



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 7, 2020 which reads as follows:

“G.R. No. 233547 (*People of the Philippines v. Jose Leyte y Bargamento*)

The Case

This appeal seeks to reverse the Court of Appeals’ Decision¹ dated March 9, 2017 in CA-G.R. CR-HC No. 07869 entitled “*People of the Philippines v. Jose Leyte y Bargamento*” affirming the verdict of conviction against appellant Jose Leyte y Bargamento for one (1) count of rape and five (5) counts of acts of lasciviousness in relation to Section 5(b) of Republic Act 7610 (RA 7610).²

The Charge

Appellant Jose Leyte was charged with one (1) count of rape and five (5) counts of acts of lasciviousness under the following Informations:

CRIMINAL CASE NO. 2010-11961-MK

x x x x

That on or about the 11th day of April 2010, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, by means of force, threat and intimidation, did then and

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¹ *Rollo*, pp. 2-9.

² Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

there willfully, unlawfully and feloniously have carnal knowledge with one AAA,³ a fourteen (14) year old minor at the time of the commission of the offense, against her will and without her consent which act of the accused debases, degrades and demeans the intrinsic worth and dignity of the minor as human being.

CONTRARY TO LAW.⁴

CRIMINAL CASE NO. 2010-12315-MK

x x x x

That sometime in the months of January to March 2010, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, cruelty and intent to debase, degrade or demean the victim AAA, a minor, fourteen (14) years of age, did then and there willfully, unlawfully and feloniously commit lascivious conduct on the said victim, in the following manner to wit: accused brought out his penis and tried to put it inside the victim's mouth who refused and instead pressed or brushed his penis into the victim's private part against her will and without her consent, thereby constituting sexual abuse which is prejudicial to her normal growth and development.

CONTRARY TO LAW.⁵

CRIMINAL CASE NO. 2010-12316-MK

x x x x

That sometime in the year 2007, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, cruelty and intent to debase, degrade or demean the victim AAA, a minor, eleven (11) years of age, did then and there willfully, unlawfully and feloniously commit lascivious conduct on the said victim, in the following manner to wit: accused brought out his penis and ordered the victim to hold it against her will and without her consent, thereby constituting sexual abuse which is prejudicial to her normal growth and development.

CONTRARY TO LAW.⁶

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³ The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* [533 Phil. 703 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

⁴ CA rollo, p. 59.

⁵ *Id.* at 56.

⁶ *Id.* at 57.

CRIMINAL CASE NO. 2010-12317-MK

x x x x

That sometime in the year 2008, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, cruelty and intent to debase, degrade or demean the victim AAA, a minor, twelve (12) years of age, did then and there willfully, unlawfully and feloniously commit lascivious conduct on the said victim, in the following manner to wit: accused brought out his penis and ordered the victim to hold it against her will and without her consent, thereby constituting sexual abuse which is prejudicial to her normal growth and development.

CONTRARY TO LAW.⁷

CRIMINAL CASE NO. 2010-12318-MK

x x x x

That sometime in the year 2009, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, cruelty and intent to debase, degrade or demean the victim AAA, a minor, thirteen (13) years of age, did then and there willfully, unlawfully and feloniously commit lascivious conduct on the said victim, in the following manner to wit: accused brought out his penis and ordered the victim to hold it against her will and without her consent, thereby constituting sexual abuse which is prejudicial to her normal growth and development.

CONTRARY TO LAW.⁸

CRIMINAL CASE NO. 2010-12319-MK

x x x x

That sometime in the year 2002, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, cruelty and intent to debase, degrade or demean the victim AAA, a minor, six (6) years of age, did then and there willfully, unlawfully and feloniously commit lascivious conduct on the said victim, by then and there touching her private part against her will and without her consent, thereby constituting sexual abuse which is prejudicial to her normal growth and development.

CONTRARY TO LAW.⁹

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⁷ *Id.*

⁸ *Id.* at 58.

⁹ *Id.*

The cases were raffled to the Regional Trial Court (RTC)-Branch 168, Marikina City. On arraignment, appellant pleaded not guilty.¹⁰ Trial ensued.

