



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **30 June 2021** which reads as follows:*

“G.R. No. 250178 (*People of the Philippines v. XXX*). – This appeal assails the Decision¹ of the Court of Appeals in CA-G.R. CR-HC No. 09259 dated July 5, 2019, affirming the conviction of appellant XXX (appellant) for four (4) counts of Statutory Rape and one (1) count of Rape by Sexual Assault.

Antecedents

Under five (5) different Informations dated January 3, 2005, appellant was charged with five (5) counts of Statutory Rape, thus:

Criminal Case No. C-72339

That sometime in the year 2001, in [REDACTED], Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence, force and intimidation did then and there willfully, unlawfully, and feloniously, have sexual intercourse with “AAA,”² who was then eight (8) years old minor, against her will.

CONTRARY TO LAW.³

¹ Penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Ricardo R. Rosario (now a member of this Court) and Perpetua T. Atal-Paño; *rollo*, pp. 3-18.

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 Record, p. 2.

Criminal Case No. C-72340

That sometime in the year 2003, in ██████████, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence, force and intimidation did then and there willfully, unlawfully, and feloniously, have sexual intercourse with “AAA,” who was then ten (10) years old minor, against her will.

CONTRARY TO LAW.⁴

Criminal Case No. C-72341

That on or about 10th day of March 2004, in ██████████, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence, force and intimidation did then and there willfully, unlawfully, and feloniously, have sexual intercourse with “AAA,” eleven (11) years old, a minor, against her will.

CONTRARY TO LAW.⁵

Criminal Case No. C-72342

That sometime in the year 2002, in ██████████, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence, force and intimidation did then and there willfully, unlawfully, and feloniously, have sexual intercourse with “AAA,” who was then nine (9) years old, a minor, against her will.

CONTRARY TO LAW.⁶

Criminal Case No. C-72343

That on or about 12th day of March 2004, in ██████████, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence, force and intimidation did then and there willfully, unlawfully, and feloniously, have sexual intercourse with “AAA,” eleven (11) years old, a minor, against her will.

CONTRARY TO LAW.⁷

On arraignment, appellant pleaded not guilty to all the charges.⁸

During the trial, the prosecution presented AAA, her mother BBB, her maternal aunt CCC, her aunt’s live-in partner DDD, Police Chief Inspector Filemon Porciuncula Jr. (PCI Porciuncula), and Police Officer 1 Carlito

⁴ *Id.* at 13.

⁵ *Id.* at 15.

⁶ *Id.* at 17.

⁷ *Id.* at 19.

⁸ *Id.* at 34.

Sapasap.⁹ The defense, on the other hand, presented appellant and his live-in partner EEE, who is also AAA's maternal aunt.¹⁰

Prosecution's Version

AAA testified that she was living in her maternal grandmother's house, along with other relatives, on [REDACTED], [REDACTED]. Appellant also lived in the same house with EEE. Sometime in December 2001, when she was only eight (8) years old, EEE asked her to watch over her child. While she was watching over the child inside the room of appellant and EEE, appellant suddenly came in, locked the door, and kissed her on the lips. She tried to pull away from him but he threatened to kill her if she resisted. She was so frightened because she knew he had previously killed someone that she could no longer do anything while he kissed her breasts, removed her shorts and underwear, and turned her over. Appellant then forced her to lie on the floor and inserted his penis into her vagina. She later saw some white substance come out of his penis. Thereafter, she left the room.¹¹

She hoped it would be the last time but appellant continued to sexually assault her in 2002 and 2003. She never told anyone because every time he would sexually assault her, he would cover her mouth with his hand and threaten to kill her if she shouted.¹²

On March 10, 2004, at around 10:30 in the evening, appellant again touched her breasts, removed her shorts, and inserted his penis inside her vagina. She felt that there was a sticky substance flowing down her legs. Appellant covered her mouth so she could not shout.¹³

