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Welfredo V. Lapitan
WELFREDO V. LAPITAN
Division Clerk of Court
Third Division

Republic of the Philippines
Supreme Court
Manila

JAN 25 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-appellee,

G.R. No. 229100

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
BERSAMIN,
LEONEN,
MARTIRES, and
GISMUNDO, JJ.

ROMEO AGONCILLO Y VISTO,
Accused-appellant.

Promulgated:

November 20, 2017

X ----- X

DECISION

GISMUNDO, J.:

This is an appeal from the Decision,¹ dated November 27, 2015, of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06254, which affirmed the Decision,² dated August 16, 2012, of the Regional Trial Court, Branch 49, Urdaneta City, Pangasinan (RTC) convicting accused-appellant Romeo Agoncillo y Visto (*accused-appellant*) for three (3) counts of rape in Criminal Case Nos. U-13564, U-13565 and U-13566 and for one (1) count of acts of lasciviousness in Criminal Case No. U-13569.

Under five Informations,³ identically dated December 1, 2004, accused-appellant was charged with the following:

¹ Penned by Associate Justice Elihu A. Ybañez with Associate Justice Magdangal M. De Leon and Associate Justice Victoria Isabel A. Paredes, concurring; *rollo*, pp. 2-21.

² Penned by Presiding Judge Efren B. Tienzo; CA *rollo*, pp. 110-121.

³ Id. at 110-111.

Criminal Case No. U-13564

That sometime in the year 2001 at XXX, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have sexual intercourse with AAA, **minor, 9 years old**, against her will and without her consent, to her damage and prejudice.

CONTRARY TO Art. 266-A, par. 1 in rel. to Art. 266-B, 1st par., as amended by R.A. No. 8353.

Criminal Case No. U-13565

That sometime in the year 2002 at XXX, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have sexual intercourse with AAA, **minor, 10 years old**, against her will and without her consent, to her damage and prejudice.

CONTRARY TO Art. 266-A, par. 1 in rel. to Art. 266-B, 1st par., as amended by R.A. No. 8353.

Criminal Case No. U-13566

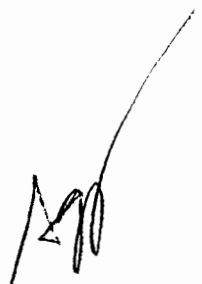
That sometime in the year 2003 at XXX, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have sexual intercourse with AAA, **minor, 11 years old**, against her will and without her consent, to her damage and prejudice.

CONTRARY TO Art. 266-A, par. 1 in rel. to Art. 266-B, 1st par., as amended by R.A. No. 8353.

Criminal Case No. U-13567

That on or about 3:00 o'clock in the afternoon of September 9, 2004 at Brgy. XXX and within the jurisdiction of this Honorable Court, the above-named accused, being the **adoptive father of CCC, minor, 3 years old**, possessing moral ascendancy over the latter, did then and there wilfully, unlawfully and feloniously have sexual intercourse with said CCC, against her will and without her consent, to her damage and prejudice.

CONTRARY TO Art. 266-A, par. 1 in rel. to Art. 266-B, 1st par., as amended by R.A. No. 8353.



Criminal Case No. U-13569

That on or about 12:30 o'clock in the afternoon of August 14, 2004, at XXX, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously perform lascivious conduct upon AAA, **minor, 12 years old**, by embracing her and holding her vagina against her will and without her consent, to her damage and prejudice, which acts degrade and demean the intrinsic worth and dignity of said minor as a human being.

CONTRARY TO Art. 366, Revised Penal Code in relation to Section 5, par. B, of R.A. 7610.

Upon arraignment on February 10, 2005,⁴ accused-appellant pleaded "not guilty" to the charges. Thereafter, trial ensued.

