

EN BANC

G.R. No. 230549 – PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*
versus GLENN BARRERA Y GELVEZ, *accused-appellant*.

Promulgated:
December 1, 2020

Anna-Filipino-Papa-Jobles

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CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

I concur in the result — that the accused Glenn Barrera y Gelvez (the accused) should stand criminally liable for the two distinct crimes of Robbery with force upon things under Article 299(A)(2) and Sexual Assault under Article 266-A(2) of the Revised Penal Code (RPC). I disagree, however, with the rationalizations of the *ponencia*.

Brief review of the facts

The accused was charged under an Information dated February 4, 2013, the accusatory portion of which reads:

That on or about 5:30 a.m. of 02 February 2013 at XXX, Calamba City and within the jurisdiction of the Honorable Court, the above-named accused, **with intent to gain by means of force upon things**, did then and there willfully, unlawfully and feloniously entered the house of the private complainant and once inside, take, steal one (1) portable DVD worth Php2,500 and one (1) TCL 21 inches television, owned by BBB, to the damage and prejudice of the latter.

That on occasion thereof, the said accused, with lewd design, sexually assaulted AAA, a seven (7) year old minor, against her will, **by pulling down her short and inserting his tongue inside the vagina of the said minor**, to the damage and prejudice of the minor.

CONTRARY TO LAW.¹ (Emphasis supplied)

It was established during the course of the trial that in the early morning of February 2, 2013, the accused, by removing one of the jalousies of a window, broke into the house where BBB,² his wife CCC,³ and their seven-

¹ *Ponencia*, p. 2.

² The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006), and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

³ Id.

year-old daughter AAA⁴ were residing.⁵ Once inside, the accused took a DVD player and a television set.

Thereafter, the accused managed to find AAA, who was then sleeping on the second floor, and violated her by taking off her shorts, licked her private parts and inserted his tongue.⁶ After the ordeal, AAA yelled which roused CCC and BBB. The attempted escape of the accused was foiled by BBB and CCC with the help of their relatives living in the same compound. BBB sought the aid of the Barangay Tanod and the accused was turned over to the police.⁷

After trial, the trial court held the accused guilty of the special complex crime of Robbery with Rape under Article 293, in relation to Article 294, of the RPC, and imposed upon him the penalty of *reclusion perpetua*.⁸

On appeal, the Court of Appeals affirmed the conviction with the modification that the accused shall not be eligible for parole pursuant to Republic Act (R.A.) No. 9346⁹ and the awards of civil indemnity and moral damages were each increased to ₱75,000.00.¹⁰ The accused then filed the present appeal.

The *ponencia* holds the accused liable for two separate crimes, namely (1) “Robbery by the use of force upon things, defined and penalized by Article 299 of the RPC”¹¹ and (2) “Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610.”¹²

As previously mentioned, I concur in the result that the accused is liable for two distinct crimes. I respectfully disagree, however, in the disquisitions of the *ponencia* in arriving at the said conclusion. It is my view that the present case — based on the allegations in the Information, as well as the facts proven — does not even involve the special complex crime of “Robbery with Rape” defined under Article 294 of the RPC, as amended. Accordingly, the discourse in the *ponencia* as to what kind of rape is included in “Robbery with Rape” is uncalled for.

***The crime of Robbery and
the special complex crime of
Robbery with Rape***

Robbery is a crime committed in one of two ways as defined under Article 293 of the RPC:

⁴ Id.

⁵ *Ponencia*, p. 2; *rollo*, p. 3.

⁶ *Ponencia*, p. 3; *rollo*, p. 4.

⁷ *Ponencia*, p. 3; *rollo*, p. 4.

⁸ *Ponencia*, p. 4; *rollo*, pp. 4-5.

⁹ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES, approved June 24 2006.

¹⁰ *Ponencia*, p. 4; *rollo*, p. 9.

¹¹ *Ponencia*, p. 22.

¹² Id.



Art. 293. *Who are guilty of robbery.* — Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, **or** using force upon anything, shall be guilty of robbery. (Emphasis and underscoring supplied)

The elements of the crime of robbery are therefore: (1) there is taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi* or intent to gain; and (4) **the taking is with violence against or intimidation of persons OR with force upon things.**¹³ “Violence against or intimidation of persons” and “force upon things” are two different modes of committing Robbery. The RPC itself even defines and deals with them separately, *i.e.*, Articles 294-298 for Robbery through violence against or intimidation of persons and Articles 299-303 for Robbery through force upon things.

