Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BBB,[1]
Petitioner,

-versus-

THE PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 249307

Members:

PERALTA, *CJ., Chairperson,*
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

Promulgated:
AUG 27 2020

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DECISION

LAZARO-JAVIER, *J.:*

The Case

This petition for review on *certiorari*[2] seeks to reverse the Decision[3] dated August 29, 2019 of the Court of Appeals in CA-G.R. CR

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

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

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

[2] *Rollo*, pp. 18-43.

[3] Penned by Associate Justice Loida S. Posadas-Kahulugan and concurred in by Associate Justice Edgardo T. Lloren and Associate Justice Angelene Mary W. Quimpo-Sale, *id.* at 47-68.

No. 01722-MIN, which affirmed with modification petitioner BBB's conviction for rape by sexual assault.

Antecedents

BBB was charged with rape by sexual assault under Article 266-A (2) of the Revised Penal Code (RPC) in relation to Republic Act No. 7610[4] (RA 7610), *viz.*:

> That sometime on November 14, 2012, in the [redacted] Province of North Cotabato, Philippines and within the jurisdiction of this Honorable Court, the said child in conflict with the law, acting with discernment, with lewd design, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously insert his finger into the genitalia of [AAA][5] who is 11 years old, against her will, which act does not only debases, degrades and demeans the intrinsic worth and dignity of [AAA] as a child but [is] also prejudicial to her growth and development.
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> CONTRARY TO LAW.[6]

When arraigned, petitioner pleaded not guilty.[7]

Version of the Prosecution

Complainant testified that she was born on August 24, 2001. On November 14, 2012 around 2 o'clock in the afternoon, while attending an event in school, her classmate Hara Jane Generosa (Generosa) invited her to go to John Mark Socubos' (Socubos) house together with petitioner and Robin James Navido (Navido). Due to Generosa's persistent invitation, she eventually agreed. She and Generosa followed petitioner and his friends to Socubos' house. There, she noticed that none of Socubos' relatives were home. When Socubos and Navido went out to buy something, petitioner asked Generosa to go out for a while, leaving her and petitioner alone in the house.[8]

In the living room, petitioner asked her if she had her monthly period. She answered in the negative. He then moved closer to her, lowered her pants and underwear, and kissed her on the cheek. She was so shocked and

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4 Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

5 The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* [533 Phil 703 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

6 *Id.* at 48 and 69.

7 *Id.*

8 *Id.* at 49.

scared, she failed to do anything. He then inserted his forefinger into her vagina. Jolted by the pain, she immediately pulled up her pants and underwear and dashed out of the house. She and Generosa went back to school. Generosa told her not to tell anyone what happened.[9]

But Generosa herself later told their class adviser what happened to her. The class adviser, in turn, relayed it to her mother. The following day, on December 4, 2012, her mother reported the incident to the Municipal Social Development Office (MSDO). There, they were advised to also report the incident to the police. She was examined at the Municipal Health Center. Dr. Phillen D. Ureta (Dr. Ureta) found an old hymenal abrasion at 5 to 6 o'clock positions.[10]

Version of the Defense

Petitioner testified that he was only fifteen (15) years old when the alleged incident happened. Since February 13, 2011, he and complainant were already a couple.[11]

On November 14, 2012, he was with Socubos and Navido composing a song for their intermission number in complainant's school. But when they later learned they could no longer participate in the event, they just decided to eat lunch at Socubos' house. There, they found nothing to eat. Thus, Socubos and Navido went out to eat while he stayed in the house and took a nap.[12]

He was awakened when he heard someone calling his name. When he looked out, he saw Generosa and complainant. Generosa told him that complainant wanted to talk to him. He told complainant, however, they could not talk inside as the place was not his, but complainant and Generosa came in anyway. Generosa then stepped out again and closed the door behind her. The doorknob was broken and could only be opened from the outside. But Generosa refused to let them out of the house.[13]

Inside, complainant was crying while asking him regarding the rumors she heard about his supposed girlfriend in another school. He consoled and assured her that she was his only girlfriend. To further appease her, he hugged and kissed her on the cheek. She then told him to "*watch out.*" Just as Socubos and Navido were coming back, Generosa called out for complainant to come out. He offered to accompany complainant back to school but she refused.[14]

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9 *Id.* at 70.
10 *Id.* at 51-52.
11 *Id.* at 52.
12 *Id.*
13 *Id.* at 53.
14 *Id.* 53.