Evidence of the Prosecution

The prosecution presented private complainant AAA, her mother BBB, Dr. Josephine B. Guiang (*Dr. Guiang*) and PO3 Mandy Ribo. Their combined testimonies established the following:

AAA was born on May 26, 1992, as shown in her Certification of Fact of Birth⁵ issued by the Office of the Civil Registrar of XXX, Pangasinan. Accused-appellant is AAA's uncle, being the husband of BBB's sister.

AAA narrated that the first incident occurred in 2001 when she was nine (9) years old. While AAA was inside the comfort room, accused-appellant entered and placed his hands between her legs. She tried to remove his hands but she was not able to. Suddenly, AAA felt accused-appellant insert his index finger in her vagina, and she felt pain. He poked a knife at her and threatened to kill her and her family if she will report the incident. Accused-appellant then left the comfort room.

The second incident occurred in 2002 when AAA was ten (10) years old and was in Grade V. At about noon time, while she was sleeping in her bedroom on the second floor of their house, she sensed somebody unzipping her shorts. She then saw accused-appellant and she warded off his hands. Accused-appellant then put saliva on his finger and inserted it in her vagina. She tried to resist and shout but she felt a knife poking on her side, and he threatened to kill her if she makes a sound. Thereafter, accused-appellant tried to insert his penis to her vagina but failed.

⁴ Records, Crim. Case No. U-13564, p. 12.

⁵ Records, Crim. Case No. U-13566, p. 7.

The third incident happened in 2003 when AAA was eleven (11) years old. While AAA was defecating in the common comfort room, about twenty (20) meters away from their house, accused-appellant entered. He told her to wash up and stand. Thereafter, accused-appellant leaned AAA against the wall and inserted his penis into her vagina. He held a knife on his other hand and again threatened AAA that he will kill her if she tells anybody about the incident.

The fourth incident of sexual abuse allegedly transpired in 2004 while AAA was in the comfort room.

BBB, mother of AAA, testified that on September 11, 2004, AAA told her that her uncle accused-appellant raped her several times. She immediately reported the incident to the Barangay Council.

Dr. Guiang conducted a physical examination on AAA. She noted healed incomplete lacerations on AAA's hymen at the 1, 5, 8 and 11 o'clock positions and that the vagina admits two (2) fingers with ease, as shown in the Medico-Legal Certificate.⁶

The other private complainant CCC in Criminal Case No. U-13567 did not testify in court.

Evidence of the Defense

The defense presented accused-appellant as its sole witness. His testimony sought to establish the following:

Accused-appellant testified that he resides at XXX, Pangasinan. He knew AAA because she was the niece of his wife and was also his neighbor. Accused-appellant denied the charges against him and narrated that on August 5, 2001, he was hired to work as a landscaper in Ayala, Alabang under an employer named Benjamin Inalbis. He worked there for more than three years and returned to XXX only on January 10, 2004. Thus, he denied having sexually abused AAA in 2001. Accused-appellant also denied having sexual intercourse with her in 2002 and 2003.

While accused-appellant admitted that there was a common comfort room in their compound at XXX, he denied having met AAA inside the said comfort room. He likewise denied entering AAA's house and raping her there.

⁶ Records, Crim. Case No. U-13566, p. 6.



The RTC Ruling

In its decision, dated August 16, 2012, the RTC found accused-appellant guilty of three (3) counts of statutory rape in Criminal Case Nos. U-13564, U-13565 and U-13566; one (1) count of acts of lasciviousness in Criminal Case No. U-13569; and dismissed the case against him in Criminal Case No. U-13567.