The **taking by either of these two means** is the gravamen of the felony. When one removes the means of commission (violence or intimidation against persons, or force upon things) from the material act of taking, the crime committed ceases to be robbery. In the commentaries of Justice Luis B. Reyes on robbery, he reiterated that there should be violence exerted to accomplish the taking. If the violence, for instance, is for a reason entirely foreign to the fact of taking, then there can be no robbery:

Where there is nothing in the evidence to show that some kind of violence had been exerted to accomplish the snatching, and the offended party herself admitted that *she did not feel anything at the time her watch was snatched from her left wrist*, the crime committed is not robbery but only simple theft.¹⁴ (Italics in the original)

The fact that the owner of the money was tied at the time the money was taken cannot be considered as violence for the purpose of classifying the same as robbery. The offended party was tied for some hours previously for a reason entirely foreign to the act of taking money.¹⁵

Simply put, to qualify the crime as robbery, the **violence against or intimidation of persons should have been present in the taking of personal property.**¹⁶

From this discussion, it is important to point out that the special complex crime of Robbery with Rape is *peculiar* to robberies committed through violence against or intimidation of persons. The special complex

¹³ *People of the Philippines v. Mamalayan*, 420 Phil. 880, 891 (2011).

¹⁴ REYES, LUIS B. THE REVISED PENAL CODE, BOOK TWO, 2008 ed., p. 681, citing *People vs. Joson*, C.A., 62 O.G. 4604.

¹⁵ REYES, LUIS B. THE REVISED PENAL CODE, BOOK TWO, 2012 ed., p. 744, citing *U.S. v. Birueda*, 4 Phil. 229 (1905).

¹⁶ According to J. Reyes, “the violence or intimidation must be present before the taking of personal property is complete.” (Id. at 662)



crime of Robbery with Rape is defined in Article 294 (1) of the RPC, as amended by R.A. No. 7659,¹⁷ which provides:

Art. 294. *Robbery with violence against or intimidation of persons* — Penalties. — Any person guilty of **robbery with the use of violence against or intimidation of any person** shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or **when the robbery shall have been accompanied by rape** or intentional mutilation or arson. (Emphasis and underscoring supplied)

It is worth noting that no similar provision can be found in the articles of the RPC dealing with Robbery through force upon things, *i.e.*, Articles 299-303. **Thus, as defined**, to support a conviction for the special complex crime of Robbery with Rape, the following elements must be proven:

- (a) The taking of personal property is committed **with violence or intimidation against persons**;
- (b) The personal property taken belongs to another;
- (c) The taking is with intent to gain; and
- (d) The robbery is accompanied by rape.¹⁸

***Application of the foregoing
in the present case***

Of the four elements of the special complex crime, the **element that the taking of property be committed with violence or intimidation against persons** is absent in the present case. The Information filed against the accused made no allegation whatsoever that the robbery itself was committed through violence or intimidation against persons. As well, the evidence of the prosecution did not establish this.

Instead, alleged in the Information and proven beyond reasonable doubt was the commission of robbery **with force upon things**, defined and penalized under Article 299(a)(2) of the RPC, as amended by R.A. No. 10951,¹⁹ which provides:

Art. 299. *Robbery in an inhabited house or public building or edifice devoted to worship*. — Any armed person, who **shall commit robbery in an inhabited house** or public building or edifice devoted to religious

¹⁷ AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES, approved December 13, 1993.

¹⁸ *People v. Bongos*, 824 Phil. 1004, 1012 (2018); *People v. Evangelio*, 672 Phil. 229, 242 (2011); *People v. Amper*, 634 Phil. 283, 291 (2010); *People v. Arellano*, 418 Phil. 479, 490 (2001).

¹⁹ AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815 KNOWN AS "THE REVISED PENAL CODE," AS AMENDED, dated August 29, 2017.



worship, shall be punished by *reclusion temporal*, if the value of the property taken shall exceed Fifty thousand pesos (Php50,000.00), and if —

(a) The **malefactor shall enter the house** or building in which the robbery was committed, by any of the following means:

1. Through an opening not intended for entrance or egress;
2. **By breaking any wall, roof, or floor, or breaking any door or window;**
3. By using false keys, picklocks, or similar tools;
4. By using any fictitious name or pretending the exercise of public authority.

x x x x

When the offenders do not carry arms, and the value of the property taken exceeds Fifty thousand pesos (Php50,000.00), the penalty next lower in degree shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed Fifty thousand pesos (Php50,000.00).

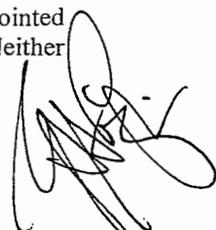
When said offenders do not carry arms and the value of the property taken does not exceed Fifty thousand pesos (Php50,000.00), they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum period. (Emphasis supplied)

All the elements of Article 299(a)(2) of the RPC, as amended by R.A. No. 10951, concur: *first*, the accused entered an inhabited house where BBB and his family were residing; *second*, the accused entered such house by removing one of the jalousies of a window; and *third*, once inside the house, the accused took personal property the value of which appears to not exceed ₱50,000.00, *i.e.*, “one (1) portable DVD worth Php2,500.00 and one (1) TCL 21 inches television.”²⁰

Since the special complex crime of Robbery with Rape does not exist for robberies committed through force upon things, the sexual acts done by the accused to the minor AAA necessitates a separate conviction for the crime of Rape by Sexual Assault under Article 266-A (2) of the RPC.²¹

²⁰ *Ponencia*, p. 2. I note that the *ponencia* correctly characterized the crime committed as one of robbery with force upon things in its final disposition (*id.* at 17).

