ba siya?

**A** Opo.

**Q** Nandito. Pwede mo siya ituro?

**A** Ayun po, yung bungal.

**Q** Ituro mo ng kamay mo, sige ineng huwag kang matakot.

**A** Nasa gitna po.

Interpreter: The minor witness is pointing at the man wearing a yellow shirt seated in the middle of the two detained and identified as Danilo Nicolas.<sup>23</sup>

(Emphases supplied)

X X X X

On what appellant did to her in the morning of December 15, 2004:

X X X X

**Q** 2004. Anong nangyari noong December 15, 2004?

**A** Pumasok po siya sa kuwarto namin.

<sup>23</sup> TSN dated 21 June 2010, pp. 3-7, 12-13; *Rollo*, pp. 10-13.

- Q Pumasok siya sa kuwarto niyo.  
A Dinala niya po ako doon sa kuwarto niya.

x x x x

A **Hinalik halikan niya po ako tapos hawak niya po yung ano niya..**

Q **Hinalik-halikan ka niya tapos hawak niya yung...**  
A **Yung "titi" niya po.**

Q Anong ginawa niya sa "titi" niya? Hawak lang niya?  
A Opo.<sup>24</sup>  
(Emphasis supplied)

x x x x

AAA clearly recounted the harrowing details when appellant raped her. She testified that he dragged her from her bedroom into his, removed her shorts and underwear, and then inserted his penis into her vagina. She tried pushing him away, but he overpowered her. He threatened to kill AAA and her mother if she reported the incident to anyone. Out of fear, AAA did not immediately report the crime.

AAA also narrated her disturbing experience of appellant's lascivious conduct. She positively testified that in the early morning of December 15, 2004, she was sleeping in the family bedroom when appellant again took her from the family bedroom and brought her with him to his own bedroom where he kissed her while holding his penis.<sup>25</sup>

By itself, AAA's testimony withstands scrutiny sufficient to sustain a verdict of conviction. Both the trial court and the Court of Appeals found AAA to have been steadfast and consistent and her testimony, clear, straightforward and categorical, thus, meriting full weight and credence.

Her tender age, her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the sordid details of the assault on her dignity cannot be so easily dismissed as mere concoction.<sup>26</sup> It is highly improbable that a girl would fabricate a story that would expose herself to shame if the matter on which she testified were not true.<sup>27</sup>

More, AAA's testimony firmly conformed with Dr. Ribaya's Medico-Legal Report, indicating *ano-genital findings suggestive of sexual abuse*. While Dr. Ribaya mentioned in her testimony that the hymenal laceration could have been caused by any blunt force or trauma, she simply gave other possibilities of its cause. Yet, her final Report, in fact, indicates that the finding

<sup>24</sup> TSN dated 21 June 2010, pp. 8-9; *Rollo*, p. 15.

<sup>25</sup> *Rollo*, pp. 105-109.

<sup>26</sup> *People v. Cadano, Jr.*, 729 Phil. 253, 259 (2014).

<sup>27</sup> *People v. Hallarte*, 731 Phil. 327, 336-337 (2014).

is *suggestive of sexual abuse*, thus, corroborating AAA's testimony.

Appellant, nevertheless, attempts to diminish AAA's credibility, pointing out her failure to ask for help, resist, and immediately report the alleged crimes; the inconsistencies in her testimony pertaining to when appellant threatened to kill her and her family; and the prosecutions' failure to establish the element of lewd design in the alleged lascivious act, thus casting doubt on her case.<sup>28</sup>

•We disagree.

**First.** Resistance is not an element of rape and the absence thereof does not necessarily lead to an acquittal.<sup>29</sup> Neither does AAA's failure to shout for help cast doubt on her credibility. It is well-settled that failure to shout or seek help do not negate rape. For there is no standard or expected reaction or behavior among victims of this heinous crime. Victims face different circumstances and cope in different manners.<sup>30</sup>

In establishing the crime of rape under Art. 266-A(1)(d) of the RPC, as amended, the law only requires that the victim's age and the fact of carnal knowledge be proven to sustain conviction.<sup>31</sup> Here, AAA's age was not questioned and prosecution appellant's carnal knowledge of AAA through her testimony.