Subsequently, at 10:30 in the evening of March 12, 2004, appellant twisted her arm, forcing her to turn her back towards him with her face against the floor. Appellant then placed himself on top of AAA, held her buttocks, and then inserted his finger in and out of her anus. Thereafter, he inserted his finger inside her vagina. He then kissed her on her legs, breasts, and face.¹⁴

On March 18, 2004, at 10:30 in the evening, DDD went up to the second floor of the house towards the room occupied by AAA to return a saucer. He became suspicious when he noticed that appellant's slippers were outside AAA's room. DDD peeped through the door and saw appellant forcibly trying to remove AAA's blanket. DDD immediately went down and told his live-in partner and AAA's aunt, CCC, about what he saw. CCC then asked AAA about the incident and the latter finally revealed her ordeal in appellant's hands. CCC immediately called BBB, who told them to meet her at the police station so they could report the matter.¹⁵

⁹ *Rollo*, p. 9.

¹⁰ *Id.* at 7.

¹¹ *CA rollo*, pp. 62-64.

¹² *Id.* at 64.

¹³ *Id.* at 65.

¹⁴ *Id.*

¹⁵ *Id.* at 62-63.

In the early morning of March 19, 2004, BBB and CCC assisted AAA in reporting the sexual abuse she endured in appellant's hands. Police officers were dispatched to appellant's house. AAA accompanied them and pointed to appellant as the person who sexually abused her. The police officers thereafter informed appellant about the complaint against him and read him his constitutional rights. Appellant then willingly went with the police.¹⁶

The medico-legal officer of the Northern Police District Crime Laboratory, [REDACTED] Police Station, PCI Porciuncula, conducted a physical and genital examination on AAA. PCI Porciuncula found 'the presence of deep healed laceration at three (3) o'clock positions, and shallow healed laceration at six (6) o'clock positions in AAA's hymen. PCI Porciuncula also conducted an anal examination on AAA and found 'healed fissure at five (5) and twelve (12) o'clock positions.¹⁷

The prosecution offered in evidence AAA's Certificate of Live Birth¹⁸ which showed that she was born on December 31, 1992. Hence, she was only eight (8) years old in December 2001, nine (9) years old in 2002, ten (10) years old in 2003, and eleven (11) years old on March 10 and 12, 2004, respectively.

Defense's Version

Appellant, on the other hand, testified that contrary to AAA's allegations, he was living with his partner EEE in their house on [REDACTED], [REDACTED]. AAA used to visit his house but they were never alone together. On March 10, 2004, he was with EEE and their children. Further, on March 12, 2004, he was at work as a helper delivering textile in a clothing factory. When he got home, he was so tired and went to sleep early.¹⁹

Finally, on March 19, 2004, he was sleeping with EEE and their children when police suddenly went inside their room and arrested him. Although he was confused as to why he was being arrested, he willingly went with the police because he knew he did nothing wrong. He was shocked when he learned that he was being charged with Rape.²⁰

The Ruling of the Trial Court

By Decision²¹ dated February 2, 2017, the trial court rendered a verdict of conviction, thus:

WHEREFORE, the Court finds accused XXX, guilty beyond reasonable doubt of the crimes of four (4) counts of statutory rape in

¹⁶ *Id.* at 63.

¹⁷ *Id.* at 65.

¹⁸ Record, p. 453.

¹⁹ CA *rollo*, p. 66.

²⁰ *Id.*

²¹ Penned by Judge Glenda K. Cabello-Marin; *id.* at 60-80.

" Criminal Case Nos. C-72339, C72340, C-72341 and C-72342. Accordingly, he is hereby sentenced to suffer the penalty of *reclusion perpetua* in each case. Further, the accused is hereby judged civilly liable to AAA. Accordingly, he is hereby ordered to pay said private complainant the following amounts for each case, to wit: a) PhP 50,000.00 as civil indemnity; b) PhP 50,000.00 as moral damages, and c) PhP 50,000.00 as exemplary damages, with interest thereon at the rate of six percent (6%) *per annum* reckoned from the finality of this Decision until fully paid.

