



Republic of the Philippines  
 Supreme Court  
 Manila

SECOND DIVISION

PEOPLE OF THE G.R. No. 257497  
 PHILIPPINES,

Plaintiff-appellee, Present:

-versus-

LEONEN,\* *Chairperson*,  
 LAZARO-JAVIER,\*\*  
 LOPEZ, M.,  
 LOPEZ, J., and  
 KHO, JR., JJ.

XXX,<sup>1</sup>

Accused-appellant.

Promulgated:

JUL 12 2023

X-----X

DECISION

M. LOPEZ, J.:

In this Ordinary Appeal, XXX assails the Decision<sup>2</sup> dated November 26, 2020, of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03021, which affirmed his conviction for rape under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353.<sup>3</sup>

<sup>1</sup> Initials were used to identify the accused-appellant pursuant to the Supreme Court Amended Administrative Circular No. 83-2015 dated September 5, 2017, entitled "Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances."

\* On official business.

\*\* Designated Acting Chairperson per Special Order No. 2999 dated July 10, 2023.

<sup>2</sup> *Rollo*, pp. 12-38. Penned by Associate Justice Lorenza R. Bordio, with the concurrence of Associate Justices Emily R. Aliño-Geluz and Gabriel T. Ingles of the Eighteenth Division, Court of Appeals, Cebu City.

<sup>3</sup> Entitled "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE AND FOR OTHER PURPOSES," dated September 30, 1997.

## ANTECEDENTS

Two Informations were filed against XXX:

Criminal Case No. 2008-04-193:

That on our about the 31<sup>st</sup> day of October, 2007, in [REDACTED],<sup>4</sup> Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, with the use of a long bladed weapon, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA],<sup>5</sup> a 16-year-old minor, against her will and without her consent.

ACTS CONTRARY TO LAW.

Criminal Case No. 2008-04-194:

That on our about the 29<sup>th</sup> day of October, 2007, in the [REDACTED],<sup>6</sup> and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, with the use of a long bladed weapon, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], a 16-year-old minor, against her will and without her consent.

ACTS CONTRARY TO LAW.<sup>7</sup>

On arraignment, XXX pleaded not guilty to both charges. The cases were consolidated and tried together.

AAA testified that on October 29, 2007, she was in the house of XXX's mother, watching television (TV). AAA decided to go home at 10:00 p.m. When she reached the gate, XXX, who had no shirt,<sup>8</sup> suddenly emerged from behind a coconut tree. XXX pointed a long bolo at her and forced her to walk towards an abandoned house.<sup>9</sup> When they arrived at the abandoned house, XXX forced AAA to lie on a wooden bed (*papag*) and ordered her to remove her clothes. All the while, XXX's bolo rested at the right side of her head.<sup>10</sup> AAA did not heed him to undress, so XXX undressed her himself. XXX

<sup>4</sup> Under SC Amended Administrative Circular No. 83-2015, "[a]s to geographical location, the decisions, resolutions, and orders in covered cases should refer only to the province where the incident occurred or where the crime was committed. References to the specific *barangay* or town should be blotted out from the body of the decision, resolution, or order if its identification could lead to the disclosure of the identities of the women or children victims."

<sup>5</sup> Fictitious initials were used in place of the victim's name pursuant to Supreme Court Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>6</sup> Under SC Amended Administrative Circular No. 83-2015, "[a]s to geographical location, the decisions, resolutions, and orders in covered cases should refer only to the province where the incident occurred or where the crime was committed. References to the specific *barangay* or town should be blotted out from the body of the decision, resolution, or order if its identification could lead to the disclosure of the identities of the women or children victims."

<sup>7</sup> *Rollo*, pp. 31-32.

<sup>8</sup> TSN, November 21, 2014, p. 6.

<sup>9</sup> *Rollo*, p. 14.