**Second.** Whether AAA testified that appellant was going to kill her before or after the act does not change the fact that she was raped. The purported inconsistency, if at all, refers only to a trivial matter which does not affect at all her account of the incident. The alleged inconsistency is immaterial as this is not an element of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b), Article III or RA 7610 and rape. What remains paramount is AAA's consistency in relating the principal elements of the crimes and the positive and categorical identification of appellant as the perpetrator.<sup>32</sup>

At any rate, minor inconsistencies in the testimony of a victim do not necessarily render the same incredible.<sup>33</sup> On the contrary, they strengthen the credibility of the witness because this shows that his or her testimony is not fabricated. As held in *People v. Divinagracia, Sr.*,<sup>34</sup> minor inconsistencies may be expected from children who are not accustomed to public trial. What is decisive is the positive identification of the accused as malefactor.<sup>35</sup>

<sup>28</sup> CA rollo, pp. 32-48.

<sup>29</sup> *People v. Bugna*, G.R. No. 218255, April 11, 2018, citing *People v. Josen*, 751 Phil. 450, (2015).

<sup>30</sup> *People v. Pareja*, 724 Phil. 759, 778-779 (2014), citing *People v. Saludo*, 662 Phil 738, (2011).

<sup>31</sup> *People v. Ronquillo*, G.R. No. 214762, September 20, 2017, 840 SCRA 405, 407.

<sup>32</sup> *People v. Tulagan*, G.R. No. 227363, March 12, 2019, citing *People v. Appegu*, 429 Phil. 467, 477 (2002).

<sup>33</sup> See *People v. Udtohan*, G.R. No. G.R. No. 228887, August 2, 2017, 834 SCRA 330, 345.

<sup>34</sup> G.R. No. 207765, July 26, 2017, 832 SCRA 53, 69.

<sup>35</sup> *Udtohan*, citing *People v. Cabigting*, 397 Phil. 944, 982 (2000).

**Finally.** The trial court and the Court of Appeals correctly gave credence to AAA's testimony. Well-settled is that the trial court's factual findings on the credibility of witnesses are accorded high respect, if not conclusive effect. This is because the trial court is able to observe up close the manner by which these witnesses testified, as well as their demeanor while testifying.<sup>36</sup> This rule becomes even more compelling when the factual findings carry the full concurrence of the Court of Appeals, as in this case.<sup>37</sup>

In light of AAA's positive identification of appellant as the person who sexually ravished her, appellant's denial must fail. Denial, being negative self-serving evidence, cannot prevail over affirmative allegations of the victim and her categorical identification of the appellant as her molester.<sup>38</sup>

### Penalty

#### Criminal Case No. 05-458

In imposing the penalty for acts of lasciviousness, it is important to note the proper designation and the Court's reconciliation of the provisions on *acts of lasciviousness* under the RPC, vis-à-vis *lascivious conduct* under Section 5(b) of RA 7610 should be applied. In *People v. Tulagan*<sup>39</sup> the Court clarified:

X X X X

Thus, other forms of acts of lasciviousness or lascivious conduct committed against a child, such as touching of other delicate parts other than the private organ or **kissing a young girl with malice**, are still punished as acts of lasciviousness under Article 336 of the RPC in relation to R.A. No. 7610 or lascivious conduct under Section 5 of R.A. No. 7610. (Emphasis supplied)

X X X X

In *People v. Caoili*,<sup>40</sup> We prescribed the following guidelines in designating or charging the proper offense in case of lascivious conduct is committed under Section 5(b) or R.A. No. 7610, and in determining the imposable penalty:

X X X X

**2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second proviso in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.**

(Emphasis in the original)

<sup>36</sup> *Spouses Guidangan v. Wooden*, 682 Phil. 112, 129 (2012).

<sup>37</sup> *People v. Racho*, G.R. No. 225642-43, January 17, 2018, citing *People v. Pareja*, 724 Phil. 759, 773 (2014) and *People v. Sanchez*, 681 Phil. 631, 635-636 (2012).