The Prosecution's Version

AAA testified that she was born on January 5, 1996. She was a native of Iloilo City but in 2002, she left her home province in order to study in Marikina City. There, she stayed with her aunt BBB, cousin CCC, and BBB's common-law husband, herein appellant.

Her ordeal started in 2002 at the age of six (6), just a few weeks after she arrived in BBB's house. Appellant would fondle and kiss her breasts, touch her private parts, show her his genitals, and order her to put his penis into her mouth. She repeatedly experienced these sexual abuses in the hands of appellant though she could not recall the specific dates. Out of fear, she did not report these incidents to anyone.¹¹

She was also abused by appellant in 2007, 2008, 2009 and 2010. In some instances, while BBB and CCC were at work, appellant would order AAA to hold his penis and stimulate it until he climaxed. Other times, appellant would bring her to the mountains so that no one would disturb them as he performed bestial acts on her. In 2010, appellant ordered her to put his penis inside her mouth and when she refused, he pressed his penis against her private part instead. Appellant would usually throw invectives at her and threaten to kill her and BBB if she disobeyed him. She gave in to appellant's sexual whims because she was scared of him.¹²

In April 2010, when AAA was already fourteen (14) years old, she finally gained courage to confess the incidents to CCC only because "*natatakot akong sa kanya ako mapunta*".¹³ CCC accompanied her to the barangay hall to report the incidents but the barangay officials told them they needed evidence before they could arrest appellant.¹⁴

On April 11, 2010, around 7:30 in the morning, while AAA was on the sofa and CCC was sleeping in her room, appellant arrived home heavily drunk. Appellant called for her but she pretended to be asleep. Appellant started throwing pillows at her, forcing her to get

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¹⁰ *Id.* at 47.

¹¹ *Rollo*, p. 7.

¹² *Id.* at 8.

¹³ *CA rollo*, p. 61.

¹⁴ *Rollo*, p. 8.

up. Thereafter, appellant held her hand and forcibly pulled her towards the comfort room. Inside, appellant pinned her against the wall, pulled down his shorts and took out his penis. He too pulled down her shorts and underwear. He bent his knees and inserted his penis in her vagina *i.e. labasan ng ihi*, despite AAA's vehement resistance. Appellant performed "push and pull" movements until he ejaculated. They went out of the bathroom and she immediately ran to CCC's bedroom to confess what had happened.¹⁵

She and CCC were on their way to the barangay hall to report the incident when they met police officer Gonzales¹⁶ and reported to him the incident. Together with other police officers, Gonzales went to her house and arrested appellant. Appellant pleaded with her not to file a case against him but she ignored his plea.¹⁷

On April 11, 2010, she went to see Dr. Maria Anna Lissa Dela Cruz for physical examination.¹⁸ Per Medico-Legal Report No. R-029-10E,¹⁹ there were both remote and recent evidence of blunt and penetrating injuries to her hymen.

The Defense's Version

Appellant denied the charges of sexual abuse hurled against him, though he admitted to physically hurting AAA because she had been misbehaving in school. The first time she hit AAA was when he discovered that she had been absent from school for three (3) days. He confronted AAA about it and ordered her to tell CCC of her wrongdoing but she refused. Enraged, he hit AAA.²⁰ The second time was when AAA failed to show him her clearance for the school year. He hit her right thigh with a bicycle. Finally, on April 11, 2010, the day he got arrested, he went home around 2 o'clock in the morning very upset because he was not able to get his wage from his employer. He directed his anger at AAA and hit her.²¹

He treated AAA as if she was his own daughter. He even financed her schooling so he could not think of any reason why AAA would falsely accuse him of rape and acts of lasciviousness.

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¹⁵ *Id.* at 8-9.

¹⁶ Full name not found on record.

¹⁷ *Rollo*, p. 9.

¹⁸ *Id.*

¹⁹ *CA rollo*, p. 65.

²⁰ *Rollo*, p. 10.

²¹ *Id.* at 11.

