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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **August 27, 2020** *which reads as follows:*

"G.R. No. 227882 – PEOPLE OF THE PHILIPPINES v. FLORENDO CASTRENCE, ET AL., accused; FLORENDO CASTRENCE y CORILLA and XXX[1], accused-appellants

Antecedents

Appellants Florendo Castrence y Corilla (Castrence) and XXX along with Ernesto Boco y Bagtong alias "Ernie" (Boco) and Arturo Dionesa y Gutierrez alias "Turo" (Dionesa), were charged with frustrated murder and robbery with rape in two (2) separate Informations, *viz.*:

Criminal Case No. C-45933 (Frustrated Murder)
Against XXX, Florendo Castrence,
Ernesto Boco, and Arturo Dionesa

That on or about the 2nd day of December, 1993 in Kalookan City, Metro Manila and within the jurisdiction of this

- over – twenty-five (25) pages ...

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[1] Pursuant to OCA Circular No. 97-2019 or the 2019 Supreme Court Revised Rules on Children in Conflict with the Law, which took effect on July 7, 2019 (amended A.M. No. 02-1-18-SC).

Section 52. *Confidentiality of Proceedings and Record.* - All proceedings and records involving children in conflict with the law from initial contact until final disposition of the case by the court shall be considered privileged and confidential. x x x

The court shall employ other measures to protect confidentiality of proceedings including non-disclosure of records to the media, the maintenance of a separate police blotter for cases involving children in conflict with the law and the adoption of a system of coding to conceal material information, which lead to the child's identity. The records of children in conflict with the law shall not be used in subsequent proceedings or cases involving the same offender as an adult.

Honorable Court, the above-named accused, conspiring together and mutually helping with one another, without any justifiable cause, with deliberate intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot with a (shotgun) one (BBB),[2] *hitting the latter on the hip, thus performing all the acts of execution which should have constitute the crime of "MURDER" as a consequence but who (sic) nevertheless did not perform it by reason of causes independent of the will of the herein accused, that is, due to the timely, able and efficient medical attendance rendered to the victim at the Jose R. Reyes (Memorial) Medical Center, Manila.*

Contrary to Law.[3]

Criminal Case No. C-45939 (Robbery with Rape)
Against XXX, Florendo Castrence, and Ernesto Boco

That on or about the 30th day of November 1993 in Kalookan City, (Metro Manila) and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping with one another, with intent (to) gain and being then armed with shotgun, handgun and knives and with the use of violence and intimidation upon the person of (AAA),[4] *did then and there willfully, (unlawfully) and feloniously take, rob and carry away two (2) pcs of rings and watch worth P4,000.00 and cash money of P500.00, all belonging to the said (AAA), to the damage and prejudice of the latter in the total amount of P4,500.00; that on the occasion of the said robbery and for the purpose of enabling them to take(,) rob and carry away the aforementioned jewelries and cash money, the herein accused in pursuance of their conspiracy, did then and there with lewd design and by means of force and intimidation, lie and have sexual intercourse with said complainant against the latter's will and without her consent.*

Contrary to Law.[5]

Appellants, together with Boco, Dionesa, and two (2) John Does were also charged with robbery, acts of lasciviousness, and violation of Presidential Decree 532 otherwise known as the Anti-Piracy and Anti-Highway Robbery Law of 1974, in five (5) more Informations, but the present appeal only concerns their conviction for robbery with rape and frustrated murder.[6]

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2 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* [533 Phil 703 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

3 CA *rollo*, p. 69.

4 Supra note 2.

5 CA *rollo*, p. 71.

6 *Id.* at 70-72.

Only appellants and Boco were arrested. On arraignment, appellants and Boco all pleaded "not guilty" to both charges. Joint trial ensued.[7]

The prosecution presented BBB, AAA, SPO1 Alfredo Rodillas (SPO1 Rodillas) and SPO1 Gaudencio Domingo (SPO1 Domingo) of the Caloocan City Police Station, Dr. Vic Managuilod (Dr. Managuilod), and Dr. Alvin David (Dr. David) from the National Bureau of Investigation (NBI) Medico-Legal Division. On the other hand, the defense presented appellants XXX and Castrence.

Version of the Prosecution

On November 30, 1993, around 4:30 o'clock in the morning, while on her way to work, AAA, then walking along ZZZ, Caloocan City, met four (4) men, two (2) of them were carrying long guns. As the place was amply lit by lampposts and the light from nearby houses, she clearly saw her assailants' faces. She was familiar with them because she often saw them in ZZZ. At times, they even pass by her house.[8]

The two (2) armed men then poked their guns on her, commanding "*huwag kang sisigaw, sasabog utak mo!.*" The two (2) other men held her arms. They took her bag along with two (2) gold rings and her Citizen wristwatch.[9]

The men then ordered her to walk with them. They led her to a nearby cemetery where they stripped her of her clothes and made her lie on one (1) of the concrete tombs, and spread her legs apart. One (1) of them was called by the name "Jess." It was "Jess" who frisked her jeans and took therefrom ₱500.00. Thereafter, he laid on top of her, kissed her on the lips, mashed her breasts, inserted his penis into her vagina, and made a push and pull movement. The three (3) others watched and held her at gunpoint. She pleaded for them to stop and let her go as she was then five (5) months pregnant. But her pleas went unheeded. After "Jess" had satisfied his lust, the three (3) others took turns on laying on top of her, kissing her, mashing her breasts, and having carnal knowledge of her.[10]

