



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 17, 2021 which reads as follows:

“G.R. No. 251142 — PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus YYY,¹ accused-appellant.

After a careful review of the records of the case and the issues submitted by the parties, the Court **AFFIRMS WITH MODIFICATIONS** the Decision² dated February 26, 2019 of the Court of Appeals, Seventh Division (CA) in CA-G.R. CR-HC No. 09491. The facts, as borne out by the records, sufficiently support the conclusion that accused-appellant is **GUILTY** of the following crimes: (1) Rape under Article 266-A(1) of the Revised Penal Code (RPC); and (2) Two counts of Lascivious Conduct under Section 5(b) of Republic Act No. (RA) 7610.

Settled is the rule that in the absence of facts or circumstances of weight and substance that would affect the result of the case,

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¹ The identity of the victims or any information which could establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to Republic Act No. (R.A.) 7610, entitled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES,” approved on June 17, 1992; R.A. 9262, entitled “AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES,” approved on March 8, 2004; and Section 40 of Administrative Matter No. 04-10-11-SC, otherwise known as the “RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN” (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 (2014), citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, titled “PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES,” dated September 5, 2017; and *People v. XXX and YYY*, G.R. No. 235652, July 9, 2018, 871 SCRA 424.)

² *Rollo*, pp. 3-14. Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Sesinando E. Villon and Edwin D. Sorongon concurring.

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appellate courts will not overturn the findings of the trial court. Thus, when the culpability or innocence of an accused hinges on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest degree of respect as they are afforded the unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination during trial.³

In this case, after a careful examination of the records of this case, the Court finds no cogent reason to vacate the Regional Trial Court's (RTC) appreciation of the evidence, which was affirmed by the CA.

Criminal Case No. 07-33734

The Court finds no reason to depart from the findings of the courts *a quo* that all the elements of rape under Article 266-A(1) of the RPC committed against AAA have been established beyond reasonable doubt. AAA positively identified accused-appellant as the one who placed himself on top of her, mashed her breast, removed her shorts and forcibly tried to fully insert his penis into her vagina.⁴ Accused-appellant accomplished his bestial act by threatening AAA that he would kill her mother if she shouted.⁵

Accused-appellant, however, maintains that the prosecution failed to prove that there was consummation of the carnal act.⁶

The Court is not persuaded.

It must be emphasized that carnal knowledge, as an element of rape under Article 266-A(1) of the RPC, is not synonymous to sexual intercourse in its ordinary sense; it implies neither the complete penetration of the vagina nor the rupture of the hymen.⁷ Thus, as jurisprudence has clarified, for rape to be consummated, there must at least be proof that accused's erect penis touched the labia of the victim's vagina, regardless of whether full or partial penetration, was actually obtained.⁸

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³ *Reyes, Jr. v. Court of Appeals*, G.R. No. 127703, January 18, 2002, 374 SCRA 86, 92.

⁴ *Rollo*, p. 5.

⁵ *Id.*

⁶ *Id.* at 8.

⁷ *People v. Bay-od*, G.R. No. 238176, January 14, 2019, 890 SCRA 377, 388; citation omitted.

⁸ *See People v. Campuhan*, G.R. No. 129433, March 30, 2000, 329 SCRA 270; *People v. Lerio*, G.R. No. 116729, January 31, 2000, 324 SCRA 76; and *People v. Bali-Balita*, G.R. No. 134266, September 15, 2000, 340 SCRA 450.

Here, the fact that accused-appellant had carnal knowledge of AAA was clearly established by the latter's testimony.

Q: By the way, Miss Witness, you said that the accused here pulled you in your right hand and brought you inside the room, where were you located exactly inside the room?

A: In the bed.

X X X

Q: Was he totally naked?

A: Yes, sir.

Q: What did he do next after undressing himself?

A: He placed himself on top of me.

Q: When he was on top of you, what did you do?

A: Nothing, I just cried and I said Kuya itigil mo na 'yan.

Q: When you said "Kuya itigil mo na 'yan," did he stop?

A: No, sir, but he said that "huwag kang sisigaw, kung hindi papatayin ko si mama". (He said: do not shout or else he [will] kill my mother)

Q: How did you feel when the accused told you, "huwag kang sisigaw, kung hindi papatayin ko si Mama".

A: I got frightened.

Q: When the accused here was already naked, and he was on top of you and you were naked also, what did he do next?

A: He just kissed me.