²¹ While rape was committed on occasion of the Robbery, the former cannot be complexed with the latter as a special complex crime of Robbery with Rape under Article 294 of the RPC since, as I have pointed out earlier, the Robbery was not committed through violence or intimidation against persons. Neither



Having two separate convictions is possible in this case because the Information filed alleged the commission of two distinct crimes. Normally, the Information would be susceptible to a challenge in a motion to quash under the vice of duplicity of offenses. It appears, however, that the accused failed, before arraignment, to move for the quashal thereof.²² This being the case, any objection to the defective Information was thereby waived and the accused may be found guilty of as many offenses as those proved during trial.²³

***The ponencia's redefinition
of Rape as a component
crime of the special complex
crime of Robbery with Rape
is obiter dicta***

To my mind, the issues presented by the appeal are straightforward and the foregoing framework would have judiciously disposed of the issues therein. On the basis of the foregoing, I thus disagree with the *ponencia's* discussions redefining the nature of rape as a component of the special complex crime of Robbery with Rape defined under Article 294 of the RPC – which, again, is a crime completely distinct from the crimes alleged in the Information and proven by the prosecution.

The *ponencia's* redefinition of the nature of rape as a component of the special complex crime of Robbery with Rape is therefore unnecessary in the resolution of the instant appeal and thus mere *obiter dicta*.

As previously discussed, the special complex crime of Robbery with Rape exists only in robberies committed through violence against or intimidation of persons. Verily, before the Court can even begin considering, discussing, and resolving the nature of rape as a component of the special complex crime of Robbery with Rape, it must first be established that **the Robbery must have been done through violence against or intimidation on persons.**

In contrast, the Information in this case did not allege — and the evidence presented did not at all prove — that there was violence or intimidation against persons to accomplish the taking of personal property. This case, therefore, clearly does not involve the **special complex crime of “Robbery with Rape” because, to reiterate, it does not exist when the taking of personal property was done with force upon things, instead of through violence against or intimidation on persons.** Any discussion redefining said special complex crime as being confined only to penile rape is

out earlier, the Robbery was not committed through violence or intimidation against persons. Neither can both felonies be complexed under Article 48 of the RPC since the accused committed two separate criminal acts and Rape cannot be considered as a necessary means for committing the Robbery. As such, the accused should be held separately liable for Rape by Sexual Assault.

²² *People v. Tamayo*, 434 Phil. 642, 655 (2002).

²³ *People v. Tano*, 387 Phil. 465, 487 (2000), citing *People v. Manalili*, 335 Phil. 652 (1998) and *People v. Bugayong*, 299 Phil. 556 (1998).



thus inconsequential in the resolution of the appeal. Any deliberation and pronouncement on the same will be no more than an advisory opinion, mere *obiter dicta* at once premature and unwarranted,²⁴ as the established facts of this case do not bear out the need to revisit the relevant penal provisions and overturn decided cases by the Court.

Ultimately, the *ponencia*'s discussions on pages 6 to 14 on the intent of the legislature to maintain the dichotomy between rape by carnal knowledge and rape by sexual assault and how it should be applied in the special complex crime of Robbery with Rape, is mere *obiter dictum*.

Indeed, “[j]usticiability demands that issues and judicial pronouncements be properly framed in relation to established facts.”²⁵ That the liberty and freedom of an accused is at stake and that the question is of extreme importance and is certainly worth of this Court’s time and attention are not enough — for the Constitution is clear that the “duty of the courts of justice [is] to settle **actual controversies** involving rights which are legally demandable and enforceable[;]”²⁶ and in the final analysis, the contours of Article 294(1) of the RPC is not part of the actual controversy in this case because, as illustrated above, Article 299(a)(2) of the RPC is the applicable law in the given set of facts.

Given, however, that the majority has seen it proper for the *ponencia* to discuss the exclusion of rape by sexual assault as a component of the special complex crime of Robbery with Rape, I hereby offer a contrary view that based on the plain text and the intent of the RPC, as amended by R.A. No. 7659 and R.A. No. 8353, the special complex crime of Robbery with Rape includes Rape by Sexual Assault.

In other words, based on my review of the legal principles involved, I believe that the special complex crime of Robbery with Rape may likewise be committed even if the sexual act done by the accused constitutes Rape by Sexual Assault and not by carnal knowledge.

A. Foremost rule in construing a statute is verba legis; thus, when a statute is clear and free from ambiguity, it must be given its literal meaning and

²⁴ See *Dee v. Harvest All Investment Limited*, 807 Phil. 572, 583 (2017):

[An obiter dictum] is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*. (Emphasis and underscoring omitted)

²⁵ *Falcis III v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744>>.

