



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated June 23, 2021, which reads as follows:

“**G.R. No. 232158** (*People of the Philippines v. XXX*¹). - On appeal is the November 10, 2016 Decision² of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07240 which affirmed with modification³ the December 5, 2014 Decision⁴ of the Regional Trial Court (RTC) of Batangas finding accused-appellant XXX (accused-appellant) guilty beyond reasonable doubt of two (2) counts of Rape under paragraph 1(a), Article 266-A of the Revised Penal Code (RPC), in relation to Republic Act No. 7610 (RA 7610).⁵

Antecedents:

Two Informations⁶ were filed charging accused-appellant with rape under Article 266-A of the RPC,⁷ as amended by RA 8353,⁸ in relation to Sec. 5(b),

¹ Initials were used to identify the accused-appellant pursuant to Amended Administrative Circular No. 32-15 dated September 5, 2017 Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances issued on September 5, 2017.

² *Rollo*, pp. 2-25; penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Rodil V. Zalameda (now Supreme Court Associate Justice) and Pedro B. Corales.

³ *Id.* at 24.

⁴ *CA rollo*, pp. 42-48; penned by Presiding Judge Noel M. Lindog.

⁵ *Id.* at 48. Republic Act No. 7610 is also known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (1992).

⁶ Records (Crim. Case No. 14-0308-2013), pp. 16-17 & records (Crim. Case No. 14-0307), pp. 1-2.

⁷ 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.

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.

⁸ The Anti-Rape Law of 1997 (1997).

Article III of RA 7610.⁹ The accusatory portions read:

Criminal Case No. 04-0308-2013:

That sometime in the month of November, 2006, at [REDACTED],¹⁰ and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge [of] AAA,¹¹ then a ten (10) year old minor, a child of the accused's common-law wife, against her will and consent, which acts debased, degraded and demeaned the intrinsic worth and dignity of the said [AAA] as a human being.

Contrary to law.¹²

Criminal Case No. 04-0307-2013:

That on or about the 25th day of December, 2012, at around 11:00 o'clock in the evening at [REDACTED] and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously insert his finger into the vagina of one AAA, a sixteen (16) year old minor, a child of the accused's common-law wife, and thereafter lie with and have carnal knowledge of her against her will and consent, which acts debased, degraded and demeaned the intrinsic worth and dignity of the said AAA as a human being.

Contrary to law.¹³

The version of the prosecution, as summarized by the trial court, is as follows:

⁹ 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:

x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be; *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.]

x x x x

¹⁰ Geographical location is blotted out pursuant to Supreme Court Amended Circular No. 34-2015, *supra* note 1.

¹¹ "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and their Children, effective November 15, 2004." (*People v. Dumadag*, 667 Phil. 664, 669 [2011]).

¹² Records (Crim. Case No. 04-0308-2013) p. 16.

¹³ Records (Crim. Case No. 04-0307-2013), p. 1.

Herein minor victim AAA testified that her mother and father were already separated. She was living in a house located at [REDACTED], with her mother, accused [REDACTED] and four (4) half-siblings. Her mother was a vendor and accused was helping her mother.

In November 2006 at around 3:00 o'clock in the early morning, when she was only ten (10) years old (Exhibit "B") and in grade four (4) of schooling, she was sleeping with her half-siblings in a room covered only by a curtain. Suddenly, she was awakened by herein accused who went on top of her. Accused told her to keep quiet as he put his hand on her mouth. Accused then took off her panty and shorts and proceeded to insert his penis into her vagina. After having carnal knowledge of her, accused left as she felt pain ("mahapdi") on her bleeding private part. All she could do at that time was to cry quietly. The morning after the incident, accused told her not to tell anybody about what happened as he sternly look[ed] at her.

On December 25, 2012 at around 11:00 o'clock in the evening, she was likewise sleeping in a room with her half-siblings when she was again awakened by the accused who was already taking off her shorts and panty. After the accused took off her shorts and panty, he held her mouth and touched her vagina and inserted his fingers [into] it. Accused then inserted his private part into her vagina despite her resistance of kicking him. Because she was resisting and crying, her oldest half-sibling CCC was awakened. Accused thus went to CCC and turned on the lights.

