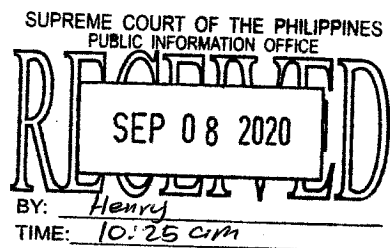




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **February 10, 2020**, which reads as follows:

“G.R. No. 229504 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. ALLAN DELA PEÑA y MERACAP, *accused-appellant*). — This resolves an appeal from the Court of Appeals Decision<sup>1</sup> in CA-G.R. CR-HC No. 06004, which affirmed with modification the Regional Trial Court’s Decision<sup>2</sup> convicting Allan Dela Peña y Meracap for statutory rape and rape by sexual assault, penalized under Article 266-A, paragraphs 1(d) and 2, respectively, of the Revised Penal Code, as amended by Republic Act No. 8353.

On May 25, 2007, accused-appellant Allan Dela Peña y Meracap (Dela Peña) was charged with statutory rape and with rape by sexual assault under Article 266-A, paragraphs 1(d) and 2 of the Revised Penal Code, as amended by Republic Act No. 8353.<sup>3</sup>

The Information for statutory rape reads:

That on or about the 13<sup>th</sup> day of May, 2007, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA, an eight (8)-year old minor and below (12) years of age, the act complained of being prejudicial to the physical and psychological development of the victim-child.

CONTRARY TO LAW.<sup>4</sup>

<sup>1</sup> Rollo, pp. 2–15. The Decision dated December 7, 2015 was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Court of Appeals Manila, Sixth Division.

<sup>2</sup> CA rollo, pp. 33–40. The Decision dated September 24, 2012 was penned by Presiding Gloria Butay Aglugub of the Regional Trial Court of Las Piñas City, Branch 254.

<sup>3</sup> Rollo, p. 3.

<sup>4</sup> CA rollo, p. 33.

The Information for rape by sexual assault states:

That on or about the 13<sup>th</sup> day of May, 2007, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously commit an act of sexual assault against the person of AAA, an eight (8)-year old minor and below twelve (12) years of age, by inserting his penis into her anal orifice, the act complained of being prejudicial to the physical and psychological development of the victim-child.

CONTRARY TO LAW.<sup>5</sup>

On arraignment, Dela Peña pleaded not guilty to the two charges.<sup>6</sup>

During pre-trial on October 2, 2007, the parties stipulated on the trial court's jurisdiction, Dela Peña's identity, and AAA's minority.<sup>7</sup> Thereafter, pre-trial was terminated and joint trial ensued.<sup>8</sup>

The prosecution presented four (4) witnesses, namely: (1) AAA; (2) ABC, AAA's older sister; (3) Medico-Legal Officer and Police Senior Inspector Jesille C. Baluyot (PSI Baluyot);<sup>9</sup> and (4) PO3 Lani Gallano (PO3 Gallano).<sup>10</sup>

According to the prosecution, AAA was eight (8) years old when she was living with her maternal grandmother, who she referred to as Mama Rosy. Also living with Mama Rosy is the latter's live-in partner, Dela Peña, and AAA's younger brother, BBB.<sup>11</sup>

On the night of May 13, 2007, when Mama Rosy was away, AAA woke up and found Dela Peña on top of her. She was able to recognize him as the place was illuminated by the light outside the house. Dela Peña told AAA not to make any noise, and inserted his penis in AAA's vagina and anus, causing her pain. Thereafter, she left the house and narrated the incident to her aunt and her older sister, ABC.<sup>12</sup>

On May 17, 2007, they reported the incident to the police. Medico-Legal Officer PSI Baluyot examined the genitals and anus of AAA, but found no lacerations or injuries. However, Medico-Legal Officer PSI Baluyot examined explained in her testimony that the absence of lacerations or injuries

<sup>5</sup> Id. at 34.

<sup>6</sup> Id.

<sup>7</sup> CA rollo, p. 34.

<sup>8</sup> Rollo, pp. 3-4.

<sup>9</sup> Id. at 4.

<sup>10</sup> CA rollo, p. 34.

<sup>11</sup> Rollo, p. 4.