²⁶ CONSTITUTION, Art. VIII, Sec. 1. (Emphasis supplied)



***applied without attempted
interpretation***

When the statute speaks unequivocally, there is nothing for the courts to do but to apply it.²⁷ The duty of the Court is to apply the law the way it is worded.²⁸ There is simply no room for statutory construction when the letter of the law is clear. Otherwise stated, a condition *sine qua non* before the court may construe or interpret a statute is that there be doubt or ambiguity in its language.²⁹

At the time of the commission of the crime in 2013, Article 294(1) of the RPC, as amended, **as written**, was unambiguous. It states that “[t]he penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or **when the robbery shall have been accompanied by rape** or intentional mutilation or arson.”

Similarly, at the time of the commission of the crime in 2013, **Rape was defined by the RPC as already including 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.

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 and underscoring supplied)

²⁷ *Tawang Multi-purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 400 (2011).

²⁸ *Id.*

²⁹ *United Paracale Mining Co., Inc. v. Dela Rosa*, 293 Phil. 117, 123-124 (1993).



In 2013, it was clear that Rape may be committed by any of the following ways, namely: (1) by a man having carnal knowledge — penile penetration of the vagina — of a woman, or (2) by a man inserting his penis into another person's, whether a man's or a woman's, mouth, or (3) by any person, whether a man or a woman, who inserts any instrument or object into the genital or anal orifice of any person, whether a man or a woman.

While Rape by sexual intercourse has a heavier penalty³⁰ than “Rape by Sexual Assault,” the law nevertheless treats both of those acts as Rape — without distinction.

To reiterate, the letter of the law, as quoted above, is clear: “Rape is committed x x x [b]y any person who x x x 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.” Thus, to exclude the second paragraph of Article 266-A from the definition of “Rape” in “Robbery with Rape” would be to construe the law contrary to its express letter.

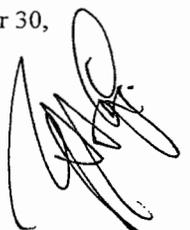
The “ambiguity” that is sought to be addressed in this case was seemingly brought about by the fact that R.A. No. 7659 which amended Article 294 of the RPC, thereby creating, among others, the special complex crime of “Robbery with Rape” — and categorizing the same as a heinous crime and imposing the death penalty — was passed earlier, or in 1993, or four years before the article on Rape was amended by R.A. No. 8353³¹ in 1997. This, however, does not, I believe, give rise to any kind of ambiguity. To be sure, it is *extraneous*, to the letter of the law at the time of the commission of the crime.

It is worth reiterating that when a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. To do otherwise would be to engage in judicial legislation. As the Court in an early case said:

In substantiation of what has just been said, it is of course fundamental that the determination of the legislative intent is the primary consideration. **However, it is equally fundamental that that legislative intent must be determined from the language of the statute itself. This principle must be adhered to even though the court be convinced by extraneous circumstances that the Legislature intended to enact something very different from that which it did enact. An obscurity cannot be created to be cleared up by construction and hidden meanings at variance with the language used cannot be sought out. To attempt to do so is a perilous undertaking, and is quite apt to lead to an amendment of a law by judicial construction.** To depart from the

³⁰ Article 266-A (1) in relation to Article 266-B of the RPC.

³¹ 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, or The Anti-Rape Law of 1997, September 30, 1997.



meaning expressed by the words is to alter the statute, is to legislate not to interpret.³² (Emphasis and underscoring supplied)

B. Even with the application of the aids of statutory construction, the Court would still arrive at the same conclusion

Even if the Court were to ascertain the legislative intent of the laws by secondary aids of construction, the conclusion remains the same that **after 1997**, upon the passage of R.A. No. 8353, the definition of rape under our criminal laws had purposefully been changed or expanded to include “acts of sexual assault.”

B.1. The title of R.A. No. 8353 expresses the legislative intent to expand the definition of Rape

R.A. No. 8353 is titled “An Act ***Expanding the Definition 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.”³³

The title alone reflects the intention of the legislature to set a new definition; to consider as Rape those acts which were previously not considered as such. Part of the reason behind the enactment of the law was to move from the “traditional” concept of Rape, which is limited only to carnal knowledge or penile penetration of the vagina, to an expanded definition where other sexual acts that similarly violate the bodily autonomy of the victim are also covered. In the Explanatory Note of one of the bills filed in the House of Representatives (House) that eventually became R.A. No. 8353, it was stated that:

The current definition of rape is inadequate inasmuch as it uses penile penetration of the vagina as the index in determining its commission. But rape law, to be reflective of the guarantee of equality found in the Constitution, must be concerned with vindicating the violated rights of a human being. It must surmount the current penile penetration-centered framework to encompass sexual violations using objects or targeting other orifices of the human body. This new approach would also end the notion that only a woman can be a rape victim.³⁴

The “expanded” definition of Rape was met with opposition when it was being deliberated in the House. The members of the House were not opposed to the idea of punishing the acts that now constitute Rape by Sexual

³² *Tañada v. Yulo*, 61 Phil. 515, 518 (1935).

³³ Emphasis supplied.

³⁴ 8th paragraph, Explanatory Note of House Bill No. 2439.