In Criminal Case No. C-72343, the Court finds accused XXX guilty beyond reasonable doubt of the crime of rape by sexual assault, as defined under Article 266-A, paragraph (2) of the Revised Penal Code. Accordingly, he is hereby sentenced to suffer the indeterminate penalty of six (6) years of *prision correccional* as minimum term to ten (10) years of *prision mayor* as maximum term. Further, the accused is likewise ordered to pay to AAA the following amounts: a) PhP 30,000.00 as civil indemnity; b) PhP 30,000.00 as moral damages; and PhP 30,000.00 as exemplary damages, with interest thereon at the rate of six percent (6%) *per annum* reckoned from the finality of this Decision until fully paid.

With costs against the accused.

SO ORDERED.²²

The trial court found that the prosecution proved all the elements of Statutory Rape, *i.e.* AAA was below twelve (12) years old, as proven by her Certificate of Live Birth, when appellant had carnal knowledge of her. The findings of the Medico-Legal Officer that AAA had a lacerated hymen and a fissure in the anus were consistent with AAA's allegations. Too, the defense of denial was unavailing as appellant did not impute any ill-motive on AAA.²³

In Criminal Case No. C-72343, AAA testified that appellant inserted his finger into her anus and vagina, and kissed her on the legs, breasts, and face. Appellant, thus, could only be convicted of Rape by Sexual Assault because AAA did not testify that appellant inserted his penis into her vagina.²⁴

Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for convicting him of four (4) counts of Statutory Rape and one (1) count of Rape by Sexual Assault despite the doubtful credibility of AAA. The discrepancies between AAA's allegations in her *Sinumpaang Salaysay* dated March 19, 2004 and in her testimony in open court rendered her testimony incredible specifically, on whether EEE asked AAA to babysit their children and whether he held her legs and covered her mouth, which were details that did not appear in her *Salaysay*.²⁵

²² *Id.* at 79-80.

²³ *Rollo*, p. 8.

²⁴ *CA rollo*, p. 78.

²⁵ Brief for the Accused-Appellant; *id.* at 43-59.

For its part, the Office of the Solicitor General (OSG) maintained that the prosecution sufficiently proved appellant's guilt based on the categorical and candid testimony of AAA. The discrepancies in AAA's testimony were trivial and did not destroy her credibility. DDD's testimony and PCI Porciuncula's findings clearly corroborated AAA's testimony. Finally, appellant's defense of denial was weak, and considering he was living in the same house with AAA, it was not impossible for him to have raped and sexually assaulted AAA.²⁶

The Ruling of the Court of Appeals

By Decision²⁷ dated July 5, 2019, the Court of Appeals affirmed but modified the penalties imposed by the trial court to conform with recent jurisprudence, *viz.*:

We **MODIFY** the Decision dated 2 February 2017 issued by the Regional Trial Court, Branch 124, [REDACTED], in Criminal Case Numbers C-72339-43, as follows:

- (1) In Criminal Case Number C-72339, Criminal Case Number C-72340, Criminal Case Number C-72341, and Criminal Case Number C-72342, we find XXX GUILTY BEYOND REASONABLE DOUBT of statutory rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended, and sentence him to imprisonment of *reclusion perpetua* for each count of statutory rape, and order him to pay AAA PhP 75,000.00 (as civil liability), PhP 75,000.00 (as moral damages), and PhP 75,000.00 (as exemplary damages) for each count of statutory rape;
- (2) In Criminal Case Number C-72343: we find XXX GUILTY BEYOND REASONABLE DOUBT of rape by sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code, as amended, and sentence him to imprisonment of twelve (12) years, ten (10) months and twenty-one (21) days of reclusion temporal (as minimum), to fifteen (15) years, six (6) months, and twenty (20) days of reclusion temporal (as maximum), and order him to pay AAA PhP 50,000.00 (as civil liability), PhP 50,000.00 (as moral damages), and PhP 50,000.00 (as exemplary damages).

All damages awarded shall bear interest at six percent (6%) per annum from finality of this Decision, until full payment.