<sup>10</sup> TSN, November 21, 2014, p. 5.

caressed her breasts and removed his shorts and brief.<sup>11</sup> After that, he mounted AAA, inserted his penis inside her vagina, and made pumping motions. AAA felt pain during the ordeal.<sup>12</sup> XXX only stopped when he heard a coughing sound from someone passing by. AAA noticed a sticky white substance came out from XXX's penis, which splattered on her vagina and stomach. She then kicked XXX in the stomach and ran home naked. XXX did not run after her.<sup>13</sup> AAA narrated that she could not stop crying while she took clothes from the back of their house and bathed upon getting home. She did not tell anyone about the incident because of XXX's threats.<sup>14</sup> AAA was just 16 years old at the time.<sup>15</sup>

The second incident happened on October 31, 2007. AAA narrated that around 7:00 p.m., she went to the comfort room inside their house. When she had pulled down her underwear and shorts, XXX entered the comfort room, carrying a bolo, and forced AAA to bend forward with her back facing him. XXX then pulled his shorts and briefs to his knees, planning to penetrate her from behind. Fortunately, AAA's friend arrived and called for her, which prompted XXX to leave.<sup>16</sup>

On February 14, 2008, AAA told her parents about the incidents when she noticed her belly rising above the umbilicus. Her parents brought her to the Municipal Health Officer (MHO). AAA also reported the incidents to the police station. On July 17, 2008, she gave birth to a baby boy.<sup>17</sup>

XXX denied the charges. He countered that on the evening of October 29, 2007, he was at home watching TV with his mother and his mother's nephews and nieces. On October 31, 2007, he was likewise home, tending to livestock and chickens. XXX claimed the charges were filed because he witnessed AAA and her father having sexual intercourse on February 26, 2008. At that time, he had already asked his friend, [REDACTED], to testify in his favor as he was already expecting that cases would be filed against him because of his discovery.<sup>18</sup> XXX could not recall when he learned about the cases, but he confronted AAA's father as soon as he found out.<sup>19</sup>

On June 4, 2018, the Regional Trial Court (RTC) found XXX guilty of attempted rape in Criminal Case No. 2008-04-193 (October 31, 2007 incident) and consummated rape in Criminal Case No. 2008-04-194 (October 29, 2007 incident).<sup>20</sup> For the attempted rape case, the trial court held that while XXX intended to have sexual intercourse with AAA, the act of rape was not

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<sup>11</sup> *Rollo*, p. 43.

<sup>12</sup> *Id.* at 43-44.

<sup>13</sup> TSN, November 21, 2014, p. 7.

<sup>14</sup> *Rollo*, p. 44.

<sup>15</sup> *Id.* at 45.

<sup>16</sup> *Id.*

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

<sup>18</sup> *Id.* at 45-46.

<sup>19</sup> *Id.* at 46.

<sup>20</sup> *Id.* at 41-52. Penned by Presiding Judge Georgina Uy Perez.

consummated when AAA's friend arrived.<sup>21</sup> On the other hand, sexual intercourse was established in the consummated rape case through the testimony of AAA and strengthened by her subsequent pregnancy.<sup>22</sup> The dispositive portion of the Decision reads:

**WHEREFORE**, premises well considered, judgment is hereby rendered finding the accused [XXX], **guilty beyond reasonable doubt for the lesser crime of Attempted Rape in Criminal Case No. 2008-04-193**. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of four (4) years, two (2) months, and one (1) day of *prision correccional maximum* as minimum to eight (8) years and one (1) day of *prision mayor medium* as maximum and to pay the private offended party [PHP] 25,000 as civil indemnity, [PHP] 25,000 as moral damages, and [PHP] 25,000 as exemplary damages, with all such amounts to earn interest of 6% per annum from the finality of this decision until full payment.

Judgment is likewise rendered finding the accused **guilty beyond reasonable doubt of Rape with the use of a deadly weapon in Criminal Case No. 2008-04-194**. He is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and to pay the private offended party [PHP] 75,000 as civil indemnity, [PHP] 75,000 as moral damages, and [PHP] 75,000 as exemplary damages with all such amounts to earn interest of 6% per annum from the finality of this decision until full payment.

In the service of his sentence, accused shall be credited in full of the time of his preventive imprisonment, if he agreed voluntarily to abide by the rules imposed upon convicted prisoners.

Furnish copies of this Decision to parties and counsels.

SO ORDERED.<sup>23</sup>

XXX filed a Notice of Appeal. Notably, the caption of the Notice of Appeal only indicated **Criminal Case No. 2008-04-194** or the consummated rape case.<sup>24</sup> However, in his Appellant's Brief,<sup>25</sup> XXX questioned his conviction under both the attempted and consummated rape cases.