The RTC found that accused-appellant raped AAA on the dates of the alleged incidents. It gave weight and credibility to the consistent testimony of AAA that accused-appellant forcibly had sexual intercourse with her and he also committed acts of lasciviousness against her. The RTC underscored that accused-appellant's defense of alibi was unsubstantiated and cannot prevail over the positive identification of AAA. The charge of rape against CCC, however, was dismissed because the latter failed to testify before the court. The *fallo* reads:

WHEREFORE, this Court renders judgment as follows:

(1) Criminal Case No. U-13564

The accused ROMEO AGONCILLO is found GUILTY beyond reasonable doubt of statutory rape. Accordingly, he is sentenced to suffer the penalty of Reclusion Perpetua;

(2) Criminal Case No. U-13565

The accused ROMEO AGONCILLO is found GUILTY beyond reasonable doubt of statutory rape. He shall suffer the penalty of Reclusion Perpetua;

(3) Criminal Case No. U-13566

The accused ROMEO AGONCILLO is found GUILTY beyond reasonable doubt of statutory rape. Likewise, he is sentenced to serve the penalty of Reclusion Perpetua;

(4) Criminal Case No. U-13567

The case against accused ROMEO AGONCILLO is DISMISSED for failure of the prosecution witness to prove his guilt beyond reasonable doubt.



(5) Criminal Case No. U-13569

The accused ROMEO AGONCILLO is found GUILTY beyond reasonable doubt of Acts of Lasciviousness. He shall suffer the penalty of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of reclusion temporal.

In Criminal Case Nos. U-13564, U-13565 and U-13566, the accused shall pay civil indemnity to the offended party AAA Fifty Thousand Pesos (Php50,000.00) for each count of statutory rape or a total of One Hundred Fifty Thousand Pesos (Php150,000.00) and moral damages of the same amount. In Criminal Case No. U-13569, the accused shall pay her Thirty Thousand Pesos (Php30,000.00) for one count of acts of lasciviousness by way of moral damages.

Accused shall be committed to the Bureau of Corrections, Muntinlupa City, without unnecessary delay.

No costs.

SO ORDERED.⁷

Aggrieved, accused-appellant appealed to the CA. In his Appellant's Brief,⁸ accused-appellant argued that AAA's testimony was unconvincing; that there was no sexual intercourse in the first and second alleged rape incidents; that mere allegation of lascivious conduct without concrete evidence cannot suffice to support his conviction; and that the prosecution's failure to prove that there was carnal knowledge necessitates his acquittal.

The CA Ruling

In its assailed decision, dated November 27, 2015, the CA affirmed with modification the trial court's decision. It found that AAA clearly conveyed her harrowing experience during trial and she categorically stated that she was raped by accused-appellant. It also highlighted that AAA's testimony was corroborated by the medical findings stating that she sustained hymenal lacerations. The CA further observed that accused-appellant's acts of touching AAA's legs and vagina are lascivious conducts. It, however, modified the damages awarded to AAA. The CA disposed the case in this wise:

⁷ CA Rollo, pp. 120-121.

⁸ Id. at 92-108.

WHEREFORE, in view of the foregoing premises, the appealed Judgment dated 16 August 2012 by Branch 49 of the Regional Trial Court in Urdaneta City, Pangasinan, is AFFIRMED with the following MODIFICATIONS:

1. In Criminal Case Nos. U-13564, U-13565 and U-13566, appellant is sentenced to suffer the penalty of *reclusion perpetua* for each count of rape. Appellant is ordered to indemnify AAA ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱30,000 as exemplary damages for each count.

2. In Criminal Case No. U-13569, appellant is sentenced to suffer the indeterminate penalty of fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. He is likewise ordered to indemnify AAA ₱20,000 as civil indemnity, ₱30,000 as moral damages, and ₱30,000 as exemplary damages.

3. Appellant must also pay interest of 6% per annum on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.⁹

Hence, this appeal.

ISSUE

WHETHER THE GUILT OF ACCUSED-APPELLANT FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In a Resolution,¹⁰ dated April 5, 2017, the Court required the parties to submit their respective supplemental briefs, if they so desire. In its Manifestation in lieu of supplemental brief,¹¹ dated June 19, 2017, the Office of the Solicitor General (*OSG*) manifested that it will no longer file a supplemental brief to avoid a repetition of arguments considering that the guilt of accused-appellant has been exhaustively discussed in its appellee's brief. In its Manifestation (in lieu of supplemental brief),¹² dated July 14, 2017, accused-appellant averred that he will no longer file a supplemental brief considering that he had thoroughly discussed the assigned errors in his appellant's brief.

