Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 229861**
- versus -	Present: CARPIO, *J.*, Chairperson, PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR., *JJ.*
FRANCISCO EJERCITO, Accused-Appellant.	Promulgated: 02 JUL 2018

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated October 28, 2016 of the Court of Appeals (CA) in CA-G.R. CEB CR. HC. No. 01656, which affirmed the Decision[3] dated April 8, 2013 of the Regional Trial Court of [redacted],[4] Branch 60 (RTC) in Crim. Case No. CEB-BRL-1300

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1 See Notice of Appeal dated November 28, 2016; *rollo*, pp. 21-23.

2 Id. at 4-20. Penned by Associate Justice Gabriel T. Ingles with Associate Justices Marilyn B. Lagura-Yap and Germano Francisco D. Legaspi concurring.

3 Records, pp. 212-221. Penned by Presiding Judge Leopoldo V. Cañete.

4 The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 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; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. 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, entitled "PROTOCOLS AND PROCEDURES IN

finding accused-appellant Francisco Ejercito (Ejercito) guilty beyond reasonable doubt of the crime of Rape defined and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,[5] otherwise known as "The Anti-Rape Law of 1997."

The Facts

This case stemmed from an Information[6] filed before the RTC charging Ejercito of the aforesaid crime, the accusatory portion of which reads:

> That on or about the 10th day of October, 2001 at past 7:00 o'clock in the evening, at [redacted], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge with [AAA], a minor, who is only fifteen (15) years old at the time of the commission of the offense against her will and consent and which act demeans the intrinsic worth and dignity of said minor as a human being.
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> CONTRARY TO LAW.[7]

The prosecution alleged that at around six (6) o'clock in the evening of October 10, 2001, AAA, then a fifteen (15) year old high school student, was cleaning the chicken cage at the back of their house located in [redacted] when suddenly, she saw Ejercito pointing a gun at her saying, "*Ato ato lang ni. Sabta lang ko. Ayaw gyud saba para dili madamay imo pamilya.*" AAA pleaded, "*'Tang,* don't do this to me" but the latter replied, "Do you want me to kill you? I will even include your mother and father." Thereafter, Ejercito dragged AAA to a nearby barn, removed her shorts and underwear, while he undressed and placed himself on top of her. He covered her mouth with his right hand and used his left hand to point the gun at her, as he inserted his penis into her vagina and made back and forth movements. When he finished the sexual act, Ejercito casually walked away and warned AAA not to tell anybody or else, her parents will get killed. Upon returning to her house, AAA hurriedly went to the bathroom where she saw a bloody discharge from her vagina. The following day, AAA absented herself from school and headed to the house of her aunt, CCC, who asked if she was

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THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.)

5 Entitled "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES," approved on September 30, 1997.

6 Records, pp. 1-2.

7 Id. at 1.

okay. At that point, AAA tearfully narrated the incident and requested CCC to remain silent, to which the latter reluctantly obliged.[8]

Haunted by her harrowing experience, AAA was unable to focus on her studies. Wanting to start her life anew, AAA moved to the city to continue her schooling there. However, Ejercito was able to track AAA down, and made the latter his sex slave. From 2002 to 2005, Ejercito persistently contacted AAA, threatened and compelled her to meet him, and thereafter, forced her to take *shabu* and then sexually abused her. Eventually, AAA got hooked on drugs, portrayed herself as Ejercito's paramour, and decided to live together. When Ejercito's wife discovered her husband's relationship with AAA, the former filed a complaint against AAA before the barangay. By this time, even AAA's mother, BBB, found out the illicit relationship and exerted efforts to separate them from each other. Finally, after undergoing rehabilitation, AAA finally disclosed to her parents that she was raped by Ejercito back in 2001 and reported the same to the authorities on September 3, 2005.[9]

In his defense, Ejercito pleaded not guilty to the charge against him, and maintained that he had an illicit relationship with AAA. He averred that during the existence of their affair from 2002 to 2004, he and AAA frequently had consensual sex and the latter even abandoned her family in order to live with him in various places in [redacted]. He even insisted that he and AAA were vocal about their choice to live together despite vehement objections from his own wife and AAA's mother. Finally, he pointed out that when AAA was forcibly taken from him by her mother, as well as police authorities, no charges were filed against him. Thus, he was shocked and dismayed when he was charged with the crime of Rape which purportedly happened when they were lovers.[10]

The RTC Ruling

In a Decision[11] dated April 8, 2013, the RTC found Ejercito guilty beyond reasonable doubt of the crime charged and, accordingly, sentenced him to suffer the penalty of *reclusion perpetua*, and ordered him to separately pay AAA and her parents ₱50,000.00 each as moral damages.[12]

Aggrieved, Ejercito appealed[13] to the CA.