The Trial Court's Ruling

By Decision²² promulgated on October 12, 2015, the trial court found appellant guilty of one (1) count of rape and five (5) counts of acts of lasciviousness, *viz*:

WHEREFORE, finding the guilt of the accused JOSE LEYTE to have been proven beyond reasonable doubt and there being an aggravating circumstance of minority without the presence of any mitigating circumstance to offset the same, the Court hereby sentences said accused:

1. In Crim. Case No. 2010-12315 for Acts of Lasciviousness in relation to RA 7610, to suffer an indeterminate penalty of imprisonment of 6 years of *prision correccional* as minimum to 10 years of *prision mayor* as maximum and ordered to pay his victim a fine of ₱15,000.00, civil indemnity of ₱20,000.00, moral damages of ₱15,000.00, and exemplary damages of ₱15,000.00.
2. In Crim. Case No. 2010-12316 for Acts of Lasciviousness in relation to RA 7610, to suffer an indeterminate penalty of imprisonment ranging from thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal*, as minimum, to sixteen (16) years and five (5) months and ten (10) days of *reclusion temporal*, as maximum, and ordered to pay his victim a fine of ₱15,000.00, civil indemnity of ₱20,000.00, moral damages of ₱15,000.00, and exemplary damages of ₱15,000.00.
3. In Crim. Case No. 2010-12317 for Acts of Lasciviousness in relation to RA 7610, to suffer an indeterminate penalty of imprisonment of six (6) years of *prision correccional* as minimum to ten (10) years of *prision mayor* as maximum and ordered to pay his victim a fine of ₱15,000.00, civil indemnity of ₱20,000.00, moral damages of ₱15,000.00, and exemplary damages of ₱15,000.00.
4. In Crim. Case No. 2010-12318 for Acts of Lasciviousness in relation to RA 7610, to suffer an indeterminate penalty of imprisonment of six (6) years of *prision correccional* as minimum to ten (10) years of *prision mayor* as maximum and ordered to pay his victim a fine of ₱15,000.00, civil indemnity of ₱20,000.00, moral damages of ₱15,000.00, and exemplary damages of ₱15,000.00.
5. In Crim. Case No. 2010-12319 for Acts of Lasciviousness in relation to RA 7610, to suffer an indeterminate penalty of imprisonment ranging from thirteen (13) years, nine (9) months

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²² Penned by Presiding Judge Lorna F. Catris-Chua Cheng; CA *rollo*, pp. 56-67.

and eleven (11) days of *reclusion temporal*, as minimum, to sixteen (16) years and five (5) months and ten (10) days of *reclusion temporal*, as maximum, and ordered to pay his victim a fine of ₱15,000.00, civil indemnity of ₱20,000.00, moral damages of ₱15,000.00, and exemplary damages of ₱15,000.00.

6. In Crim. Case No. 2010-11961 for Rape to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay each (sic) victim civil indemnity of ₱75,000.00, moral damages of ₱75,000.00 and exemplary damages of ₱30,000.00.

Accused shall be credited in full of his preventive imprisonment he already served in confinement.

SO ORDERED.²³

The trial court gave full credence to the testimony of AAA who narrated her ordeal in a straightforward and candid manner. She positively identified appellant as her molester and clearly described how he violated her. Being a girl of tender years who barely understood sex and sexuality, it was unlikely of her to concoct a tale of defloration, allow the examination of her private parts, and undergo the rigors of public trial unless she was actually raped.²⁴

Too, the prosecution established that appellant threatened AAA every time he would molest her. Appellant also had moral ascendancy and influence over AAA since he was the one sending her to school and spent for her needs.²⁵ Considering these circumstances, the trial court found appellant guilty as charged. AAA's testimony prevailed over appellant's denial which the trial court found to be inherently weak.

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction despite the alleged inconsistencies and absurdities in AAA's testimony. At one point, AAA testified that she was first abused when she was ten (10) years old but in another testimony, she claimed she was only five (5) years old when appellant committed the first lascivious act. These do not jibe with the Information charging him with sexual abuse committed when AAA was six (6) years old. More, the prosecution failed to establish with

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²³ CA rollo, p. 48.

²⁴ *Id.* at 49.

²⁵ *Id.* at 65.

particularity the acts constituting the offense as alleged in the five (5) Informations for acts of lasciviousness.²⁶

As for the rape charge, AAA's testimony showed there was no carnal knowledge that happened since appellant did not insert his penis in her vagina. He was merely masturbating. AAA was referring to the act of masturbation when she mentioned the push and pull movement.²⁷ At any rate, AAA voluntarily went to the comfort room because she wanted appellant to do something to her that she can report to the barangay.