It was almost daybreak when the men abandoned her. It took an hour or so for her to finally muster the courage and energy to put on

7 *Id.* at 72.
8 *Id.* at 74.
9 *Id.* at 74-75.
10 *Id.* at 75.

her clothes. She then inched her way toward the nearby house of her brother BBB.[11]

BBB was roused from sleep by a knock on their door early in the morning of November 30, 1993. He was shocked to see his sister AAA sprawled on the floor completely disheveled and with her dress worn inside out. After hearing her story, he immediately went to the cemetery where he recovered AAA's handbag and shoes. Accompanied by barangay *tanods*, he reported the incident to the ZZZ Police Detachment, which sent out two (2) of its officers to conduct further investigation. AAA was likewise advised to go to the NBI for physical examination.[12]

Based on his physical examination of AAA, Dr. David found that she was five (5) to six (6) months pregnant; she had two (2) reddish linear abrasions on her left forearm; she sustained hymenal tags suggesting previous hymenal lacerations; human spermatozoa was found along the vaginal wall indicative of recent sexual intercourse. He did not discount that more than one (1) man recently had intercourse with AAA.[13]

On December 2, 1993, while BBB was walking along ZZZ, Caloocan City on his way to work, he was ambushed and shot from behind. He heard four (4) gunshots and got hit causing him to fall on the ground. When he turned to see his assailants who were just three (3) to four (4) meters away, he saw three (3) men armed with handguns, and another one (1), with a long gun. After the shooting, his assailants scampered away. Tony Pallorena and another person who were in the area, came to his rescue and rushed him to the Tala Hospital. He was later moved to the Jose R. Reyes Memorial Hospital.[14]

Dr. Managuilod who examined and treated BBB found six (6) gunshot wounds, four (4) of which were located in the latter's left gluteal area or left buttocks and two (2) along the perianal area, around the anus. Surgical intervention was needed to treat BBB's wounds. Sans timely medical attention, BBB could have died either due to blood poisoning because of urethral disruption or massive hemorrhage as the large vessel in BBB's right thigh was transected.[15]

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11 *Id.* at 75.
12 *Id.* at 76.
13 *Id.* at 78.
14 *Id.* at 73.
15 *Id.* at 77-78.

Taking notice of these twin crimes that took place just a day apart, the [redacted] Police Station, Caloocan City, tasked SPO1 Domingo to conduct an investigation on other recent robbery and rape complaints and to follow up on the investigation regarding AAA's case. For this purpose, SPO1 Domingo formed a team including SPO1 Rodillas, PO3 Carmelito Silvino, and PO3 Jose Mario Jumaquio. The team interviewed several victims of robbery, including AAA, who all gave the same descriptions of their respective assailants. After further investigation, two (2) informants gave the identities and addresses of the suspects.[16]

On December 4, 1993, around 10 o'clock in the morning, the team, including SPO1 Domingo and SPO1 Rodillas, proceeded to the target area. They were able to arrest XXX, Castrence, and Boco and brought them to the police station where they were detained. They were also able to retrieve some of the stolen items from the target area.[17]

AAA and BBB were both summoned at the station to identify the suspects.[18] When AAA peeked through the jail cell, she saw and identified Castrence and XXX as two (2) of the men who robbed and raped her.[19] There were other people who also identified Castrence and XXX as the persons who robbed them, too.[20]

On the other hand, Police Officer Rudy Domingo went to the hospital where BBB was confined, taking with him Castrence and XXX. When these two (2) were presented to him, BBB identified them as two (2) of the assailants who ambushed and shot him. Two (2) weeks after the shooting incident, BBB got released from the hospital where he spent a total of ₱50,000.00 for his confinement.[21]

Version of the Defense

Appellants denied the charges against them.

XXX testified that he was born on March 30, 1977 and was just sixteen (16) years old when the incidents happened and when he got arrested. On December 4, 1993, he was at the basketball court when police officers rounded them up and brought them to the police

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16 *Id.* at 156-157.
17 *Id.* at 77.
18 *Id.* at 77.
19 *Id.* at 75.
20 *Id.* at 77.
21 *Id.* at 73.

station, sans any warrant of arrest. Later, his companions were released but he remained in detention, together with two (2) others named Castrence and Boco. He was not informed of the charges against him.[22] He only met BBB for the first time in court.[23]

Castrence, on the other hand, testified that uniformed police officers invited him and his nephew named "Dudoy" to the [redacted] Police Station. There, they were investigated. They were eventually charged with robbery and frustrated murder. While he was detained, none of the complainants pointed to him as one (1) of the perpetrators of any crime. He was merely on vacation in Caloocan City when he was arrested. He was actually a resident of Bolinao, Pangasinan. He also denied knowing XXX and Boco.[24]

The Trial Court's Ruling

In its Joint Decision[25] dated October 2, 2012, the Regional Trial Court (RTC)-Branch 130, Caloocan City found both appellants guilty of frustrated murder and robbery with rape, *viz.*:

> **WHEREFORE,** premises considered, the Court hereby renders judgment as follows:
>
> In ***Criminal Case No. C-45933*** for Frustrated Murder defined and penalized under Article 248 of the Revised (P)enal Code, the Court finds (the accused) (**XXX**) and **Florendo Castrence y (C)orilla GUILTY** beyond reasonable doubt and hereby sentences them respectively as follows:
>
> > **a.** (**XXX**) to suffer (an imprisonment) of an indeterminate penalty of six (6) months and 1 day of *prision correccional* as minimum to six (6) years and 1 day as maximum of *prision mayor*:
> >
> > **b.** **Florendo Castrence y Corilla** to suffer an imprisonment of indeterminate penalty of six (6) years of *prision mayor* as minimum to 12 years and 1 day of *reclusion temporal* as maximum.
>
> They are further ordered to pay the private complainant (**BBB**) the sum of Php50,000.00 as and by way of actual damages.
>
> Accused **Ernesto Boco y Bagtong** on the other hand (is) hereby ordered **ACQUITTED** for failure of the prosecution to prove (his) guilt beyond reasonable doubt.