Assault. However, for the members of the House, the “traditional” definition of Rape ought to be “preserved” because (1) that has always been the case and (2) it seemed “unfair” to punish with the same gravity — with *reclusion perpetua* to *death* — both Rape by carnal knowledge and Rape by sexual assault. Some of the members of the House viewed the two crimes to be different because, especially with “object rape” and bestiality,³⁵ the perpetrator experiences sexual pleasure not directly, but vicariously. Advocates of the law in the House urged other members to view the crime of rape from the perspective of the victim — the physical, emotional, and psychological trauma that it brings to the victim — and not from the lens of the pleasure brought to the perpetrator. As a form of compromise, advocates of the law in the House eventually agreed to retain the “traditional” definition of Rape and to have the other acts punished as “sexual assault.” Thus, the title of the bill after the second reading of the bill in the House read:

AN ACT TO AMEND ARTICLE 335³⁶ OF THE REVISED PENAL CODE, AS AMENDED, AND DEFINING AND PENALIZING THE CRIME OF SEXUAL ASSAULT

The title of the House Bill above is different from what the official title of R.A. No. 8353 eventually became. The title above is reflective of the position of the House that the “traditional” definition of Rape had to be “preserved.”

In stark contrast, the title of R.A. No. 8353 explicitly states that it was expanding the definition of Rape. The title was changed because Section 2 of R.A. No. 8353, amending Article 335 of the RPC into Article 266-A, treats all the acts therein as Rape, whether it be by sexual intercourse or by sexual assault.

The change in Section 2 of R.A. No. 8353 was a result of a compromise reached in the Bicameral Conference Committee (Bicam) between the two houses of Congress. In contrast with their counterparts in the House, the Senators who were present in the Bicam were adamant that the definition of Rape ought to be expanded. Influenced by developments in other areas of study, the Senators were of the view that, at its core, rape is an issue of power. It is the violation of the lack of consent to the sexual act, and the imposition of power by the perpetrator against the other person, that qualifies the act into rape. To the Senators, therefore, it should be immaterial whatever the sexual act was committed as what was being punished was the intrusion of the victim’s bodily autonomy. As a form of compromise, therefore, the legislators agreed to lump together the sexual acts — both those constituting sexual intercourse and those constituting sexual assault — in one section and called it all “Rape,” and then simply imposed different penalties as a concession to the members of the House in the Bicam.

³⁵ Forcing another person to have sex with an animal. This was an act punished under the original draft of the bill/s filed in the House.

³⁶ The article number of Rape under the RPC prior to the enactment of R.A. No. 8353.



Thus, the title of R.A. No. 8353 is what it is because the legislative intent, particularly of the Senate, is to treat all the sexual acts, when done with the attendant circumstances,³⁷ as Rape, without distinction.

B.2. The legislative deliberations reveal the intent to expand the definition of Rape

In this connection, R.A. No. 8353's title is not the only basis for saying that the intent was indeed to expand the definition of Rape. In fact, the Congressional deliberations themselves clearly reveal the said intention. In the Bicam, Senators Anna Dominique M.L. Coseteng and Leticia Ramos Shahani explained the position of the Senate in this wise:

CHAIRPERSON COSETENG. I think that for us to be able to even get to first base in this bicameral conference committee meeting, we should confine ourselves to the issues right here.

I would like to know exactly, since you brought this up, Congressman Damasing, you said several things which I took down. The mouth and the anus are not sexual organs so that you cannot call the insertion of a man's penis into a woman's mouth forcibly without her consent plus all the factors mentioned here, as rape. You don't classify as a rape. Suppose there is consent, is there pleasure, sexual pleasure obtained from the insertion of a man's penis into a woman's mouth? Is the mouth not a source of sexual pleasure when there is consent? Is the anus, for example, with consent, does the penetration of a penis into the woman's anus, is this a source of sexual pleasure when there is consent? Because the reason I think that you're saying it is not a sexual organ is because under the situation[,] you don't believe there is pleasure[.] [N]either is there pleasure, for example, when you force yourself into a woman through her vagina. But if a woman consents to inserting a man's penis into her mouth with consent, is it not a pleasurable act?

I'm only making this analogy, Congressman, because it is not the pleasure or the lack of it that determines whether or not it's a sexual organ.

HON. DAMASING. Madam?

CHAIRPERSON COSETENG. Yes, Congressman.

HON. DAMASING. When a man forces the woman to hold his organ and masturbate the organ, there's pleasure. But I don't see that as a rape. That is not rape, but there is pleasure.

X X X X

³⁷ 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.



x x x So, in other words, we have to be reasonable because I for one would be the first one to defend the woman's right. But we have to be reasonable. For instance, in this version of the Senate, insertion of the finger into the anus is already rape.

CHAIRPERSON COSETENG. Forcible.

HON. DAMASING. Yes, you call it rape. Imagine that!

x x x x

CHAIRPERSON COSETENG. In other words, why are we listening to the men talk about what they feel when the men are the criminals, the men are the violators? I don't want to say that all men are rapists, but I have yet to see a man stand up and say, "I was raped by this woman."