⁹ Id. at 19-20.

¹⁰ *Rollo*, p. 34.

¹¹ Id. at 36-38.

¹² Id. at 43-45.

The Court's Ruling

The appeal is partially meritorious.

Section 5 of R.A. No. 7610 states:

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

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other child abuse; **Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period;** (emphasis supplied)

When the victim of rape or act of lasciviousness is below twelve (12) years old, the offender shall be prosecuted under the RPC provided that the penalty for lascivious conduct shall be *reclusion temporal* in its medium period. Article 266-A of the RPC provides:

Rape: When And How Committed. - Rape is committed:

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

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

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

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Rape under first paragraph of Article 266-A of the RPC is committed by sexual intercourse under any of the circumstances stated therein. It becomes statutory rape when the offender has carnal knowledge against a woman below 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, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12.¹³

Rape by sexual assault under the second paragraph of Article 266-A of the RPC is committed when there is an insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice and any of the circumstances enumerated in the first paragraph of Article 266-A is present.¹⁴

First incident

In Criminal Case No. U-13564, accused-appellant was charged with the crime of rape because he allegedly had sexual intercourse with AAA, who was 9 years old then. Anent the said charge, AAA testified as follows:

- Q: And what was that unusual incident?
A: Romeo Agoncillo entered the comfort room while I was using it, sir.
- Q: And when was that Madam Witness?
A: When I was in Grade 4, sir.
- Q: And what time of the day?
A: When I arrived from school, sir.
- Q: What did Romeo Agoncillo do when he went inside the toilet while you were using it?
A: I asked him why he entered the comfort room, sir.
- Q: And what was his reply?
A: He told me that he will do something, sir.
- Q: And what happened after he told you that he will do something?
A: He placed his palm in between my thighs, sir.
- Q: When in particular did the accused placed his palm between your thighs?
A: (Witness stood up and point on the middle portion of her thigh)

¹³ *People v. Cadano, Jr.*, 729 Phil. 576, 584 (2014).

¹⁴ See *Ricalde v. People*, 751 Phil. 793 (2015).

- Q: What did you do when the accused placed his palm between your thighs?
A: I tried to remove his hands, sir.
- Q: Were you able to remove it, Madam Witness?
A: No, sir. I was not able to remove it.
- Q: What else did he do when you were not able to remove his hands?
A: He inserted his finger in my vagina, sir.
- Q: How many times?
A: (Witness showing her right index finger).
- Q: What did you do when the accused inserted his finger in your vagina?
A: I was trying to remove his hands, sir.
- Q: Were you able to remove it? And how long Madam Witness was the index finger of the accused in your vagina?
A: It was just for a while sir.
- Q: What did you feel when the index finger of the accused was inserted in your vagina?
A: It was painful, sir.
- Q: Aside from inserting his finger in your vagina what else did the accused do, Madam Witness?
A: He pointed a knife, sir?
- Q: Aside from pointing a knife to you what else did the accused do?
A: He said that if I report this incident he will kill me and all of my family, sir.¹⁵

The Court finds that accused-appellant did not commit the crime of statutory rape under the first paragraph of Article 266-A; rather, he committed the crime of rape by sexual assault under the second paragraph thereof. Contrary to the findings of the CA and the RTC, there was no carnal knowledge between accused-appellant and AAA in this first incident because it was his finger that was inserted in her vagina. Clearly, there was rape by sexual assault because there was an insertion of an instrument into another person's genitals, who was below twelve (12) years old. Both the aggravating circumstances of use of a deadly weapon and relationship, however, cannot be appreciated because these were not alleged in the information.

¹⁵ TSN dated November 14, 2005, pp. 7-9.