<sup>12</sup> Id.

does not mean that the rape did not happen. She expounded that the penetration may not have extended to the hymen, as the hymen is “externally located and covered by the labia majora[.]”<sup>13</sup> Furthermore, injuries in the anus would have disappeared after 24 hours if the injury was superficial or resulted only to congestion or edema.<sup>14</sup>

The defense presented the sole testimony of Dela Peña. Dela Peña claimed that AAA and her family made up the accusations against him because they did not like him as Mama Rosy’s live-in partner. He likewise asserted that AAA lived in the house of her aunt, and not with Mama Rosy.<sup>15</sup>

The Regional Trial Court found Dela Peña guilty beyond reasonable doubt of the charged offense.<sup>16</sup> It ruled that the prosecution sufficiently proved all the elements of the two (2) offenses. It lent credence to the consistent testimony of AAA, and found that her actuations after the incident were consistent with human nature and experience. It held that the defense of Dela Peña was too flimsy to be convincing.<sup>17</sup>

Furthermore, according to the Regional Trial Court, Dela Peña contradicted himself when he stated that AAA was living with them in May 2007, that she was only eight (8) years old at that time, and that she called him “Papa Allan.”<sup>18</sup>

The dispositive portion reads:

**WHEREFORE**, judgment is hereby rendered as follows:

(1) In Crim. Case No. 07-0433, accused ALLAN DELA PEÑA y MERACAP, is hereby found GUILTY beyond reasonable doubt of STATUTORY RAPE under Article 266-A. Paragraph 1(d) of the Revised Penal Code as amended by R.A. No. 8353, and accordingly, SENTENCED to suffer the penalty of RECLUSION PERPETUA and to indemnify victim, AAA, the amount SEVENTY FIVE THOUSAND PESOS (Php75,000.00); moral damages of Php75,000.00, and exemplary damages of FIFTY THOUSAND PESOS (Php50,000.00); and

(2) In Crim. Case No. 07-0434, accused ALLAN DELA PEÑA y MERACAP, is hereby found GUILTY beyond reasonable doubt of RAPE under Article 266-A, Paragraph 2, of the Revised Penal Code as amended by R.A. No. 8353, and accordingly, SENTENCED to suffer the penalty of imprisonment of SIXTEEN (16) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS to TWENTY (20) YEARS of reclusion temporal and to indemnify victim, AAA, the amount of FIFTY THOUSAND PESOS

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<sup>13</sup> Id.

<sup>14</sup> Id. ---

<sup>15</sup> Id. at 5.

<sup>16</sup> *Rollo*, p. 5.

<sup>17</sup> *CA rollo*, p. 39.

<sup>18</sup> *CA rollo*, p. 35.

(Php50,000.00); moral damages of Php50,000.00, and exemplary damages of TWENTY FIVE THOUSAND PESOS (Php25,000.00).

**SO ORDERED.**<sup>19</sup>

Dela Peña appealed his conviction.<sup>20</sup>

He argued before the Court of Appeals that AAA's testimony is speculative and incredible. He pointed out that AAA testified that her brother was also in the room, but did not even seek help from him or call his attention. She also did nothing, not even resist, when he allegedly attempted to insert his penis into her vagina and anus. He likewise pointed that AAA identified him as the culprit only from a noise and a little light from outside. She could not recall what he was wearing, and failed to notice if he was naked.<sup>21</sup> She also allegedly admitted that she was facing down when the penis was inserted into her anus, while it was nighttime with no lights on. Thus, Dela Peña argued that it can be reasonably assumed that she did not actually see him, especially since she just woke up and was unalert and groggy from her sleep. He pointed out that AAA could not even remember if she informed her grandmother of the incident.<sup>22</sup>

Furthermore, he argued that the Medico-Legal Officer found no laceration or injury in AAA's hymen or anus. He also pointed out that AAA's aunt testified of being told that Dela Peña only touched the private parts of AAA and ABC. This is similar to ABC's testimony, where she said that AAA told her that "*hinahawakan daw po siya.*"<sup>23</sup> ABC also admitted that she was not present during the incident and had no personal knowledge of the acts complained of.<sup>24</sup> Likewise, the arresting officers had no personal knowledge of the incident.<sup>25</sup>

The prosecution, on the other hand, insisted that the conviction of Dela Peña was proper.<sup>26</sup>

It argued that the lone testimony of a rape victim is sufficient to sustain a conviction if it is credible, and in this case, AAA's testimony was spontaneous, categorical, and believable, especially considering her vulnerable age. It pointed out that AAA positively identified Dela Peña as the person who raped her; not anyone else. It also noted that AAA's behavior

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<sup>19</sup> Id. at 40.