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8 See *rollo*, pp. 5-6.
9 See id. at 6-7.
10 See id. at 7-8.
11 Records, pp. 212-221.
12 See id. at 221.
13 See Notice of Appeal dated May 2, 2013; id. at 224-225.

The CA Ruling

In a Decision[14] dated October 28, 2016, the CA affirmed the RTC ruling with modification, convicting Ejercito of Rape defined and penalized under Article 335 of the RPC, and accordingly, sentenced him to suffer the penalty of *reclusion perpetua*, and ordered him to pay the offended party, AAA, the amounts of ₱75,000.00 as civil indemnity *ex delicto*, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, with legal interest of six percent (6%) per annum to be imposed on all monetary awards from finality of the ruling until fully paid.[15]

Agreeing with the RTC's findings, the CA held that through AAA's clear and straightforward testimony, the prosecution had established that Ejercito raped her in 2001. On the other hand, it did not give credence to Ejercito's sweetheart defense, pointing out that assuming *arguendo* that he indeed eventually had a relationship with AAA, their first sexual encounter in 2001 was without the latter's consent and was attended with force and intimidation as he pointed a gun at her while satisfying his lustful desires.[16]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Ejercito's conviction for the crime of Rape must be upheld.

The Court's Ruling

The appeal is without merit.

Time and again, it has been held that in criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[17]

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14 *Rollo*, pp. 4-20.
15 Id. at 19-20.
16 See id. at 9-18.
17 See *Miguel v. People*, G.R. No. 227038, July 31, 2017, citing *People v. Alejandro*, G.R. No. 225608, March 13, 2017.

Based on this doctrine, the Court, upon careful review of this case, deems it proper to correct the attribution of the crime for which Ejercito should be convicted and, consequently, the corresponding penalty to be imposed against him, as will be explained hereunder.

At the onset, the Court observes that the CA, in modifying the RTC ruling, erroneously applied the old Rape Law, or Article 335 of the RPC, since the same was already repealed upon the enactment of RA 8353 in 1997. To recount, the Information alleges "[t]hat on or about the **10th day of October 2001** x x x [Ejercito], with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge with [AAA], a minor who is only fifteen (15) years old at the time of the commission of the offense against her will and consent x x x"; hence, in convicting Ejercito of Rape, the CA should have applied the provisions of RA 8353, which enactment has resulted in the new rape provisions of the RPC under Articles 266-A in relation to 266-B, *viz.*:

> Article 266-A. *Rape, When and How Committed.* – Rape is committed –
>
> 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a. Through force, threat or intimidation;
>
> x x x x
>
> Article 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*
>
> Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.
>
> x x x x

For a charge of Rape by sexual intercourse under Article 266-A (1) of the RPC, as amended by RA 8353, to prosper, the prosecution must prove that: (*a*) the offender had carnal knowledge of a woman; and (*b*) he accomplished this act under the circumstances mentioned in the provision, *e.g.*, through force, threat or intimidation. The gravamen of Rape is sexual intercourse with a woman against her will.[18]

In this case, the prosecution was able to prove beyond reasonable doubt the presence of all the elements of Rape by sexual intercourse under Article 266-A (1) of the RPC, as amended by RA 8353. Through AAA's positive testimony, it was indeed established that in the evening of October

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[18] See *People v. Bagamano*, 793 Phil. 602, 608 (2016).

10, 2001, AAA, then just a fifteen (15)-year old minor, was cleaning chicken cages at the back of her house when suddenly, Ejercito threatened her, removed her lower garments, covered her mouth, and proceeded to have carnal knowledge of her without her consent. The RTC, as affirmed by the CA, found AAA's testimony to be credible, noting further that Ejercito failed to establish any ill motive on her part which could have compelled her to falsely accuse him of the aforesaid act. In this relation, case law states that the trial court is in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.[19] As there is no indication that the RTC, as affirmed by the CA, overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case, the Court therefore finds no reason to deviate from its factual findings.