Later on, and thinking that CCC was already asleep, accused turned off the lights and went near AAA again. Accused took off her shorts and panty but due to her resistance, CCC was again awakened and told her father to stop annoying them. She was not able to sleep that night and just cried. The following day, while she was inside the comfort room, accused told her not to tell her mother what happened. On January 14, 2013 however, she got the courage to tell her ordeal to her aunt [REDACTED] and Tito [REDACTED]. Hence these two (2) cases of Rape against herein accused.¹⁴

The prosecution was set to present the social worker and the victim's aunt as witnesses, but dispensed with their testimonies after the defense admitted the substance thereof, to the effect that they assisted AAA in going to the police station and filing the cases.¹⁵ The testimonies of the police officer who prepared the blotter, and the doctor who prepared the medical certificate showing that AAA had healed lacerations in her vagina, were also dispensed with as the defense admitted the existence and authenticity of both the police blotter and the medical certificate.¹⁶

On the other hand, accused-appellant denied the charges against him and countered that during both alleged incidents, he was not in their house. On the first alleged incident, he was in another municipality buying fish and mangoes with AAA's mother. On the second incident, he was shopping in the night market in another city with AAA and his other children. Not being in their house during both incidents, he could not have raped the victim. Instead, accused-appellant

¹⁴ *CA rollo*, pp. 43-44.

¹⁵ *Id.* at 44.

¹⁶ *Id.*

claimed that the reason why AAA filed the cases against him was because he once caught her in a drinking session.¹⁷

Aside from accused-appellant's testimony, the defense did not present any other evidence.¹⁸

Ruling of the Regional Trial Court:

In its December 5, 2014 Decision, the trial court found that the prosecution was able to sufficiently establish the elements of rape under paragraph 1(a), Article 266-A of the RPC in relation to RA 7610, and held that accused-appellant was guilty beyond reasonable doubt of two (2) counts thereof.¹⁹ The trial court gave credence to the positive and categorical testimony of AAA, as well as the medical certificate stating that the victim's hymen "has healed lacerations at 3, 6, 9 o'clock position[s]".²⁰ It rejected the accused-appellant's alibi which was uncorroborated by any other evidence.²¹

The dispositive portion of the RTC's Decision reads:

WHEREFORE, in view of all the foregoing and the prosecution having established to a moral certainty the guilt of the accused [REDACTED] *alias* "[REDACTED]" for the crimes charged, the Court hereby finds said accused **GUILTY** beyond reasonable doubt, as principal, for two (2) counts of *Rape* as defined and penalized under *Article 266-A, paragraph 1(a) of the Revised Penal Code* in relation to *Republic Act No. 7610* otherwise known as the "*Special Protection of Children against Abuse Exploitation and Discrimination Act*" and hereby sentences him as follows:

1. In **Criminal Case No. 04-0307-2013**, to suffer the penalty of *Reclusion Perpetua* and to pay the minor victim AAA the sum of Fifty Thousand Pesos (Php50,000.00) as civil indemnity, Fifty Thousand Pesos (Php50,000.00) as moral damages and Twenty Five Thousand Pesos (Php25,000.00) as exemplary damages.
2. In **Criminal Case No. 04-0308-2013**, to suffer the penalty of *Reclusion Perpetua* and to pay the minor victim AAA the sum of Fifty Thousand Pesos (Php50,000.00) as civil indemnity, Fifty Thousand Pesos (Php50,000.00) as moral damages and Twenty Five Thousand Pesos (Php25,000.00) as exemplary damages.

The period which the accused has undergone preventive imprisonment during the pendency of these cases shall be credited to him provided he agreed in writing to abide by and comply strictly with the rules and regulations imposed upon committed prisoners.

¹⁷ Id. at 44-45.

¹⁸ Id. at 44.

¹⁹ Id. at 47-48.

²⁰ Id. at 46-47.

²¹ Id. at 47.