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22 *Id.* at 79.
23 *Id.* at 159.
24 *Id.* at 79.
25 Penned by Presiding Judge Raymundo G. Vallega, *id.* at 68-88.

With respect to accused **Arturo Dionesa y Gutierrez @ "TURO"**, who is at large, his case is hereby (**ARCHIVED**) until he is arrested.[26]

x x x x x x x x x

In ***Criminal Case No. C-45939*** for Robbery with Rape defined and penalized under Article 294 (1) of the Revised (P)enal Code, the Court finds the accused (**XXX**) and **Florendo Castrence y Corilla GUILTY** beyond reasonable doubt and hereby sentences them respectively to suffer the imprisonment as follows:

a. (**XXX**) - to suffer an imprisonment of an indeterminate penalty of 6 years and 1 day of *prision mayor* as minimum to 12 years and 1 day of *reclusion temporal* as maximum.

b. **Florendo Castrence y Corilla** is hereby sentenced to suffer the penalty of *reclusion perpetua.*

They are hereby ordered to pay the private complainant (**AAA**) the sum of Php4,500.00 as and by way of actual damages she incurred in the robbery. Further, they are ordered to pay the private complainant the amount of Php50,000.00 as civil indemnity and Php25,000.00 as exemplary damages.

On the other hand, for failure of the prosecution to prove the guilt of the accused **Ernesto Boco** beyond reasonable doubt, he is hereby **ACQUITTED**;[27]

x x x x x x x x x

SO ORDERED.[28]

The trial court gave full credence to the testimonies of the prosecution witnesses and the medical report issued by Dr. Managuilod and Dr. David. It held that AAA positively identified appellants as among those who robbed and raped her. For his part, BBB likewise categorically pointed to appellants as among those who ambushed and shot him in the morning of December 2, 1993. Appellants' bare denials must therefore fail. Too, it was not shown that AAA and BBB had any motive to falsely testify against appellants. On the contrary, it was appellants who had a motive to kill BBB because the latter reported what appellants did to AAA. It found that appellants employed treachery in the shooting of BBB.[29]

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26 *Id.* at 86.
27 *Id.* at 87.
28 XXX was similarly found guilty of two (2) more counts of robbery, but he did not interpose any appeal on these convictions, *id.* at 86-88.
29 *Id.* at 80-84.

Ruling of the Court of Appeals

In its assailed Decision[30] dated April 15, 2016, the Court of Appeals affirmed, thus:

> **WHEREFORE**, in view of the foregoing, the (appeal) is **DISMISSED**. The Joint Decision, dated October 2, 2012, rendered by the Regional Trial Court of Caloocan City, Branch 130 in Criminal Case Nos. C-45933-37, and C-45939-41, is **AFFIRMED**.
>
> **SO ORDERED**.[31]

Even then, in its appreciation of the evidence, the Court of Appeals found that evident premeditation, too, attended the shooting of BBB. It held that appellants knew where BBB would be at the time of the attack. They decided to kill him. Armed with guns, they shot BBB with clear intent to kill the latter. The fact that they did gun down BBB overtly showed that they clung to their determination to commit the crime.[32]

The Present Petition

Appellants now seek affirmative relief from the Court and pray anew for their acquittal. In accordance with the Court's Resolution[33] dated January 25, 2017, the Office of the Solicitor General (OSG) and both appellants manifested that in lieu of supplemental brief, they were adopting their respective briefs filed before the Court of Appeals.[34]

In the main, appellants fault the Court of Appeals for affirming the trial court's factual findings on the credibility of the victims' testimony. They claim that their arrest was illegal considering that the police officers who arrested and detained them were not armed with a warrant. Their cases do not allegedly fall under any of the circumstances where a warrantless arrest is allowed. Too, they were not informed of their Constitutional rights during the arrest itself.[35] More important, a positive declaration that one (1) saw the accused commit the crime should not automatically cancel out the accused's denial. Denial and alibi may be weak but courts should not at once

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30 Penned by Associate Justice Agnes Reyes-Carpio and concurred in by then CA Presiding Justice and now retired SC Associate Justice Andres B. Reyes, Jr. and Associate Justice Renato C. Francisco, *id.* at 148-168.

31 *Id.* at 167.

32 166.

33 *Rollo*, pp. 28-29.

34 *Id.* at 30-32 and 34-36.