The Court remains mindful that Section 5 (b) of RA 7610,[20] which, to note, was passed prior to RA 8353 on June 17, 1992, equally penalizes those who commit sexual abuse, by means of either (*a*) **sexual intercourse or** (b) lascivious conduct, **against "a child exploited in prostitution or subjected to other sexual abuse**," *viz.*:

> Section 5. *Child Prostitution and Other Sexual Abuse.* – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
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> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
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> x x x x
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> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided, That when the victim 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; x x x
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> x x x x

In *Quimvel v. People* (*Quimvel*),[21] the Court set important parameters in the application of Section 5 (b) of RA 7610, to wit:

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[19] See *Peralta v. People*, G.R. No. 221991, August 30, 2017, citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

[20] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION, AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES," approved on June 17, 1992.

[21] See G.R. No. 214497, April 18, 2017.

(1) A child is considered as one "***exploited in prostitution or subjected to other sexual abuse***" when the child indulges in sexual intercourse or lascivious conduct "under the coercion or influence of any adult":

> **To the mind of the Court, the allegations are sufficient to classify the victim as one "*exploited in prostitution or subject to other sexual abuse.*"** This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, **which encompasses children who indulge in sexual intercourse or lascivious conduct** (a) for money, profit, or any other consideration; or **(b) under the coercion or influence of any adult, syndicate or group**.
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> Correlatively, Sec. 5 (a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, **paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct.** Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children. x x x.[22] (Emphases and underscoring supplied)

(2) A violation of Section 5 (b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim **only once**, even without a prior sexual affront:

> [T]he very definition of "*child abuse*" under Sec. 3 (b) of RA 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of. For it refers to the maltreatment, whether habitual or not, of the child. **Thus, a violation of Sec. 5 (b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.**[23] (Emphasis and underscoring supplied)

(3) For purposes of determining the proper charge, the term "coercion and influence" as appearing in the law is **broad enough to cover "force and intimidation" as used in the Information**; in fact, as these terms are almost used synonymously, it is then "of no moment that the terminologies employed by RA 7610 and by the Information are different":

> **The term "*coercion and influence*" as appearing in the law is broad enough to cover "*force* and *intimidation*" as used in the Information**. To be sure, Black's Law Dictionary defines "*coercion*" as "*compulsion*; *force*; *duress*" while "[undue] *influence*" is defined as "*persuasion carried to the point of overpowering the will.*" On the other hand, "*force*" refers to "*constraining power, compulsion; strength*

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22 See id. (see *ponencia* in *Quimvel*, pp. 8-9), citing *People v. Larin*, 357 Phil. 987, 998-999 (1998) and *Malto v. People*, 560 Phil. 119, 135 (2007).

23 See id. (see *ponencia* in *Quimvel*, p. 15).

directed to an end" while jurisprudence defines "***intimidation*" as "*unlawful coercion; extortion; duress; putting in fear.*" As can be gleaned, the terms are used almost synonymously. It is then of no moment that the terminologies employed by RA 7610 and by the Information are different**. And to dispel any remaining lingering doubt as to their interchangeability, the Court enunciated in *Caballo v. People* [(710 Phil. 792, 805-806 [2013])] that:

> x x x sexual intercourse or lascivious conduct under the coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. Corollary thereto, Section 2 (g) of the Rules on Child Abuse Cases conveys that sexual abuse involves the element of influence which manifests in a variety of forms. It is defined as:
>
> > The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.
>
> To note, the term "influence" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." Meanwhile, "coercion" is the "improper use of x x x power to compel another to submit to the wishes of one who wields it."[24] (emphases and underscoring supplied)

Thus, the Court, in *Quimvel*, observed that although the Information therein did not contain the words "coercion or influence" (as it instead, used the phrase "through force and intimidation"), the accused may still be convicted under Section 5 (b) of RA 7610. Further, following the rules on the sufficiency of an Information, the Court held that the Information need not even mention the exact phrase "exploited in prostitution or subjected to other abuse" for the accused to be convicted under Section 5 (b) of RA 7610; it was enough for the Information to have alleged that the offense was committed by means of "force and intimidation" for the prosecution of an accused for violation of Section 5 (b) of RA 7610 to prosper.[25]

In this case, it has been established that Ejercito committed the act of sexual intercourse against and without the consent of AAA, who was only fifteen (15) years old at that time. As such, she is considered under the law as a child who is "exploited in prostitution or subjected to other sexual abuse;" hence, Ejercito's act may as well be classified as a violation of Section 5 (b) of RA 7610.