Second incident

In Criminal Case No. U-13565, accused-appellant was charged with the crime of rape because he allegedly had sexual intercourse with AAA, who was 10 years old then. AAA's testimony states:

Q: Do you remember where that second incident happened?

A: Inside our house, sir.

Q: In what particular place in your house?

A: Upstairs, sir.

Court:

Where was your house during the alleged second intercourse?

A: XXX, sir.

Q: Do you recall what time was that incident happened?

A: Noontime, sir.

Q: What were you doing at that time for the accused had intercourse with you?

A: I was sleeping then, sir.

Q: Where were you sleeping at that time?

A: In my bedroom at the second floor of the house, sir.

Q: While you were sleeping at that time, what happened if any?

A: I sensed that there was somebody unzipping my shorts, sir.

Q: Did you come to know that person who was trying to unzip your shorts? Who is that person?

A: (Witness pointing to a person whose name when asked as Romeo Agoncillo)

Q: What did you do when you said that the accused is trying to unzip your shorts?

A: I warded off his hands, sir.

xxx xxx xxx

Q: And do you remember if the accused uttered any words while he is poking the knife in your side?

A: Yes, sir.

Q: Will you please tell the Court what was that Madam Witness?

A: He said, "Don't shout or else I will kill you," sir.

Q: So what did you feel when the accused uttered those words?

A: I was frightened, sir.

Q: And what happened next?

A: He removed my panties and pants, sir.

Q: What else happened when the accused successfully removed your pants and panties?

A: He spit saliva on his finger and put it on my vagina, sir.

Q: And what did you feel when the accused placed his finger in your vagina?

A: I felt pain, sir.

Q: What happened next after that?

A: He tried to insert his penis in my vagina but he was not able to insert his penis, sir.

Q: Did you feel the penis of the accused inserted in your vagina?

A: Yes, sir.

Q: How could you tell whether what he inserted into your vagina was his finger or his penis?

A: First he inserted his finger into my vagina and his penis because of the saliva that he put on my vagina it was slippery so he again inserted it.

Court:

His finger?

A: Yes, sir. His two fingers.

Prosecutor Lopez

Q: So how could you be sure that the next thing he inserted in your vagina is his penis when you don't know the difference?

A: His penis is hard and his finger the edge is sharp because of the fingernails and it is rough while the penis was only hard, sir.¹⁶

The Court finds that accused-appellant committed two (2) crimes in the second incident: rape by sexual assault and statutory rape. It can be gleaned from the testimony that accused-appellant first inserted his finger in the vagina of the minor victim, which constitutes rape by sexual assault. Afterwards, he inserted his penis in AAA's vagina albeit unsuccessful. AAA felt that accused-appellant attempted to insert his penis in her vagina and she was able to differentiate it from his finger. Time and again, the Court held that the slightest penetration of the labia of the female victim's genitalia consummates the crime of rape.¹⁷ As AAA was only ten (10) years old at that time, accused-appellant committed statutory rape.

While it is possible to convict an offender for both rape by sexual assault and statutory rape for one incident, these crimes must be properly alleged in the informations.¹⁸ In this case, the information in Criminal Case No. U-13565 only charged accused-appellant for having sexual intercourse with AAA; there was no separate allegation therein or separate information

¹⁶ TSN, December 4, 2008, pp. 7-8.

¹⁷ *People v. Reyes*, 714 Phil. 300, 308 (2013).

¹⁸ *People v. Chingh*, 661 Phil. 208, 220 (2011).

regarding the insertion of his fingers in her vagina. Thus, accused-appellant can only be convicted for the crime of statutory rape in the second incident. Similarly, the aggravating circumstances of use of a deadly weapon and relationship cannot be recognized because these were not alleged in the information.

Third incident

In Criminal Case No. U-13566, accused-appellant was charged with the crime of rape because he allegedly had sexual intercourse with AAA, who was eleven (11) years old then. AAA's testimony provides:

Q: Madam Witness, when was the third time the accused raped you?