IT IS SO ORDERED.²⁸

The Court of Appeals ruled that the elements of Statutory Rape were proven beyond reasonable doubt. Appellant had carnal knowledge of AAA on the material years and date in question, *i.e.* 2001, 2002, 2003, and March 10,

²⁶ Brief for the Appellee; *id.* at 95-115.

²⁷ *Rollo*, pp. 3-18.

²⁸ *Id.* at 17.

2004, while AAA was below twelve (12) years old. Notably, AAA's testimony that appellant raped her was candid, clear, and categorical.²⁹

Too, the prosecution was able to prove appellant's guilt for Rape by Sexual Assault. AAA's testimony sufficiently established that appellant used force and intimidation as a means to commit sexual assault by inserting his finger in her anus and vagina. The Court of Appeals held that AAA, then under twelve (12) years old and a child victim, had no reason to concoct stories against appellant, absent any evidence of any ill-will or motive on her part.³⁰

The Present Appeal

Appellant now seeks anew a verdict of acquittal.³¹ The OSG manifested that, in lieu of a supplemental brief, it is adopting its brief before the Court of Appeals.³² Meanwhile, the Court issued a Resolution dated February 15, 2021³³ dispensing with appellant's supplemental brief.

Issue

Did the Court of Appeals err in affirming appellant's guilt for four (4) counts of Statutory Rape and one (1) count of Rape by Sexual Assault?

The Court's Ruling

***Criminal Case Nos. C-72339,
C-72340, C-72341, C-72342***

Statutory Rape is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape. For the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of Statutory Rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.³⁴

Here, the prosecution was able to prove that AAA, having been born on December 31, 1992 as evidenced by her Certificate of Live Birth,³⁵ was indeed below twelve (12) years old during the material times alleged in the Informations, *i.e.* December 2001, sometime in 2002, sometime in 2003, and on March 10 and 12, 2004 respectively.

²⁹ *Id.* at 11-13.

³⁰ *Id.* at 13-15.

³¹ *Id.* at 19-20.

³² *Id.* at 28-29.

³³ Not in *rollo*.

³⁴ *People v. _____*, G.R. No. 229836, July 17, 2019.

³⁵ Record, p. 453.

Too, AAA's testimony that appellant raped her was clear and categorical, viz.:

Q: What happened during the last week of December, 2001 that caused you cry AAA?

A: For what he did to me sir.

Q: Can you tell us in your own words what XXX did to you?

A: He inserted his penis in my vagina sir.

Q: How many times did he do that?

A: So many times sir, I cannot remember anymore.³⁶

x x x x

Q: AAA, what did he do before he inserted his penis to your private organ or to your vagina?

A: He pulled me and then he removed my panty and my short then he showed his penis then he pulled me again towards him then he placed his penis towards my vagina and then he forced to insert it in. I was resisting then but he was holding my feet and legs.

Q: What was he doing when he was holding his legs?

A: He told me not to shout. I tried to shout but he covered my mouth.³⁷

x x x x

Q: And then what happened afterwards? Was he able to insert his penis in your private organ?

A: Yes, sir.³⁸

x x x x

Q: And March 10, what did he do to you?

A: Same thing sir, he touched my breast, he removed his shorts then he again inserted his penis in my vagina down to my anus.

Q: What did you feel AAA.

A: I felt that there is a sticky substance flowing down to my legs then he inserted it then while he was caressing my breast his hand was on my face covering my mouth.³⁹

x x x x

AAA further confirmed on the stand her *Sinumpaang Salaysay* dated March 19, 2004.⁴⁰

5. TANONG : *Bakit mo gustong ireklamo si Kuya XXX mo?*

SAGOT : *Dahil po sa ginawa niyang pagpasok ng titi niya sa pekpek ko at sa puwet ko po, at ang panghihipo po niya sa dede at ari ko po.*

³⁶ *Rollo*, pp. 11-12.