Between Article 266-A of the RPC, as amended by RA 8353, as afore-discussed and Section 5 (b) of RA 7610, the Court deems it apt to

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[24] See id. (see *ponencia* in *Quimvel*, pp. 10-11).
[25] See id. (see *ponencia* in *Quimvel*, pp. 11-12).

clarify that Ejercito should be convicted under the former. Verily, penal laws are crafted by legislature to punish certain acts, and when two (2) penal laws may both theoretically apply to the same case, then the law which is more special in nature, regardless of the time of enactment, should prevail. In *Teves v. Sandiganbayan*:[26]

> It is a rule of statutory construction that where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but **if there is any conflict, the latter shall prevail regardless of whether it was passed prior to the general statute.** Or where two statutes are of contrary tenor or of different dates but are of equal theoretical application to a particular case, **the one designed therefor specially should prevail over the other.**[27] (Emphases supplied)

After much deliberation, the Court herein observes that RA 8353 amending the RPC should now be uniformly applied in cases involving sexual intercourse committed against minors, and not Section 5 (b) of RA 7610. Indeed, while RA 7610 has been considered as a special law that covers the sexual abuse of minors, RA 8353 has expanded the reach of our already existing rape laws. These existing rape laws should not only pertain to the old Article 335[28] of the RPC but also to the provision on sexual intercourse under Section 5 (b)[29] of RA 7610 which, applying *Quimvel*'s characterization of a child "exploited in prostitution or subjected to other abuse," virtually punishes the rape of a minor.

It bears to emphasize that not only did RA 8353 re-classify the crime of Rape from being a crime against chastity to a crime against persons,[30] it also provided for more particularized instances of rape and conjunctively, a

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[26] 488 Phil. 311 (2004).

[27] Id. at 332.

[28] Article 335. *When and How Rape is Committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by *reclusión temporal.*

[29] Section 5. *Child Prostitution and Other Sexual Abuse.* Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

x x x x

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

x x x x

[30] See Section 2 of RA 8353.

new set of penalties therefor. Under RA 8353, Rape is considered committed not only through the traditional means of having carnal knowledge of a woman (or penile penetration) but also through certain lascivious acts now classified as rape by sexual assault:

> Article 266-A. *Rape: When and How Committed.* – Rape is committed –
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> 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.
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> **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**. (Emphasis supplied)

Moreover, RA 8353 provides for new penalties for Rape that may be qualified under the following circumstances:

> Article 266-B. *Penalty.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*
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> Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.
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> When by reason or on the occasion of the rape, the victim has become insane, the penalty shall become *reclusion perpetua* to death.
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> When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.
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> When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.
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> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
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> **l) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by**

consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

5) When the victim is a child below seven (7) years old;

6) When the offender knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

x x x x (Emphases supplied)

Significant to this case, the above-highlighted provisions of RA 8353 already accounted for the circumstance of minority under certain peculiar instances. The consequence therefore is a clear overlap with minority as an element of the crime of sexual intercourse against a minor under Section 5 (b) of RA 7610. However, as it was earlier intimated, RA 8353 is not only the more recent statutory enactment but more importantly, the more comprehensive law on rape; therefore, the Court herein clarifies that in cases where a minor is raped through sexual intercourse, the provisions of RA 8353 amending the RPC ought to prevail over Section 5 (b) of RA 7610 although the latter also penalizes the act of sexual intercourse against a minor.