35 CA *rollo*, pp. 60-63.

look at them with disfavor. There are instances where the accused may really have no other defenses but denial and alibi. In any case, it would be better to set free ten (10) men who might probably be guilty of the crime charged than to convict one (1) innocent man.[36]

On the other hand, the People, through Assistant Solicitor General Alexander S. Salvador and State Solicitor Catalina A. Catral-Talatala, argues that the trial court and the Court of Appeals correctly convicted appellants of the crimes charged. Appellants' warrantless arrest was justified under the doctrine of hot pursuit. The police officers had personal knowledge that crimes had been committed based on the reports made to them by the victims themselves. In any event, any objection against appellants' warrantless arrest was deemed waived when they failed to raise it before arraignment.[37]

Mere denial cannot exculpate appellants from criminal liability. It cannot prevail over their positive declarations by both AAA and BBB as among those who attacked them on two (2) separate occasions.[38]

Issues

1. Did the Court of Appeals err in affirming appellants' conviction for robbery with rape?

2. Did the Court of Appeals err in affirming appellants' conviction for frustrated murder?

Ruling

We affirm appellants' conviction for robbery with rape and frustrated murder.

Primarily, as to appellants' warrantless arrest they are deemed to have waived any objection thereto when they failed to raise it before arraignment.[39] *Veridiano v. People*[40] enunciated:

> Lack of jurisdiction over the person of an accused as a result of an invalid arrest **must be raised through a motion to quash before an accused enters his or her plea**. **Otherwise, the objection is deemed waived** and an accused is "estopped from questioning the legality of his [or her] arrest."

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36 *Id.* at 63-64.
37 *Id.* at 128-130.
38 *Id.* At 133, 117-118 and 122-124.
39 *See Lapi v. People*, G.R. No. 210731, February 13, 2019.
40 810 Phil. 642, 654 (2017).

> The voluntary submission of an accused to the jurisdiction of the court and his or her active participation during trial cures any defect or irregularity that may have attended an arrest. The reason for this rule is that "the legality of an arrest affects only the jurisdiction of the court over the person of the accused." (Emphasis supplied)

So must it be.

We now resolve the appeal on the merits. When the issue is one of credibility of witnesses, the Court will generally not disturb the trial court's factual findings especially when affirmed in full by the Court of Appeals as in this case. For indeed, the trial court is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[41]

Here, AAA was steadfast, categorical, and positive when she identified appellants as among those who held her at gunpoint, took her bag, gold rings and wristwatch, and took turns in forcibly having carnal knowledge of her. For his part, BBB, too, categorically identified appellants as among those who shot him in the morning of December 2, 1993. Both AAA and BBB were consistent in their identification of appellants during the police investigation and during the trial itself.

On this score, it was established at trial that the *situs criminis* was well lighted by lampposts and lights coming from the nearby houses. This gave AAA a clear view of the men who ganged up on her.[42] In ***People v. Ordona***,[43] the Court ordained:

> x x x What is material in this case is the act of stabbing. That the second witness did not see accused-appellant momentarily leave the place of the commission of the crime does not negate Hubay's killing, Also, **both witnesses testified that the place was well-lit for them to see the incident. Regardless of the source of illumination, both witnesses saw accused appellant stab Hubay twice**. (Emphasis supplied)

As for BBB, he testified that he clearly saw the faces of his assailants who were merely three (3) to four (4) meters away from where he was gunned down. In ***People v. Amodia***,[44] the Court

41 *See People v. Mabalo*, G.R. No. 238839, February 27, 2019; also see *People v. Bay-Od*, G.R. No. 238176, January 14, 2019.
42 CA *rollo*, p. 74.
43 818 Phil. 670, 678 (2017).
44 602 Phil. 889, 906-907 (2009).

sustained the identification of the assailant despite the fact that the witnesses were fifteen (15) meters away from the incident. The Court pronounced:

> The RTC and CA found the identification made by Romildo and Luther to be clear, categorical, and consistent. We observed that in accepting the truth of the identification and the account of how the stabbing took place, the RTC and CA considered the witnesses' **proximity to the victim and his assailants at the time of the stabbing - they were about three arms length away and 15 meters away**, respectively; the **well-lighted condition of the crime scene; and the familiarity** of these eyewitnesses **with the** victim and his **assailants** - they were all residents of the same area. Similarly, we also note that **no evidence was presented to establish that these eyewitnesses harbored any ill-will against Pablo and had no reason to fabricate their testimonies**. The weight of jurisprudence is to accept these kinds of testimonies as true for being consistent with the natural order of events, human nature and the presumption of good faith.
>
> Aside from these, we additionally note that Romildo and Luther **never wavered, despite the contrary efforts of the defense, in their positive identification of Pablo as one of the assailants of the victim**. x x x x (Emphasis supplied)

Notably, both BBB and AAA were familiar with appellants. They both testified that prior to the incident, they often saw appellants in the same area where they lived.[45] This is understandable as AAA, BBB, and appellants all resided at ZZZ, Caloocan City and moved within the same area. In ***People v. Pespenian***,[46] the Court gave credence to the identification of the assailants by the witnesses considering the latter's familiarity with the former's features, *viz.*:

> *Second*, it was established during the examination of the prosecution witnesses that the place where the incident took place was not totally dark. There was illumination coming from the flashlight, which helped the witnesses see the attackers. The witnesses were only four meters away from Colminas as he was being assaulted. The witnesses knew the accused as they lived near each other. Pespenian even admitted during his cross examination that he knew Pilota and Valenzona as they were neighbors. In sum, the light, the distance, and **the familiarity with the accused aided the prosecution witnesses to identify them**. (Emphasis supplied)

45 CA *rollo*, pp. 73 & 74.
46 G.R. No. 242413, September 04, 2019.

More, it was not shown that AAA or BBB had any ill motive to falsely testify against appellants. In the absence of any showing that a witness was actuated by malice or other improper motives, his or her *positive and categorical declarations* on the witness stand under a solemn oath deserve full faith and credence.[47]

Lastly, appellants offered nothing but denial and alibi. These defenses are inherently weak and unreliable due to the ease by which they may be fabricated or concocted. If not substantiated by clear and convincing evidence, as in this case, such defenses are considered self-serving, hence, devoid of any probative weight.[48] Indeed, they cannot prevail over the affirmative testimonies of the prosecution eyewitnesses who were the victims themselves.[49]

Robbery with Rape

Robbery with Rape is a special complex crime under Article 294 of the RPC. It contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime.[50] It requires the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.[51]

Here, the first three (3) elements were adequately established by AAA's affirmative testimony that appellants and two (2) other men, armed with guns, surrounded her while she was walking on her way to work. While pointing their guns at her, they took her bag, rings, and wristwatch.