³⁷ *Id.* at 12.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Record, pp. 3-5.

x x x x

7. *TANONG* : *Maari mo bang isalaysay ang buong pangyayari?*
*SAGOT: x x x. At 2002 po ay malimit pa rin niya akong minomoloestiya, pinapasok pa rin po ang titi niya sa ari ko, at tuwing ikalawang araw po iyon, at wala pong oras minsan po sa umaga, hapon, o kaya po sa gabi. 2003 po ay madalas pa rin na makipag-sex si Kuya XXX sa akin, at tinatakot pa rin po niya ako kaya di ako makapagsumbong.*⁴¹

x x x x

Indeed, AAA gave a detailed, spontaneous, and consistent narration of her ordeal. The nature of the crime of Rape often entails reliance on the lone and uncorroborated testimony of the victim, which is sufficient for a conviction, provided that such testimony is clear, convincing, and otherwise consistent with human nature,⁴² as here.

But AAA's testimony did not stand alone. The trial court and the Court of Appeals also considered the corroborative medical findings of PCI Porciuncula that AAA sustained deep healed laceration at three (3) o'clock position and shallow healed laceration at six (6) o'clock position in her hymen. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. When the forthright testimony of a rape victim is consistent with medical findings, as in this case, the essential requisites of carnal knowledge or deemed to have been sufficiently established.⁴³

Appellant, however, submits that AAA's credibility is not as reliable as the trial court decided it to be. He alleges that her testimony is riddled with inconsistencies. He first states that it is doubtful that he and his partner would even ask AAA to babysit their children because AAA was feverish at the time. More, AAA embellished her testimony in open court by mentioning that appellant held her legs and covered her mouth, which were details that did not appear in her *Sinumpaang Salaysay*. In sum, appellant posits that AAA is not a credible witness.⁴⁴

We cannot agree.

We note that AAA was below twelve (12) years old when she was sexually ravished. It is settled that when the offended party is of tender age, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability, but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be

⁴¹ *Id.* at 445.

⁴² See *People v. Castillo*, G.R. No. 242276, February 18, 2020.

⁴³ See *People v. Pagkatipunan*, G.R. No. 232393, August 14, 2019.

⁴⁴ CA rollo, pp. 50-52.

compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as a mere concoction.⁴⁵

Too, the trial court and the Court of Appeals uniformly gave credence to AAA's testimony and concluded that she was a credible witness. Indeed, 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 has the unique opportunity to observe the witnesses' demeanor, and is in the best position to discern whether they are telling the truth or not.⁴⁶ This rule becomes more compelling when such factual findings carry the full concurrence of the Court of Appeals, as in this case.

In any case, the alleged inconsistencies in AAA's testimony and *Sinumpaang Salaysay* pertaining to whether appellant and EEE asked AAA to babysit and whether he held down her legs or covered her mouth are trivial matters that do not affect her credibility. Indeed, *People v. Corpuz*⁴⁷ held that discrepancies referring only to minor details and collateral matters – not to the central fact of the crime – do not affect the veracity or detract from the essential credibility of witnesses' declarations, as long as these are coherent and intrinsically believable on the whole.⁴⁸

Against AAA's positive testimony, appellant only offered denial. We have pronounced time and again that denial is an inherently weak defense which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial on the other, the former is generally held to prevail.⁴⁹

Criminal Case No. C-72343

In Criminal Case No. C-72343, the trial court, as affirmed by the Court of Appeals, found appellant guilty of Rape by Sexual Assault. *People v. Bagic*⁵⁰ enumerated the elements of rape by sexual assault, viz.:

- (1) The offender commits an act of sexual assault;
- (2) 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

⁴⁵ *People v. Cadano*, 729 Phil. 576, 585 (2014).

⁴⁶ *People v. Nelmida*, 694 Phil. 529, 556 (2012).

⁴⁷ 714 Phil. 337, 345 (2013).

⁴⁸ *Id.*

⁴⁹ *People v. Batalla*, G.R. No. 234323, January 7, 2019.

⁵⁰ 822 Phil. 784, 800 (2017).