<sup>38</sup> *Supra*, Note 35.

<sup>39</sup> G.R. No. 227363, March 12, 2019.

<sup>40</sup> G.R. Nos. 196342 & 196848, August 8, 2017, 835 SCRA 107, 152-153.

x x x x

In the absence of any modifying circumstances, the imposable penalty is *reclusion temporal* in its medium period. The maximum sentence shall then be taken from its medium range or from fifteen (15) years, six (6) months and twenty-one (21) days to sixteen (16) years, five (5) months and nine (9) days; applying the Indeterminate Sentence Law, the minimum term shall be taken from the penalty next lower, *reclusion temporal* minimum which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.<sup>41</sup>

The penalty imposed on appellant for acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610 should therefore be increased. The Court, thus, imposes on appellant the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* as maximum.

As for the monetary awards, *People v. Tulagan* sets the awards for civil, moral and exemplary damages in acts of lasciviousness in relation to Section 5(b) of RA 7610 at Php50,000.00 each.

#### Criminal Case No. 05-459

The courts below sentenced appellant to *reclusion perpetua without eligibility of parole* for rape. The phrase *without eligibility of parole* is only used to qualify the penalty to emphasize that the accused should have been sentenced to suffer death penalty, had it not been for RA 9346 – which is not the case here. The qualification should therefore be deleted.<sup>42</sup>

As for the monetary awards, they should be increased from Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php30,000.00 as exemplary damages to Php75,000.00 each.<sup>43</sup>

In both cases, these shall earn six percent (6%) interest per annum from finality of this resolution until fully paid.

**WHEREFORE**, the appeal is **DENIED**. The Decision of the Court of Appeals dated May 31, 2016 in CA-G.R. CR-H.C. No. 06734 is **AFFIRMED** with **MODIFICATION**.

In Criminal Case No. 05-458, **DANILO NICOLAS y FERNANDO** is found **GUILTY** of **Rape** and sentenced to *Reclusion Perpetua*. He is further ordered **TO PAY** Php75,000.00 as civil indemnity; Php75,000.00 as moral damages; and Php75,000.00 as exemplary damages.

<sup>41</sup> *Quimvel v. People*, G.R. No. 214497, April 18, 2017, 823 SCRA 192, 223.

<sup>42</sup> A.M. No. 15-08-02-SC, GUIDELINES FOR THE PROPER USE OF THE PHRASE “WITHOUT ELIGIBILITY FOR PAROLE” IN INDIVISIBLE PENALTIES.

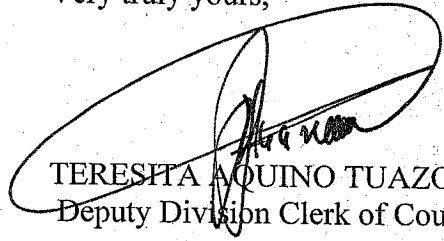
<sup>43</sup> *People v. Jugueta*, 783 Phil. 806, 846 (2016).

In Criminal Case No. 05-459, **DANILO NICOLAS y FERNANDO** is found **GUILTY** of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b), Article III of R.A. No 7610. He is sentenced to the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* as the minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* as maximum. He is further ordered **TO PAY** Php50,000.00 as civil indemnity; Php50,000.00 as moral damages; and Php50,000.00 as exemplary damages.

These amounts shall earn six percent (6%) interest per annum from finality of this resolution until fully paid.

**SO ORDERED. "**

Very truly yours,

  
**TERESITA AQUINO TUAZON**  
 Deputy Division Clerk of Court *by 11/21*  
 22 NOV 2019

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 Accused-Appellant  
 c/o The Director  
 Bureau of Corrections  
 1770 Muntinlupa City

THE DIRECTOR (reg)  
 Bureau of Corrections  
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
 Regional Trial Court, Branch 207  
 Muntinlupa City  
 (Crim. Case No. 05-458)

JUDGMENT DIVISION (x)  
 Supreme Court, Manila

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\*with copy of CA Decision dated 31 May 2016  
 Please notify the Court of any change in your address.  
 GR231382. 10/02/19A(70)URES(m)

**A(170)URES(m)**