The Trial Court's Ruling

In the body of its Decision dated July 6, 2018,[15] Regional Trial Court (RTC), Branch 23, Kidapawan City pronounced petitioner guilty as charged, *viz.*:

> **WHEREFORE, based [on] the forgoing disquisitions, this court finds the accused guilty of the crime as charged beyond reasonable doubt and he is hereby sentenced to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to [eight] (8) years and one (1) day of *prision mayor* as maximum.**
>
> **The accused is further directed to pay the vietim the sum of ₱30,000.00 as civil indemnity; ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages. The period of preventive detention of the accused is counted in his favor. Cost de Officio.**[16]

The trial court gave full credence to complainant's testimony. It noted that complainant was just eleven (11) years old at the time the crime was committed, hence, the only subject of inquiry is whether "carnal knowledge" in fact took place. It similarly noted that complainant never faltered in her testimony even when she was subjected to a grueling cross-examination by the defense. Her testimony was not only consistent and straightforward, it was further supported by Dr. Ureta's findings.

The trial court, too, adopted the social worker's finding that petitioner acted with discernment when he committed the offense. For petitioner admitted that complainant was his girlfriend and he understood how difficult it was inside the detention cell. In fact, he even cried when recalling his time inside.

The trial court, nonetheless, concluded in the body of its decision that since Dr. Ureta found complainant's hymen to be intact, petitioner cannot be convicted of rape, but only of lascivious conduct.

Ruling of the Court of Appeals

On appeal , the Court of Appeals rendered its assailed Decision dated August 29, 2019,[17] *viz.*:

> **WHEREFORE**, [the] foregoing premises considered, the appeal is **DENIED**. The *Decision* dated 06 July 2018 of the Regional Trial Court (RTC), Branch 23, 12th Judicial Region, Kidapawan City in Crim. Case No. 1737-2013 in convicting the appellant of the crime charged is hereby

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15 Penned by Presiding Judge Jose T. Tabosares, *rollo*, pp. *id.* at 69-77.

16 *Id.* at 77.

17 Supra note 3.

> **AFFIRMED** in that accused-appellant BBB is **GUILTY** beyond reasonable doubt of the crime of Rape by Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code and is sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correctional* [sic] in its medium period, as minimum, to eight (8) years and one (1) day of *prision mayor* in its medium period, as maximum.
>
> Accused-appellant is **ORDERED** to pay the private complainant the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages. The amounts of damages awarded shall have an interest of six percent (6%) *per annum* from the date of finality of judgment until fully paid.
>
> The case against the accused-appellant shall be **REMANDED** to the trial court for appropriate disposition in accordance with Section 51 of Republic Act No. 9344.
>
> SO ORDERED.[18]

The Court of Appeals found petitioner guilty of rape by sexual assault. It affirmed the trial court's assessment of complainant's credibility as there was no showing that the trial court's factual findings were tainted with arbitrariness or oversight. It disregarded the defense's claim that complainant's account of what happened during and after the alleged incident was contrary to human experience. It emphasized that a child victim cannot be expected to behave and react as an adult.

It similarly found that petitioner acted with discernment when he committed the act. Petitioner obviously knew what he was doing when he asked complainant first whether she had her monthly period at that time.

The Present Petition

Petitioner now seeks affirmative relief from the Court and prays anew for his acquittal.

In the main, petitioner, faults the Court of Appeals for affirming the trial court's factual findings on the credibility of complainant's testimony. He maintains that it was inconsistent with human nature for an eleven (11) year old girl to go to the house of someone she claimed she did not even know very well and to not react when this person allegedly undressed and instructed her not to report to anyone the horrendous thing which he allegedly did to her.[19] Too, the imposition of the penalty under RA 7610 instead of the RPC is misplaced considering that he was also a minor when

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[18] *Id.* at 67.