What I'm saying is, can we not listen to the women since the women are the victims? **If the women feels (sic) that it is considered a violation and she considers it rape if a male's organ is forced into her mouth, should we not listen to the women who are the ones violated** and not just say it's laughingstock because it does not fit into our traditional concepts of what rape is all about?

HON. DAMASING. Madam, it's not only the women that we are protecting in this Bill, even the men.

x x x x

HON. SHAHANI. Because I think the crime of rape is rape. I mean, we feel that if violence is done to a woman, it is rape. And it is not sexual assault. You see[,] by saying sexual assault, you lighten it. That is the interpretation, you see. **The use of violence, the use of force without her consent whether it is carnal knowledge or introduction of foreign object. The fact that there is violence in that act and that it is done against her will, for women, that is rape.** I think that is, this is a fundamental difference.

CHAIRMAN SATOR. We have discussed the meaning of rape in our group. We are agreed that the real meaning of rape is committed on the reproductive organ of a woman by the reproductive organ of the man. I think that we have to distinguish the reproductive organs from those which are not. So we have to classify those which are not done to the reproductive organs as not rape. Because that has always been the meaning, wherever we go, whether in the Philippines or anywhere in the world. The crime of rape has always been on the sexual organs. Because it will put an outsider to the family or to the woman. For example, she will bear a child or the woman is married, an outsider will come in into that family. So the traditional meaning has always been that way. It will really be very difficult for us to foresee that the crime of rape will include these other acts that we are describing now as sexual assault.

HON. SHAHANI. Well, I think if you might want to put it this way, the repertoire of sexual practice has been enlarged over the years. I mean, just to confine it I think to the genital parts does not reflect what scientists like



Floyd have discovered. I am sure you have heard about the sexual book of Masters and Johnson. I mean, it's not just like the genitals. There are ways of violating a body of a woman. And when you say, sex, I mean I think I would agree with what Senator Coseteng says. **I mean, the other parts of the body are sexually sensitive. I mean, they may not lead to pregnancy. But their manipulation can mean an assault or violation of the woman without her consent.** Why do you have to always go by tradition? I mean a lot of crimes precisely have been done. Women have been violated. We could see these as violation against women.³⁸ (Emphasis and underscoring supplied)

Because of the differing views put forth by the Senators and the members of the House, Senator Raul Roco tried to reconcile the points by suggesting that all the acts be called Rape, in line with the position of the Senate, but, as a concession to the House, the penalties would be different:

HON. ROCO. But we may satisfy everybody already by saying that rape is committed through forced sexual intercourse, bestiality or sodomy or acts of sexual assault. Then you say this way.

x x x x

HON. ROCO. **The three are all rape, then you define them separately.**

x x x x

HON. ROCO. **A is rape as the traditional; B is bestiality, rape as bestiality; C is rape as sexual assault.** I think, pati na — lahat na should be happy.

x x x x

HON. ROXAS. The alternative, as they do this, no, where rape is the general term and then you have the specifics for each one. May be they can also do parallel what is the House construct which is sexual assault as the genus and the, and then rape and all these other, as the aggravating.

x x x x

HON. ROCO. That's why I am suggesting that one of our justifications is there was nothing to reconcile. Tugma, eh. Parang we just like to accept but we combine it under one genus. Di ba? Because, and it happens, it has happened that when your version is totally different from ours, just put them together. In other words, parang it was out of our hands. It was the way it evolved. So we just say since kami one definition lang, kayo two, we combine it and make it three. And that is really reconciliation. But when you are charged in court you will be charged as a violation of 266 under sexual assault. But,

³⁸ Bicameral Conference Committee, February 19, 1997.



HON. APOSTOL. Ang ginagawa natin, ang general classification is rape tapos ang sexual assault becomes only a part of it. Actually ang general classification nito ay sexual assault, eh. Then we go, ang particulars is rape.

HON. ROCO. Because this is an anti-rape bill. That's the reason I am suggesting, hindi ba? We did not start out with an anti-sexual assault.

HON. SHAHANI. Yes.

HON. ROCO. We wanted to upgrade the rape as a crime. So when you downgrade rape and it is component of sexual assault, parang di hindi na-achieved yung goal.

HON. [APOSTOL]. No, it's still ano, eh, you still move it up to the section which is crime against persons. You attain that. It's just what you call it, eh. But it's still moved up in the Revised Penal Code to the section that is crimes against persons. So their upgrading was attained.

HON. ROCO. No, but it is the anti-rape bill nga, eh. It is a reaction.

HON. DAMASING. No, no, if we follow your suggestion, there will be no more left for sexual assault.

HON. ROCO. No.

HON. DAMASING. Because under the Senate version, all are rape.

HON. ROCO. No, no, we're classifying this as para we reconcile. We are classifying it para naman yung justification.³⁹ (Emphasis and underscoring supplied)

After another meeting, the conference committee report, which reflects how R.A. No. 8353 is currently worded, was drafted. When the conference committee report was read to the rest of the members of the House for approval, Rep. Erasmo Damasing had the following clarificatory questions:

MR. DAMASING. Madam Speaker. Your Honor. I want this clarified. If one is charged under paragraph 2, will he be charged with sexual assault or he will be charged with rape?