More, AAA's testimony was incredulous. During the alleged rape on April 11, 2010, she did not make any noise to awaken CCC in the adjacent room. Even after the alleged sexual abuses, she continued to live with appellant in the same house. If it were true that she had been raped, she should have had fresh lacerations and not healed and healing lacerations when she was physically examined right after the alleged incident.²⁸

The Office of the Solicitor General (OSG) defended the verdict of conviction and riposted that the prosecution was able to prove that appellant indeed molested AAA when she was around five (5) or six (6) years old until the abuses culminated in rape in 2010.²⁹ AAA allowed the molestations to continue for fear of not being sent to school. She was still living in the house of her aunt BBB and appellant and, at her young age, she knew she really had nothing going for her except her education. She also testified that she did not report the incidents sooner because appellant threatened he would kill her, her aunt BBB, and her cousin CCC.

AAA also testified how appellant had carnal knowledge of her. It is not true that she voluntarily went with appellant to the bathroom for a sexual tryst. Appellant woke her up by throwing pillows at her and forcibly dragged her into the bathroom. Per Medico-Legal Report No. R-029-10E,³⁰ AAA sustained not only remote but also recent evidence of blunt and penetrating injuries to the hymen.³¹

The Court of Appeals' Ruling

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²⁶ *Id.* at 102.

²⁷ *Id.*

²⁸ *Id.* at 102-103.

²⁹ *Id.* at 103-105.

³⁰ *Id.* at 65.

³¹ *Id.* at 107.

Under its assailed Decision dated March 9, 2017,³² the Court of Appeals affirmed with modification as to the imposed penalty and damages awarded, thus:

WHEREFORE, we DENY the appeal. The decision appealed from is AFFIRMED with MODIFICATIONS. Appellant Jose B. Leyte shall suffer the penalty of imprisonment as follows:

1. In Crim. Case No. 2010-12315 for Acts of Lasciviousness in relation to RA 7610, to suffer an indeterminate penalty of imprisonment of eight (8) 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 and ordered to pay his victim a fine of ₱15,000.00, civil indemnity of ₱20,000.00, moral damages of ₱15,000.00, and exemplary damages of ₱15,000.00.
2. In Crim. Case No. 2010-12316 for Acts of Lasciviousness in relation to RA 7610, to suffer an indeterminate penalty of imprisonment of twelve (12) years and one (1) day of *reclusion temporal*, as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum and ordered to pay his victim a fine of ₱15,000.00, civil indemnity of ₱20,000.00, moral damages of ₱15,000.00, and exemplary damages of ₱15,000.00.
3. In Crim. Case No. 2010-12317 for Acts of Lasciviousness in relation to RA 7610, to suffer an indeterminate penalty of imprisonment of eight (8) 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 and ordered to pay his victim a fine of ₱15,000.00, civil indemnity of ₱20,000.00, moral damages of ₱15,000.00, and exemplary damages of ₱15,000.00.
4. In Crim. Case No. 2010-12318 for Acts of Lasciviousness in relation to RA 7610, to suffer an indeterminate penalty of imprisonment of eight (8) 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 and ordered to pay his victim a

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³² *Rollo*, pp. 2-9.

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

5. In Crim. Case No. 2010-12319 for Acts of Lasciviousness in relation to RA 7610, to suffer an indeterminate penalty of imprisonment of twelve (12) years and one (1) day of *reclusion temporal*, as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum and ordered to pay his victim a fine of ₱15,000.00, civil indemnity of ₱20,000.00, moral damages of ₱15,000.00, and exemplary damages of ₱15,000.00.
6. In Crim. Case No. 2010-11961 for Rape, to suffer the penalty of *reclusion perpetua* and ordered to pay his victim civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00.

Plus interest of 6% on all the monetary awards from the date of finality of judgment until they be fully paid.

IT IS SO ORDERED.³³

The Court of Appeals similarly found AAA's personal account of the sexual incidents candid and straightforward. The inconsistencies pertaining to the dates when the sexual encounters happened were trivial matters which did not affect appellant's guilt.³⁴ Thus, AAA's testimony was sufficient to sustain a conviction.