Regarding the attempted rape case (October 31, 2007 incident), XXX raised various inconsistencies in AAA's testimony and the documents presented by the prosecution. Specifically, he pointed out that the Certificate of Police Blotter (Police Blotter) stated that the second incident occurred on February 12, 2008, not October 31, 2007, contrary to AAA's testimony. Further, during the trial, AAA testified that her friend arrived, but the Police Blotter indicated that it was AAA's younger sister.<sup>26</sup> Finally, the Medico-Legal Report issued by the MHO revealed three, not two, incidents of rape:

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<sup>21</sup> *Id.* at 47.

<sup>22</sup> *Id.* at 48.

<sup>23</sup> *Id.* at 51-52.

<sup>24</sup> Records, p. 116.

<sup>25</sup> CA *rollo*, pp. 11-30.

<sup>26</sup> *Id.* at 22.

October 29, 2007 at 10:00 p.m., October 31, 2007, and February 12, 2008 at 7:00 p.m.<sup>27</sup>

In the consummated rape case (October 29, 2007 incident), XXX argued that AAA's testimony was marred with improbabilities. First, it was unnatural for AAA not to see the alleged person who coughed near the crime scene. Second, getting clothes found outside their house when she got home from the incident negates her claim that she feared XXX.<sup>28</sup> Third, AAA's pregnancy cannot be used against XXX, lacking a DNA test.<sup>29</sup>

On November 26, 2020, the CA issued the assailed Decision<sup>30</sup> that affirmed XXX's conviction. The CA ruled that XXX's failure to indicate Criminal Case No. 2008-04-193 in his Notice of Appeal rendered his conviction in that case final and outside its jurisdiction.<sup>31</sup> On the other hand, in Criminal Case No. 2008-04-194, the CA found that all elements of rape under Article 266-A of the RPC were established. The dispositive portion of the Decision states:

**WHEREFORE**, in view of the foregoing, the appeal is **DENIED**. The Joint Decision dated June 4, 2018 of the Regional Trial Court, Branch 7 (Family Court), [REDACTED] Tacloban City, in Criminal Case No. Case No. 2008-04-194 finding appellant [XXX] guilty beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code is **AFFIRMED**.

**SO ORDERED.**<sup>32</sup>

Hence, this Appeal.

## RULING

Preliminarily, we correct the CA's erroneous notion that XXX's failure to indicate Criminal Case No. 2008-04-193 in the caption of his Notice of Appeal is tantamount to his failure to appeal the same. It is well-settled that an appeal in a criminal proceeding throws the whole case open for review *of all of its aspects*.<sup>33</sup> The Court must correct errors that may be found in the judgment appealed from, whether they are assigned errors or not. Thus, in *Saulo v. People*,<sup>34</sup> we reviewed the accused's conviction for violation of Batas Pambansa Blg. (BP) 22, although the accused failed to question the same and only raised issues regarding his conviction for perjury. In that case, violation of BP 22 and perjury were consolidated and tried together, and the accused was found guilty of both.

<sup>27</sup> *Id.* at 23.

<sup>28</sup> *Id.* at 27.

<sup>29</sup> *Id.* at 28.

<sup>30</sup> *Rollo*, pp. 12-38.

<sup>31</sup> *Id.* at 21.

<sup>32</sup> *Id.* at 37.

<sup>33</sup> *Soriano v. People*, G.R. No. 238282, April 26, 2022 [Per J. Inting, First Division].

<sup>34</sup> 873 Phil. 630 (2020) [Per J. Reyes, First Division].

Similarly, in this case, Criminal Case Nos. 2008-04-193 and 2008-04-194 were consolidated and tried together. The RTC issued a Joint Decision finding XXX guilty of both charges. Moreover, XXX's Appellant's Brief before the CA raised issues regarding his conviction in Criminal Case No. 2008-04-193, thereby showing his intent to appeal both cases. To be sure, the Appellant's Brief should prevail over the mere caption of his Notice of Appeal.