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The Court is not unaware of its previous pronouncements in *People v. Tubillo*,[31] citing the cases of *People v. Abay*[32] and *People v. Pangilinan*[33] (*Tubillo, et al.*), wherein the potential conflict in the application of Section 5 (b) of RA 7610, on the one hand, vis-à-vis RA 8353 amending the RPC, on the other, was resolved by examining whether or not the *prosecution's evidence focused on the element of "coercion and influence" or "force and intimidation."* In *Tubillo*:

> To reiterate, the elements of rape under Section 266-A of the RPC are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.
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> On the other hand, the elements of Section 5 (b) of R.A. No. 7610, are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. It is also stated there that children exploited in prostitution and other sexual abuse are those children, whether male or female, who, for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct.
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> In the recent case of *Quimvel v. People*, the Court ruled that the term "coercion and influence" as appearing in the law is broad enough to cover "force and intimidation." Black's Law Dictionary defines coercion as compulsion; force; duress, while undue influence is defined as persuasion carried to the point of overpowering the will. On the other hand, force refers to constraining power, compulsion; strength directed to an end; while jurisprudence defines intimidation as unlawful coercion; extortion; duress; putting in fear. **As can be gleaned, the terms are used almost synonymously. Thus, it is not improbable that an act of committing carnal knowledge against a child, twelve (12) years old or older, constitutes both rape under Section 266-A of the RPC and child abuse under Section 5 (b) of R.A. No. 7610.**
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> In *People v. Abay*, the Court was faced with the same predicament. In that case, both the elements of Section 266-A of the RPC and Section 5 (b) of R.A. No. 7610 were alleged in the information. Nevertheless, these provisions were harmonized, to wit:
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> > Under Section 5 (b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A (1) (d) of the Revised Penal Code and penalized with *reclusion perpetua*. On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5 (b) of RA 7610 or rape under Article 266-A (except paragraph 1 [d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy

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31 See G.R. No. 220718, June 21, 2017.
32 599 Phil. 390 (2009).
33 676 Phil. 16 (2011).

> will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5 (b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law. (Emphasis supplied)

In *Abay*, the offended party was thirteen (13) years old at the time of the rape incident. Again, the information therein contained all the elements of Article 266-A (1) of the RPC and Section 5 (b) of R.A. No. 7610. **Nevertheless, the Court observed that the prosecution's evidence only focused on the specific fact that accused therein sexually violated the offended party through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, accused therein was convicted of the crime of rape under Article 266-A (1) of the RPC. Notably, the prosecution did not tackle the broader scope of "influence or coercion" under Section 5 (b) of R.A. No. 7610**.

Similarly, in *People v. Pangilinan*, the Court was faced with the same dilemma because all the elements of Article 266-A (1) of the RPC and Section 5 (b) of R.A. No. 7610 were present. It was ruled therein that the accused can be charged with either rape or child abuse and be convicted therefor. **The Court observed, however, that the prosecution's evidence proved that accused had carnal knowledge with the victim through force and intimidation by threatening her with a samurai sword. Thus, rape was established. Again, the evidence in that case did not refer to the broader scope of "influence or coercion" under Section 5 (b) of R.A. No. 7610.**

In the present case, the RTC convicted Tubillo for the crime of rape because the prosecution proved that there was carnal knowledge against by means of force or intimidation, particularly, with a bladed weapon. On the other hand, the CA convicted Tubillo with violation of Section 5 (b) of R.A. No. 7610 because the charge of rape under the information was in relation to R.A. No. 7610.

After a judicious study of the records, the Court rules that Tubillo should be convicted of rape under Article 266-A (1) (a) of the RPC.

A reading of the information would show that the case at bench involves both the elements of Article 266-A (1) of the RPC and Section 5 (b) of R.A. No. 7610. As elucidated in *People v. Abay* and *People v. Pangilinan*, in such instance, **the court must examine the evidence of the prosecution, whether it focused on the specific force or intimidation employed by the offender or on the broader concept of coercion or influence to have carnal knowledge with the victim.**

Here, the evidence of the prosecution unequivocally focused on the force or intimidation employed by Tubillo against HGE under Article 266-A (1) (a) of the RPC. The prosecution presented the testimony of HGE who narrated that Tubillo unlawfully entered the house where she was sleeping by breaking the padlock. Once inside, he forced himself upon her, pointed a knife at her neck, and inserted his penis in her vagina. She could not resist the sexual attack against her because Tubillo poked a bladed

> weapon at her neck. Verily, Tubillo employed brash force or intimidation to carry out his dastardly deeds.
>
> In fine, Tubillo should be found guilty of rape under Article 266-A (1) (a) of the RPC with a prescribed penalty of *reclusion perpetua*, instead of Section 5 (b) of R.A. No. 7610.[34] (Emphases and underscoring supplied)

