



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

THE PEOPLE OF THE  
PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 238405

Present:

versus

LEONEN, J.,  
*Chairperson,*  
HERNANDO,  
INTING,  
DELOS SANTOS, and  
ROSARIO, JJ.

Promulgated:

XXX,<sup>1</sup>  
*Accused-Appellant.*

December 7, 2020

X-----MIS-DCB-H-----X

DECISION

**HERNANDO, J.:**

Challenged in this appeal is the April 25, 2017 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08168, which affirmed with modifications the December 4,<sup>3</sup> 2015 Judgment<sup>4</sup> of the Regional Trial Court (RTC), Branch 61 of Gumaca, Quezon, in Criminal Case Nos. 9994-G, 9995-G, and 10479-G.

**The Antecedents:**

Accused-appellant XXX was charged in three Informations which alleged:

<sup>1</sup> Initials were used to identify the accused-appellant pursuant to Amended Administrative Circular No. 83-15 dated September 5, 2017 Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances issued on September 5, 2017.  
<sup>2</sup> *Rollo*, pp. 2-17; penned by Associate Justice Rodil V. Zalameda (now a member of this Court) and concurred in by Associate Justices Sesonando E. Villon and Ma. Luisa Quijano-Padilla.  
<sup>3</sup> Promulgated on December 9, 2015.  
<sup>4</sup> *CA rollo*, pp. 11-23; penned by Presiding Judge Maria Chona E. Pulgar-Navarro.

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### Criminal Case No. 9994-G – Object Rape

That on or about September 5, 2007, at [REDACTED]<sup>5</sup>, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [Nicanor [XXX]], with lewd design, did then and there committed an act of sexual assault on one [AAA],<sup>6</sup> an eight-year old female child, by forcing the said child to perform *fellatio* on him, that is, by inserting his penis into the said child's mouth, to gratify his sexual desire.

That the accused is the common-law spouse of [AAA's] mother, [BBB].<sup>7</sup>

That in committing the offense, the said accused abused his moral ascendancy and influence over the said child and showed moral depravity by telling her, "*huwag kang masamok kay Mama at kapag may asawa ka na ay hindi na kita[g]agalawin.*"

Contrary to law.<sup>8</sup>

### Criminal Case No. 9995-G – Statutory Rape

That on or about September 5, 2007, at [REDACTED] Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [Nicanor [XXX]], with lewd design, did then and there have carnal knowledge of one [AAA], an eight-year old female child, by inserting his penis inside her vagina, against her will.

That the accused is the common-law spouse of [AAA's] mother, [BBB].

That in committing the offense, the said accused abused his moral ascendancy and influence over the said child and showed moral depravity by telling her, "*huwag kang masamok kay Mama at kapag may asawa ka na ay hindi na kita agalawin.*"

Contrary to law.<sup>9</sup>

### In Criminal Case No. 10479-G – Statutory Rape

That on or about the month of September 2007, [REDACTED] Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [Nicanor [XXX]], with lewd design, did then and there have carnal knowledge of one [AAA], an eight-year old female child, by inserting his penis inside her

<sup>5</sup> "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 Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." (*People v. Dumadag*, 667 Phil. 664, 669 [2011]).

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Records (Crim. Case No. 9994-G), p. 2.

<sup>9</sup> Records (Crim. Case No. 9995-G), p. 2.

vagina, against her will.

That the accused is the common-law spouse of [AAA's] mother, [BBB].

Contrary to law.<sup>10</sup>

XXX pleaded “not guilty” to all charges.<sup>11</sup> The three criminal cases were tried jointly<sup>12</sup> by the RTC.