[19] *Id.* at 25-37.

the incident happened. Imposing on him the heavier penalty under RA 7610 is contrary to the provisions of the Juvenile Justice and Welfare Act of 2006 which aim to protect the best interest of the child in conflict with the law.[20]

The People, on the other hand, argues that the issues raised by petitioner are factual in nature, hence, not proper a subject of a petition for review on *certiorari*. Besides, these issues were already discussed and resolved by the trial court and Court of Appeals.[21] In any case, the trial court and the Court of Appeals correctly found petitioner guilty of rape by sexual assault. Complainant never faltered in her testimony. She was consistent and straightforward. Dr. Ureta's findings also corroborate complainant's allegations.[22] Notably too, the defense stipulated on the assessment of the Municipal Social Welfare and Development Officer (MSWDO) that petitioner had acted with discernment. Petitioner cannot now deny a finding to which he agreed.[23]

Lastly, the Court of Appeals did not err when it imposed on petitioner the heavier penalty under RA 7610. The framers of RA 7610 clearly intended to provide a heavier penalty for sexual abuses committed against minors. The provisions of RA 7610 should be given full force and effect. To exempt a minor offender from the heavier penalty under RA 7610 would not only defeat the purpose of the law but will also prejudice the minor victim because the minor offender is protected by the Juvenile Justice and Welfare Act of 2006. This would be tantamount to tolerating the acts of the minor offender.[24]

Issues

1. Did the Court of Appeals err in finding petitioner guilty of rape by sexual assault?

2. Did the Court of Appeals err when it applied the penalty prescribed under RA 7610 to petitioner, a minor offender?

Ruling

To begin with, there is a discrepancy in the designation of the crime which petitioner was found to have committed, as borne in the body of the trial court's decision, on one hand, and as borne in the *fallo* itself, on the other. In the body, the trial court concluded that the accused (petitioner) did not commit rape through sexual assault but only acts of lasciviousness, thus:

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20 *Id.* at 37-40.
21 *Id.* at 146-148.
22 *Id.* at 148.
23 *Id.* at 149-152.
24 *Id.* at 152-159.

> Nevertheless, since based on the findings of the doctor, the hymen of the victim was intact, it can be gleaned that the accused has not committed the crime of rape [through] sexual assault but merely acts of lasciviousness. Although the charged [sic] was rape by sexual assault under Article 266-A second paragraph, the accused can still be convicted of the crime of acts of lasciviousness under Article 335 of the Revised Penal Code in relation to Title III, Section 5(b) of R.A. 7610.
>
> Under the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure and affirmed by settled jurisprudence, even though the crime charged against the accused was for rape through carnal knowledge, he can be convicted of the crime of acts of lasciviousness without violating any of his constitutional rights because said crime is included in the crime of rape.[25]

But in the *fallo*, the trial court pronounced petitioner guilty of the crime, as charged, to wit:

> **WHEREFORE, based [on] the forgoing disquisitions, this court finds the accused guilty of the crimes as charged beyond reasonable doubt and he is hereby sentenced to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to [eight] (8) years and one (1) day of *prision mayor* as maximum.**
>
> **The accused is further directed to pay the victim the sum of ₱30,000.00 as civil indemnity; ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages. The period of preventive detention of the accused is counted in his favor. Cost de Officio.**[26]

It is settled that where there is a conflict between the dispositive part and the opinion of the court contained in the text or body of the decision, the former must prevail over the latter on the theory that the dispositive portion is the final order, while the opinion is merely a statement ordering nothing.[27] ***Florentino v. Rivera***[28] ordains:

> It is settled rule that "the operative part in every decision is the dispositive portion or the *fallo,* and where there is conflict between the *fallo* and the body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is the final order while the opinion in the body is merely a statement, ordering nothing." We expounded on the underlying reason behind this rule in *Republic v. Nolasco* where, reiterating the earlier pronouncements made in *Contreras v. Felix*, we said:
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> > More to the point is another well-recognized doctrine that the final judgment of the court as rendered in the judgment of the court irrespective of all seemingly contrary statements in the decision. "A judgment must be distinguished from an

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25 *Id.* at 75.