As may be gleaned therefrom, the Court examined the evidence of the prosecution to determine "whether it focused on the specific force or intimidation employed by the offender or on the broader concept of coercion or influence to have carnal knowledge with the victim."[35] The premise in *Tubillo* that "coercion or influence" is the broader concept in contrast to "force or intimidation" appears to have been rooted from that statement in *Quimvel* wherein it was mentioned that "[t]he term 'coercion and influence' as appearing in the law is broad enough to cover 'force and intimidation' **as used in the Information.**"[36] However, *Quimvel* did not intend to provide any distinction on the meanings of these terms so as to determine whether an accused's case should fall under Section 5 (b) of RA 7610 or RA 8353 amending the RPC, much more foist any distinction depending on what the prosecution's evidence "focused" on. In fact, the Court in *Quimvel* stated "the terms ['coercion and influence' and 'force and intimidation'] are used almost synonymously";[37] as such, the Court in *Quimvel* held that "[i]t is then of no moment that the terminologies employed by RA 7610 and by the Information are different";[38] and that "the words 'coercion or influence' need not specifically appear"[39] in order for the accused to be prosecuted under Section 5 (b) of RA 7610. As such, the Court misconstrued the aforesaid statement in *Quimvel* and misapplied the same to somehow come up with *Tubillo, et al.*'s "focus of evidence" approach.

However, the mistaken interpretation of *Quimvel* in *Tubillo, et al.* only compounds the fundamental error of the "focus of evidence" approach, which is to rely on evidence appreciation, instead of legal interpretation. Ultimately, there is no cogent legal basis to resolve the possible conflict between two (2) laws by ascertaining what was the focus of the evidence presented by the prosecution. Presentation of evidence leads to determining what act was committed. Resolving the application of either RA 8353 amending the RPC or Section 5 (b) of RA 7610 already presupposes that evidentiary concerns regarding what act has been committed (*i.e.*, the act of sexual intercourse against a minor) have already been settled. Hence, the Court is only tasked to determine what law should apply based on legal interpretation using the principles of statutory construction. In other words, the Court need not unearth evidentiary concerns as what remains is a pure

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34 See *People v. Tubillo*, supra note 31.
35 See id.
36 See *Quimvel v. People*, supra note 21.
37 See id. (see *ponencia* in *Quimvel*, p. 10).
38 See id.
39 See id. (see *ponencia* in *Quimvel*, p. 11).

question of law – that is: *in cases when the act of sexual intercourse against a minor has been committed, do we apply RA 8353 amending the RPC or Section 5 (b) of RA 7610?* Herein lies the critical flaw of the "focus of evidence" approach, which was only compounded by the mistaken reading of *Quimvel* in the cases of *Tubillo, et al.* as above-explained.

Neither should the conflict between the application of Section 5 (b) of RA 7610 and RA 8353 be resolved based on which law provides a higher penalty against the accused. The superseding scope of RA 8353 should be the sole reason of its prevalence over Section 5 (b) of RA 7610. The higher penalty provided under RA 8353 should not be the moving consideration, given that penalties are merely accessory to the act being punished by a particular law. The term "'[p]enalty' is defined as '[p]unishment imposed on a wrongdoer usually in the form of imprisonment or fine'; '[p]unishment imposed by lawful authority upon a person who commits a deliberate or negligent act.'"[40] Given its accessory nature, once the proper application of a penal law is determined over another, then the imposition of the penalty attached to that act punished in the prevailing penal law only follows as a matter of course. ***In the final analysis, it is the determination of the act being punished together with its attending circumstances – and not the gravity of the penalty ancillary to that punished act – which is the key consideration in resolving the conflicting applications of two penal laws.***

Notably, in the more recent case of *People v. Caoili* (*Caoili*),[41] the Court encountered a situation wherein the punishable act committed by therein accused, *i.e.*, lascivious conduct, may be prosecuted either under "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA 7610" or "Lascivious Conduct under Section 5 (b) of RA 7610." In resolving the matter, the Court did not consider the "focus" of the evidence for the prosecution nor the gravity of the penalty imposed. Rather, it is evident that the determining factor in designating or charging the proper offense, and consequently, the imposable penalty therefor, is the nature of the act committed, *i.e.*, lascivious conduct, taken together with the attending circumstance of the age of the victim:

> Accordingly, for the guidance of public prosecutors and the courts, the Court takes this opportunity to prescribe the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5 (b) of R.A. No. 7610, and in determining the imposable penalty:
>
> 1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.
>
> 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

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[40] See *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017.