A: When I was inside the CR, sir.

Court:

Rest room you mean?

A: Yes, sir.

Prosecutor Lopez:

Q: And that CR attached to your house, Madam Witness?

A: No, that restroom is far from our house, sir.

Court:

How many kilometers away?

A: From here up to the stairs outside sir.

Court:

The Court estimates that to be 20 meters away.

Prosecutor Lopez:

Q: While you were in the restroom, what happened, if any, Madam Witness?

A: While I was inside he entered, sir.

Q: And who entered, Madam Witness?

A: (Witness pointing to the accused)

Q: And what happened when the accused entered in the restroom, Madam Witness?

A: My hands were put together that time but the accused tried to separate them away and then he put his hands in between my thighs and that time he was also holding a knife.

XXX XXX XXX

Q: What happened when the accused was holding the knife?

A: The accused asked me if I was already done and I said not yet, he told me further that I have to wash and stand up.

Q: Did you comply with the order of the accused, Madam Witness?

A: Yes because he was armed with a knife and after that he leaned me against the wall, sir.

XXX XXX XXX

Q: So what did you do when the accused leaned you in the wall, Madam Witness?

A: I was shock, sir.

Q: And what did the accused do after that, Madam Witness?

A: The first he did was that he inserted his fingers and he inserted his penis.

XXX XXX XXX

Q: And what was your position when the accused inserted his fingers and penis to you, Madam Witness?

A: I was in a standing position, sir.

Q: How about when he inserted his penis to your vagina, what was your position, Madam Witness?

A: He separated my two legs, sir.

XXX XXX XXX

Q: How come you did not call the attention of your parents and your sisters since they were in your house then?

A: During that time he pointed the knife to my side, sir.¹⁹

The Court finds that accused-appellant also committed two (2) crimes in the third incident: rape by sexual assault and statutory rape. It is evident in AAA's testimony that accused-appellant first inserted his fingers into her vagina while they were standing, which is tantamount to the crime of rape by sexual assault. Afterwards, accused-appellant inserted his penis into her vagina, which is statutory rape because AAA was only eleven (11) years old then.

Nonetheless, similar to the second incident, accused-appellant can only be convicted of statutory rape in this instance because it was the only crime alleged in the information in Criminal Case No. U-13566. The crime of rape by sexual assault was neither alleged in the information nor contained in a separate information. Again, the aggravating circumstances of use of a deadly weapon and relationship cannot be appreciated because these were not alleged in the information.

¹⁹ TSN, March 10, 2009, pp. 3-9.

Fourth incident

In Criminal Case No. U-13569, accused-appellant was charged with acts of lasciviousness in relation to Section 5 (b) of R.A. No. 7610 because he allegedly committed lascivious conduct against AAA, who was twelve (12) years old then.

The records, however, show that AAA did not testify as to the events that transpired in the fourth incident. While AAA filed a Criminal Complaint²⁰ for acts of lasciviousness against accused-appellant where she stated the alleged details of the abuse, she did not testify on the same before the trial court. After a circumspect review of the records, the Court finds that the only matters testified to by AAA in the purported fourth incident are as follow:

Atty. Bacuno:

Q: And all that incidents happened between as you have said in your affidavit 2001-2003, is that correct?

A: Yes, sir.

Q: Can you tell us then why you are only charging 3 counts when supposedly 4 counts, the other one is bunos (sic)?

A: No answer.

Court:

Next question.

Atty. Bacuno:

Q: Within that duration of 3 years, Madam witness 2001-2003 all those incidents happened inside a comfort room, is that correct?

A: Not only in the comfort room, sir.

Q: The first time that you were raped where did it happen?

A: In our house, sir.

xxx xxx xxx

Court:

Q: 4th one?

