



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 231991

Present:

- versus -

PERLAS-BERNABE, S.A.J.,
Chairperson,
REYES, A., JR.,*
HERNANDO,**
INTING, and
DELOS SANTOS, JJ.

NOLI FORNILLOS y MABAJEN
@ "INTOY,"
Accused-Appellant.

Promulgated:

27 JAN 2020

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DECISION

PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal¹ assailing the Decision² dated February 15, 2017 of the Court of Appeals (CA) in CA-G.R. CEB-CR HC No. 01821, which upheld the Decision³ dated March 24, 2014 of the Regional Trial Court of ██████████ Samar, Branch 33 (RTC) in Criminal Case Nos. CC-2007-1652, CC-2007-1653, CC-2007-1654, CC-2007-1655, and CC-2007-1656 finding accused appellant Noli Fornillos y Mabajen @ "Intoy" (Fornillos) guilty beyond reasonable doubt of two (2) counts of Rape by Sexual Assault defined and penalized under Article 266-A (2) of the Revised Penal Code (RPC) and three (3) counts of Acts of Lasciviousness defined and

* On official leave.

** On official leave.

¹ See Notice of Appeal dated March 7, 2017; *rollo*, pp. 30-31.

² *Id.* at 4-29. Penned by Associate Justice Pablito A. Perez with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol, concurring.

³ CA *rollo*, pp. 36-47. Penned by Judge Janet M. Cabalona.

penalized under Article 336 of the same Code, in relation to Republic Act No. (RA) 7610,⁴ otherwise known as the “Special Protection of Children Against Abuse, Exploitation, and Discrimination Act.”

The Facts

The instant case stemmed from numerous Informations charging Fornillos of two (2) counts of Rape by Sexual Assault and three (3) counts of Acts of Lasciviousness committed against AAA, the accusatory portions of which state:

Criminal Case No. CC-2007-1652

That on or about the 23rd day of February, 2006, at about 9:00 o'clock in the evening, more or less, at [REDACTED] Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there, wilfully, unlawfully[,] and feloniously kissed and held the two breast[s] of 13[-]year[-]old minor [AAA], then inserted his penis into [the] victim's mouth until something came out of his penis while pointing a knife at her which acts constitute child abuse, prejudicial to the normal development and debase, degrade[,] and demean the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.

Criminal Case No. CC-2007-1653

That on or about the 24th day of February, 2006, at about 5:00 o'clock in the afternoon, more or less, at [REDACTED] Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there, wilfully, unlawfully[,] and feloniously dragged 13[-]year[-]old minor [AAA] to the backyard while pointing a knife at her and inserted his erect penis into the victim's mouth until a whitish salty substance came out which acts constitute child abuse, prejudicial to the normal development and debase, degrade[,] and demean the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.

Criminal Case No. CC-2007-1654

That on or about the 24th day of February, 2006, at about 8:30 o'clock in the evening, more or less, at [REDACTED] Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there, wilfully, unlawfully[,] and feloniously kissed and held the two breast[s] of 13[-]year[-]old minor [AAA], while pointing a knife at her which acts constitute child abuse, prejudicial to the normal development

⁴ Entitled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES.”

and debase, degrade[,] and demean the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.

Criminal Case No. CC-2007-1655

That on or about the 22nd day of February, 2006, at about 8:00 o'clock in the evening, more or less, at [REDACTED] Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there, wilfully, unlawfully[,] and feloniously kissed and held the two breast[s] of 13[-]year[-]old minor [AAA] while pointing a knife at her which acts constitute child abuse, prejudicial to the normal development and debase, degrade[,] and demean the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.

Criminal Case No. CC-2007-1656

That on or sometime in the month of January, 2006, about 7:00 o'clock in the evening, more or less, at [REDACTED] Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there, wilfully, unlawfully[,] and feloniously kissed and held the two breasts of 13[-]year[-]old minor [AAA] while pointing a knife at her which acts constitute child abuse, prejudicial to the normal development and debase, degrade[,] and demean the intrinsic worth and dignity of the minor as a human being.

CONTRARY TO LAW.⁵

Essentially, the prosecution alleged that in separate incidents, Fornillos sexually abused AAA, then a 13-year old minor, all while he was equipped with a knife and threatening her of bodily harm should she divulge what happened. In particular, the series of sexual abuses were outlined as follows: ***first***, one evening in January 2006, AAA was walking towards a neighborhood store when she passed by Fornillos. Suddenly, Fornillos grabbed AAA and pulled her into a dark area and thereat, kissed and touched AAA's breasts. After some time, AAA managed to escape Fornillos' grip and was able to run away; ***second***, about a month later, or in the evening of February 22, 2006, AAA was supposed to go to a neighbor's house to watch television when Fornillos appeared out of nowhere, grabbed her, and then took her to a dark area, where Fornillos again touched AAA's private parts;⁶ ***third***, the next night, or on February 23, 2006, AAA's father and Fornillos were having a drinking session at their house when AAA's parents went out to gather firewood. Fornillos was able to gain access inside the house and while inside, inserted his penis into AAA's mouth until a white substance came out therefrom; ***fourth***, in the afternoon of February 24, 2006, AAA was in school when Fornillos appeared by the school fence and motioned her to come near

⁵ CA rollo, pp. 36-39.