26 Supra note 16.

27 *PH Credit Corporation v. Court of Appeals, et al.*, 421 Phil. 821, 833 (2001).

28 515 Phil 494, 501-503 (2006).

> opinion. The latter is the informal expression of the views of the court and cannot prevail against its final order or decision. While the two may be combined in one instrument, the opinion forms no part of the judgment. So, ... there is a distinction between the findings and conclusions of a court and its Judgment. While they may constitute its decision and amount to the rendition of a judgment, they are not the judgment itself. They amount to nothing more than an order for judgment, which must, of course, be distinguished from the judgment." (1 Freeman on Judgments, p. 6). At the root of the doctrine that the premises must yield to the conclusion is perhaps, side by side with the needs of writing finis to litigations, the recognition of the truth that "the trained intuition of the judge continually leads him to right results for which he is puzzled to give unimpeachable legal reasons." "It is an everyday experience of those who study judicial decisions that the results are usually sound, whether the reasoning from which the results purport to flow is sound or not." (The Theory of Judicial Decision, Pound, 36 Harv. Law Review, pp. 9, 51). It is not infrequent that the grounds of a decision fail to reflect the exact views of the court, especially those of concurring justices in a collegiate court. We often encounter in judicial decisions, lapses, findings, loose statements and generalities which do not bear on the issues or are apparently opposed to the otherwise sound and considered result reached by the court as expressed in the dispositive part, so called, of the decision.

Succinctly stated, "where there is a conflict between the dispositive portion of the decision and the body thereof, the dispositive portion controls irrespective of what appears in the body of the decision." While the body of the decision, order or resolution might create some ambiguity in the manner the court's reasoning preponderates, it is the dispositive portion thereof that finally invests rights upon the parties, sets conditions for the exercise of those rights, and imposes the corresponding duties or obligations.

More emphatically, *Light Rail Transit Authority v. Court of Appeals* declares that "it is the dispositive part of the judgment that actually settles and declares the rights and obligations of the parties, finally, definitively, and authoritatively, notwithstanding the existence of inconsistent statements in the body that may tend to confuse." In this regard, it must be borne in mind "that execution must conform to that ordained or decreed in the dispositive part of the decision; consequently, where the order of execution is not in harmony with and exceeds the judgment which gives it life, the order has *pro-tanto* no validity."

On appeal, the Court of Appeals disagreed with the trial court's factual conclusion in the body of the latter's decision, *thus*:

> However, this Court disagrees with the RTC in holding that since per Dr. Ureta's findings, the hymen of the victim was intact, appellant cannot be said to have committed the crime of rape by sexual assault but only acts of lasciviousness. It bears emphasizing that a broken hymen is not an element of the crime charged against the appellant.[29]

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[29] *Rollo*, p. 59.

and eventually made the following disposition, thus:

> **WHEREFORE**, [the] foregoing premises considered, the appeal is **DENIED**. The *Decision* dated 06 July 2018 of the Regional Trial Court (RTC), Branch 23, 12th Judicial Region, Kidapawan City in Crim. Case No. 1737-2013 in convicting the appellant of the crime charged is hereby **AFFIRMED** in that accused-appellant BBB is **GUILTY** beyond reasonable doubt of the crime of Rape by Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code and is sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correctional* [sic] in its medium period, as minimum, to eight (8) years and one (1) day of *prision mayor* in its medium period, as maximum.
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> x x x x x x x x x

Clearly, therefore, both the trial court and the Court of Appeals convicted petitioner of rape by sexual assault.

We now focus on these courts' appreciation of the evidence which boils down to the issue of credibility. On this score, the Court will generally not disturb the trial court's factual findings especially when affirmed in full by the Court of Appeals, as in this case. For indeed, the trial court is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[30] Here, records bear complainant's detailed narration of the incident when she was left inside the Socubos residence with petitioner: the latter undressed her, kissed her, and inserted his finger into her vagina.