MR. LARA. Sexual assault, Madam Speaker.

MR. DAMASING. Your Honor, if you read Article 266-A, **there is no such crime denominated as sexual assault, it is all rape because at the start rape is committed by (1) and by (2). The No. 2 is only through sexual assault, but the crime is still known as rape. Look at how it is worded.**

Rape, when and how committed? Rape is committed: (1), and then No. 2, this is against the House version, because the House version stated

³⁹ Id.



specifically that there are two ways of committing crimes which are sexually-related: rape and sexual assault. But here, it is lumped into one as rape. Is that correct, Your Honor?

MR. LARA. Madam Speaker.

MR. DAMASING. Let us not anymore try to go around.

MR. LARA. Madam Speaker, I believe that the principal concern that we must have here is that the House Panel succeeded in separating the penalties. What we should see here was the concern of the House that sexual assault must not be penalized with death penalty as the Senate version proposed. So, in the Bicameral Conference, the House Panel succeeded in separating that. Be that as it may, I think this is just a matter of lumping together. In that context, it is lumping together and calling it, generally, as rape. I would have the tendency to agree with my colleague from Cagayan de Oro City. So, probably, the Speaker was suggesting that he would coauthor with us and probably joined by the Gentleman from Cagayan de Oro City, a way to remedy this particular situation. But, probably in that context, we — the Gentleman from Cagayan de Oro City and myself — are in agreement, Madam Speaker.

MR. DAMASING. So, Madam Speaker, Your Honor, it is therefore now clear that all sexual related crimes are now denominated as rape, regardless of the penalties. We want that clarified. Is that correct, Your Honor?

MR. LARA. Yes, with different penalties.

MR. DAMASING. Yes. To me it is regardless of the penalties. It is just that I wanted to clarify that all [sexually related] crimes are now denominated as rape, there is no such thing as sexual assault, but rape committed through sexual assault?

MR. LARA. Yes.

MR. DAMASING. Okay.⁴⁰ (Emphasis and underscoring supplied)

Another member of the House sought clarification and it was answered in the same manner:

MR. ISIDRO. Your Honor, at the time that we were discussing this during the period of amendments, this Representation submitted amendments to clarify the definition of the crime of rape in order that rape can only be committed by a man against a woman because of carnal knowledge.

MR. APOSTOL. Yes, Your Honor.

MR. ISIDRO. And my amendment was carried...

⁴⁰ I RECORD, HOUSE 10TH CONGRESS 3RD SESSION 789 (September 3, 1997).



MR. APOSTOL. Yes, Your Honor.

MR. ISIDRO. ... unanimously by this body. Now, I was startled to see that it came back in another form that is in paragraph 2 of Article 266-A so that rape under this definition is not confined to carnal knowledge. It includes sexual assault so that under this bill, rape can now be committed by a man against another man.

MR. APOSTOL. Under paragraph 2.

MR. ISIDRO. Yes. It can also be committed by a woman against another woman.

MR. APOSTOL. Yes, under paragraph 2.

MR. ISIDRO. It can also be committed by a woman against a man.

MR. APOSTOL. Yes, under paragraph 2.

MR. ISIDRO. Now, is this not startling in the sense that it revolutionizes the crime of rape so that for the first time in our history in this jurisdiction, a woman can now charge another woman of rape. A man can charge another man with rape. And a man can charge a woman with rape. Are we ready to accept these changes?

MR. APOSTOL. Your Honor, paragraph (2) is basically an act of sexual assault. Though it is a part, that is paragraph (2) of Section 2, Article 266-A, but this is basically sexual assault. So when we try to revolutionize rape, it is not really revolutionizing rape, it is more sexual assault.

MR. ISIDRO. Your Honor, there is no such crime of sexual assault in this bill, sexual assault is an act in this bill, not a crime.

MR. APOSTOL. Rape by sexual assault.

MR. ISIDRO. What is a crime is the crime of rape which is defined (*sic*). I am only referring to that particular matter, Your Honor.

MR. APOSTOL. Yes, Your Honor.

MR. ISIDRO. So that. That is why I am only asking whether we are ready to accept these changes insofar as rape is concerned.

MR. APOSTOL. Yes, Your Honor, we are ready.

MR. ISIDRO. Oh?

MR. APOSTOL. If we will approve it now, we are ready already.

MR. ISIDRO. You mean, the people will not be surprised when a woman charges another woman with rape[?]



MR. APOSTOL. Yes, in fact this is the clamor of women to make rape genderless. But since we could not accept this through your amendment that rape is genderless, we have to agree and accept your amendment on paragraph (1).

MR. ISIDRO. And a man can also charge another man with rape? And that is also the clamor of women?

MR. APOSTOL. Yes, genderless.

MR. ISIDRO. Your Honor, I do not know if these are matter[s] which according to Congressman Damasing, would be subject of future amendments when the time comes. But I feel that matters like [these] which [change] the universal definition of rape should be corrected. Because for the first time we are introducing by Filipino definition, not the universal definition, the crime of rape where it can be committed by either sex against either sex.