⁶ See rollo, pp. 8-9.

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him. When AAA approached Fornillos, the latter took her to an isolated area where he again inserted his penis into AAA's mouth until a whitish liquid came out; and *fifth*, in the evening of the same day, Fornillos and AAA's father was then having a drinking spree when the latter ordered AAA to buy food at the neighborhood store. While AAA was on her way to the store, Fornillos caught up with her and started touching her private parts again, only letting her go when he heard AAA's cousin looking for her. Finally, AAA told her mother about the incidents, prompting them to report the same to the authorities.⁷

Initially, these cases were archived because Fornillos was nowhere to be found and remained at large. Eventually, he was arrested on May 22, 2012 and proceedings resumed with his arraignment, wherein he pleaded not guilty to the charges against him.⁸ For his part, Fornillos averred that while he indeed had drinking sessions with AAA's father, he denied the incidents of sexual abuse against AAA. He then claimed that he only met with AAA to tell her that they could not elope as the latter was still very young, and asked her to stop following him around.⁹

The RTC Ruling

In a Decision¹⁰ dated March 24, 2014, the RTC found Fornillos guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (a) in Criminal Case No. CC-2007-1652, he was sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages; (b) in Criminal Case No. CC-2007-1653, he was sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages; (c) in Criminal Case No. CC-2007-1654, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of seventeen (17) years and five (5) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages; (d) in Criminal Case No. CC-2007-1655, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of seventeen (17) years and five (5) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages; and (e) in Criminal Case No. CC-2007-1656, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of seventeen (17) years and five (5) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and to pay AAA the amounts

⁷ See *id.* at 9-10.

⁸ *Id.* at 8.

⁹ See *id.* at 10.

¹⁰ *CA rollo*, pp. 36-47.

of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages.¹¹

The RTC found that the prosecution – through AAA’s honest, sincere, candid, and straightforward testimony – had established beyond reasonable doubt that Fornillos subjected AAA to a series of sexual abuses, wherein he inserted his penis into AAA’s mouth in two (2) separate incidents, and mashed her breasts in three (3) other separate incidents. In view of such positive testimony, the RTC disregarded Fornillos’ defense of denial, even pointing out that his flight indicates his guilt for the crimes charged against him.¹²

Aggrieved, Fornillos appealed to the CA.

The CA Ruling

In a Decision¹³ dated February 15, 2017, the CA affirmed the RTC ruling with the following modifications: (a) in Criminal Case Nos. CC-2007-1652 and CC-2007-1653, Fornillos was sentenced to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, and to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages for each count of Rape by Sexual Assault as defined and penalized under Article 266-A (2) of the RPC; and (b) in Criminal Case Nos. CC-2007-1654, CC-2007-1655, and CC-2007-1656, he is sentenced to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, and to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and ₱15,000.00 as exemplary damages for each count of Acts of Lasciviousness under Article 336 of the RPC in relation to RA 7610.¹⁴

In upholding Fornillos’ conviction, the CA held that Fornillos’ repeated sexual abuses on the victim, AAA, were done through force and intimidation as he threatened the victim with a bladed instrument and forced her to submit to his bestial desires.¹⁵

Hence, this appeal.¹⁶

¹¹ Id. at 46-47.

¹² See id. at 43-46.

¹³ *Rollo*, pp. 4-29.

¹⁴ Id. at 27-28.

¹⁵ See id. at 12-23.

¹⁶ See Notice of Appeal dated March 7, 2017; id. at 30-31.

The Issue Before the Court

The issue for the Court's resolution is whether or not Fornillos is guilty beyond reasonable doubt of two (2) counts of Rape by Sexual Assault and three (3) counts of Acts of Lasciviousness.

The Court's Ruling

The appeal is bereft of merit.

Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.¹⁷

Guided by this consideration, the Court finds it proper to modify Fornillos' convictions as will be explained hereunder.

At the outset, it must be stressed that the Court agrees with the findings of the courts *a quo* that the prosecution – through the positive, candid, straightforward, and unwavering testimony of AAA – was able to prove beyond reasonable doubt that Fornillos sexually abused AAA on five (5) separate incidents, wherein in two (2) of those instances, he inserted his penis into the latter's mouth; while in the remaining three (3) occasions, he touched AAA's private parts. Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.¹⁸

However, there is a need to adjust the nomenclature of the crimes in question, the concomitant penalties attached thereto, and the civil liability *ex delicto* in accordance with the guidelines set by the Court *En Banc* in the very recent case of *People v. Tulagan (Tulagan)*.¹⁹

In *Tulagan*, the Court threshed out the “applicable laws and [consequent penalties] for the crimes of acts of lasciviousness or lascivious conduct and rape by carnal knowledge or sexual assault, depending on the age

¹⁷ *People v. De Guzman*, G.R. No. 234190, October 1, 2018, citation omitted.