<sup>20</sup> Id. at 41.

<sup>21</sup> Id. at 60.

<sup>22</sup> Id. at 61.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id. at 62.

<sup>26</sup> Id. at 84.

after the incident was consistent with human experience: (1) she cried; (2) immediately ran outside the house; and (3) told her family about it.<sup>27</sup>

It maintained that Dela Peña's defense is flimsy, especially when he admitted that AAA and her family never told him that they did not like him.<sup>28</sup> His denial is likewise self-serving, and failed to overturn AAA's categorical testimony.<sup>29</sup>

The prosecution also argued that any laceration or injury in the hymen and anus of the victim is not an element of the offense, and its absence does not negate the possibility of rape. It maintained that medical evidence is only corroborative and is not absolutely necessary to prove the crime.<sup>30</sup>

Finally, it asserted that the award for damages should be modified such that the civil indemnity, moral damages, and exemplary damages should be ₱75,000.00, ₱75,000.00, and ₱30,000.00, respectively.<sup>31</sup>

The Court of Appeals affirmed the conviction of Dela Peña, but modified his civil liability.<sup>32</sup> It found that the prosecution was able to prove all the elements of statutory rape and rape by sexual assault.<sup>33</sup> It lent credence to AAA's testimony, considering her age and the clear and categorical manner by which she testified.<sup>34</sup> It ruled that the inconsistencies pointed out by Dela Peña did not impair AAA's credibility, as it only referred to trivial matters that were not essential to the commission of the rape.<sup>35</sup>

The Court of Appeals did not lend credence to Dela Peña's defense of denial and alibi. It found it self-serving and weak. It noted that Dela Peña did not elaborate on his claim that the accusations against him were due to AAA's family's disliking towards him. He even admitted that he was not initially aware that AAA's family disliked him for Mama Rosy.<sup>36</sup>

The Court of Appeals modified the penalty of imprisonment for the crime of rape by sexual assault. It thus reduced the period as follows:<sup>37</sup>

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<sup>27</sup> Id. at 86.

<sup>28</sup> Id. at 87.

<sup>29</sup> Id. at 88.

<sup>30</sup> Id. at 87.

<sup>31</sup> Id. at 88-89.

<sup>32</sup> *Rollo*, pp. 14-15.

<sup>33</sup> Id. at 8-11.

<sup>34</sup> Id. at 9 and 11.

<sup>35</sup> Id. at 12.

<sup>36</sup> Id. at 13.

<sup>37</sup> Id.

	Regional Trial Court	Court of Appeals
<i>Penalty of Imprisonment</i>	16 years, 5 months, 11 days to 20 years of reclusion temporal	Minimum: 6 months and one day to six years of <i>prision correccional</i>  Maximum: 8 years and one day to 10 years of <i>prision mayor</i>

It also modified Dela Peña's civil liability for both offenses. The amounts were reduced as follows:<sup>38</sup>

Civil Liability	Regional Trial Court	Court of Appeals
<i>Statutory Rape</i>	Indemnity of ₱75,000.00  Moral damages of ₱75,000.00,  Exemplary damages of ₱50,000.00	Indemnity of ₱75,000  Moral damages of ₱75,000.00  Exemplary damages of ₱30,000.00
<i>Rape by Sexual Assault</i>	Indemnity of ₱50,000  Moral damages of ₱50,000.00  Exemplary damages of ₱25,000.00	Indemnity of ₱30,000  Moral damages of ₱30,000.00  Exemplary damages of ₱30,000.00

The dispositive portion reads:

We **MODIFY** the Decision dated 24 September 2012 issued by the Regional Trial Court, Branch 254, Las Piñas City, in Criminal Case Numbers 07-0433 and 7-0434, as follows:

(1) In Criminal Case Number 07-0433: we find accused-appellant Allan Dela Peña y Meracap **GUILTY BEYOND REASONABLE DOUBT** of statutory rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended, and sentence him to imprisonment of *reclusion perpetua*, and order him to pay AAA PhP75,000.00 (as civil liability), PhP 75,000.00 (as moral damages), and PhP 30,000.00 (as exemplary damages);

(2) In Criminal Case Number 07-0434: we find accused-appellant Allan Dela Peña y Meracap **GUILTY BEYOND**

<sup>38</sup> Id. at 13-14.