SO ORDERED.²²

Ruling of the Court of Appeals:

In its November 10, 2016 Decision, the appellate court affirmed with modification the trial court's Decision.²³ It found AAA's testimony to be credible, as she was able to clearly describe how each incident was committed.²⁴ Further, the result of her genital examination was consistent with her testimony.²⁵ On the other hand, accused-appellant merely offered denial and *alibi*, both of which are inherently weak defenses.²⁶

In affirming the trial court's ruling, however, the appellate court appreciated the qualifying circumstance of minority and relationship under Article 266-B of the RPC,²⁷ considering that the victim was a minor during both instances of rape, and because accused-appellant was the common-law husband of the victim's mother.²⁸ Consequently, it held that the penalty imposed should have been death pursuant to Article 266-B of the RPC, but because of the passage of RA 9346,²⁹ the trial court correctly imposed the penalty of *reclusion perpetua*.³⁰ The appellate court further increased the award of civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each for every count of rape.³¹

The dispositive portion of the Decision of the CA reads:

WHEREFORE, in view of the foregoing, the Decision dated December 5, 2014 of the Regional Trial Court of Lipa City, Branch 13, is hereby **AFFIRMED with the MODIFICATION** that the Civil Indemnity awarded is increased to One Hundred Thousand Pesos (P100,000.00), the Moral Damages to One Hundred Thousand Pesos (P100,000.00), and the Exemplary Damages to One Hundred Thousand Pesos (P100,000.00), for each count of rape committed by appellant[.]

Interest is hereby imposed on the total amount of damages awarded, at the legal rate of six percent (6%) *per annum*, until the same are fully paid.

In all other respects, the appealed decision is hereby **AFFIRMED**.

²² Id. at 47-48.

²³ *Rollo*, p. 24.

²⁴ Id. at 9-18.

²⁵ Id. at 9.

²⁶ Id. at 8.

²⁷ Article 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) **When the victim is under eighteen (18) years of age** and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

x x x x (Emphasis supplied.)

²⁸ *Rollo*, pp. 19-20.

²⁹ Anti-Death Penalty Law (2006).

³⁰ *Rollo*, p. 19-20.

³¹ Id. at 23-24.

SO ORDERED.³²

Our Ruling

The appeal has no merit.

Accused-appellant assails the trial court's reliance on the minor's testimony which was supposedly marred by inconsistencies and was therefore incredible.³³ *First*, accused-appellant points out that it is extremely unlikely for him to assault AAA in the manner she described when she herself testified that she and her three (3) other half-siblings were sleeping in one bed.³⁴ *Second*, accused-appellant finds incredible the victim's testimony that when her half-sister woke up during the second incident, the latter again went back to sleep after accused-appellant told her to do so.³⁵ *Third*, accused-appellant questions the victim's lack of explanation on how her shorts and panty were put on when accused-appellant turned on the lights during the second incident.³⁶

In *People v. Sanchez*,³⁷ We enumerated the guidelines to be considered when the issue of credibility of a witness is presented before this Court:

First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And third, the rule is even more stringently applied if the CA concurred with the RTC.³⁸ (Citations omitted)

Here, the trial court found the victim's testimony to be credible. This was affirmed by the appellate court. After a careful examination of the records, We see no reason to depart from these findings. "It is a well-settled rule 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."³⁹ "Absent any evidence that the trial court's assessment was tainted with arbitrariness or oversight of a fact of consequence or influence — especially so

³² Id. at 24.

³³ In his Manifestation In Lieu Of Supplemental Brief dated October 27, 2017 (*rollo*, pp. 39-41), accused-appellant manifested that he was adopting the matters discussed in his Appellant's Brief (*CA rollo*, pp. 30-40).

³⁴ Id. at 37.

³⁵ Id.

³⁶ Id. at 37-38.

³⁷ 681 Phil. 631 (2012).

³⁸ Id. at 635-636, citing *People v. Laog*, 674 Phil. 444 (2011).