### **Version of the Prosecution:**

The prosecution established that XXX is the common-law husband of AAA's mother, BBB.<sup>13</sup>

In Criminal Case No. 10479-G, the prosecution claimed that sometime in September 2007, AAA was lying naked on the floor inside the room of their house when XXX laid on top of her and twice inserted his penis into her vagina, then threatened her not to tell her mother.<sup>14</sup>

With regard to Criminal Case Nos. 9994-G and 9995-G, the prosecution alleged that on September 5, 2007, XXX summoned AAA, who was eight years old at the time, inside their house. Thereafter, XXX brought her inside a room. He then removed her shorts and placed his penis inside her mouth. Thereafter, he inserted his penis into AAA's vagina. Eventually, AAA confided to BBB about the rape incidents, prompting the latter to report the matter to the authorities which led to the arrest of XXX.<sup>15</sup>

AAA's birth certificate<sup>16</sup> showed that she was born on February 6, 1999. Thus, she was only eight years old when XXX sexually molested her in September 2007.

Dr. Genevive Bayongan Laguerta (Dr. Laguerta) examined AAA. In her Medical Legal Certificate,<sup>17</sup> Dr. Laguerta stated that she found redness on the opening of AAA's vulva and hymenal lacerations at 7, 11 and 1 o'clock positions. Dr. Laguerta opined that an object, such as a penis, was inserted inside the opening of the hymen by force.<sup>18</sup>

In her *Salaysay*,<sup>19</sup> AAA narrated that she could not recall the number of times XXX had sexually molested her. She did not report the rape incidents to anyone because of the threats made by XXX. AAA recalled what transpired on

<sup>10</sup> Records (Crim. Case No. 10479-G), p. 2.

<sup>11</sup> Records (Crim. Case No. 9994-G), p. 13; records (Crim. Case No. 10479), pp. 22, 25.

<sup>12</sup> *Rollo*, p. 6.

<sup>13</sup> Records (Crim. Case No. 9994-G), p. 38.

<sup>14</sup> *CA rollo*, pp. 48-49.

<sup>15</sup> *Id.* at 49, 89.

<sup>16</sup> Records (Crim. Case No. 9995-G), p. 14.

<sup>17</sup> *Id.* at 11.

<sup>18</sup> TSN, May 23, 2012, pp. 4-6.

<sup>19</sup> Records (Crim. Case No. 9995-G), p. 10.

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September 5, 2007, to wit:

07. TANONG: Maari mo bang isalaysay ang buong pangyayari kung paano kang iniyot ni [XXX]?

SAGOT: Opo, kapag po umaalis si Mama ay tinatawag po ko ni [XXX] sa loob [ng aming] bahay at sinasabi po ni [XXX] na huwag akong maingay at iyong pong aking mga kapatid ay hindi pinapapasok sa loob at hinubad [na po] ni [XXX] ang aking suot na short at pinasok [na po] ni [XXX] ang kanyang ari sa aking puki at pagkatapos po ay pinapadede ni [XXX] ang kanyang ari sa akin at hinihimas niya ang aking dede at pagkatapos po ay sinasabi po ni [XXX] sa akin na 'HUWAG KANG MASAMOK KAY MAMA AT KAPAG MAY ASAWA KA NA AY HINDI NA KITA GAGALAWIN.'<sup>20</sup>

The victim added that the last time she was sexually molested, BBB saw XXX forcing her (AAA) to perform fellatio on him.<sup>21</sup>

BBB recounted what she saw on September 5, 2007 in her *Salaysay voz.*:<sup>22</sup>

05. TANONG: Maari mo bang isalaysay kung paano ginahasa ni [XXX] ang iyong anak na si AAA?

SAGOT: Opo, [n]oon pong petsa 5 ng Setyembre 2007 oras humigit kumulang sa ika tatlo (3:00pm) ng hapon pag uwi ko po ng aming bahay galing sa paglaba ay naabutan ko po ang aking anak na si [AAA] at ang aking kinakasamang si XXX na nasa loob ng aming bahay na nakita ko po na pinapasuso ni XXX ang aking anak na si [AAA] sa kanyang ari habang nakahiga si XXX sa gilid ng aming lamesa habang ang anak ko ay [magulong-magulo] ang buhok at ng makita po niya ako ay pinahawakan ni XXX ang kanyang kamay sa aking anak na si [AAA] na pinapahilot ang kanyang kamay, at ng tinanong ko po ang aking anak ay sinabi po niya sa akin na huwag ko daw pong sasabihin kay XXX na nagsumbong siya sa akin na pinapadede siya ni XXX sa kanyang ari, nilalamas ang suso at iniyot ni XXX.<sup>23</sup>