REASONABLE DOUBT of rape by sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code, as amended, and sentence him to imprisonment of six (6) months and one (1) day to six (6) years of prison correccional (as minimum), to eight (8) years and one (1) day to ten (10) years, (as maximum), and order him to pay AAA PhP 30,000.00 (as civil liability), PhP30,000.00 (as moral damages), and PhP 30,000.00 (as exemplary damages).

All damages awarded shall bear interest at six percent (6%) interest per annum from finality of this Decision until full payment.

**IT IS SO ORDERED.**<sup>39</sup> (Emhphasis in the orginal)

Thus, Dela Peña filed a Notice of Appeal.<sup>40</sup>

In a June 28, 2017 Resolution, this Court acknowledged receipt of the records forwarded by the Court of Appeals and ordered the parties to file supplemental briefs if they so desired.<sup>41</sup>

Dela Peña<sup>42</sup> and the Office of the Solicitor General<sup>43</sup> manifested that they will no longer file Supplemental Briefs.

The issue for this Court's resolution is whether or not the prosecution proved beyond reasonable doubt that accused-appellant Dela Peña is guilty of statutory rape and rape by sexual assault, penalized under Article 266-A, paragraphs 1(d) and 2 of the Revised Penal Code, as amended by Republic Act No. 8353.

This Court affirms the conviction of accused-appellant.

Accused-appellant is charged with statutory rape and rape by sexual assault under paragraphs 1(d) and (2), respectively, of Article 266-A of the Revised Penal Code as amended by Republic Act No. 8353,<sup>44</sup> which states:

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:

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<sup>39</sup> Id. at 14–15.

<sup>40</sup> Id. at 16–17.

<sup>41</sup> Id. at 21–22.

<sup>42</sup> Id. at 32–35.

<sup>43</sup> Id. at 23–26.

<sup>44</sup> The Anti-Rape Law of 1997, September 30, 1997.

- 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 supplied)*

The elements of statutory rape are:

(1) the offended party is under 12 years of age and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.<sup>45</sup>

In statutory rape, it is not necessary that any force or violence be exerted on the victim. Likewise, the victim need not resist the advances made. This is in consideration of the victim's tender age, and their presumed incapacity to exercise their judgment and will on their own. In *People v. Teodoro*:<sup>46</sup>

Rape under paragraph 3 of this article is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation and physical evidence of injury are not relevant considerations; *the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.*<sup>47</sup> (Emphasis supplied; citations omitted)

This Court has emphasized the depravity of statutory rape committed by those who exercise moral ascendancy over the child victim. In *People v. Gutierrez y Robles*:<sup>48</sup>

<sup>45</sup> *People v. Gutierrez y Robles*, 731 Phil. 352, 357 (2014) [Per J. Leonen, Third Division].

<sup>46</sup> 622 Phil. 328 (2009) [Per J. Brion, Second Division].

<sup>47</sup> Id. at 337 citing *People v. Pancho*, 462 Phil. 193 (2003) [Per J. Sandoval-Gutierrez, Third Division].

<sup>48</sup> 731 Phil. 352, 357 (2014) [Per J. Leonen, Third Division].



Rodrigo was referred to by the child-victim as "Uncle Rod." He admitted that AAA's family had known him for a long time. Rodrigo had the trust and respect that any elder in the family of AAA had. Instead of providing the moral guidance that his status allowed him, he took advantage of AAA's youthful innocence to satiate his illicit carnal desires. To cover this up and seemingly justify his actions, he gave his child-victim the measly sum of five pesos. Rodrigo knew that what he did was wrong; AAA would have probably doubted whether such act was normal among adults.

With his moral ascendancy, it would not be unreasonable to assume that even the child-victim's desire for help would be muffled by her fear of her "Uncle Rod." To a young 10-year-old, the ordinary world can be daunting. To be so young and silently aware that one is the victim of such callous depravation by Rodrigo, who she could have expected to take care of her, can create the kind of lasting fear that diminishes the development of her own person and her own convictions.<sup>49</sup>

In this case, all the elements of statutory rape are present. Accused-appellant admitted that AAA was only 8 years old at the time of the incident, and called him "Papa Allan."<sup>50</sup> The prosecution was also able to prove beyond reasonable doubt that accused-appellant inserted his penis into AAA's vagina. In her testimony, AAA stated the following:

Q: Can you tell us if there was any incident that happened on May 2007?