(d) **When the woman is under 12 years of age** or demented. (Emphases supplied)

Here, AAA testified on how appellant sexually ravished her, thus:

Q: Can you recall what happened on March 12, 2004?

A: He asked me to turn around. He twisted my arm and forced me to turn.

Q: And then what happened next?

A: He placed himself on top of me.

Q: And then what happened

A: He held my buttocks and he inserted his finger in my anus.

Q: What did he do with his finger, did he push it in and out?

A: Yes, sir.

Q: Then what happened?

A: Then he inserted his finger in my vagina”

Q: And then what happened?

A: Then he played with his finger inside my vagina”⁵¹

x x x x

Based on AAA’s testimony, thus, appellant raped her by sexual assault on March 12, 2004, *i.e.*, appellant inserted his finger into her vagina and she was only eleven (11) years old at the time, having been born on December 31, 1992 as evidenced by her Certificate of Live Birth.

Notably, however, the Information dated January 3, 2005⁵² in Criminal Case No. C-72343 did not charge appellant with rape by sexual assault but with rape by sexual intercourse. We refer back to the original Information, *viz.*:

That on or about 12th day of March 2004, in [REDACTED], Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence, force and intimidation did then and there willfully, unlawfully, and feloniously, have sexual intercourse with “AAA,” eleven (11) years old, a minor, against her will.

CONTRARY TO LAW.⁵³

*People v. Caoili*⁵⁴ ordains that an accused charged in the Information with Rape by Sexual Intercourse cannot be found guilty of Rape by Sexual Assault, even though the latter crime was proven during trial, thus:

By jurisprudence, however, an accused charged in the Information with rape by sexual intercourse cannot be found guilty of rape by sexual

⁵¹ *Rollo*, p. 14.

⁵² *Record*, p. 19.

⁵³ *Id.*

⁵⁴ 815 Phil. 839, 882-885 (2017).

assault, even though the latter crime was proven during trial. This is due to the substantial distinctions between these two modes of rape.

The elements of rape through sexual intercourse are: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force or intimidation. Rape by sexual intercourse is a crime committed by a man against a woman, and the central element is carnal knowledge.

On the other hand, the elements of rape by sexual assault are: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others.

In the first mode (rape by sexual intercourse): (1) the offender is always a man; (2) the offended party is always a woman; (3) rape is committed through penile penetration of the vagina; and (4) the penalty is *reclusion perpetua*.

In the second mode (rape by sexual assault): (1) the offender may be a man or a woman; (2) the offended party may be a man or a woman; (3) rape is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person; and (4) the penalty is *prision mayor*.

x x x x

In fine, given the material distinctions between the two modes of rape introduced in R.A. No. 8353, the variance doctrine cannot be applied to convict an accused of rape by sexual assault if the crime charged is rape through sexual intercourse, since the former offense cannot be considered subsumed in the latter.

Under the variance doctrine,⁵⁵ however, the prosecution's failure to prove the charge of rape may nevertheless result in a conviction for Acts of Lasciviousness without violating the due process right of the accused. For Acts of Lasciviousness is a lesser offense necessarily included in the charge of rape.⁵⁶

Notably, in *People v. Tulagan*,⁵⁷ the Court decreed that when the victim is under twelve (12) years of age at the time the offense was committed, as here, the offense shall be designated as Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to Section 5 of Republic Act No. 7610 (RA 7610). Thus, before an accused can be convicted of child abuse through lascivious conduct on a minor below twelve (12) years of age, the requisites of Acts of Lasciviousness under Article 336 of the RPC must be

⁵⁵ Section 5. *When an offense includes or is included in another.*— An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter.

⁵⁶ See *BBB v. People*, G.R. No. 249307, August 27, 2020.

⁵⁷ G.R. No. 227363, March 12, 2019.

present in addition to the requisites of sexual abuse under Section 5 of RA 7610.