BBB confirmed that AAA is her child with her previous husband and not with XXX.<sup>24</sup>

The victim vividly described the sexual assault and rape incidents on September 5, 2007 as follows:

T Sabi mo mag-isa ka sa kuwarto noong mangyari yoon?

S Opo.

T Natutulog ka ba?

S Hindi po.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id. at 9

<sup>23</sup> Id.

<sup>24</sup> Id.

- T     Ano ang ginagawa mo?  
S     Tinawag po niya ako sa labas.
- T     Si XXX ba ang tumawag sa iyo sa labas?  
S     Opo.
- T     Lumabas ka ba?  
S     Pumasok po ako sa loob.
- T     Saan ka pumasok?  
S     Pumasok po ako sa loob ng bahay.
- T     Andoon ba si XXX sa loob ng bahay?  
S     Opo, sinara po niya ang mga kurtina.
- T     Siya mismo ang nagsara ng mga kurtina?  
S     Opo.

x x x x

- T     Pagkasara ng kurtina, ano ang nangyari?  
S     Pumasok po siya sa loob ng kuwarto.
- T     Saan siya pumasok?  
S     Sa loob po ng kuwarto.

x x x x

- T     Pagkatapos niyang pumasok sa kuwarto ano ang nangyari?  
S     Sabi po niya ay maghubad ako.
- T     Ano ang nangyaring kasunod, naghubad ka ba?  
S     Opo.

x x x x

- T     Ano ang nangyari pagkatapos tanggalin ang short mo, [m]ay nangyari ba?  
S     Opo.
- T     Ano ang ginawa sa iyo, may ipinasok ba siya sa bibig mo?  
S     Opo.
- T     Ano ang ipinasok sa bibig mo, ano ang tawag doon, meron ka ba noon?  
S     Wala po.

x x x x

- TY    Yoong ipinasok sa iyong bibig, ano ang hitsura?  
S     Ari niya.
- T     Titi niya ba yon?  
S     Opo.
- T     Ilang beses niya ipinasok sa bibig mo yong titi niya?  
S     Isa (1) lamang po.

x x x x

T Alam mo ba kung nasaan ang pipi mo?  
S [(Witness pointed to her vagina)].

T May ipinasok ba siya sa pipi mo?  
S Opo, meron.

T Kailan, yon ding araw na yoon na ipinasok niya ang ari niya sa bibig mo?  
S Opo.

x x x x

T Halimbawa ito ang pipi mo, ituro mo nga kung paano niya ipinasok. (Fiscal Begonia is demonstrating her hands to the witness)  
S [(The witness [pushed] the forefinger of this representation inside the fist of her left hand indicating the penis is penetrating the vagina.)]

T Ano ang naramdaman mo ng pumasok ang ari niya sa pipi mo?  
S Masakit po.

T Inilabas pasok ba niya?  
S Opo.

T Paglabas pasok nasaktan ka ba?  
S Opo.

T May sinabi ka [ba sa] kanya ng ipinasok at inilabas niya sa pipi mo ang ari niya?  
S Wala po.

T Umiyak ka ba?  
S Opo.

x x x x

T Nagsabi ka ba sa Mama mo tungkol doon sa ginawa sa iyo ni XXX?  
S Opo.

T Kailan ka nagsabi kay Mama?  
S Noong kinabukasan po.

x x x x

T Pag-naaalala mo ba yong nangyari sa iyo, naiiyak ka pa ba, ano ang nararamdaman mo?  
S Natatakot po ako.

T Natatakot ka ba kay XXX?  
S Opo.