A: Yes, Ma'am.

Q: What was the incident?

A: He was trying to insert his penis into my vagina.

Q: Who is that person that you are referring to?

A: Allan, Ma'am.

Q: Are you referring to Allan dela Peña?

A: Yes, Ma'am.

Q: By the way, you said that Allan lives with you and your Mama Rosy, what is your relationship to [sic] Allan?

A: None, Ma'am.

Q: How come Allan lives with you and Mama Rosy?

A: They are husband and wife, Ma'am.

Q: You said that Allan tried to insert his penis into your vagina, where were you at that time when this incident happened?

A: I was in the room, Ma'am.

Q: Of whose house?

A: Mama Rosy, Ma'am.

Q: Can you tell us how many rooms are there in the house of Mama Rosy?

A: One only, Ma'am.

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<sup>49</sup> Id. at 360-361.

<sup>50</sup> CA *rollo*, p. 35.

Q: Is that where and when Allan tried to insert his penis into your vagina?  
A: Yes, Ma'am.

Q: Can you tell us if it was daytime or night time when the incident happened?  
A: It was night time, Ma'am.

Q: Can you tell us what you were doing then?  
A: I was sleeping, Ma'am.

Q: And who were inside the room aside from you?  
A: Robin, Ma'am.

Q: Aside from Robin, was there any other person inside that room?  
A: None, Ma'am.

xxx xxx xxx

Q: How about Allan dela Peña, where was he at that time?  
A: He was at the sala, Ma'am.

xxx xxx xxx

Q: Are you telling the Court that Allan went to your room at that time?  
A: Yes, Ma'am.

Q: So, you were sleeping. Were you sleeping beside Robin at that time?  
A: We were sleeping on separate beds.

Q: But, you were sleeping, how did you know that Allan was the one who tried to insert his penis to your vagina?  
A: Because there was noise outside and there was a little light, Ma'am.

Q: From?  
A: From outside, Ma'am.

Q: Where was Allan when you woke up?  
A: In the room, Ma'am.

xxx xxx xxx

Q: When he was trying to insert his penis into your vagina, where was Allan in relation to you?  
A: On top of me, Ma'am.

xxx xxx xxx

Q: How did you know that it was Allan dela Peña?  
A: I saw his face, Ma'am.<sup>51</sup>

This Court likewise affirms that accused-appellant is guilty of rape by sexual assault. The elements of the offense are:

<sup>51</sup> Id. at 36-38.

- (1) That the offender commits an act of sexual assault;
- (2) That the act of sexual assault is *committed* by any of the following means:
- (a) By inserting his penis into another person's mouth or *anal orifice*; or
- ....
- (3) That the act of sexual assault is *accomplished* under any of the following circumstances:
- (a) By using force, threat or intimidation;
- (b) When a woman is deprived of reason or otherwise unconscious;<sup>52</sup>
- 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.*<sup>53</sup> (Emphasis supplied)

In *People v. Abello y Fortada*:<sup>54</sup>

R.A. No. 8353 which took effect on October 22, 1997 introduced into the Philippine legal system the concept of rape by sexual assault. This amendment not only reclassified rape as a crime against persons, but also expanded the definition of rape from the traditional concept of a sexual intercourse committed by a man against an unwilling woman.

The second paragraph of Article 266-A of the RPC, as amended defines rape by sexual assault as committed *by any person who, under any of the circumstance mentioned in paragraph 1 . . . 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>55</sup> (Emphasis in the original)

In this case, AAA testified that accused-appellant inserted his penis into her anus:

*Q: Aside from that, can you tell us if there were other things that Allan did to you that night?*

*A: Yes, Ma'am.*

<sup>52</sup> *People v. Abello y Fortada*, 601 Phil. 373, 390-391 (2009) [Per J. Brion, Second Division].

<sup>53</sup> Rev. Pen. Code, art. 266-A as amended by Republic Act No. 8353 (1997).

<sup>54</sup> 601 Phil. 373 (2009) [Per J. Brion, Second Division].

<sup>55</sup> *Id.* at 390.