Q: **Were you able to feel his penis?**

A: **Yes, sir.**

Q: **Was it erect?**

A: **Yes, sir.**

Q: **How were you able to feel?**

A: **"Ipinapasok n'ya po kasi non".**

Q: **Where?**

A: **In my vagina.**

Q: **Was he able to insert his penis in your vagina?**

A: **No, sir because it hurts.**

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- Q: **Were you able to feel his penis?**
A: **Yes, sir.**
- Q: **When he was trying to insert his whole penis inside your vagina, what happened?**
A: **It's painful.**
- Q: **After he was doing this, what happened?**
A: **He is still trying to insert his penis into my vagina but he was not able to do so.**
- Q: Why he was not able to insert his penis in your vagina?
A: That was the time his son entered the house.
- Q: What made you sure it was the penis of the accused?
A: Because his hands [are] holding my hands.
- Q: Both of his hands?
A: Yes, sir.⁹

It is clear from the foregoing that even before accused-appellant's son entered the house, rape against AAA was already consummated. AAA clearly stated that accused-appellant repeatedly tried to insert his erect penis into her vagina, which caused her extreme pain. AAA's statement that accused-appellant was not able to insert his penis into her vagina should then be understood to mean that there was no full penetration. However, there can be no doubt that there was at least a partial entry of accused-appellant's penis because the pain that AAA felt could be nothing but the result of penile penetration sufficient to constitute consummated rape.¹⁰

Indeed, in *People v. Quiñanola*,¹¹ the Court held that “[t]he crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ or, as once so said in a case, by the ‘*mere touching of the external genitalia by a penis capable of consummating the sexual act.*’”¹²

Further, the Court, in *People v. Gabayron*,¹³ ruled that “[w]hat must be proven in the crime of rape is merely the introduction of the male organ into the labia of the pudendum and not the full penetration

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⁹ CA rollo, pp. 84-85, citing TSN, April 7, 2014, pp. 6-13; italics omitted, emphasis supplied.
¹⁰ See *People v. Sanchez*, G.R. Nos. 98402-04, November 16, 1995, 250 SCRA 14 and *People v. Ombreso*, G.R. No. 142861, December 19, 2001, 372 SCRA 675.
¹¹ G.R. No. 126148, May 5, 1999, 306 SCRA 710.
¹² Id. at 731; emphasis and italics supplied, citations omitted.
¹³ G.R. No. 102018, August 21, 1997, 278 SCRA 78.

of the complainant's private part."¹⁴ **Thus, a victim's testimony that she felt pain already established without doubt that accused's organ managed to come into contact with the victim's vagina.**¹⁵

And in *People v. Escobar*,¹⁶ the Court has said:

While the evidence may not show full penetration on both occasions of rape, the slightest penetration is enough to consummate the offense. In fact, there was vulva penetration in both cases. The fact that the hymen was intact upon examination does not belie rape for a broken hymen is not an essential element of rape; nor does the fact that the victim has remained a virgin negate the crime. **What is fundamental is that the entrance, or at least the introduction, of the male organ into the labia of the pudendum is proved. As in the case at bar, it can be said that there was penetration, although incomplete, and it was sufficient to prove carnal knowledge of a child under twelve years of age.** A medical examination is not an indispensable element in a prosecution for rape. The accused may be convicted on the sole basis of complainant's testimony, if credible, and the findings of the medico-legal officer do not disprove the commission of rape.

There are no half measures or even quarter measures nor is their gravity graduated by the inches of entry. Partial penile penetration is as serious as full penetration. The rape is deemed consummated in either case. In a manner of speaking, bombardment of the drawbridge is invasion enough even if the troops do not succeed in entering the castle.¹⁷

As to the penalty imposed, the CA correctly sentenced accused-appellant to suffer the penalty of *reclusion perpetua* pursuant to Article 266-B of the RPC. The civil indemnity and damages, as modified by the CA, were also proper pursuant to prevailing jurisprudence.¹⁸

***Criminal Cases Nos. 07-33199
and 07-33733***

The Court also finds no reason to reverse the factual findings of the RTC in Criminal Cases Nos. 07-33199 and 07-33733, wherein accused-appellant was charged with two counts of Rape by Sexual Assault under Article 266-A(2) of the RPC.

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¹⁴ Id. at 93; citation omitted.

¹⁵ Id.; emphasis supplied. See also *People v. Ombreso*, supra note 10.

¹⁶ G.R. Nos. 122980-81, November 6, 1997, 281 SCRA 498.

¹⁷ Id. at 507; emphasis supplied, citations omitted.

¹⁸ *People v. Jugueta*, G.R. No. 212124, April 5, 2016, 788 SCRA 331.