T Bakit ka natatakot kay XXX?  
S Sinasaktan po kami.<sup>25</sup>

<sup>25</sup> TSN, September 24, 2008, pp. 6-10, 12-13.

When recalled to the witness stand, AAA related the incident as follows:

Q You earlier mentioned that the accused inserted his penis to your vagina, before the said incident, what were you doing then in the said room?

A I was lying [down], sir.

Q How about the accused, what [was] the accused doing [in] the said room?

A He was on top of me, sir.

x x x x

Q You mean he is totally naked then?

A He was not wearing short, sir.

Q You said naked, he is naked on his lower portion?

A Yes, sir.

Q How about you when you said he was on top of you, what then [were you] wearing?

A None, sir.

Q Did the accused have any weapon then?

A None, he was not carrying any, sir.

Q Was he uttering anything?

A Yes, sir.

Q What is that?

A 'Huwag ko daw pong sasabihin kay mama.'

x x x x

Q Do you recall how many times the said accused inserted his penis inside your vagina?

A Two (2) times/twice, sir.

x x x x

Q When you said that the penis was inserted twice, after the second insertion, what happened next?

A He kissed me, sir.

Q After that?

A He was inserting his penis inside my vagina, sir.<sup>26</sup>

BBB also testified that on September 5, 2007, she saw AAA sitting in between the legs of XXX and said, "Pinadede po niya [XXX] sa ari niya iyong anak ko [AAA]."<sup>27</sup>

<sup>26</sup> TSN, June 1, 2011, pp. 6-8.

<sup>27</sup> TSN, March 14, 2013, p. 10.

**Version of the Defense:**

The defense presented XXX as its lone witness. He confirmed during his cross-examination that he and BBB were not legally married.<sup>28</sup> He denied the allegations against him. He stated that he raised AAA since she was two years old until she was around eight.<sup>29</sup> Notably, he admitted that he was with AAA on September 5, 2007.<sup>30</sup>

**Ruling of the Regional Trial Court:**

In a Judgment<sup>31</sup> dated December 4, 2015, the RTC adjudged XXX guilty as charged. The trial court gave more weight to the victim's statements which were corroborated by the testimonies of her mother and the doctor and remained unrefuted by the defense. AAA's testimony was detailed and convincing, as well as consistent with human nature and the normal course of things.<sup>32</sup> AAA's minority was established by the presentation in evidence of her birth certificate.<sup>33</sup> It rejected the defense's denial and claim of ill motive in view of the child victim's positive identification of XXX as the perpetrator of the crimes.<sup>34</sup>

The trial court found XXX guilty of Rape by Sexual Assault or Object Rape in Criminal Case No. 9994-G and Statutory Rape in both Criminal Case Nos. 9995-G and 10479-G. The dispositive portion of the trial court's Judgment reads:

**WHEREFOR**, finding that [the] prosecution evidence has established the guilt of the accused beyond reasonable doubt in all three cases, accused [XXX] is adjudged **GUILTY** [in] Criminal Cases Nos. 9994-G, 9995-G and 10479-G. He is hereby sentenced as follows:

1. In Criminal Case No. 9994-G for Object Rape, [XXX] is hereby sentenced to suffer the penalty of 12 years of *prision mayor* as minimum to 20 years of *reclusion temporal* as maximum. Accused is ordered to pay the private complainant [the] amounts of P30,000.00 as civil indemnity, P30,000.00 as moral damages, and P30,000.00 as exemplary damages.

2. In Criminal Cases Nos. 9995-G and 10479-G, accused is sentenced to suffer the penalty of *Reclusion Perpetua* in each case. He is likewise ordered to pay the private [complainant] the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages for each case.

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<sup>28</sup> TSN, January 5, 2015, p. 3.

<sup>29</sup> Id. at 5.

<sup>30</sup> Id. at 6.

<sup>31</sup> *CA rollo*, pp. 10-23.

<sup>32</sup> Id. at 16-17.