*Q: What other things did he do to you?*

*A: He was trying to insert his penis into my anus, Ma'am.*

*Q: You mentined of "pinapasok," how many times did he do that?*

*A: Several times, Ma'am.*

*Q: When you said "pinapasok," are you saying that Allan was able to insert his penis into your anus?*

*A: Yes, Ma'am.*

*Q: How did you feel when he inserted his penis into your anus?*

*A: It was painful, Ma'am.<sup>56</sup> (Emphasis in the original)*

The testimonies of AAA were positive, clear, and categorical. She identified accused-appellant as the culprit and explained that the latter inserted his penis into her vagina and her anus.

In *People v. Veloso*,<sup>57</sup> this Court explained the rationale as to why full weight and credence is accorded to the testimonies of child victims of rape:

In a litany of cases, this Court has ruled that the testimonies of child-victims of rape are to be given full weight and credence. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape, if what she claims is not true. Her candid narration of how she was raped bears the earmarks of credibility, especially if no ill will — as in this case — motivates her to testify falsely against the accused. It is well-settled that when a woman, more so when she is a minor, says she has been raped, she says in effect all that is required to prove the ravishment. The accused may thus be convicted solely on her testimony — provided it is credible, natural, convincing and consistent with human nature and the normal course of things.<sup>58</sup>

In *People v. Tulagan*:<sup>59</sup>

We reiterate the principle that no young girl, such as AAA, would concoct a sordid tale, on her own or through the influence of her grandmother as per Tulagan's intimation, undergo an invasive medical examination then subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice. In *People v. Garcia*, we held:

Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed.

<sup>56</sup> *Rollo*, p. 11.

<sup>57</sup> 703 Phil. 541 (2013) [Per J. Leonardo-De Castro, First Division].

<sup>58</sup> *Id.* at 553 citing *People v. Salazar*, 648 Phil. 520 (2010) [Per J. Velasco, Jr., First Division].

<sup>59</sup> *People v. Tulagan*, G.R. No. 227363, March 12, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>> [Per J. Peralta, En Banc].

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. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.<sup>60</sup> (Citations omitted)

Considering the tender age of AAA and the shame, inconvenience, trauma, and scandal that follows in coming forward to report an incident of rape, this Court finds it hard to believe that AAA will make up the accusations against accused-appellant on the sole basis that she does not like him for her Mama Rosy. Her clear, categorical, and straightforward testimony is worthy of weight and credence.

On the other hand, the defense of accused-appellant was self-serving and flimsy. His denial was not substantiated by clear and convincing evidence. He likewise did not show that it was physically impossible for him to be at the area where the rape took place.

. . . Long judicial experience instructs that their denial and alibis, being too easy to invent, could not overcome their positive identification by credible Prosecution witnesses whose motives for the identification were not shown to be ill or vile. Truly, a positive identification that is categorical, consistent, and devoid of any showing of ill or vile motive on the part of the Prosecution witnesses always prevails over alibi and denial that are in the nature of negative and self-serving evidence. To be accepted, the denial and alibi must be substantiated by clear and convincing evidence establishing not only that the accused did not take part in the commission of the imputed criminal act but also that it was physically impossible for the accused to be at or near the place of the commission of the act at or about the time of its commission. In addition, their proffered alibis were really unworthy of credit because only the accused themselves and their relatives and other intimates substantiated them.<sup>61</sup> (Citations omitted)

Accused-appellant's reliance on inconsistencies in the testimony of AAA must likewise fail:

Jurisprudence tells us that a witness' testimony containing inconsistencies or discrepancies does not, by such fact alone, diminish the credibility of such testimony. In fact, the variance in minor details has the net effect of bolstering instead of diminishing the witness' credibility because they discount the possibility of a rehearsed testimony. Instead,

<sup>60</sup> Id. citing *People v. Garcia*, 695 Phil. 576 (2012) [Per J. Reyes, First Division].

<sup>61</sup> *People vs. Villarico, et al.*, 662 Phil. 399, 421-422 (2011) [Per J. Bersamin, Third Division].

what remains paramount is the witness' consistency in relating the principal elements of the crime and the positive and categorical identification of the accused as the perpetrator of the same.<sup>62</sup> (Citation omitted)

In failing to overturn the evidence presented by the prosecution, it cannot be reasonably doubted that accused-appellant committed the crimes charged. This Court thus affirms the conviction of the accused.

Nonetheless, this Court modifies the nomenclature, penalty, and damages for the charge of rape by sexual assault. "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.'"<sup>63</sup>

Section 5(b) of Republic Act No. 7610<sup>64</sup> states:

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

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

....