[41] See G.R. No. 196342, August 8, 2017.

> 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.
>
> 3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5 (b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.[42]

Thus, being the more recent case, it may be concluded that *Caoili* implicitly **abandoned** the "focus of evidence" approach used in the *Tubillo, et al.* rulings. Likewise, it is apt to clarify that if there appears to be any rational dissonance or perceived unfairness in the imposable penalties between two applicable laws (say for instance, that a person who commits rape by sexual assault under Article 266-A in relation to Article 266-B of the RPC,[43] as amended by RA 8353 is punished less than a person who commits lascivious conduct against a minor under Section 5 (b) of RA 7610[44]), then the solution is through remedial legislation and not through judicial interpretation. It is well-settled that the determination of penalties is a policy matter that belongs to the legislative branch of government.[45] Thus, however compelling the dictates of reason might be, our constitutional order proscribes the Judiciary from adjusting the gradations of the penalties which are fixed by Congress through its legislative function. As Associate Justice Diosdado M. Peralta had instructively observed in his opinion in *Caoli*:

> Curiously, despite the clear intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty **[*reclusion temporal* medium]** when the victim is under 12 years old is lower compared to the penalty **[*reclusion temporal* medium to *reclusion perpetua*]** when the victim is 12 years old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31, Article XII of R.A. 7610, in which case, the imposable penalty is *reclusion perpetua*. In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the minimum term in the case of the younger victims shall be taken from *reclusion temporal* minimum, whereas as [sic] the minimum term in the case of the older victims shall be taken from *prision mayor* medium to *reclusion temporal* minimum. **It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the**

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42 See id. (see *ponencia* in *Caoili*, p. 19).

43 The penalty is only *prision mayor* pursuant to Article 266-B of the RPC, as amended by RA 8353.

44 The penalty is *reclusion temporal* in its medium period to *reclusion perpetua* if the child is under eighteen years old but over twelve years old, while the penalty is actually lesser when the child is under twelve years old, *i.e.*, *reclusion temporal* in its medium period.

45 See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018.

> **legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints, but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law. To my mind, a corrective legislation is the proper remedy to address the noted incongruent penalties for acts of lasciviousness committed against a child.**[46] (Emphasis supplied)

Based on the foregoing considerations, the Court therefore holds that in instances where an accused is charged and eventually convicted of having sexual intercourse with a minor, the provisions on rape under RA 8353 amending the RPC should prevail over Section 5 (b) of RA 7610. Further, to reiterate, the "focus of evidence" approach used in the *Tubillo, et al.* rulings had already been abandoned.

In this case, it has been established that Ejercito had carnal knowledge of AAA through force, threat, or intimidation. Hence, he should be convicted of rape under paragraph 1 (a), Article 266-A of the RPC, as amended by RA 8353. To note, although AAA was only fifteen (15) years old and hence, a minor at that time, it was neither alleged nor proven that Ejercito was her "parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim" so as to qualify the crime and impose a higher penalty. As such, pursuant to the first paragraph of Article 266-B of the same law, Ejercito should be meted with the penalty of *reclusion perpetua*, as ruled by both the RTC and the CA. Further, the Court affirms the monetary awards in AAA's favor in the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, all with legal interest at the rate of six percent (6%) per annum from finality of this ruling until fully paid, since the same are in accord with prevailing jurisprudence.[47]

WHEREFORE, the appeal is **DENIED**. The Decision dated October 28, 2016 of the Court of Appeals in CA-G.R. CEB CR. HC. No. 01656 is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant Francisco Ejercito is hereby found **GUILTY** beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353. Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua*. Further, he is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, all with legal interest at the rate of six percent (6%) per annum from finality of this ruling until fully paid.

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[46] See Separate Concurring Opinion of Justice Peralta in *People v. Caoili*, supra note 41. See also Separate Opinion of Justice Peralta in *Quimvel v. People*, supra note 21.

[47] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382-383 and 388.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296,
The Judiciary Act of 1948, as amended)

CERTIFIED TRUE COPY:
TERESITA AQUINO TUAZON
DEPUTY DIVISION CLERK OF COURT
OCC - SECOND DIVISION