Thus, we will no longer surmise why XXX's counsel did not indicate Criminal Case No. 2008-04-193 in the caption of the Notice of Appeal and, worse, why he failed to question the appellate court's erroneous disposition before the Court. When one's liberty is at stake, it is fitting that a window for redress should be opened for the accused, especially in cases where the accused, who is ordinarily unfamiliar with the rules of procedure, is prejudiced by the mistake or error of his counselor in the lower court. The deprivation of an accused of liberty and/or property should certainly receive the liberal application of the Rules of Court to attain justice and fairness.<sup>35</sup> Thus, we will review both criminal cases.

*The prosecution proved XXX's guilt beyond reasonable doubt for consummated rape in Criminal Case No. 2008-04-194.*

We affirm XXX's conviction for rape committed against AAA on October 29, 2007.

For a charge of rape by sexual intercourse under Article 266-A (1) of the RPC, as amended, to prosper, the prosecution must prove that: (a) the offender had carnal knowledge of a woman; and (b) he accomplished this act under the circumstances mentioned in the provision, *e.g.*, through force, threat or intimidation.<sup>36</sup>

We have held that by the very nature of the crime of rape, it is generally unwitnessed, and usually, the victim is left to testify for herself. Her testimony is thus most vital and must be received with the utmost caution. On this score, when a rape victim's testimony is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded. Once found credible, her lone testimony is sufficient to sustain a conviction.<sup>37</sup>

Here, AAA's testimony, which was found credible by both the RTC and the CA, positively and categorically identified XXX as the person who raped her on October 29, 2007, through force, threat, and intimidation:

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<sup>35</sup> See *Sideño v. People*, 881 Phil. 405 (2020) [Per J. Peralta, First Division].

<sup>36</sup> *People v. Ejercito*, 834 Phil. 837, 844 (2018) [Per J. Perlas-Bernabe, Second Division].

<sup>37</sup> *People v. Suarez*, 750 Phil. 858, 864-865 (2015) [Per J. Perez, First Division].

Pros. Edgar A. Sabarre

Q: And did you in fact reach your house?

A: No, because when I was by the gate of their house, he suddenly came out from behind the coconut tree and he suddenly poked a long bolo at me.

Q: Who was the person you said poked a long bolo at you, you [*sic*] name him?

A: [XXX].

Q: After he poked a long bolo at you, what happened next, if any?

A: I was not able to move and make a sound because I was confused by fright.

Q: By the way, how old were you at that time?

A: Sixteen years old.

Q: Because you were not able to move, what did [XXX] do, if any?

A: He went behind me while carrying the long bolo and told me to walk.

Q: And did you walk?

A: I could not walk so he pushed me so I could start walking.

....

Q: At the abandoned house, what transpired next, if any?

A: He made me lie down on a wooden bed (*papag*).

Q: Where was that *papag* located, inside or outside the house?

A: Inside the house.

Q: After you were made to lie down on the wooden cut (*papag*), what did [XXX] do next, if any?

A: He told me to remove my pants/clothes.

Q: And where was the long bolo when he ordered you to take off your clothes?

A: At the side of my head, at the right side.

Q: And did you in fact take off your clothes as ordered by [XXX]?

A: No.

Q: And because you did not take off your clothes, what did [XXX] do, if any?

A: He removed my t-shirt and my shorts.

Q: Aside from the t-shirt and shorts that were removed, what else, if any, was removed by [XXX]?

A: My underwear.

Q: And when you were already naked, what did [XXX] do, if any?

A: He caressed my breast.

Q: After caressing your breast, what did he do next, if any?

A: He removed his clothes.

....

Q: After he took off his shorts and brief, what did he do next, if any?

A: He inserted his penis into my vagina.

Q: When he inserted his penis inside your vagina, was he on top of you?

A: Yes.

Q: When his penetrated [*sic*] your vagina, what did you feel?

A: I felt pain.

Q: When his penis was already inside your vagina, what did he do next, if any?

A: He kept on pumping.

Q: After pumping his penis inside your vagina, what happened next, if any?

A: Somebody passed by and made a coughing sound and [XXX] stood up.

....

Q: Why did you not tell somebody [*sic*] about what [XXX] has done to you?

A: I was afraid of him, because the following day he peeped through a hole in our house and he warned me not to tell anybody about the incident or else he would get inside our house and would kill us.

Q: What did you feel when you heard those words?