AAA testified, in a clear and straightforward manner, that on January 25, 2007, accused-appellant took his mattress, which he laid on the living room floor. Then, he suddenly pulled AAA towards him and mashed her breasts. AAA begged accused-appellant to stop but accused-appellant continued his bestial acts and inserted his finger into AAA's vagina. AAA felt pain and told accused-appellant that it was painful. Accused-appellant then stood up and left the house.¹⁹ AAA further testified that on January 28, 2007, accused-appellant continued his bestial motives. When AAA arrived home, accused-appellant instructed her to go to the room. When inside the room, accused-appellant forcibly laid AAA on the bed, mashed her breasts and kissed her lips. AAA struggled and cried for him to stop but accused-appellant did not heed her pleas and inserted his fingers into her vagina, one by one. AAA felt extreme pain, cried and begged accused-appellant to stop.²⁰

In both these instances, the Court agrees with the courts *a quo*, that accused-appellant employed force and intimidation against AAA. AAA's struggles and cries during the incidents clearly indicate that the acts of accused-appellant were against her will. Moreover, as aptly found by the trial court, accused-appellant's threat to kill AAA's mother during the first incident of rape cowed AAA into submitting to accused-appellant's lustful demands.²¹

However, as AAA was aged fourteen (14) at the time the incidents happened, in view of the Court's ruling in *People v. Tulagan*²² (*Tulagan*), a modification of the nomenclature of the crime, penalty imposed and damages awarded are in order.

In *Tulagan*, the Court prescribes the following guidelines in the proper designation or nomenclature of acts constituting sexual assault and the imposable penalty depending on the age of the victim, *viz.*:

Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta* and *Caoli*, We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610" and no longer "Acts of Lasciviousness under Article 336 of the RPC in

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¹⁹ *Rollo*, pp. 5-6; *CA rollo*, p. 87, citing TSN, September 2, 2014, pp. 5-8.

²⁰ *Id.* at 6; *id.* at 87-88, citing TSN, November 3, 2014, pp. 9-10.

²¹ *CA rollo*, pp. 55-56.

²² G.R. No. 227363, March 12, 2019, 896 SCRA 307.

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

*Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be “Lascivious Conduct under Section 5(b) of R.A. No. 7610” with the impossible penalty of reclusion temporal in its medium period to reclusion perpetua, but it should not make any reference to the provisions of the RPC. It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as “Sexual Assault under paragraph 2, Article 266-A of the RPC” with the impossible penalty of prision mayor.*²³

In line with the foregoing pronouncement, accused-appellant should be convicted of the crime of Lascivious Conduct under Section 5(b) of RA 7610, instead of Rape by Sexual Assault under Article 266-A(2) of the RPC.²⁴ Thus applying the Indeterminate Sentence Law,²⁵ accused-appellant should be sentenced to suffer the penalty of imprisonment for an indeterminate period of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, for each count of the aforesaid crime. He should also be ordered to pay civil indemnity, moral damages and exemplary damages in the amount of Php50,000.00 each, for each count of the aforesaid crime.²⁶

Finally, the Court agrees with the lower courts, that accused-appellant’s twin defenses of alibi and denial, which are inherently weak, cannot prevail over the positive and credible testimony of AAA that accused-appellant committed the crime. As between a categorical testimony which has the ring of truth on the one hand, and a mere denial and alibi on the other, the former is generally held to prevail.²⁷ Further, accused-appellant’s claim that he was out of the house at the time of the three incidents does not negate the possibility that he committed the same as he failed to adduce evidence that it was physically impossible for him to have been present at the crime scene at the time of their commission.²⁸

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²³ Id. at 368-369; italics and underscoring supplied, citations omitted.

²⁴ Id.

²⁵ “[I]f the special penal law adopts the nomenclature of the penalties under the RPC, the ascertainment of the indeterminate sentence will be based on the rules applied for those crimes punishable under the RPC.” (*Peralta v. People*, G.R. No. 221991, August 30, 2017, 838 SCRA 350, 365; citation omitted. See also *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, 860 SCRA 86, 97.)

²⁶ *People v. Fornillos*, G.R. No. 231991, January 27, 2020.

²⁷ *People v. Nievera*, G.R. No. 242830, August 28, 2019.

²⁸ *Rollo*, p. 12.

WHEREFORE, premises considered, the Court finds accused-appellant **YYY**:

1. In Criminal Case No. 07-33734, **GUILTY** beyond reasonable doubt of the crime of Rape under Article 266-A(1) of the Revised Penal Code and sentenced to suffer the penalty of *reclusion perpetua*. He is **ORDERED TO PAY** the victim AAA the amounts of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php75,000.00 as exemplary damages; and
2. In Criminal Cases Nos. 07-33199 and 07-33733, **GUILTY** beyond reasonable doubt of two counts of Lascivious Conduct under Section 5(b) of Republic Act No. 7610 and is sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, for each count of Lascivious Conduct under Section 5(b) of Republic Act No. 7610. He is **ORDERED TO PAY** the victim AAA the amounts of Php50,000.00 as civil indemnity; Php50,000.00 as moral damages; and Php50,000.00 as exemplary damages, for each count of Lascivious Conduct under Section 5(b) of Republic Act No. 7610.

The amount of civil indemnity and damages are subject to interest of six percent (6%) *per annum* from the time of finality of this Resolution until fully paid.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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The Solicitor General
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Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 09491)

The Hon. Presiding Judge
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(Crim. Case Nos. 07-33199, 07-33733
& 07-33734)

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