The elements of Acts of Lasciviousness under Article 336 of the RPC are: **(a) the offender commits any act of lasciviousness or lewdness upon another person of either sex;** and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or **(iii) when the offended party is under twelve (12) years of age.**⁵⁸ Lewd is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity.⁵⁹

Here, AAA positively testified that in March 2014, when she was eleven (11) years old, appellant twisted her arm, forcing her to turn her back towards him with her face against the floor. Appellant then placed himself on top of her, held her buttocks, and then inserted his finger in and out of her anus. Thereafter, he inserted his finger inside AAA's vagina. He then kissed AAA on her legs, breasts, and face. Hence, all the elements of Lascivious Conduct under RA 7610 and Acts of Lasciviousness under Article 336 of the RPC were clearly established.

Penalties

Criminal Cases Nos. C-72339, C-72340, C-72341, C-72342

The trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua* for each count of Statutory Rape in accordance with *Tulagan*. The Court of Appeals, too, correctly increased the monetary awards of civil indemnity, moral damages, and exemplary damages to ₱75,000.00 each for every count of Statutory Rape, pursuant to *People v. Jugueta*.⁶⁰

Criminal Case No. C-72343

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 *Tulagan* the Court clarified:

x x x x

In *People v. Caoili*, 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

⁵⁸ See *Capueta v. People*, G.R. No. 240145, September 14, 2020.

⁵⁹ See *People v. Arcega*, G.R. No. 237489, August 27, 2020.

⁶⁰ 783 Phil. 806, 849 (2016).

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)

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.⁶¹

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, *Tulagan* sets the awards for civil, moral, and exemplary damages in Acts of Lasciviousness, in relation to Section 5(b) of RA 7610 at ₱50,000.00 each. These amounts shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

Likewise, pursuant to Section 31(f) of RA 7610⁶² a fine may be imposed on the perpetrator, which jurisprudence pegs at ₱15,000.00.⁶³

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals dated July 5, 2019 in CA-G.R. CR-HC No. 09259 is **AFFIRMED with MODIFICATION**.

In Criminal Case Nos. C-72339, C-72340, C-72341, and C-72342, appellant **XXX** is found **GUILTY** of **four (4) counts of Statutory Rape**, defined and penalized under Article 266 of the Revised Penal Code, as amended by Article 266-A paragraph 1(d), in relation to Article 266-B paragraph 5 of Republic Act No. 8353 and sentenced to *reclusion perpetua* for each count. He is further ordered **TO PAY AAA ₱75,000.00** as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages for each count of Statutory Rape.

In Criminal Case No. C-72343, **XXX** is found **GUILTY** of **Acts of Lasciviousness**, defined and penalized under Article 336 of the Revised Penal

⁶¹ *Quimvel v. People*, G.R. No. 214497, April 18, 2017.

⁶² Section 31. *Common Penal Provisions*. – x x x.

x x x x

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

⁶³ *People v. XXX*, G.R. No. 235662, July 24, 2019.

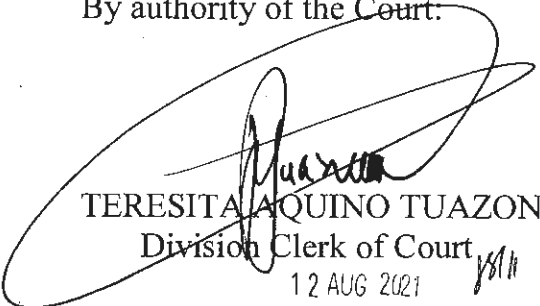
June 30, 2021

Code, in relation to Section 5(b), Article III of Republic Act 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 AAA ₱50,000.00** as civil indemnity; **₱50,000.00** as moral damages; **₱50,000.00** as exemplary damages; and **₱15,000.00** as fine.

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

SO ORDERED.” (Rosario, J., no part due to prior action in the Court of Appeals; Zalameda, J., designated as additional member in lieu of Rosario, J. per Raffle dated February 15, 2021; Lopez, J., designated additional member per Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court
 12 AUG 2021

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XXX (reg)

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 124
 Caloocan City
 (Crim. Case Nos. C-72339-43)

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 Supreme Court, Manila

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*with copy of CA Decision dated 5 July 2019
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