A: I was frightened.<sup>38</sup>

It is doctrinally settled that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.<sup>39</sup> This is because having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility.<sup>40</sup> The trial court can only be disturbed when some facts or circumstances of weight and substance have been overlooked, misapprehended, or misinterpreted.

Here, AAA's testimony showed how XXX had carnal knowledge of her without her consent through force and threats. Using the long bolo, pointing it at her, and keeping it near her as he raped her was sufficient to produce reasonable fear in AAA's mind that if she resisted or did not yield to the desires of the accused, the threat would be carried out. AAA's fears were exacerbated by XXX's threat the following day.

XXX's attempts to impugn the candid testimony of AAA fail to persuade. That AAA did not see the person who passed by and that she took

<sup>38</sup> TSN, November 21, 2014, pp. 4–8.

<sup>39</sup> *People v. Buclao*, 736 Phil. 325, 337 (2014) [Per J. Leonen, Third Division].

<sup>40</sup> *People v. Tuazon*, 585 Phil. 119, 127 (2008) [Per J. Austria-Martinez, Third Division].



clothes from outside their house instead of inside are minor details irrelevant to the constitutive elements of the crime of rape. It is settled that the victim's behavior does not establish the truth or falsity of her accusation. There is no typical form of conduct for a woman when facing a traumatic experience such as a sexual assault.<sup>41</sup> Neither can XXX rely on the lack of a DNA test since this is not an element of rape.

Finally, XXX's defenses of denial and alibi cannot prevail over AAA's clear and direct testimony. Positive identification, when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over a denial.<sup>42</sup> Besides, it is incumbent upon XXX to prove by clear and convincing evidence that it was physically impossible for him to be in the place of the crime when it was committed.<sup>43</sup> This he miserably failed to do. He had nothing to offer as his defense aside from his uncorroborated testimony that he was at home watching TV. Neither did he offer any credible evidence to show ill-motive on the part of AAA.

*The prosecution did not prove XXX's guilt beyond reasonable doubt for attempted rape in Criminal Case No. 2008-04-193. Instead, XXX is guilty of lascivious conduct under Section 5(b) of RA No. 7610.*

Article 6 of the RPC states that “[t]here is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.”

Carnal knowledge of a female is the basic element of rape.<sup>44</sup> It is the “act of a man having sexual bodily connections with a woman.”<sup>45</sup> In *Cruz v. People*,<sup>46</sup> the Court expounded on what overt acts would constitute an attempted rape, *viz.*:

... the character of the overt acts for purposes of the attempted stage has been explained in *People v. Lizada*:

An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. **The raison d'être for the law requiring a direct overt act is that, in a majority of cases, the**

<sup>41</sup> *People v. Rusco*, 796 Phil. 147, 158 (2016) [Per J. Perez, Third].

<sup>42</sup> *People v. Agcanas*, 674 Phil. 626, 632 (2011) [Per J. Sereno, *En Banc*], citing *People v. Caisip*, 352 Phil. 1058, 1065 (1998) [Per J. Sereno, *En Banc*].

<sup>43</sup> *People v. Mosquerra*, 414 Phil. 740 (2001) [Per J. De Leon, Jr., Second Division].

<sup>44</sup> *Cruz v. People*, 745 Phil. 54, 68 (2014) [Per J. Bersamin, First Division].

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 74.

**conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the “first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made.” The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.**<sup>47</sup> (Emphasis supplied)

....

We clarify that the direct overt acts of the petitioner that would have produced attempted rape did not include equivocal preparatory acts. The former would have related to his acts directly connected to rape as the intended crime, but the latter, whether external or internal, had no connection with rape as the intended crime. Perforce, his perpetration of the preparatory acts would not render him guilty of an attempt to commit such felony. His preparatory acts could include his putting up of the separate tents, with one being for the use of AAA and BBB, and the other for himself and his assistant, and his allowing his wife to leave for Manila earlier that evening to buy more wares. Such acts, being equivocal, had no direct connection to rape. As a rule, preparatory acts are not punishable under the *Revised Penal Code* for as long as they remained equivocal or of uncertain significance, because by their equivocality no one could determine with certainty what the perpetrator's intent really was.<sup>48</sup> (Emphasis in the original)

Therefore, the offender's act of removing the victim's clothes does not constitute the crime of attempted rape, absent any showing that he commenced forcing his penis into the victim's sexual organ.<sup>49</sup> In *Perez v. People*,<sup>50</sup> the accused's acts of lying on top of the complainant, embracing and kissing her, mashing her breasts, inserting his hand inside her panty, and touching her sexual organ, while admittedly obscene and detestable acts, do not constitute attempted rape, because there was no proof that the offender commenced inserting his penis to the victim's vagina. We held that these acts rather constitute the crime of acts of lasciviousness punishable under Article 336 of the RPC.