³⁹ *People v. Udtohan*, 815 Phil. 449, 463 (2017) citing *People v. Buclao*, 736 Phil. 325 (2014).

when affirmed by the CA — it is entitled to great weight, if not conclusive and binding on the Court.⁴⁰

Indeed, the prosecution was able to establish that accused-appellant had carnal knowledge of AAA sometime in November 2006 and on December 25, 2012, against her will, as shown in the categorical, straightforward and spontaneous testimony of the victim:

PROS.

Q: Sometime in November 2006, do you remember any unusual incident that happened to you?

A: Yes there was, Sir.

Q: What was the unusual incident that happened?

A: The rape committed to my person by the person of XXX, Sir.

Q: What time more or less x x x you said you were raped in November 2006?

A: At 3:00 o'clock in the morning, Sir.

Q: Do you remember the actual date?

A: No, Sir.

Q: But you distinctly remember that it was in November 2006?

A: Yes, Sir.

Q: You said it happened at 3:00 o'clock in the morning?

A: Yes, Sir.

Q: In your household, where do you usually sleep?

A: I sleep beside the children of XXX, Sir.

Q: Is that a separate room where XXX and your mother sleep?

A: Yes, Sir.

Q: At around 3:00 o'clock in the morning, as you said you were raped by the accused, can you narrate to this Honorable Court what you were doing then before you were raped?

A: I was sleeping, Sir.

Q: You were sleeping with whom?

A: I was sleeping with my siblings, Sir.

Q: These are your younger siblings?

A: Yes, Sir.

Q: Average of six (6) years old?

A: Yes, Sir.

x x x x

Q: What did the accused do x x x?

A: I was still sleeping, Sir.

Q: What happened next?

⁴⁰ *People v. Manaligod*, G.R. No. 218584, April 25, 2018 citing *People v. Garcia*, 695 Phil. 576, 588 (2012).

A: When I was awakened, he was on top of me, Sir.

x x x x

Q: When you noticed that the accused was on top of you, what happened next?

A: He told me to keep quiet and he placed his hand to (sic) my mouth, Sir.

Q: What happened next?

A: He took off my panty and shorts, Sir.

x x x x

For the record Your Honor, the witness is starting to cry.

Q: When he was able to take off your shorts and panty, what happened next?

A: He inserted his private part to my private part, Sir.

x x x x

Q: Now, when you said that he inserted his private part to your private part, what was his hand doing?

A: It was on my mouth, Sir.

x x x x

Q: How long did you feel that the private part of the accused was inside your private part?

A: It took a long time, Sir.

Q: What body movement did he do while his private part was inside your private part?

A: It was going in and out, Sir.

Q: The private part of the accused was going in and out?

A: Yes, Sir.

x x x x

Q: What did you feel with your private part when he left?

A: It was painful, Sir.

Q: What else did you feel on your private part?

A: "Mahapdi po", Sir.

x x x x

Q: Aside from this first incident, x x x, do you remember any other unusual incident that happened to you?

A: Yes, Sir.

Q: When did that happen?

A: On December 25, 2012, Sir.

x x x x

Q: On the same date and time, at around eleven o'clock in the evening, how did you notice that the accused was inside your room?

A: I was awakened that he was already in my foot, Sir.

x x x x

Q: When you said that you noticed that the accused was already at your foot, what happened next?

A: He was already taking off my shorts and panty, Sir.

x x x x

Q: When he was able to take off your shorts and panty, what happened next?

A: He held my mouth, Sir.

x x x x

Q: After he was able to take off your panty and shorts, what happened next?

A: He inserted his private part to my private part, Sir.

Q: What did he do before he inserted his private part?

A: He was touching my private part, Sir.

Q: What else?

A: He inserted his fingers, Sir.

Q: What did you feel while he was doing this to you?

A: It was painful, Sir.

Q: After he did this to you the holding of your private part and inserting his fingers, what happened next?

A: He inserted his private part on my private part, Sir.

Q: When you felt that he inserted his private part to your private part, what did you do?

A: I was resisting and I was kicking him, Sir.

Q: Was he able to insert his private part inside your private part?

A: Yes, Sir.

x x x x

Q: And then what did he do?