MR. APOSTOL. I think, Your Honor, this will be one of those to be amended by Congressman Damasing. Because Congressman Damasing does not agree that paragraph (2) be called rape, it should really be called sexual assault. That is what he was saying.⁴¹ (Emphasis and underscoring supplied)

Despite the clarifications and reservations of the members of the House, the conference committee report was approved overall,⁴² although there were some who voted to reject the report. One of those who rejected the report, Rep. Didagen Dilangalen, explained his vote:

MR. DILANGALEN. Thank you very much, Madam Speaker. I am voting against this Committee Report because while under House Bill No. 6365, the crime of sexual assault was clearly defined[.] **[U]nder the Committee Report, there is no more crime of sexual assault. We only have rape committed in two ways: by a man who shall have carnal knowledge of a woman under any of the following circumstances, which means to say, the orthodox definition as provided under the Revised Penal Code, and No. 2, by any person who, under any of these circumstance mentioned in paragraph 2 hereof shall commit an act of sexual assault, etc. etc.** So, for this reason, Madam Speaker, considering that what we have agreed here in the lower House has not been carried on in the Bicameral Conference Committee, I am registering my vote against this Committee Report.

Thank you very much, Madam Speaker.⁴³ (Emphasis and underscoring supplied)

Undoubtedly, therefore, the understanding and intent of both houses of Congress was that with the enactment of R.A. No. 8353, the definition of Rape would be expanded from the traditional definition of Rape that was limited

⁴¹ Id. at 794-795.

⁴² Id. at 759-798.

⁴³ Id. at 796-797.



only to penile penetration of the vagina, to the more modern definition that now includes other acts of sexual assault.

In sum, therefore, from the enactment of R.A. No. 8353 in 1997, it was the intent of our criminal laws to understand rape as a crime that may be committed in several ways.

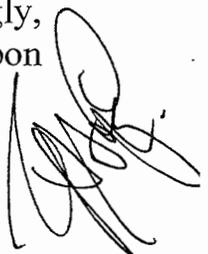
This change in the understanding of what rape is, and what acts are included in this understanding/definition of rape was set in the law **with full knowledge and understanding of all previous laws that dealt with rape** — including, but not limited to, R.A. No. 7659. Accordingly, when Congress passed R.A. No. 8353 — *acknowledged to be a reaction to the clamor of women for protection from acts that were not traditionally viewed as violations of their rights simply because they do not fall under the orthodox but antiquated view that rape should involve her and her assailant's genitalia, and a recognition that as sexual practices evolve, these practices could be, and are used to further degrade or debase another human being* — then it was with full knowledge that the crime of “Robbery with Rape” under R.A. No. 7659 would necessarily be understood as also including the other kinds of rape. Thus, the Court cannot ignore the same or give a construction that would render nugatory the letter, intent, and purpose underlying the radical change introduced by R.A. No. 8353.

Conclusion

In sum, while I agree in the result of the case, I submit in this Opinion that:

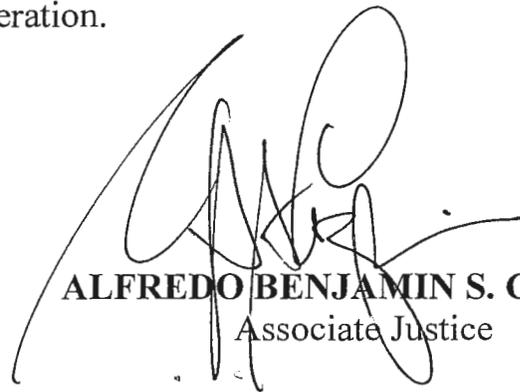
- (1) This is an improper case, given the factual circumstances involved, to discuss the contours of the special complex crime of Robbery with Rape, defined under Article 294(1) of the RPC, as amended. As this is a case involving a robbery through force upon things, the applicable provision of the RPC is Article 299(a)(2). For the sexual acts done against the minor victim, Article 266(a)(2) of the RPC should be applied.
- (2) In any event, the rape component of the special complex crime of Robbery with Rape includes acts constituting rape by sexual assault. This interpretation that acts constituting rape by sexual assault are nevertheless considered “Rape” is supported not just by plain reading of the letter of the RPC, as amended by R.A. No. 7659 and R.A. No. 8353, but also by the legislative intent of R.A. No. 8353 as exhibited by its title, structure, and the legislative deliberations.

Based on these premises, I vote to **AFFIRM** with **MODIFICATION** the conviction of petitioner **GLENN BARRERA Y GELVEZ**. Accordingly, he should be convicted of one (1) count of Robbery by the use of force upon



things under Article 299 of the Revised Penal Code, as amended by R.A. No. 10951, and one (1) count of Sexual Assault under Article 266-A(2) of the Revised Penal Code in relation to Section 5(b), R.A. No. 7610.

For the *ponente*'s consideration.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Certified True Copy
Anna-Li R. Papa-Jankov
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Deputy Clerk of Court
OCC En Banc, Supreme Court