The last element came to fore when appellants and their companions, after robbing AAA of her personal belongings, brought her to a nearby cemetery where they took turns restraining her at

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47 *Etino v. People*, 826 Phil. 32, 49 (2018).

48 *See People v. Pentecostes*, 820 Phil. 823, 843 (2017).

49 *See People v. Vidal, et al.*, G.R. No. 229678, June 20, 2018.

50 *People v. Bringcula*, 824 Phil. 585, 591, 597-598 (2018).
Art. 294. Robbery with violence against or intimidation of persons; Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

51 *Id.* at 592.

gunpoint and in forcibly having sexual intercourse with her. They lent a deaf ear to AAA's plea for mercy as she made known to them that she was five (5) months pregnant. On this score, ***People v. Bringcula***[52] is apropos:

> As to the asportation by appellant of private complainant's personal properties constituting the first three (3) elements of the crime, We find the same sufficiently established by the evidence on records. The prosecution was able to prove that appellant entered the house of private complainant and took her money, some pieces of jewelry and cellphones by means of violence and intimidation. Appellant barged into the house of the victim armed with a weapon, tied her down x x x to immobilize her, and robbed her of some personal belongings. Private complainant saw the perpetrator leaving her house carrying the pieces of jewelry and other items taken from her.
>
> Having established that the personal properties of the [victim were] unlawfully taken by the appellant, intent to gain was sufficiently proven. x x x
>
> x x x x x x x x x
>
> The prosecution was likewise able to establish that appellant raped private complaint on the occasion of the robbery.
>
> Private complainant's account on what appellant did to her was straightforward, candid and carries a disturbing ring of sordid truth. She vividly recounted how appellant forced himself on her and succeeded in having carnal knowledge with her. x x x
>
> x x x x x x x x x
>
> It is a settled rule that the foremost even sometimes, the only consideration in the prosecution for rape is the victim's testimony. The victim's testimony alone, if credible, is sufficient to convict. A rape victim, who testifies in a categorical, straightforward, spontaneous, and frank manner, and remains consistent on all material points, is a credible witness.
>
> The prosecution was also able to establish, based on AAA's testimony, that the robbery preceded the crime of rape and that the latter crime was an incident to the original intent of the appellant to rob AAA, x x x
>
> x x x x x x x x x

In light of the foregoing considerations, both the trial court and the Court of Appeals did not err in finding appellants guilty of robbery with rape committed against AAA.

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52 *Id.* at 592-593.

Frustrated Murder

If one inflicts physical injuries on another but the latter survives, the crime committed is either consummated physical injuries, if the offender had no intention to kill the victim, or frustrated or attempted homicide or frustrated murder or attempted murder if the offender intends to kill the victim.[53] In murder or homicide, the offender must have the intent to kill. If he or she did not have such intent, he or she is liable only for physical injuries.[54]

In ***Fantastico, et al. v. Malicse, Sr., et al.,***[55] the Court considered the following determinants of intent to kill: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused. The Court also considered the words uttered by the offender at the time he or she inflicted injuries on the victim as an additional determinative factor.

Here, the attendant circumstances showed that appellant and his companions intended to kill BBB when they shot him several times, hitting his anus and buttocks. Dr. Managuilod found that BBB sustained the following injuries:

> **GSW: POE**: #4, 05 cm. each, left gluteal area; #2, 0.5 cm. each, perianal area, 1.5 cm. from anal opening, 0.5 cm. right thigh P/rd posterior aspect
> **POX**: None, slug palpable over right P/rd, (A)nterior thigh with hematoma plus rectal (P)erforation, 0.5 cm. anterior ractal vault, 7cm. from anal maze; partial transection of femoral vein, 0.5 cm., partial transection of adductus longus muscle, right; slug lodge at sartorius muscle; urethal disruption
> **Surgical Procedure: Proctoscopy**; wound exploration, right thigh; lateral venorrhaphy; myorrhaphy; extraction of foreign body; loop colostomy; pre-sacral drain; tube cystostomy, drain. [56]

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53 *People v. Jugueta,* 783 Phil. 806, 820 (2016).
54 *Cirera v. People,* 739 Phil. 25, 39 (2014).
55 Phil. 120, 132-133 (2015), citing *Rivera v. People*, 515 Phil. 824, 833 (2006).
56 CA *rollo*, pp. 77-78.

Dr. Managuilod opined that BBB could have died from the injuries he sustained were it not for the timely medical attention given to him. This is specially true due to the slug that tore a large vessel located at BBB's right thigh.[57] It was the surgery done on him which saved his life.

Had BBB actually died, the offense committed would have been murder because of the presence of the qualifying circumstance of treachery.