The trial court gave full credence to complainant's positive, clear, and straightforward testimony. Surely, the credible testimony of the victim in rape cases is sufficient to sustain a verdict of conviction. More so, when the victim's testimony, as in this case, firmly conformed with the medical findings of the doctor who examined her. Dr. Ureta testified that he examined complainant and found that the latter had an old hymenal abrasion in 5 to 6 o'clock positions. According to Dr. Ureta, these lacerations were indicative of recent insertion of any hard instrument in the vagina, like a finger.[31]

Also, complainant was indisputably only eleven (11) years old when the incident happened on November 14, 2012. Her birth certificate[32] indicated she was born on August 24, 2001. Settled is the rule that testimonies of child-victims are normally given full weight and credit. Youth and immaturity are generally badges of truth and sincerity.[33]

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30 *See People v. Mabalo*, G.R. No. 238839, February 27, 2019; also *see People v. Bay-Od*, G.R. No. 238176, January 14, 2019.

31 *Rollo*, p. 108.

32 Exhibit "C."

33 *People v. Padit*, 780 Phil. 69, 80 (2016).

Petitioner, however, asserts that Presiding Judge Jose T. Tabosares who penned the trial court's decision could not have possibly "observed" complainant's behavior during her testimony because he was not yet the presiding judge when complainant testified.[34]

Time and again, the Court has invariably held that although the judge who rendered judgment in a criminal case was not the same judge who heard the case, there is nothing to preclude the former from ascertaining complainant's credibility based on the case records. ***People v. Udang, Sr.***[35] instructs:

> Udang attempts to raise doubt in his conviction because the judge who penned the trial court decision, Judge Mordeno, was not the judge who heard the parties and their witnesses during trial. For Udang, Judge Mordeno was in no position to rule on the credibility of the witnesses, specifically, of AAA, not having observed the manner by which the witnesses testified.
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> Ideally, the same trial judge should preside over all the stages of the proceedings, especially in cases where the conviction or acquittal of the accused mainly relies on the credibility of the witnesses. The trial judge enjoys the opportunity to observe, first hand, "the aids for an accurate determination" of the credibility of a witness "such as the witness' deportment and manner of testifying, the witness' furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath."
>
> **However, inevitable circumstances – the judge's death, retirement, resignation, transfer, or removal from office – may intervene during the pendency of the case.** An example is the present case, where the trial judge who heard the witnesses, Judge Francisco D. Calingin (Judge Calingin), compulsorily retired pending trial. Judge Calingin was then replaced by Judge Mordeno, who proceeded with hearing the other witnesses and writing the decision. **Udang's argument eannot be accepted as this would mean that every case where the judge had to be replaeed pending decision would have to be refiled and retried so that the judge who hears the witnesses testify and the judge who writes the decision wonld be the same. What Udang proposes is impracticable.**
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> x x x x x x x x x
>
> Applying the foregoing, the trial court decision convicting Udang is valid, regardless of the fact that the judge who heard the witnesses and the judge who wrote the decision are different. **With no showing of any irregularity in the transcript of records, it is presumed to be a "complete, authentic record of everything that transpire[d] during the trial," sufficient for Judge Mordeno to have evaluated the credibility of the witnesses, specifically, of AAA.** (Emphasis supplied)

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34 *Rollo*, p. 25.

35 823 Phil. 411, 424-425 (2018).

So must it be.

Further, there is no showing, as none was shown, that complainant was impelled by improper motive or was influenced by any of her family members to falsely accuse petitioner of rape by sexual assault. Absent evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that he/she was not so actuated and his/her testimony is entitled to full credence.[36]

Notably, against complainant's positive testimony, petitioner only offered denial as a defense. The Court has constantly decreed that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, between a categorical testimony which has a ring of truth on one hand, and a mere denial on the other, the former is generally held to prevail.[37]

The Court of Appeals, therefore, did not err in finding petitioner guilty of rape by sexual assault. ***People v. Bagsic***[38] enumerated the elements of rape by sexual assault, *viz.*:

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

(2) The act of sexual assault is committed by any of the following means:

(a) By inserting his penis into another person's mouth or anal orifice; or
(b) By inserting any instrument or object into the genital or anal orifice of another person;

(3) That the act of sexual assault is accomplished under any of the following circumstances:

(a) By using force and intimidation;
(b) When the woman is deprived of reason or otherwise unconscious; or
(c) By means of fraudulent machination or grave abuse of authority; or
(d) **When the woman is under 12 years of age** or demented. (Emphasis supplied)

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36 *People v. Galuga*, G.R. No. 221428, February 13, 2019.
37 *People v. Batalla*, G.R. No. 234323, January 07, 2019.
38 822 Phil. 784, 800 (2017).