It rejected appellant's assertion that AAA planned and allowed the sexual act to happen in order to prove to the barangay officials that appellant had been abusing her. AAA was simply constrained to do so in order to end her harrowing ordeal and have strong evidence against appellant. Physical resistance need not be established in rape cases when threats and intimidation are employed and the victim submits herself to the offender because of fear, as in this case. Undoubtedly, the disturbing event would instill so much fear and intimidation in AAA, who was sexually abused for several years starting when she was only about five (5) or six (6) years old.³⁵

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³³ *Id.* at 32-33.

³⁴ *Id.* at 14-15.

³⁵ *Id.* at 23.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated December 14, 2017,³⁶ appellant and the OSG both manifested³⁷ that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.

Threshold Issue

Did the Court of Appeals err in affirming appellant's conviction for acts of lasciviousness and rape?

Ruling

The appeal must fail.

***Appellant is guilty of rape in
Criminal Case No. 2010-11961-MK***

Article 266-A of the Revised Penal Code (RPC) defines rape, thus:

Article 266-A. Rape: When and How Committed. — Rape is committed:

- 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a) Through force, threat, or intimidation;
 - b) When the offended party is deprived of reason or otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority; and
 - d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

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The elements of rape by carnal knowledge are: (1) the offender had carnal knowledge of the victim; and (2) such act was

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³⁶ *Id.* at 40-41.

³⁷ *Id.* at 42-44 and 56-59.

accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve (12) years of age.

Carnal knowledge is defined as the act of a man having sexual bodily connections with a woman.³⁸ This explains why the slightest penetration of the female genitalia consummates rape. *People v. Pareja*,³⁹ citing *People v. Campuhan*,⁴⁰ is apropos:

Thus, *touching* when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, as in this case. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. As the labias, which are required to be "touched" by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.

The pudendum or vulva is the collective term for the female genital organs that are visible in the perineal area, e.g., mons pubis, labia majora, labia minora, the hymen, the clitoris, the vaginal orifice, etc. The mons pubis is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the labia majora or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the labia majora is the labia minora. Jurisprudence dictates that the labia majora must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the mons pubis of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, i.e., touching of either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.

Here, AAA narrated in detail that on April 11, 2010, around 7:30 in the morning, appellant arrived home heavily drunk. He called her but she pretended to be asleep on the sofa. But when appellant

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³⁸ *People v. Reyes*, 714 Phil. 300, 307-308 (2013).

³⁹ 694 Phil. 338, 347 (2012).

⁴⁰ 385 Phil. 912, 920-921 (2000).

threw pillows at her, she was forced to get up. He held her hand and forcibly pulled her toward the comfort room and pinned her against the wall. He pulled down her short pants and underwear after lowering his own. He bent his knees to position his penis at the level of her private organ. She tried to resist by pushing his shoulders but appellant overpowered her. His penis touched the part which she described as "*labasan ng ihi*". He then made push and pull movements until he ejaculated.⁴¹

The trial court gave full credence to the positive, clear, and straightforward testimony of AAA. Indeed, the credible testimony of the rape victim is sufficient to sustain a verdict of conviction. More so, when the victim's testimony firmly conformed with the medical findings of the doctor who examined her, as here. We refer to Dr. Maria Anna Lissa Dela Cruz's Medico-Legal Report No. R-029-10E stating that AAA sustained both remote and recent evidence of blunt and penetrating injuries to her hymen.⁴²

The portion of the female external genitalia AAA described as "*labasan ng ihi*" is called the external urethral orifice. It is just above the vagina and beneath both the labia minora and labia majora.⁴³ If penetration of the labia majora is sufficient to consummate rape, then it is with more reason that a person who penetrated the external urethral orifice which is closer to the vaginal opening should be convicted of rape.

Appellant nevertheless claims that AAA "planned" and allowed herself to be raped only to obtain evidence against him, hence, the sexual congress was consensual.

We disagree.

It has been held that different people react differently to different situations and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience such as rape and acts of lasciviousness. Verily, some victims choose to suffer in silence; while others may be moved to action out of a need to seek justice for what was done to them. Then there are those who opt not to dwell on their experience and try to live as though it never happened.⁴⁴

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⁴¹ *Rollo*, pp. 7-9.

⁴² *CA rollo*, p. 65.