<sup>33</sup> Id. at 23.

<sup>34</sup> Id. at 23-24.

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**SO ORDERED.**<sup>35</sup>

**Ruling of the Court of Appeals:**

The CA affirmed XXX's conviction for Rape by Sexual Assault in Criminal Case No. No. 9994-G and for Statutory Rape in Criminal Case No. 10479-G but absolved him from the charge of Statutory Rape in Criminal Case No. 9995-G based on reasonable doubt.

The appellate court considered the qualifying circumstances of minority and relationship and held that XXX should be held liable for Qualified Rape.<sup>36</sup>

The dispositive portion of the assailed CA Decision reads:

**WHEREFORE**, premises considered, the instant Appeal is **PARTLY GRANTED**. The Judgment dated 04 December 2015 of Branch 61, Regional Trial Court of Gumaca, Quezon is hereby **AFFIRMED but with the following MODIFICATIONS**, in that –

x x x x

1. In Criminal Case No. 9994-G for **Qualified Rape by Sexual Assault**, [XXX] is hereby **CONVICTED** of the crime charged and sentenced to suffer the **indeterminate penalty of nine (9) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum**. Accused is ordered to pay the private complainant [the] amounts of P30,000.00 as civil indemnity, P30,000.00 as moral damages, and P30,000.00 as exemplary damages.

2. In Criminal Case No. 10479-G for **Qualified Rape**, accused is hereby **CONVICTED** of the crime charged and sentenced to suffer the penalty of ***reclusion perpetua*, without eligibility for parole**. He is likewise ordered to pay the private [complainant] **the amounts of P100,000.00 as civil indemnity, P100,000.00 as moral damages, and P100,000.00 as exemplary damages**.

3. **Interest at the rate of six percent (6%) per *annum* is imposed on all the damages awarded in this case from date of finality of this judgment until fully paid.**

4. In Criminal Case [No.] 9995-G, accused-appellant is hereby **ACQUITTED** due to reasonable doubt.

x x x x

**SO ORDERED.**<sup>37</sup>

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<sup>35</sup> Id. at 24-25.

<sup>36</sup> *Rollo*, p. 13.

<sup>37</sup> Id. at 16.

XXX filed a Motion for Partial Reconsideration<sup>38</sup> which the CA denied in a Resolution<sup>39</sup> dated September 29, 2017.

### Issue

Whether or not XXX is guilty beyond reasonable doubt of Qualified Rape.

### Our Ruling

We dismiss the appeal.

After a judicious review of the records, we find no reason to deviate from the findings of the trial court as affirmed by the appellate court. AAA's testimony was candid, straightforward, and unrehearsed. Indeed, "[t]he trial court's determination of witness credibility will seldom be disturbed on appeal unless significant matters were overlooked. A reversal of these findings becomes even more inappropriate when affirmed by the Court of Appeals."<sup>40</sup> Absent any indication that the RTC and the CA committed any error in the evaluation of the evidence, the Court sees no reason to deviate from the factual findings that XXX sexually assaulted and had carnal knowledge of AAA.<sup>41</sup>

Notably, AAA was only nine<sup>42</sup> and 12<sup>43</sup> years old when placed on the witness stand. Jurisprudence dictates that -

x x x When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. Errorless recollection of a harrowing incident cannot be expected of a witness, especially when she is recounting details of an experience so humiliating and so painful as rape. What is important is that the victim's declarations are consistent on basic matters constituting the elements of rape and her positive identification of the person who did it to her.<sup>44</sup>

Moreover, Dr. Laguerta's medical findings that AAA suffered hymenal lacerations suggesting that an object or a male organ had penetrated her vagina corroborated AAA's testimony that she was raped. Thus, "[w]here the victim's testimony is corroborated by physical findings of penetration, there is

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<sup>38</sup> CA rollo, pp. 134-138.

<sup>39</sup> Id. at 148-149.