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<sup>47</sup> *Id.* at 71–72.

<sup>48</sup> *Id.* at 72–73.

<sup>49</sup> *People v. Caiñgat*, 426 Phil. 782 (2002) [Per J. Kapunan, *En Banc*].

<sup>50</sup> 431 Phil. 786 (2002) [Per J. Kapunan, First Division].



We reiterated the same principle in *People v. Dominguez*.<sup>51</sup> In that case, We held that it could not be assumed that the accused intended to rape the victim because he undressed himself and the victim and that the victim was raped on previous occasions. At most, the accused is guilty of acts of lasciviousness. Thus:

We cannot simply assume in Criminal Case Nos. 02-548 and 02-552 that accused-appellant was intending to rape AAA simply because accused-appellant undressed himself and AAA during these two instances, plus the fact that accused-appellant did rape AAA on three other occasions. Such a presumption hardly constitutes proof beyond reasonable doubt of the crime of attempted rape. The gauge in determining whether the crime of attempted rape had been committed is the commencement of the act of sexual intercourse, *i.e.*, penetration of the penis into the vagina, before the interruption.

As the Court of Appeals found, it has been established beyond reasonable doubt in Criminal Case Nos. 02-548 and 02-552 that accused-appellant committed the crime of acts of lasciviousness.<sup>52</sup>

Here, AAA's testimony, at most, established that XXX removed his undergarments. But, XXX was unable to do anything else due to the timely arrival of AAA's friend:

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Q: And when he went inside your comfort room while you were also inside, what did he do, if any?

A: He told me to bend forward with my back facing towards him.

Q: What was [XXX] carrying at that time when he ordered you to bend forward?

A: The same, a long bolo.

Q: And did you ascend to his order?

A: Yes, because I was frightened.

**Q: And what did he do with your clothes and panty?**

**A: My panty and my shorts were already pulled down because I was using the comfort room at that time.**

**Q: You said that you bent forward, what did he do with his clothes?**

**A: He pulled down his shorts and brief to his knees.**

....

**Q: And because he already pulled down his shorts and brief up to his knees, what did he do next, if any?**

<sup>51</sup> 650 Phil. 492 (2010) [Per J. Leonardo-De Castro, First Division].

<sup>52</sup> *Id.* at 517-518.

**A: Nothing further, because my friend suddenly arrived and was calling me, and he immediately pulled up his shorts and brief and rushed out.**

Q: You mean he did not place his penis to your vagina?

A: Yes.<sup>53</sup> (Emphasis supplied)

Accordingly, XXX cannot be held guilty of attempted rape for the incident that occurred on October 31, 2007. Nevertheless, he can be convicted of the lesser crime of lascivious conduct performed on a child, *i.e.*, lascivious conduct under Section 5(b)<sup>54</sup> of RA No. 7610,<sup>55</sup> which was the offense proved because it is included in the crime of rape, the offense charged.<sup>56</sup> This is consistent with the variance doctrine enunciated under Section 4<sup>57</sup> in relation to Section 5<sup>58</sup> of Rule 120 of Rules of Criminal Procedure. In *People v. Caoili*,<sup>59</sup> the Court explained that:

[t] he due recognition of the constitutional right of an accused to be informed of the nature and cause of the accusation through the criminal complaint or information is decisive of whether his prosecution for a crime stands or not. Nonetheless, the right is not transgressed if the information sufficiently alleges facts and omissions constituting an offense that includes the offense established to have been committed by the accused, which, in this case, is lascivious conduct under Section 5 (b) of [RA] No. 7610.<sup>60</sup>

<sup>53</sup> TSN, November 21, 2014, pp. 9–10.

<sup>54</sup> 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 subject 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[.]

<sup>55</sup> Entitled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES,” dated June 17, 1992.