⁴³ Nguyen, John, Updated: October 10, 2019, "Anatomy, Abdomen and Pelvis, Female External Genitalia", <https://www.ncbi.nlm.nih.gov/books/NBK547703/>, Date visited: June 20, 2020.

⁴⁴ *People v. Prodcenciado*, 749 Phil. 746, 763 (2014).

In AAA's case, she wanted nothing but justice. She initially reported to the barangay the sexual abuses perpetrated by appellant against her only to be told that she should have evidence to prove her accusations. She did not allow as she was forced to endure the rape because she believed she needed evidence to end the cycle of abuse. Indeed, just because AAA did not offer tenacious resistance nor even shout when appellant sexually ravished her did not make her less credible as a witness.

In any event, when the issue is one of credibility of witnesses, this Court will generally not disturb the findings of the trial court, especially when already affirmed by the Court of Appeals. For the trial court was in a better position to decide the question of credibility as it heard the witnesses themselves and observed their deportment and the manner by which they testified during the trial.⁴⁵ So must it be.

All told, the Court of Appeals correctly convicted appellant of one (1) count of rape and meted the penalty of *reclusion perpetua*. In accordance with prevailing jurisprudence, appellant is liable for ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.⁴⁶ These amounts shall earn six (6) percent interest *per annum* from finality of this resolution until fully paid.

The Prosecution sufficiently established appellant's lascivious conducts as alleged in the Informations

Section 5(b) of RA 7610⁴⁷ punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one – through coercion, intimidation or influence – engages in sexual intercourse or lascivious conduct with a child.

Lascivious conduct is 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

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⁴⁵ *People v. Mabalo*, G.R. No. 238839, February 27, 2019; also see *People v. Bay-Od*, G.R. No. 238176, January 14, 2019.

⁴⁶ *People v. Jugueta*, 783 Phil. 806, 848 (2016).

⁴⁷ An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And For Other Purposes.

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.⁴⁸

Here, AAA was only around five (5) or six (6) years old when the first incident of abuse happened. She narrated how appellant started molesting her just weeks after she arrived at her aunt BBB's house. Appellant started touching her private part against her will as alleged in the Information in Criminal Case No. 2010-12319-MK. She even revealed that appellant would fondle and kiss her breasts, show her his genitals, and order her to put his penis into her mouth.

Anent the allegations in Criminal Case Nos. 2010-12316-MK to 2010-12318-MK, the prosecution proved that appellant sexually abused AAA in 2007, 2008 and 2009 by ordering her to hold his penis and masturbate it.⁴⁹

Finally, in Criminal Case No. 2010-12315-MK, the prosecution established that in early 2010, appellant sexually molested AAA by pressing his penis against her private part when she refused to put it inside her mouth.⁵⁰

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 badges of truth and sincerity.⁵¹

Further, there is no showing that AAA was impelled by improper motive or was influenced by any person to falsely accuse appellant of the crimes charged against him. Where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that he or she was not so actuated and his or her testimony is entitled to full credence.⁵²

Against AAA's positive testimony, appellant only offered the defense of denial. We have pronounced time and again that denial is an inherently weak defense which cannot prevail over the positive and credible testimony of the prosecution witness who consistently

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⁴⁸ Section 32, Article XIII of the Implementing Rules and Regulations (IRR) of RA 7610.

⁴⁹ *Rollo*, pp. 24-25.

⁵⁰ *Id.* at 25-26.

⁵¹ *People v. Padit*, G.R. No. 202978, February 01, 2016.

⁵² *People v. Galuga*, G.R. No. 221428, February 13, 2019.

identified the accused as the one who committed the crime. Thus, as between a categorical testimony which has a ring of truth, on one hand, and a mere denial, on the other, the former prevails.⁵³

In fine, the courts below did not err in holding appellant guilty of sexually abusing AAA. But to avoid confusion and to conform with this Court's ruling in *People v. Tulagan*,⁵⁴ we find it necessary to modify the designation of the offense used by the courts below and amend the amounts in the award of damages in line with prevailing jurisprudence.⁵⁵

Considering that AAA was below twelve (12) years old when appellant molested her as charged in **Criminal Case No. 2010-12316-MK** and **2010-12319-MK**, the Court of Appeals properly convicted appellant of acts of lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA 7610 and sentenced him to the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal*, as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. The award of civil indemnity and damages, however, must be modified. Pursuant to *Tulagan*, the following awards are proper: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱50,000.00 as exemplary damages. These amounts shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

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⁵³ *People v. Batalla*, G.R. No. 234323, January 07, 2019.