<sup>40</sup> *People v. Lita*, G.R. No. 227755, August 14, 2019, citing *People v. Dimapilit*, 816 Phil. 523, 540-541 (2017).

<sup>41</sup> *People v. Traigo*, 734 Phil. 726-732 (2014).

<sup>42</sup> TSN, September 24, 2008.

<sup>43</sup> TSN, June 1, 2011.

<sup>44</sup> *People v. ZZZ*, G.R. No. 224584, September 4, 2019, citing *People v. Araojo*, 616 Phil. 275 (2009) and *People v. Daco*, 589 Phil. 335, 348 (2008).

sufficient basis for concluding that sexual intercourse did take place.”<sup>45</sup>

We are not convinced by XXX’s contention that BBB was moved by ill motive when she filed the cases against him. “[I]t is settled that motives, such as those attributable to revenge, family feuds and resentment cannot destroy the credibility of a minor complainant who gave an unwavering testimony in open court.”<sup>46</sup> We note that XXX did not even offer a solid alibi which would account for his whereabouts during the rape incidents. On the contrary, he admitted that he was at home with AAA.

Anent the qualifying circumstances of minority and relationship, we find the same to have been satisfactorily alleged in the Informations and established during the trial. AAA was a minor when the felonies were committed against her, as confirmed by her birth certificate. XXX was the common-law spouse of BBB, AAA’s mother. XXX himself did not deny such fact.

Article 266-A of the Revised Penal Code (RPC) reads as follows:

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 is 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.<sup>47</sup> (Emphasis supplied)

Rape through sexual intercourse and rape through sexual assault are further described as follows:

In rape under paragraph 1 or rape through sexual intercourse, carnal knowledge is the crucial element which must be proven beyond reasonable doubt. This is also referred to as ‘organ rape’ or ‘penile rape’ and must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. There must be evidence to establish beyond reasonable doubt that the perpetrator’s penis touched the *labia* of the victim or slid into her female organ, and not merely stroked the external surface thereof, to ensure his

<sup>45</sup> *People v. ZZZ*, G.R. No. 224584, September 4, 2019, citing *People v. Lumaho*, 744 Phil. 233, 243 (2002).

<sup>46</sup> *People v. Laguerta*, G.R. No. 233542, July 9, 2018, citing *People v. Ittang*, 397 Phil. 692, 700-701 (2000).

<sup>47</sup> REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353 (1997).

conviction of rape by sexual intercourse.

On the other hand, rape under paragraph 2 of the above-quoted article is commonly known as rape by sexual assault. The perpetrator, under any of the attendant circumstances mentioned in paragraph 1, commits this kind of rape 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. It is also called 'instrument or object rape,' also 'gender-free rape,' or the narrower 'homosexual rape.'<sup>48</sup>

Before determining the appropriate felony committed by XXX, it is important to emphasize that the title of the felony as stated in the Information is not controlling but the allegations in the body therein. Indeed, what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information constituting the crime charged."<sup>49</sup> The Court clarified in *Quimvel v. People*<sup>50</sup> that:

Jurisprudence has already set the standard on how the requirement is to be satisfied. Case law dictates that the allegations in the Information must be in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the **elements** of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of the specific crimes.

The main purpose of requiring the elements of a crime to be set out in the Information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question his conviction based on facts not alleged in the information cannot be waived. As further explained in *Andaya v. People*:

No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.<sup>51</sup> (Citations omitted.)

The Information in Criminal Case No. 9994-G denominated the felony as Object Rape under Article 266-A, paragraph 2 of the RPC, otherwise known as Rape by Sexual Assault. Based on the facts, and as found by both

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<sup>48</sup> *People v. Gaduyon*, 720 Phil. 750, 767 (2013), citing *People v. Brioso*, 600 Phil. 530 (2009) and *People v. Abulon*, 557 Phil. 428 (2007).

<sup>49</sup> *People v. Molejon*, G.R. No. 208091, April 23, 2018, citing *People v. Ursua*, 819 Phil. 467 (2017).