Treachery has been defined as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[58] The essence of treachery hinges on the aggressor's attack sans any warning, done in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.[59]

Here, appellants suddenly shot BBB from behind without any warning, leaving the latter no chance to defend himself or even flee from the assailants. By attacking the unsuspecting, nay, armless victim from behind while he was just walking on his way to work, appellants, then armed with small guns and even a shotgun ensured the commission of the crime without risk to themselves arising from any possible retaliation from BBB. ***People v. Gaborne***[60] relevantly elucidated:

> x x x x x x x x x
>
> Furthermore, there is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.
>
> The requisites of treachery are:
>
> (1) The employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and

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57 *Id.* at 78.

58 Article 14 par. 16 of the Revised Penal Code; also see *People v. Racal*, 817 Phil. 665, 677 (2017).

59 *People v. Sota*, 821 Phil. 887, 908 (2017).

60 791 Phil. 581, 592-593 (2016).

> (2) Deliberate or conscious adoption of such means, method, or manner of execution.
>
> In this case, the hapless victims were merely drinking and singing (infront) of the *videoke* machine when shot by the appellant. The firing was so sudden and swift that they had no opportunity to defend themselves or to retaliate. Furthermore, appellant's acts of using a gun and even going out of the *videoke* bar evidently show that he consciously adopted means to ensure the execution of the crime.
>
> x x x x x x x x x

Going now to evident premeditation, its elements are: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused has clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution enough to allow the accused to reflect upon the consequences of his acts. These elements have to be proven beyond reasonable doubt. The decision to kill prior to the moment of its execution must have been the result of meditation, calculation, reflection or persistent attempts.[61]

None of these elements were shown here. There was lack of any indication of when appellants contemplated on killing BBB, when they decided to kill him, and whether there was a lapse of time between the decision and the time when they actually shot BBB, a time enough to allow them to reflect upon the consequences of their acts.

In fine, we cannot sustain the conclusion of the Court of Appeals that evident premeditation likewise attended the shooting of BBB.

We now turn to the different stages of felony: consummated, frustrated, and attempted, as enumerated and defined under Article 6 of the RPC, *viz.*:

> Art. 6. *Consummated, frustrated, and attempted felonies.* — Consummated felonies as well as those which are frustrated and attempted, are punishable.
>
> A felony is consummated when all the elements necessary for its execution and accomplishment are present; and **it is frustrated when the offender performs all the acts of execution which**

61 *People v. Kalipayan*, 824 Phil. 173, 184 & 185 (2018).

> **would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator**.
>
> There is an attempt when the offender commences the commission of a felony directly or over acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than this own spontaneous desistance. (Emphasis supplied)

As discussed, BBB sustained six (6) gunshot wounds, one of them even hit a large artery. Dr. Managuilod opined that BBB would have died if not for the timely medical attention afforded him. In accordance with Article 6 of the RPC, killing becomes frustrated when the offender performs all the acts of execution which could have produced the crime but did not produce it for reasons independent of his or her will.[62] ***People v. Lababo***[63] is apropros:

> As for BBB's case, We agree with the RTC and CA's factual finding that the eight gunshot wounds sustained by BBB, as contained in the *Medico-Legal Certificate*, would have caused his death if he was not given timely medical attention. Furthermore, it does not appear that BBB was armed or was in a position to deflect the attack. As a matter of fact, based on CCC's narration of the events that transpired, the suddenness of the attack upon AAA and BBB cannot be denied. Only that, unlike AAA, BBB survived.
>
> The act of killing becomes frustrated when an offender performs all the acts of execution which could produce the crime but did not produce it for reasons independent of his or her will.
>
> Here, taking into consideration the fact that BBB was shot eight times with the use of a firearm and that AAA, who was with him at that time, was killed, convinces Us that the malefactor intended to take BBB's life as well. However, unlike in AAA's case, BBB survived. It was also established that he survived not because the wounds were not fatal, but because timely medical attention was rendered to him. Definitely, BBB's survival was independent of the perpetrator's will. As such, this Court is convinced that the attack upon BBB qualifies as frustrated murder.

Both the trial court and the Court of Appeals, therefore, did not err in convicting appellants of frustrated murder.

Penalty

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62 Supra note 54, at 40.

63 *People of the Philippines v. Benito Lababo*, G.R. No. 234651, June 06, 2018, 865 SCRA 609, 624-625.

Robbery with Rape

Article 294 of the RPC, as amended by Republic Act 7659,[64] provides:

> **Article 294**. *Robbery with violence against or intimidation of persons - Penalties*. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> 1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.
>
> x x x x x x x x x

Applying Article 63(2) of the RPC,[65] the lesser of the two (2) indivisible penalties, *i.e.*, *reclusion perpetua*, shall be imposed considering that there is no mitigating or aggravating circumstance in this case. Verily, both the trial court and the Court of Appeals correctly sentenced Castrence to *reclusion perpetua*.

As for XXX, he was born on March 30, 1977, he was only sixteen (16) years and eight (8) months old when he committed the crime he was charged with and found guilty of. Since the privileged mitigating circumstance of minority applies to him, the penalty next lower in degree should be imposed, *i.e.*, *reclusion temporal*.[66] In the absence of any ordinary mitigating or aggravating circumstance, XXX should be sentenced to *reclusion temporal* in its medium period.

Under the Indeterminate Sentence Law (ISL), as enunciated in ***Fantastico, et al. v. Malicse, Sr., et al.***,[67] the maximum of the

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64 An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes.