⁵⁴ *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

⁵⁵ As summarized in *Tulagan*:

Crime	Civil Indemnity	Moral Damages	Exemplary Damages
Acts of lasciviousness in relation to Section 5 (b) of R.A. No. 7610 [Victim is a child under 12 years old or is demented]	₱50,000.00	₱50,000.00	₱50,000.00
Sexual Abuse or Lascivious Conduct under Section 5 (b) of R.A. No. 7610 [Victim is a child 12 years old and below 18, or above 18 under special circumstances]	₱75,000.00 (If penalty imposed is <i>reclusion perpetua</i>)	₱75,000.00 (If penalty imposed is <i>reclusion perpetua</i>)	₱75,000.00 (If penalty imposed is <i>reclusion perpetua</i>)
	₱50,000.00 (If penalty imposed is within the range of <i>reclusion temporal medium</i>)	₱50,000.00 (If penalty imposed is within the range of <i>reclusion temporal medium</i>)	₱50,000.00 (If penalty imposed is within the range of <i>reclusion temporal medium</i>)

On the other hand, AAA was at least twelve (12) years old but below eighteen (18) years old when the lascivious acts were committed against her in **Criminal Case Nos. 2010-12315-MK, 2010-12317-MK and 2010-12318-MK**. Thus, the proper designation of the crime charged in these cases is “lascivious conduct under Section 5 (b) of RA 7610”, not “acts of lasciviousness”. The Court of Appeals, nevertheless, properly sentenced appellant to eight (8) years and one (1) day of *prision mayor* to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*. There is, however, a need to modify the award of damages. In conformity with prevailing jurisprudence, the Court awards the following to AAA: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱50,000.00 as exemplary damages. These amounts, too, shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

WHEREFORE, the appeal is **DENIED** and the Decision dated March 9, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07869 is **AFFIRMED with MODIFICATION**.

Appellant **Jose Leyte y Bargamento** is found **GUILTY** of the following:

1. **RAPE** in **Criminal Case No. 2010-11961-MK**, and is sentenced to *reclusion perpetua*. Appellant is **ORDERED** to **PAY** AAA P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary damages;
2. **LASCIVIOUS CONDUCT** under **Section 5 (b) of RA 7610** in **Criminal Case Nos. 2010-12315-MK**, and is sentenced to eight (8) 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. Appellant is **ORDERED** to **PAY** AAA ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages;
3. **ACTS OF LASCIVIOUSNESS** under **Article 336 of the RPC** in relation to **Section 5 (B) of RA 7610** in **Criminal Case No. 2010-12316-MK**, and is sentenced to twelve (12) years and one (1) day of *reclusion temporal*, as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. Appellant is **ORDERED** to **PAY** AAA ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages;

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4. **LASCIVIOUS CONDUCT under Section 5 (b) of RA 7610** in **Criminal Case Nos. 2010-12317-MK**, and is sentenced to eight (8) 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. Appellant is **ORDERED** to **PAY AAA ₱50,000.00** as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages;
5. **LASCIVIOUS CONDUCT under Section 5 (b) of RA 7610** in **Criminal Case Nos. 2010-12318-MK**, and is sentenced to eight (8) 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. Appellant is **ORDERED** to **PAY AAA ₱50,000.00** as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages; and
6. **ACTS OF LASCIVIOUSNESS under Article 336 of the RPC in relation to Section 5 (B) of RA 7610** in **Criminal Case No. 2010-12319-MK**, and is sentenced to twelve (12) years and one (1) day of *reclusion temporal*, as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. Appellant is **ORDERED** to **PAY AAA ₱50,000.00** as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages.

These amounts shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *mal/lu*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 07869)

The Hon. Presiding Judge
Regional Trial Court, Branch 168
1800 Marikina City
(Crim. Case Nos. 2010-11961-MK
& 2010-12315 to 19-MK)

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