<sup>50</sup> *Quimvel v. People*, 808 Phil. 889 (2017).

<sup>51</sup> *Id.* at 912-913.

the RTC and the CA, XXX forced AAA to perform *fellatio* on him by placing his penis inside her mouth. By this, XXX should be adjudged guilty of Rape by Sexual Assault under the RPC. However, the recent case of *People v. Tulagan (Tulagan)*<sup>52</sup> prescribed guidelines regarding the proper designation or nomenclature of acts constituting sexual assault and the corresponding penalty depending on the victim's age, to wit:

Considering the development of the crime of sexual assault from a mere 'crime against chastity' in the form of acts of lasciviousness to 'crime against persons' akin to rape, as well as the ruling in *Dimakuta and Caoili*, We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be 'Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610' and no longer 'Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610,' because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A(2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.<sup>53</sup>

Thus, pursuant to *Tulagan*, and considering the fact that AAA was eight years old when the crime was committed against her, the proper designation of the crime in Criminal Case No. 9994-G should be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610."<sup>54</sup> Moreover, this crime shall be punished by *prision mayor* in accordance with Article 266-B of the RPC. However, the penalty shall be increased to *reclusion temporal* if an aggravating or qualifying circumstance is present in the case.<sup>55</sup>

Considering the attending circumstances of the minority of the victim and the fact that the offender is the common-law spouse of the parent of the victim, which circumstances were both alleged in the Information and proved during trial, the imposable penalty in Criminal Case No. 9994-G is *reclusion temporal*. Applying the Indeterminate Sentence Law, XXX should be sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of

<sup>52</sup> G.R. No. 227363, March 12, 2019.

<sup>53</sup> *Id.*

<sup>54</sup> SEC. 5. *Child Prostitution and Other Sexual Abuse.* –

Children, whether male or female, who for money, profit or any other consideration or due to 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

(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

<sup>55</sup> REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353 (1997).

*reclusion temporal*, as maximum, and to pay the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.<sup>56</sup>

In Criminal Case No. 10479-G, it was proved that sometime in September 2007, XXX had carnal knowledge of AAA by inserting his penis inside her vagina against her will. Undeniably, these details confirmed that XXX committed rape by sexual intercourse.

According to Article 266-B of the RPC, rape under paragraph 1 of Article 266-A (rape by sexual intercourse) shall be punished by *reclusion perpetua*. However, the rape shall be qualified and the death penalty shall be imposed:

1. 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[.]<sup>57</sup>

The elements of qualified rape are: “(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [eighteen] years of age at the time of the rape; and (5) the offender is [either] a parent (whether legitimate, illegitimate or adopted), [ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent] of the victim.”<sup>58</sup>

According to *People v. Begino*,<sup>59</sup> the “qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances since the latter admit of proof even if not pleaded. It would be a denial of the right of the accused to be informed of the charges against him and consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form, although the attendant circumstance qualifying the offense and resulting in the capital punishment was not alleged in the indictment on which he was arraigned.”

Here, AAA’s minority was properly alleged in the Information and proven during trial. The Information likewise alleged that XXX was the common-law husband of BBB, which was subsequently proven during the trial and admitted by XXX himself.<sup>60</sup>

To reiterate, in order to qualify the rape charge, the victim’s minority **and** her relationship with the offender should **both** be alleged in the

<sup>56</sup> *People v. Macasilang*, G.R. No. 241791, January 22, 2020; see *People v. Tulagan*, supra note 52.

<sup>57</sup> REVISED PENAL CODE, Article 266-B, as amended by Republic Act No. 8353 (1997).

<sup>58</sup> *People v. Salaver*, G.R. No. 223681, August 20, 2018, citing *People v. Colentava*, 753 Phil. 361 (2015).

<sup>59</sup> 601 Phil. 182, 191 (2009), citing *People v. Garcia*, 346 Phil. 475, 504-505 (1997).

<sup>60</sup> *People v. Vañas y Balderama*, G.R. No. 225511, March 20, 2019.