A: In the comfort room, sir.²¹

This is the only testimony of AAA with respect to the fourth incident. She did not testify before the trial court the details or circumstances surrounding the event. The only information gathered from her testimony was that an incident happened in 2004 while she was in the comfort room. The Court has judiciously examined the other testimonies of AAA and they do not mention anything about the purported fourth incident.

²⁰ Records, Crim. Case No. U-13569, p. 4-6.

²¹ TSN dated June 8, 2009, pp. 4-5.

Even the CA, the RTC and the OSG could not cite any specific portion of the records which would indicate that AAA testified in open court regarding the fourth incident. AAA did not reaffirm the contents of her criminal complaint for acts of lasciviousness before the trial court. It would be unjust to convict accused-appellant for the crime of acts of lasciviousness simply based on an unsubstantiated complaint. Further, accused-appellant was not given an opportunity to cross-examine AAA concerning the fourth incident because the latter did not testify on the matter to begin with. The Court has no recourse other than to acquit accused-appellant of the charge of acts of lasciviousness.

*AAA's testimony is credible
and convincing*

In fine, with respect to the first, second and third incidents, the testimony of AAA showed that she was able to establish with clear and candid detail her age at the time of the incident, the identity of accused-appellant, and the bestial acts committed by him. It is a well settled rule that testimonies of rape victims who are young and of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credence.²² The factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.²³

Further, the findings contained in the medico-legal report corroborated the victim's testimony. It provided that there were healed incomplete lacerations on AAA's hymen at the 1, 5, 8 and 11 o'clock positions. Evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being.²⁴

Defenses of denial and alibi

Accused-appellant simply denied the charges against him without any supporting evidence. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the accused and his involvement in the crime attributed to him.²⁵ Indeed, the positive testimony of AAA outweighs the denial proffered by accused-appellant.

²² *People v. Baraga*, 735 Phil. 466, 472 (2014).

²³ *People v. Buclao*, 736 Phil. 325, 337 (2014).

²⁴ *People v. Pareja*, 724 Phil. 759, 780 (2014).

²⁵ *People v. Amaro*, 739 Phil. 170, 178 (2014).

Accused-appellant also presented a defense of alibi stating that he was working at Ayala, Alabang for three (3) years from 2001 to 2004. However, aside from his bare testimony, he did not present any evidence to substantiate his defense. Accused-appellant even admitted that he regularly returns to his home in Pangasinan, where AAA's house is only two (2) meters away. There is no physical impossibility for accused-appellant to be at the alleged times and dates of the incidents. Alibi is the weakest of all defenses as it can be easily contrived.²⁶

Penalties

The crimes committed by accused-appellant are: one (1) count of rape by sexual assault; and two (2) counts of statutory rape. For the crime of statutory rape, the prescribed penalty is *reclusion perpetua*.

For the crime of rape by sexual assault, Article 266-B of the RPC prescribes a penalty of *prision mayor*. However, in *People v. Chingh*,²⁷ the Court clarified that when there is rape by sexual assault and the minor victim is below twelve (12) years old, the prescribed penalty under Section 5 (b) of R.A. No. 7610, *reclusion temporal* in its medium period, should be imposed, to wit:

In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under paragraph 2, Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, 29 for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is *prision mayor*, considering that VVV was below 12 years of age, and considering further that Armando's act of inserting his finger in VVV's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period.

The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article 366, in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to child abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those "persons below eighteen (18) years of age or

²⁶ *People v. Piosang*, 710 Phil. 519, 527 (2013).