All three (3) elements were proved here. Consider (a) petitioner committed a sexual act on complainant; (b) by inserting his finger into complainant's vagina; and (c) complainant was only eleven (11) years old at that time.

On whether petitioner, then only fifteen (15) years old, acted with discernment, the Court affirms the concurrent findings of both courts below. They properly gave weight to the report submitted by Social Worker Antonia Fernandez to the trial court, which stated:[39]

> He invited her inside the house and his classmate left them and he had a chance to be alone and there he sexually molested her because he observed that she did not refused [*sic*] what they did and kissed her lips. He admitted during the time the incident happened that what they did is wrong.

All told, the Court of Appeals did not err when it rendered a verdict of conviction against petitioner for rape by sexual assault.

Penalty

Article 266-A and Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353 (RA 8353)[40] define and penalize rape by sexual assault, as follows:

> Article 266-A. Rape. *When and How Committed.* - Rape is committed:
>
> x x x x x x x x x
>
> 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.
>
> Article 266-B. *Penalty*. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.
>
> x x x x x x x x x
>
> Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

RA 7610, on the other hand, provides:

> **Section 5.** ***Child Prostitution and Other Sexual Abuse.*** – Children, whether male or female, who for money, profit, or any other consideration

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39 *Rollo*, p. 109.

40 The Anti-Rape Law of 1997.

> 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.
>
> The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:
>
> x x x x x 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; and

Petitioner argues it was grave error for the Court of Appeals to impose on him the stiffer penalty of *reclusion temporal* in its medium period under RA 7610 instead of the lighter penalty of *prision mayor* prescribed under the Revised Penal Code considering he was also a minor at the time of the incident.

The argument is meritorious.

RA 7610 defines "children" as persons below eighteen (18) years of age or 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.

Complainant and petitioner, eleven (11) and fifteen (15) years old, respectively, at the time of the incident, were both children. In the Information itself, petitioner was referred to as a "child in conflict with the law" and complainant as an eleven (11) year old girl. Petitioner's minority at the time the offense was committed is undisputed.

RA 7610 was enacted in order to protect children from abuse, exploitation, and discrimination by adults and not by persons who are also children themselves. Section 5 of RA 7610 expressly states that a child is deemed to be sexually abused when coerced or influenced by an ***adult***, syndicate, or group, thus:

> **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. (Emphasis supplied)

Caballo v. People[41] elucidated on the offenders covered by this provision, *viz.*:

> The second element, *i.e.*, that the act is performed with a child exploited in prostitution or subjected to other sexual abuse, is likewise present. As succinctly explained in *People v. Larin*:
>
> > A child is deemed exploited in prostitution or subjected to other sexual abuse, when the child indulges 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**...
>
> It must be noted that the law covers not only a situation in which a child is abused for profit, but also one in which a child, through coercion or intimidation, engages in lascivious conduct.
>
> We reiterated this ruling in *Amployo v. People*:
>
> > ... As we observed in *People v. Larin*, Section 5 of Rep. Act No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child engages in any lascivious conduct through coercion or intimidation...
>
> Thus, a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct **under the coercion or influence of any adult**. In this case, Cristina was sexually abused because she was coerced or intimidated by petitioner to indulge in a lascivious conduct. x x x (Emphasis supplied)

In ***People v. Deliola***,[42] accused Deliola had carnal knowledge of his niece AAA. At that time, AAA was only eleven (11) years old like complainant herein. Deliola, on the other hand, was fifteen (15) years old, the same age as herein petitioner. Deliola was charged with and found guilty of qualified statutory rape under 266-A and 266-B of the Revised Penal Code and not under RA 7610.