A: He was able to take off my panty and shorts again, Sir.

Q: What did you do?

A: I kicked him, Sir.

x x x x

Q: What did you do?

A: I was crying, Sir.⁴¹

Significantly, the result of AAA's genital examination is consistent with her claim that accused-appellant ravaged her. "When the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge. Laceration, whether healed or fresh, is the best physical evidence of forcible defloration."⁴²

⁴¹ TSN, November 5, 2013, pp. 8-22.

⁴² *People v. Manaligod*, supra note 38 citing *People v. Mercado*, 664 Phil. 747, 751 (2011) and *People v. Clores, Jr.*, 475 Phil. 99, 107 (2004).

As to the element of force or intimidation, AAA, then a minor, testified that on the first incident, she woke up with accused-appellant already on top of her, with the latter's hand on her mouth.⁴³ She recounted how she cried as she felt pain in her vagina after accused-appellant forced himself on her.⁴⁴ During that time, she was also afraid that "he might [have] hurt [her]."⁴⁵ While she tried to resist and kick him on the second incident,⁴⁶ she was overpowered by accused-appellant who was undeniably superior in strength and size.

Parenthetically, the prosecution need not prove the element of force or intimidation to secure accused-appellant's conviction for rape under paragraph 1, Article 266-A of the RPC⁴⁷ in Criminal Case No. 04-0308-2013, considering that it was able to establish that AAA was below twelve (12) years old during that time.⁴⁸ Carnal knowledge of a woman below twelve (12) years old constitutes statutory rape under paragraph 1(d), Article 266-A of the RPC.⁴⁹

Going now to the matters raised by accused-appellant in his Appellant's Brief, We find the same to be flimsy and barely deserving of this Court's attention. He insists that it is extremely unlikely for him to assault AAA given that she and her three (3) other half-siblings were sleeping on one bed.⁵⁰ Indeed, this circumstance could have prevented him from committing the horrendous acts, but it did not. As We have repeatedly observed, "rape is not always committed in seclusion, but also in places where other people may be around, x x x or even in an occupied room, as 'lust is no respecter of time and [place],' and 'rape defies constraints of time and space.'"⁵¹

Further, accused-appellant finds incredible the victim's testimony that when her half-sister woke up during the second incident, the latter again went back to sleep after accused-appellant told her to do so.⁵² There is simply nothing incredible in this statement. AAA's half-sister, who was a minor at that time,⁵³ could have very well gotten back to sleep after being told by her father to do so.

Finally, accused-appellant questions the victim's lack of explanation on how her shorts and panty were put on when accused-appellant turned on the

⁴³ TSN, November 5, 2013, p. 10.

⁴⁴ *Id.* at 13-14.

⁴⁵ *Id.* at 15.

⁴⁶ *Id.* at 20-21.

⁴⁷ 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.

x x x x

⁴⁸ *CA rollo*, p. 45.

⁴⁹ *People v. Manaligod*, *supra* note 38.

⁵⁰ *CA rollo*, p. 37.

⁵¹ *People v. Empenado*, G.R. No. 220753, November 7, 2018 citing *People v. Regalado*, 793 Phil. 493, 503 (2016).

⁵² *CA rollo*, p. 37.

⁵³ TSN, November 5, 2013, pp. 7, 20.

lights during the second incident.⁵⁴ AAA's lack of explanation does not render her testimony incredible. What is important is that she was able to narrate clearly how the accused-appellant forced himself on her on the night of December 25, 2012.

In any case, it should be stressed that “[i]nconsistencies in the testimony of the victim do not necessarily render such testimony incredible,”⁵⁵ as they in fact strengthen the victim's credibility by discounting the possibility of a fabricated testimony.⁵⁶ “What is decisive in a charge of rape is the complainant's positive identification of the accused as the malefactor.”⁵⁷

Notably, against AAA's categorical, straightforward and spontaneous testimony, corroborated by the medical certificate which due execution and authenticity was admitted by the defense, all the accused-appellant could offer is bare denial and alibi that he was not in the house during both incidents. We have consistently held that “alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant.”⁵⁸ Absent any shred of evidence to corroborate accused-appellant's defense, We are constrained to reject the same in the face of the minor's positive and categorical testimony and identification.