(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 victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.] (Emphasis supplied)

Under Section 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610, "lascivious conduct" means:<sup>65</sup>

... the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the

<sup>62</sup> *People v. Tulagan*, G.R. No. 227363, March 12, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>> [Per J. Peralta, En Banc] citing *People v. Appegu*, 429 Phil. 467, 477 (2002) [Per J. Ynares-Santiago, First Division].

<sup>63</sup> *Id.*

<sup>64</sup> Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, June 17, 1992.

<sup>65</sup> Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, October 1993.

same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person[.]

In *Dimakuta y Maruhom v. People*,<sup>66</sup> this Court explained that if the victim is a child and the act charged is considered lascivious conduct under Republic Act No. 7610, and sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code, the accused should be liable under Article III, Section 5(b) of Republic Act No. 7610, which imposes the higher penalty of *reclusion temporal* in its medium period:

Article 226-A, paragraph 2 of the RPC, punishes inserting of the penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person if the victim did not consent either it was done through force, threat or intimidation; or when the victim is deprived of reason or is otherwise unconscious; or by means of fraudulent machination or grave abuse of authority as sexual assault as a form of rape. However, in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *prision mayor*, the offender should be liable for violation of Section 5 (b), Article III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (18) years and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable for sexual abuse under R.A. No. 7610.

There could be no other conclusion, a child is presumed by law to be incapable of giving rational consent to any lascivious act, taking into account the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth, as well as, in harmony with the foremost consideration of the child's best interests in all actions concerning him or her. This is equally consistent with the declared policy of the State to **provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination**, and other conditions prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination. Besides, if it was the intention of the framers of the law to make child offenders liable only of Article 266-A of the RPC, which provides for a lower penalty than R.A. No. 7610, the law could have expressly made such statements.<sup>67</sup> (Emphasis in the original)

<sup>66</sup> *Dimakuta y Maruhom v. People*, 771 Phil. 641 (2015) [Per J. Peralta, En Banc].

<sup>67</sup> *Id.* at 670-671.

This was further elaborated on in *People v. Tulagan*.<sup>68</sup>

Considering the development of the crime of sexual assault from a mere “crime against chastity” in the form of acts of lasciviousness to a “crime against persons” akin to rape, as well as the rulings 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 impossible penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.<sup>69</sup>

In this case, all the elements of sexual abuse under Section 5(b) of Republic Act No. 7610 are also present. Accused-appellant’s act of inserting his penis into the anus of AAA is considered lascivious conduct under Section 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610. AAA was then eight (8) years old. Accused-appellant had moral ascendancy over her as the boyfriend of AAA’s grandmother. AAA even called him “Papa Allan.” Clearly, AAA was a child subjected to lascivious conduct “under the coercion or influence of any adult.”<sup>70</sup>

Given these circumstances, the proper penalty that should be meted to accused-appellant is the higher penalty of *reclusion temporal* in its medium period, subject to the Indeterminate Sentence Law.

This Court also modifies the award of damages in accordance with *People v. Tulagan*.<sup>71</sup>

**WHEREFORE**, the Court of Appeals Decision dated December 7, 2015 in CA-G.R. CR-HC No. 06004 is **AFFRIMED with MODIFICATIONS**. Accused-appellant Allan Dela Peña y Meracap is found **GUILTY** beyond reasonable doubt of:

1) Statutory rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended by Republic Act No. 8353. He is sentenced to suffer the penalty of *reclusion perpetua* and to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages; and

<sup>68</sup> G.R. No. 227363, March 12, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>> [Per J. Peralta, En Banc].

<sup>69</sup> Id.

<sup>70</sup> Id.

<sup>71</sup> G.R. No. 227363, March 12, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>> [Per J. Peralta, En Banc].



2) Rape by sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code, as amended by Republic Act No. 8353, in relation to Section 5(b) of Republic Act No. 7610. He is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum, and to pay AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

Legal interest at the rate of six percent (6%) per annum is imposed on all damages awarded from the date of finality of this Resolution until fully paid.<sup>72</sup>

**SO ORDERED.”**

By authority of the Court:

**MISAEAL DOMINGO C. BATTUNG III**

*Division Clerk of Court*

By:

**RUMAR D. PASION**

*Deputy Division Clerk of Court*

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**G.R. No. 229504**

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<sup>72</sup> See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].