65 Art. 63. *Rules for the application of indivisible penalties.* — x x x
In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:
x x x x
2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

66 *See People v. Deliola*, 794 Phil. 194, 212 (2016).
Art. 68. *Penalty to be imposed upon a person under eighteen years of age.* — When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraphs next to the last of Article 80 of this Code, the following rules shall be observed:
x x x x
2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

67 Supra note 55, at 139.

sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the RPC.

The minimum imposable penalty, therefore, should be within the range of *prision mayor*, *i.e.*, six (6) years and one (1) day to twelve (12) years; and the maximum imposable penalty is within *reclusion temporal* in its medium period, *i.e.*, fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

As for appellants' civil liabilities, ***People v. Jugueta***[68] ordained:

> IV. For Special Complex Crimes like x x x, Robbery with Rape, x x x and other crimes with death, injuries, and sexual abuse as the composite crimes, where the penalty consists of indivisible penalties:
>
> x x x x x x x x x
>
> 2.1 Where the penalty imposed is *reclusion perpetua,* other than the above-mentioned:
>
> a. Civil indemnity - P75,000.00
> b. Moral damages - P75,000.00
> c. Exemplary damages - P75,000.00

In addition to these amounts, appellants must pay AAA the amount of the items stolen from her which was established during trial, *i.e.*, Four Thousand Five Hundred Pesos (₱4,500.00).

Lastly, in accordance with ***Jugueta***, these monetary awards shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

Frustrated Murder

Murder is punishable by *reclusion perpetua* to death if committed through any of the attendant circumstances mentioned in Article 248 of the RPC, as amended by Republic Act 7659.[69] On the other hand, Article 50 of RPC provides:

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68 Supra note 53, at 850.

69 An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes.

> Article 248. *Murder.* - Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances x x x

> Art. 50. *Penalty to be imposed upon principals of a frustrated crime.* — The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony.

In the absence of any modifying circumstances, the imposable penalty for frustrated murder is *reclusion temporal* in its medium period. Once again, under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the RPC.[70] The minimum imposable penalty, therefore, should be within the range of *prision mayor*, *i.e.*, six (6) years and one (1) day to twelve (12) years; and the maximum imposable penalty is within *reclusion temporal* in its medium period, *i.e.*, fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

Again, as regards XXX, the privileged mitigating circumstance of minority applies to him. Thus, the penalty next lower in degree should be imposed on him, *i.e.*, *prision mayor*.[71] Applying the Indeterminate Sentence Law, the minimum imposable penalty should be within the range of the penalty next lower to *prision mayor*, which is *prision correccional*, *i.e.*, six (6) months and one (1) day to six (6) years; and the maximum imposable penalty is within *prision mayor* in its medium period, *i.e.*, eight (8) years and one (1) day to ten (10) years.

As for civil liabilities, ***Jugueta***[72] decreed:

> I. For those crimes like, Murder, Parricide, Serious Intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties:
>
> x x x x x x x x x
>
> 2.2 Where the crime committed was not consummated:

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70 Supra note 55, at 139.

71 Supra note 66, at 212.
Art. 68. *Penalty to be imposed upon a person under eighteen years of age.* — When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraphs next to the last of Article 80 of this Code, the following rules shall be observed:
x x x x
2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

72 Supra note 53, at 847-848.

a. Frustrated:

i. Civil indemnity – P50,000.00
ii. Moral damages – P50,000.00
iii. Exemplary damages – P50,000.00

Appellants are also ordered to pay BBB Fifty Thousand Pesos (P50,000.00) as actual damages representing the amount that he spent for his confinement as proved below.

In accordance with ***Jugueta***, these monetary awards shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

Finally. Appellant XXX, being a minor at the time he committed the offenses, was entitled to suspension of sentence under Republic Act No. 9344 (RA 9344), otherwise known as the Juvenile Justice and Welfare Act of 2006.[73] Records show, however, that when the trial court adjudged appellant XXX guilty of the crimes charged in October 2, 2012, he was already thirty-five (35) years old, hence, no longer qualified for suspension of sentence in accordance with Section 40 of RA 9344.[74] He had been confined at the New Bilibid Prison as Inmate [redacted], upon his conviction by the trial court.[75] In accordance, however, with RA 9344 [76] and ***People v.***

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73 **SEC. 5.** ***Rights of the Child in Conflict with the Law.*** – Every child in conflict with the law shall have the following rights, including but not limited to:
x x x x
(I) in general, the right to automatic suspension of sentence;
x x x x
SEC. 38. ***Automatic Suspension of Sentence.*** – Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided, however*, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.
Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

74 **SEC. 40.** ***Return of the Child in Conflict with the Law to Court.*** – x x x
If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

75 *Rollo*, p. 27.