Now, as to the designation of the crime. The RTC convicted accused-appellant of two (2) counts of Rape under paragraph 1(a), Article 266-A of the RPC, in relation to RA 7610.⁵⁹ In affirming the trial court, the CA appreciated the qualifying circumstance of minority and relationship under Article 266-B of the RPC.⁶⁰ The appellate court is correct in appreciating the same, considering that the prosecution was able to establish the allegation in the Informations that during both incidents of rape, AAA was under eighteen (18) years of age, and accused-appellant was the common-law husband of AAA's mother. Consequently, the crime committed is Qualified Rape. Further, consistent with this Court's disquisition in *People v. Tulagan*,⁶¹ the nomenclature of the crime is Qualified Rape under paragraph 1 (a), Article 266-A in relation to Article 266-B of the RPC.⁶²

⁵⁴ *Id.* at 37-38.

⁵⁵ *People v. Udtohan*, *supra* note 37 at 463, citing *People v. Cabigting*, 397 Phil. 944, 982 (2000).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *People v. Tampos*, G.R. No. 19542, April 23, 2014, citing *People v. Abulon*, 557 Phil. 428, 447-448 (2007).

⁵⁹ *CA rollo*, pp. 47-48.

⁶⁰ *Rollo*, pp. 19-20. Article 266-B of the RPC states:

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

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

x x x x

⁶¹ G.R. No. 227363, March 12, 2019.

⁶² *Id.* In *People v. Tulagan*, We explained that “‘force, threat or intimidation’ is the element of rape under the RPC, while ‘due to coercion or influence of any adult, syndicate or group’ is the operative phrase for a child to be deemed ‘exploited in prostitution or other sexual abuse,’ which is the element of sexual abuse

As to the penalty, the CA correctly imposed *reclusion perpetua* for each count of rape pursuant to Article 266-B of the RPC. However, the same should state “without eligibility for parole” pursuant to A.M. No. 15-08-02-SC,⁶³ to emphasize that while death penalty is prescribed under Article 266-B for qualified rape, due to the passage of RA 9346, accused-appellant shall suffer *reclusion perpetua* instead.

Finally, as to the modified award of damages, We find the same to be consistent with jurisprudence.

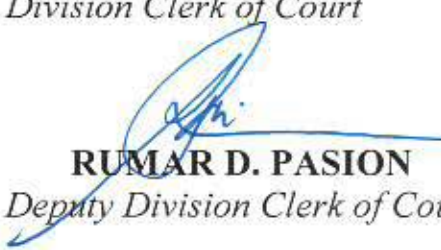
WHEREFORE, premises considered, the appeal is **DISMISSED**. The Decision dated November 10, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 07240 is hereby **AFFIRMED with MODIFICATIONS** in that this Court finds accused-appellant XXX **GUILTY** beyond reasonable doubt for two (2) counts of Qualified Rape under paragraph 1(a), Article 266-A in relation to Article 266-B of the Revised Penal Code. He is hereby **SENTENCED** to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and to pay AAA civil indemnity, moral damages and exemplary damages in the amount of ₱100,000.00 each for every count of rape.

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 847

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under Section 5 (b) of R.A. No. 7610.” Here, the Informations alleged that the acts were committed “by means of force, threat and intimidation”, not due to “coercion or influence of any adult, syndicate or group”. This was also what was proved during trial. Thus, the crime committed is qualified rape under paragraph 1 (a), Article 266-A of the RPC, without reference to Section 5 (b) of R.A. No. 7610.

⁶³ Guidelines for the Proper Use of the Phrase “Without Eligibility for Parole” in Indivisible Penalties (2015).

The Presiding Judge
REGIONAL TRIAL COURT
Branch 13, 4217 Lipa City
(Crim. Case Nos. 04-0307-2013 &
04-0308-2013)

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City


Mr. XXX
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

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