¹⁸ See *id.*, citing *Peralta v. People*, 817 Phil. 554, 563 (2017).

¹⁹ G.R. No. 227363, March 12, 2019.

of the victim, in view of the provisions of paragraphs 1 and 2 of Article 266-A and Article 336 of the [RPC], as amended by [Republic Act No. (RA)] 8353 and Section 5(b) of [RA] 7610.”²⁰ For this purpose, *Tulagan* provided a comprehensive table stating the proper nomenclature of crimes involving sexual abuse against children, to wit:²¹

Age of Victim:	Under 12 years old or demented	12 years old or below 18, or 18 under special circumstances	18 years old and above
Crime Committed:			
Acts of Lasciviousness committed against children exploited in prostitution or other sexual abuse	Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610: <i>reclusion temporal</i> in its medium period	Lascivious Conduct under Section 5(b) of RA 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Not applicable
Sexual Assault committed against children exploited in prostitution or other sexual abuse	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of RA 7610: <i>reclusion temporal</i> in its medium period	Lascivious Conduct under Section 5(b) of RA 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Not applicable
Sexual Intercourse committed against children exploited in prostitution or other sexual abuse	Rape under Article 266-A(1) of the RPC: <i>reclusion perpetua</i> , except when the victim is below 7 years old in which case death penalty shall be imposed	Sexual Abuse under Section 5(b) of RA 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Not applicable
Rape by carnal knowledge	Rape under Article 266-A(1) in relation to Article 266-B of the RPC: <i>reclusion perpetua</i> except when the victim is below 7 years old in which case death penalty shall be imposed	Rape under Article 266-A(1) in relation to Article 266-B of the RPC: <i>reclusion perpetua</i>	Rape under Article 266-A(1) of the RPC: <i>reclusion perpetua</i>

²⁰ Id.

²¹ Id.; emphases and underscoring supplied.

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<u>Rape through Sexual Assault</u>	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5 (b) of RA 7610: <i>reclusion temporal</i> in its medium period	<u>Lascivious Conduct under Section 5(b) of RA 7610: reclusion temporal in its medium period to reclusion perpetua</u>	Sexual Assault under Article 266-A(2) of the RPC: <i>prision mayor</i>
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Applying the foregoing guidelines, as well as the fact that AAA was then a 13-year-old minor when the incidents of sexual abuse occurred, Fornillos' conviction under Criminal Case Nos. CC-2007-1652, CC-2007-1653, CC-2007-1654, CC-2007-1655, and CC-2007-1656 should all be modified to "Lascivious Conduct under Section 5 (b) of RA 7610." As such, in accordance with the Indeterminate Sentence Law,²² Fornillos must be sentenced to suffer the penalty of imprisonment for an indeterminate period of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, for each count of the aforesaid crime. Finally, he is also ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, with legal interest of six percent (6%) per annum imposed on all monetary awards from the date of finality of this Decision until full payment,²³ for each count of the aforesaid crime.

WHEREFORE, the appeal is **DENIED**. Accordingly, the Decision dated February 15, 2017 of the Court of Appeals in CA-G.R. CEB-CR HC No. 01821 is hereby **AFFIRMED with MODIFICATION**, finding accused-appellant Noli Fornillos y Mabajen @ "Intoy" **GUILTY** beyond reasonable doubt of five (5) counts of Lascivious Conduct under Section 5 (b) of RA 7610. Accordingly, he is sentenced to suffer the penalty of imprisonment for an indeterminate period of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, for each count of the aforesaid crime, and is ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, with legal interest of six percent (6%) per annum imposed on all monetary awards from the date of finality of this Decision until full payment, for each count of the aforesaid crime.

²² "[I]f the special penal law adopts the nomenclature of the penalties under the RPC, the ascertainment of the indeterminate sentence will be based on the rules applied for those crimes punishable under the RPC." (*Cahulogan v. People*, G.R. No. 225695, March 21, 2018, 860 SCRA 86, 97)

²³ See *People v. Tulagan*, supra note 19.

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SO ORDERED.

Ms. Perl
ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

On official leave
ANDRES B. REYES, JR.
Associate Justice

On official leave
RAMON PAUL L. HERNANDO
Associate Justice

mmmp
HENRI JEAN PAUL B. INTING
Associate Justice

[Signature]
EDGARDO L. DELOS SANTOS
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.

Ms. Perl
ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

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

[Signature]
DIOSDADO M. PERALTA
Chief Justice