Information and proven beyond reasonable doubt during trial. This is because these circumstances have the effect of altering the nature of the rape and its corresponding penalty. Otherwise, the death penalty (or *reclusion perpetua*, because of the prohibition on the imposition of death penalty) cannot be imposed upon the offender.<sup>61</sup> Since **both** the qualifying circumstances of minority **and** relationship were properly pleaded and proved during trial, the CA correctly convicted XXX of Qualified Rape under paragraph 1(d) of Article 266-A in relation to Article 266-B of the RPC as amended by RA No. 8353 in Criminal Case No. 10479-G.

The CA correctly affirmed the penalty of *reclusion perpetua* in light of the prohibition on the imposition of the death penalty as mandated by Republic Act No. 9346, without eligibility for parole. Likewise, it rightly imposed the amounts of ₱100,000.00 each for civil indemnity, moral damages, and exemplary damages in accordance with recent jurisprudence.<sup>62</sup>

With regard to the rate of interest, the CA appropriately held that all the monetary awards (granted for each felony) should be subject to the interest rate of six percent (6%) per *annum* from the finality of the Decision until fully paid.<sup>63</sup>

**WHEREFORE**, the instant appeal is **DISMISSED**. The assailed April 25, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08168 is **AFFIRMED with MODIFICATIONS**.

In Criminal Case No. 9994-G, accused-appellant XXX is found **GUILTY** beyond reasonable doubt of Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of Republic Act No. 7610. He is sentenced to suffer the indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and to pay the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

In Criminal Case No. 10479-G, accused-appellant XXX is found **GUILTY** beyond reasonable doubt of Qualified Rape under paragraph 1(d) of Article 266-A in relation to Article 266-B of the RPC as amended by Republic Act No. 8353. He is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is ordered to pay the amounts of ₱100,000.00 each as civil indemnity, moral damages, and exemplary damages.

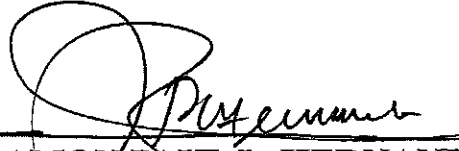
The monetary awards shall earn interest at the rate of six percent (6%) per *annum* from date of finality of this Decision until fully paid.

<sup>61</sup> *People v. Begino*, 601 Phil. 182, 190 (2009) citing *People v. Ferolino*, 386 Phil. 161, 179 (2000); *People v. Bayya*, 384 Phil. 519, 527 (2000); *People v. Maglente*, 366 Phil. 221 (1999); *People v. Ilaa*, 357 Phil. 656, 672 (1998); *People v. Ramos*, 357 Phil. 559, 575 (1998).


<sup>62</sup> *People v. Jugueta*, 783 Phil. 806 (2016).


<sup>63</sup> *People v. Roy*, G.R. No. 225604, July 23, 2018 citing *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

**SO ORDERED.**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

WE CONCUR:

  
**MARVIC M. V. F. LEONEN**  
Associate Justice  
Chairperson

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

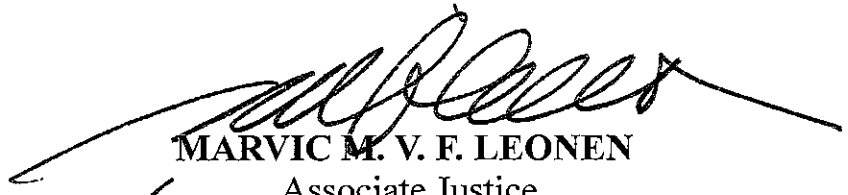
  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice



**ATTESTATION**

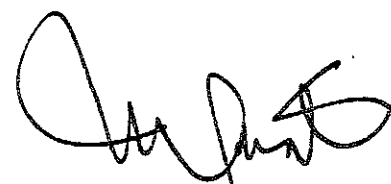
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M. V. F. LEONEN**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I hereby 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