<sup>56</sup> *People v. Caoili*, 815 Phil. 839 (2017) [ Per J. Tijam, *En Banc*].

<sup>57</sup> Section 4. *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved. (4a)

<sup>58</sup> Section 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter. (5a)

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 891.

The elements of acts of lasciviousness under Section 5(b) are as follows: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.<sup>61</sup> Lascivious conduct is defined as the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, 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.<sup>62</sup>

All these elements are present in this case. The Information specifically stated that AAA was “a 16-year-old minor” at the time of commission of the offense on October 31, 2007. This was proved by her Certificate of Live Birth<sup>63</sup> showing that she was born on September 29, 1991.<sup>64</sup> AAA testified that she had already pulled down her underwear and shorts when XXX entered the comfort room, undressed himself, and forced her to bend her back towards XXX. AAA only complied with XXX’s insidious request because XXX was armed with a *bolo*. The act of XXX is morally inappropriate, indecent, and lustful and constitutes lascivious conduct under RA No. 7610.

XXX cannot rely on the entries in the Medico-Legal Report and Police Blotter to impugn AAA’s testimony against him. This is because official records are only *prima facie* evidence of the facts and are not entitled to full credit, for it could be incomplete and inaccurate. Further, they may result from the partial suggestions or inquiries of the officer preparing the report.<sup>65</sup> We have held:

Entries in the police blotter are not evidence of the truth thereof but merely of the fact that the entries were made. Affidavits executed before the police or entries in such police blotters cannot prevail over the positive testimony given in open court. The entry in the police blotter is not necessarily entitled to full credit for it could be incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestions or inquiries. Without the aid of such the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertain

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<sup>61</sup> *Carbonell v. People*, G. R. No. 246702, April 28, 2021 [Per J. Delos Santos, Third Division]. *See also People v. Baya*, 859 Phil. 973, 990 (2019) [Per J. Reyes, J., Second Division].

<sup>62</sup> *See* Section 2 (h) of the Implementing Rules and Regulations of RA No. 7610.

SECTION 2. *Definition of Terms.* — As used in these Rules, unless the context requires otherwise

.....  
h) “Lascivious conduct” means 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 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[.]

<sup>63</sup> Records, p. 20.

<sup>64</sup> Pre-Trial Order where the defense admitted the minority of the victim at the time of the incidents. *RTC Records*, pp. 13–14.

<sup>65</sup> *People v. Manansala*, 826 Phil. 576, 590 (2018) [Per J. Perlas-Bernabe, Second Division].

to the subject. It is understandable that the testimony during the trial would be more lengthy and detailed than the matters stated in the police blotter.<sup>66</sup>

### *Penalty*

In **Criminal Case No. 2008-04-194**, the aggravating circumstance of use of a deadly weapon (long-bladed weapon) was alleged in the Information and proved during the trial. Under Article 266-B of the RPC, as amended, whenever a rape is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death.<sup>67</sup> There are neither mitigating nor aggravating circumstances in this case; hence, the lesser penalty shall be applied.<sup>68</sup> Accordingly, the RTC properly imposed the penalty of *reclusion perpetua* for the rape committed on October 29, 2007. The award of civil indemnity, moral damages, and exemplary damages of PHP 75,000.00 each,<sup>69</sup> all with 6% interest per annum from the date of finality of this Decision until fully paid,<sup>70</sup> are in order.

In **Criminal Case No. 2008-04-193**, the crime of lascivious conduct under Section 5 (b), Article III of RA No. 7610, is punishable by *reclusion temporal* in its medium period to *reclusion perpetua*.<sup>71</sup> Absent any mitigating or aggravating circumstance, applying the Indeterminate Sentence Law, the maximum term of the sentence shall be taken from the medium period or seventeen (17) years, four (4) months and one (1) day to twenty (20) years. The minimum term shall be taken within the range of the penalty next lower in degree, which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period, or from eight (8) years and one (1) day to fourteen (14) years and eight (8) months. Accordingly, we impose the penalty of **fourteen (14) years and eight (8) days of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum.** Anent damages, *People v. Tulagan*<sup>72</sup> instructs:

For the sake of consistency and uniformity, We deem it proper to address the award of damages in cases of Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5 (b) of [RA] No. 7610, and

<sup>66</sup> *People v. Corpuz*, 826 Phil. 801, 810–811 (2018) [Per J. Martirez, Third Division].