²⁷ *Supra* note 18.



those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.”²⁸ (emphasis supplied)

Similarly, in *Ricalde v. People*,²⁹ the Court ruled that when the minor victim was below twelve (12) years old, the higher penalty provided under R.A. No. 7610 of *reclusion temporal* in its medium period, and not that of the RPC, should be imposed against the offender. It was emphasized there that in enacting R.A. No. 7610, the legislature intended to impose a higher penalty when the victim is a child. The same doctrine was also affirmed in the recent case of *People v. Dizon*.³⁰

Certainly, this interpretation would avoid an absurd spectacle that offenders who commit rape by sexual assault against a minor less than twelve (12) years of age, which is undoubtedly a graver offense, shall be punished by *prision mayor* only; while offenders who commit acts of lasciviousness against the same minor shall be punished by a heavier penalty of *reclusion temporal* in its medium period. To give life to the provisions of R.A. No. 7610 for the protection of minors and to deter the child abuses against the minor victims, the stiffer penalty should be imposed in both crimes.

Based on the foregoing, the penalty of *reclusion temporal* in its medium period prescribed under R.A. No. 7610 when the minor victim is below twelve (12) years old should be observed for the crime of rape by sexual assault. Accordingly, the indeterminate penalty 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 maximum³¹ should be imposed against accused-appellant.

For the crimes of statutory rape, the CA properly gave the award of damages of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages in accordance with *People v. Jugueta*.³² For the crime of rape by sexual assault, accused-appellant is ordered to pay AAA ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.³³ Finally, the CA correctly ruled that all damages shall earn interest at the rate of 6% per annum from the date of the finality of judgment until fully paid.

²⁸Id. at 222-223.

²⁹Supra note 14.

³⁰G.R. No. 217982, July 10, 2017.

³¹See *People v. Chingh*, supra note 18, and *Ricalde v. People*, supra note 14.

³²G.R. No. 202124, April 5, 2016.

³³*People v. Dizon*, supra note 30.



WHEREFORE, the appeal is **PARTIALLY GRANTED**. The November 27, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06254 is **MODIFIED** as follows:

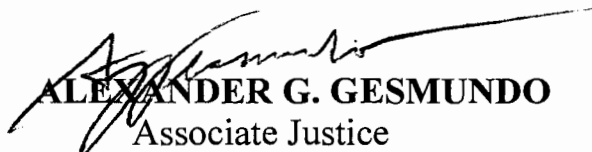
1. In Criminal Case No. U-13564, accused-appellant Romeo Agoncillo is found **GUILTY** of one (1) count of Rape by Sexual Assault under Paragraph 2, Article 266-A of the Revised Penal Code and he is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. He is ordered to pay AAA ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

2. In Criminal Case Nos. U-13565 and U-13566, accused-appellant Romeo Agoncillo is found **GUILTY** of two (2) counts of Statutory Rape under Paragraph 1, Article 266-A of the Revised Penal Code and he is sentenced to suffer the penalty of *reclusion perpetua* for each count. He is 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.

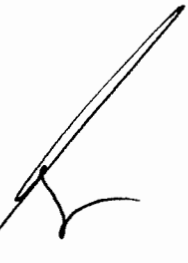
3. In Criminal Case No. U-13569, accused-appellant Romeo Agoncillo is **ACQUITTED** of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

4. All awards of damages shall earn interest at the rate of 6% per annum from the date of the finality of judgment until fully paid.

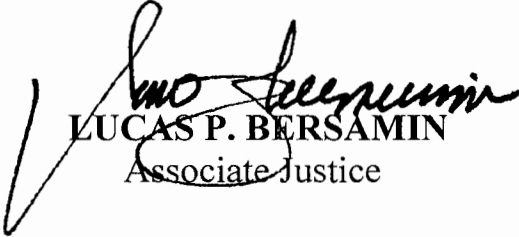
SO ORDERED.


ALEXANDER G. GESMUNDO
Associate Justice


WE CONCUR:




PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice




MARVIC M.V.F. LEONEN
Associate Justice



SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

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



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Second Division



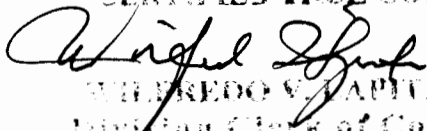
CERTIFICATION

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



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY



WILFREDO V. LAPID
Division Clerk of Court
Third Division

JAN 25 2018