Similarly, the 2019 Supreme Court Revised Rules on Children in Conflict with the Law which took effect on July 7, 2019 ordains that the best interest of the child shall be taken into consideration in judging a minor offender, to wit:

> **Section 44.** *Guiding Principles in Judging the Child.* - Subject to the provisions of the Revised Penal Code, as amended, and other special laws, the judgment against a child in conflict with the law shall be guided by the following principles:
>
> (1) The judgment shall be in proportion to the gravity of the offense, and shall consider the circumstances and the best interest of the child, the

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41 710 Phil. 792, 803 (2013).
42 794 Phil. 194, 212 (2016).

rights of the victim, and the needs of society in line with the demands of balanced and restorative justice.

(2) Restrictions on the personal liberty of the child shall be limited to the minimum. x x x[43]

Verily, therefore, being only fifteen (15) years and eight (8) months old when he committed the crime he was charged with and found guilty of, petitioner should be penalized under Article 266-A (2) of the Revised Penal Code, as amended by RA 8353, *viz.*:

Article 266-A. Rape: *When And How Committed.* - Rape is committed:

1) x x x x

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 orifiee of another person**. (Emphasis supplied)

Since the privileged mitigating circumstance of minority applies to petitioner, the penalty next lower in degree should be imposed, *i.e., prision correccional.*[44]

Applying the Indeterminate Sentence Law, petitioner should be sentenced to six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum.

In accordance, however, with RA 9344[45] and ***Deliola***,[46] citing ***People v. Jacinto***[47] and ***People v. Ancajas, et al.***,[48] petitioner, although he is now more than twenty-one (21) years old, is still entitled to be confined in an agricultural camp instead of serving sentence in a regular jail. ***Deliola*** enunciated:

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43 Section 46 under A.M. No. 02-1-18-SC or the Revised Rule on Children in Conflict with the Law.

44 *See* Supra note 42, at 212.

Art. 68. *Penalty to be imposed upon a person under eighteen years of age.* — When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraphs next to the last of Article 80 of this Code, the following rules shall be observed:

x x x x

2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

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

46 Supra note 42.

47 661 Phil. 224 (2011).

48 772 Phil. 166 (2015).

> Although it is acknowledged that accused-appellant was qualified for suspension of sentence when he committed the crime, Section 40 of R.A. 9344 provides that the same extends only until the child in conflict with the law reaches the maximum age of twenty-one (21) years old. Nevertheless, in extending the application of RA No. 9344 to give meaning to the legislative intent of the said law, we ruled in *People v. Jacinto*, as cited in *People v. Ancajas*, that **the promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in order that he/she may be given the chance to live a normal life and become a productive member of the community. Thus, accused-appellant is ordered to serve his sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities**, in accordance with Section 51 of R.A. 9344.[49] (Emphasis supplied)

More, the total period which petitioner initially served from his arrest on August 29, 2013 up till he got released on bail on October 13, 2014[50] shall be credited in his favor.

As for damages, the Court of Appeals correctly ordered petitioner to pay complainant ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages in accordance with ***People v. Lindo***.[51]

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated August 29, 2019 of the Court of Appeals in CA-G.R. CR No. 01722-MIN is **AFFIRMED with MODIFICATION**.

Petitioner BBB is found **GUILTY** of **Rape through Sexual Assault** under Article 266-A (2) of the Revised Penal Code. He is sentenced to an indeterminate term of six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum. He is further ordered to **PAY** complainant AAA the following monetary awards:

(1) ₱30,000.00 as civil indemnity;
(2) ₱30,000.00 as moral damages; and
(3) ₱30,000.00 as exemplary damages.

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

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49 Supra note 42, at 212-213.
50 *Rollo*, p. 24.
51 641 Phil. 635 (2010).

This case is **REMANDED** to the Regional Trial Court, Branch 23, Kidapawan City for its appropriate action on petitioner's service of sentence, in lieu of confinement in a regular penal institution, in an agricultural camp or other training facilities established, maintained, supervised, and controlled by the Bureau of Corrections in coordination with the Department of Social Welfare and Development, in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR :

DIOSDADO M. PERALTA
Chief Justice
Chairperson – First Division

See Concurring + Dissenting Opinion.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

MARIO V. LOPEZ
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.

DIOSDADO M. PERALTA
Chief Justice