<sup>67</sup> Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

<sup>68</sup> Article 63 (2), RPC.

ARTICLE 63. Rules for the Application of Indivisible Penalties. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

...

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied[.]

<sup>69</sup> *People v. Jugueta*, 783 Phil. 806, 839 (2016) [Per J. Peralta, *En Banc*].

<sup>70</sup> *Nacar v. Gallery Frames and/or Bordey, Jr.*, 716 Phil. 267, 283 (2013) [Per J. Peralta, *En Banc*].

<sup>71</sup> *Supra* note 54, at 886.

<sup>72</sup> 849 Phil. 197, 287–288 (2019) [Per J. Peralta, *En Banc*].

Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of [RA] No. 7610. Considering that the imposable penalties for the said two crimes are within the range of *reclusion temporal*, the award of civil indemnity and moral damages should now be fixed in the amount of PHP 50,000.00 each. The said amount is based on *People v. Jugueta* which awards civil indemnity and moral damages in the amount of PHP 50,000.00 each in cases of homicide where the imposable penalty is *reclusion temporal*. In case exemplary damages are awarded due to the presence of any aggravating circumstance, to set a public example, or to deter elders who abuse and corrupt the youth, then an equal amount of PHP 50,000.00 should likewise be awarded.

Thus, the Court imposes civil indemnity and moral damages in the amount of PHP 50,000.00 each, which shall earn interest at the rate of 6% per annum from the date of finality of this Decision until full payment.<sup>73</sup>

**ACCORDINGLY**, the Appeal is **DISMISSED**. The Decision of the Court of Appeals dated November 26, 2020, in CA-G.R. CR-HC No. 03021 is **AFFIRMED with MODIFICATION**.

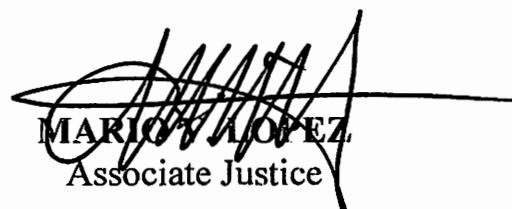
In Criminal Case No. 2008-04-193, accused-appellant XXX is **GUILTY** beyond reasonable doubt of Lascivious Conduct under Section 5 (b), Article III of Republic Act No. 7610. He is sentenced to suffer the penalty of fourteen (14) years and eight (8) days of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, and is **ORDERED** to pay the victim AAA the amounts of PHP 50,000.00 as civil indemnity and PHP 50,000.00 as moral damages.

In Criminal Case No. 2008-04-194, accused-appellant XXX is **GUILTY** beyond reasonable doubt of Rape under Article 266-B of the Revised Penal Code, as amended. He is sentenced to suffer the penalty of *reclusion perpetua* and is **ORDERED** to pay the victim AAA the amounts of PHP 75,000.00 as civil indemnity, PHP 75,000.00 as moral damages, and PHP 75,000.00 as exemplary damages.

In the service of his sentences, accused-appellant XXX shall be credited with the period of his preventive detention, subject to the provisions of Article 29 of the Revised Penal Code.

All monetary amounts shall earn legal interest at the rate of 6% per annum from the finality of this Decision until full payment.

**SO ORDERED.**


  
MARIO V. LOPEZ  
Associate Justice

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<sup>73</sup> *Supra* note 68.

**WE CONCUR:**

on official business  
**MARVIC M.V.F. LEONEN**  
*Associate Justice*  
*Chairperson*


  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

  
**JHOSEP Y. LOPEZ**  
*Associate Justice*

  
**ANTONIO T. KHO, JR.**  
*Associate Justice*

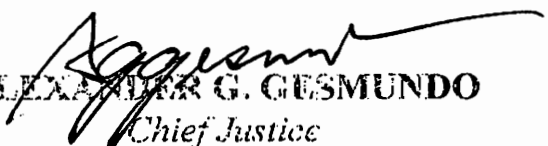
**ATTESTATION**

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.

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*  
*Acting Chairperson*

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Acting 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.

  
**ALEXANDER G. GUSMUNDO**  
*Chief Justice*