76 **Section 51.** ***Confinement of Convicted Children in Agricultural Camps and other Training Facilities.*** - A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

Deliola, [77] citing ***People v. Jacinto***[78] and ***People v. Ancajas, et al.***[79] XXX, although he is now more than twenty-one (21) years old, forty-three (43) years old to be exact, and no longer entitled to suspension of sentence, he is, nevertheless still entitled to be confined in an agricultural camp instead of serving sentence in a regular jail. ***Deliola*** enunciated:

> Although it is acknowledged that accused-appellant was qualified for suspension of sentence when he committed the crime, Section 40 of R.A. 9344 provides that the same extends only until the child in conflict with the law reaches the maximum age of twenty-one (21) years old. Nevertheless, in extending the application of RA No. 9344 to give meaning to the legislative intent of the said law, we ruled in *People v. Jacinto*, as cited in *People v. Ancajas*, that **the promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in order that he/she may be given the chance to live a normal life and become a productive member of the community. Thus, accused-appellant is ordered to serve his sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities**, in accordance with Section 51 of R.A. 9344.[80] (Emphasis supplied)

Hubilla v. People[81] further discussed:

> We note that the petitioner was well over 23 years of age at the time of his conviction for homicide by the RTC on July 19, 2006. Hence, **the suspension of his sentence was no longer legally feasible or permissible**.
>
> Lastly, the petitioner posits that condemning him to prison would be in violation of his rights as a child in conflict with the law as bestowed by Republic Act No. 9344 and international agreements.
>
> A review of the provisions of Republic Act No. 9344 reveals, however, that **imprisonment of children in conflict with the law is by no means prohibited.** While Section 5 (c) of Republic Act No. 9344 bestows on children in conflict with the law the right not to be unlawfully or arbitrarily deprived of their liberty; **imprisonment as a proper disposition of a case is duly**

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77 Supra note 66.
78 661 Phil. 224 (2011).
79 772 Phil. 166 (2015).
80 Supra note 66, at 212-213.
81 748 Phil. 441, 450-451 (2014).

> **recognized**, subject to certain restrictions on the imposition of imprisonment, namely: (a) the detention or imprisonment is a disposition of last resort, and (b) the detention or imprisonment shall be for the shortest appropriate period of time. Thereby, the trial and appellate courts did not violate the letter and spirit of Republic Act No. 9344 by imposing the penalty of imprisonment on the petitioner simply because the penalty was imposed as a last recourse after holding him to be disqualified from probation and from the suspension of his sentence, and the term of his imprisonment was for the shortest duration permitted by the law.
>
> A survey of relevant international agreements supports the course of action taken herein. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Guidelines), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Liberty are consistent in recognizing that imprisonment is a valid form of disposition, provided it is imposed as a last resort and for the minimum necessary period.
>
> Lastly, following Section 51 of Republic Act No. 9344, the petitioner, **although he has to serve his sentence, may serve it in an agricultural camp or other training facilities to be established, maintained, supervised and controlled by the Bureau of Corrections, in coordination with the Department of Social Welfare and Development**, in a manner consistent with the offender child's best interest. Such service of sentence will be in lieu of service in the regular penal institution. (Emphasis supplied)

Thus, while the trial court and the Court of Appeals were correct in not suspending XXX's sentence, they could have at least ordered for the service of his sentence in an agricultural camp or other training facilities maintained, supervised and controlled by the Bureau of Corrections, in coordination with the Department of Social Welfare and Development (DSWD).

Section 41[82] of RA 9344 additionally states that the child in conflict with the law shall be credited in the services of his/her sentence with the full time spent in actual commitment and detention under the Act. There is thus, a need to remand the case to the trial court for its appropriate action on XXX's service of sentence.

WHEREFORE, the appeal is **DENIED**. The Decision dated April 15, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07115 is **AFFIRMED with MODIFICATION.**

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[82] Sec. 41. *Credit in Service of Sentence.* – The child in conflict with the law shall be credited in the services of his/her sentence with the full time spent in actual commitment and detention under this Act.

1. In **Criminal Case No. C-45939**, appellants Florendo Castrence y Corilla and XXX are found **GUILTY** of **Robbery with Rape** under Article 294 of the Revised Penal Code. Florendo Castrence y Corilla is sentenced to ***reclusion perpetua***; while appellant XXX, to an indeterminate term of eight (8) years, eight (8) months and one (1) day of *prision mayor*, as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.

They are further ordered to jointly and severally **PAY** AAA the following monetary awards:

(1) ₱75,000.00 as civil indemnity;
(2) ₱75,000.00 as moral damages;
(3) ₱75,000.00 as exemplary damages; and
(4) ₱4,500.00 as actual damages

All monetary awards shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

2. In **Criminal Case No. C-45933**, appellants Florendo Castrence y Corilla and XXX are found **GUILTY** of **Frustrated Murder** under Articles 248 and 250 of the Revised Penal Code. Florendo Castrence y Corilla is sentenced to an indeterminate term of eight (8) years, eight (8) months and one (1) day of *prision mayor*, as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum while appellant XXX is sentenced to an indeterminate term of two (2) years, eleven (11) months and eleven (11) days of *prision correccional*, as minimum to eight (8) years, eight (8) months and one (1) day of *prision mayor*, as maximum.

They are further ordered to jointly and severally **PAY** BBB the following monetary awards:

(1) ₱50,000.00 as civil indemnity;
(2) ₱50,000.00 as moral damages;
(3) ₱50,000.00 as exemplary damages; and
(4) ₱50,000.00 as actual damages

All monetary awards shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

These cases are **REMANDED** to the Regional Trial Court, Branch 130, Caloocan City for its appropriate action on XXX's

service of sentence on both cases, in lieu of confinement in a regular penal institution, in an agricultural camp or other training facilities established, maintained, supervised, and controlled by the Bureau of Corrections in coordination with the Department of Social Welfare and Development, in accordance with Section 51 of Republic Act No. 9344 (RA 9344).

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
83-B$_2$

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The Hon. Presiding Judge
Regional Trial Court, Branch 130
1400 Caloocan City
(Crim. Case Nos. C-45933 & C-45939)

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